



Neutral Citation Number: [2024] EWHC 2492 (Ch)

Case No: PT-2023-BRS-000021

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 17/09/2024

Before :

HHJ MICHAEL BERKLEY
(sitting as a Judge of the High Court)

Between :

(1) IRVING JOHN CLEAVE
(2) CAROLINE CLEAVE

Claimants

- and -

MARY LOUISE CLEAVE

Defendant

Alex Troup K.C. (instructed by Ashfords LLP) for the Claimants
Steven Ball (instructed by Paul Finn Solicitors) for the Defendant

Hearing dates: 6th, 7th, 10th, 11th, 12th, 13th and 14th June 2024

JUDGMENT

HHJ Michael Berkley:

Overview

1. These proceedings concern an unfortunate dispute between a mother on the one hand and her only son and daughter in law on the other. The mother is Mary Cleave (“Mary”), the Defendant, who is aged 91. She resides in a care home near Bude in Cornwall. Her husband, Elwyn, died in 2021. Their only son is Irving Cleave (“Irving”), the First Claimant, who is aged 62 and has a diagnosis of Parkinson’s Disease. Irving is married to Caroline Cleave (“Caroline”), the Second Claimant. I shall refer to the main witnesses by the first names for ease of reference. No disrespect is intended thereby.

2. The dispute concerns a farm called Great Knowle Farm in Devon, which is about 52 acres in size (“the Farm”). The land comprising the Farm was owned by Mary, who inherited it from her parents, save for two fields purchased by Mary and Elwyn in the 1960s. There is a helpful plan at [1/209] (“the Plan”) which shows the constituent elements of the Farm. The farmhouse, which is shaded blue, was the family home. A copy of the Plan is appended to this judgment as a Schedule.
3. There are two main elements to the claim. The first involves a proprietary estoppel claim by Irving, who says that he has committed his working life to working on the Farm for low pay on the faith of his parents’ assurances that he would inherit it. The second concerns a plot of land on the Farm referred to as “the Trust Land” which is shown shaded in purple on the Plan.
4. In 2022 Mary signed a deed of trust (“the Trust Deed”) the ultimate purpose of which is stated by the Claimants to have been to settle the Trust Land on a discretionary trust (“the Trust”) for the benefit of Irving and Caroline. The Trust property initially comprised the sum of £10 as a pilot, the intention being to transfer the Trust Land into it. A TP1 of the Trust Land was signed by Mary within a few weeks of the Trust Deed having been signed which, if valid, transferred the Trust Land into the Trust. Mary, however, alleges that the documents were not properly witnessed or should be set aside on the grounds of undue influence, *non est factum* and/or unconscionable bargain. That is disputed by Irving and Caroline, who say that Mary executed the Trust Deed and the TP1 of her own free will and with the benefit of advice from her accountants and lawyers and that both were properly witnessed. The Trust Land is also subject to the proprietary estoppel claim in any event.

Background

5. The Farm was originally purchased by Mary’s father, Albert Neck Bowden, in 1925. He died in 1970 leaving a will in which he gave his wife (Mary’s mother) a life interest in the farmhouse plus £1 per week income, and subject thereto gave the Farm to Mary. Mary’s mother executed a Deed of Release relinquishing her interest in the estate, following which the Farm was assented to Mary on 10 August 1970.
6. Mary lived on the Farm with her husband, Elwyn, and their son, Irving. Irving was born on 8 January 1962. The Farm business was run by Elwyn and Mary in partnership,

and Irving (on his case at least) helped on the Farm from a young age. The extent of his contribution from the outset is disputed. Irving's evidence is that after leaving school aged 15 in 1977, he went to agricultural college (which transpired to be on a weekly day-release) and thereafter worked on the Farm with his father. He says that the Farm was predominantly sheep and cattle, and that in 1979 there were 380 ewes plus lambs, 30 Charolais cattle and 80 dairy cows. Mary denies that there were ever that many cows or sheep, and asserts that Irving spent most of his time doing his own contracting work or doing jobs that involved driving a tractor. She says that he was never any good with livestock.

7. Irving accepts that he carried out contract spraying on other farms but he says nearly all of the income was paid into the Farm partnership account. It is, however, common ground that Irving was paid only £125 per month from the outset, and that wage remained the same until 2016 (when Irving was aged 54) when it was increased to £250 per month. Irving was formally admitted into the partnership as a 1/3 partner in 2015, apparently on the advice of their long-standing accountants, Simpkin Edwards ("SE"). There does not appear to have ever been any formal distribution of partnership profits, possibly because the accounts record an almost constant loss-making status.
8. In 1991 Elwyn suffered a head injury after collapsing and hitting his head on his pick-up truck. Irving says that after this injury his father's work on the Farm reduced, with Irving taking on the majority of the work. Mary accepts that there was an accident in which Elwyn was injured, but states that he made a full recovery within a few weeks or even days.
9. In 2010 Irving formed a relationship with a Margaret Hookway. They lived in a log cabin situated in the orchard, close to the farmhouse. Contemporary documents suggest that Mary intensely disliked Margaret Hookway and she amended her will to prevent her from receiving any of her estate. However, Mary's witness statement states that in fact she thought that Margaret Hookway was a good woman, and that it was Irving and Caroline who (after the relationship had deteriorated) poisoned her mind against Margaret by malicious calumny. This, she says, accounts for the contemporaneous documentation.

10. In 2015, Irving was diagnosed with Parkinson's Disease. Irving believes that this was the result of him being exposed to pesticides from a young age with no protective clothing, but no medical evidence was adduced in support of this.
11. It is common ground that Irving started his relationship with Caroline in about October 2018. They married in September 2022.
12. Elwyn had had the idea of developing some Farm buildings into houses. This is evident from the solicitors' and accountants' records. The Farm also had a barn situated away from the main Farm yard. Over time, according to Irving and Caroline, it became clear that, because of Irving's Parkinson's disease, they would have difficulty in continuing to Farm and would need to diversify. The farmhouse was in a dilapidated state and needed redeveloping and the yard had agricultural buildings which could be developed into residential units for sale or letting. Putting it as neutrally as possible, the idea developed that the separate barn would be converted into residential property in which Caroline and Irving would live and the agricultural buildings would be developed into dwellings for sale or letting. Over time, the barn conversion was planned professionally using architects and was specifically designed to cater for Irving's potentially deteriorating physical health as a sufferer from Parkinson' Disease. For example, the corridors and bathrooms are designed for use with a wheelchair and there is a lift in the property.
13. It is common ground that Caroline invested about £127,000 of her own money into the conversion. Irving is said by him to have contributed the proceeds of sale of some land left to him by his grandfather in the sum of £172,875 plus an additional £18,000 or so from cashing in pensions and life policies.
14. It became apparent that the farmhouse was inappropriate for Mary to live in on her own because of its dated and decaying state and her failing mobility as she grew older. It was then decided (Mary says without her full consent) that an annexe would be added to the barn conversion ("the Annexe") into which Mary would move. The Claimants say that, once this was decided, they diverted all of the available resources into completing the Annexe to enable Mary to move in as quickly as possible given her deteriorating health. This meant that they had to extend their time living in a caravan as the main conversion was thereby delayed.

15. According to the ongoing plan (which Mary says she was bullied into), the buildings on the Trust Land would also be converted into residential units leaving the remaining Farm land and original farmhouse in Mary's ownership. In addition, there were three plots of land within the Farm of particular interest to immediate neighbours. These were to be sold to assist with the funding of the barn conversion and annexe. These sales occurred in early 2022, and are not in dispute from a validity perspective, though Mary says she was also bullied into selling these. The proceeds of sale were paid into the partnership bank account, though Mary says all such proceeds have been taken by the Claimants.
16. As stated, Mary and Elwyn's long-standing accountants were SE, and their long-standing solicitors were Messrs Peter, Peter & Wright ("PPW"), which is now an LLP. The tax advice received from SE was that the Trust Deed and transfer of the Trust Land into the Trust needed to be complete before the planning permission to convert the Farm buildings was approved. As detailed below, Mrs Joanna Tope from SE visited Mary, Irving and Caroline on at least two occasions in advance of the deed being signed. For reasons unclear to me, the Trust Deed and TP1 transferring the Trust Land into the Trust were not ready as the approval of the planning permission for the Trust Land approached. This meant that the Trust Deed and the TP1 needed to be drafted and executed in a short space of time: it was thought initially, a matter of a few weeks. It is common ground that PPW were approached by Caroline to undertake this drafting as soon as possible. However, they declined to accept the instructions because of a lack of capacity to act in the time available. This decision is the subject of dispute because Caroline says that she was let down by the relevant partner at PPW who failed to act soon enough and/or inform her of the decision which meant that time became even tighter. Furthermore, that partner, a Ms Woolsey, in an email to SE, expressed concern that she had not received instructions directly from Mary by this stage and had concerns that the transaction might not have been in Mary's best interests.
17. Upon learning that PPW would not act, Caroline approached a firm of solicitors in Plymouth, Gill Akaster LLP ("GA") which, she says, was suggested to her by the Cleaves' long-standing land agent, Kivells. Mr Rose of GA drafted the Trust Deed based on information received from Mrs Tope of SE in a Heads of Terms document. The draft was sent to Mary. It was approved in a phone call made by Caroline, and the

final version was sent by post to Mary for execution. It was signed by her but its attestation is disputed. The proposed transfer of the Trust Land into the Trust was dealt with by another partner at GA, Mr Cusack, who went to see Mary at the Farm to take instructions. The TP1 was sent to Mary by post and it was signed by her within two weeks of the Trust Deed having been signed. Its attestation (and thus its validity) is also disputed.

18. Mary moved into the Annexe shortly afterwards in early June 2022, but on the evening of 20¹ June 2022 an abrupt and dramatic episode occurred, the details of which are disputed. On her case, Mary felt that the Claimants had abruptly turned against her since she had moved into the Annexe, and were denying her a phone. On that evening, she says she had asked Caroline to bring some books from the farmhouse, and she had refused and started shouting at Mary and left, only to return later and, in Mary's words "*started to have a go at me*", telling her to shut up and even calling her "*a daft slut*". She claims that Caroline then tried to suffocate her with a pillow and was only prevented by Irving who appeared on the scene. They then left taking Mary's walking frame with them. The scales had fallen from her eyes that evening and she realised that she needed to escape from a bullying and abusive relationship with Irving and Caroline and so she attempted to commit suicide by taking an overdose of paracetamol. This was observed by Caroline through the window who shouted "*Go on, take the bloody lot*", which she did. Despite this, she awoke on the morning of 21 June 2022, and "*struggled out*" to ask the builder who was on site to phone her sister-in-law. The builder asked Irving to do so, which he did, and her sister-in-law duly turned up and took her away from the scene. It was at this point that Mary made the allegations that Irving and Caroline had been bullying her and shouting at her, pressing her to sign things that she did not know what they were, and she felt that she had escaped from an abusive and repressed situation.
19. Mary and Irving's version of these hours is quite different. They had noticed a change in Mary's behaviour on moving into the Annexe, for example asking for her bookshelf to be put into the wet room and wanting to choose a bedroom in the main house (which was not finished) in which she did not live. On the early evening of 20 June 2022, when Irving was checking in on her, she became irate about having a room

¹ Mary and Margaret say this was on 14 June 2022, but the documentary evidence (principally the PPW email with manuscript additions dated 21 June 2022) suggests otherwise.

in the main house and she started shouting at him; he did not know what to do, never having seen her like that. At that point, Caroline came in because of the delay in Irving returning to the caravan for supper. She says that she found Irving sitting with his head in his hands, crying and shaking whilst Mary was shouting at him. They decided to leave her to calm down, and Irving checked in on her later, and she was asleep. In the morning, they went to check up on her and she was fine. When they returned later to check on the building works, the builder reported that Mary was behaving oddly and they had better speak to her. They found empty packets of paracetamol on the side in the kitchen and Mary in a highly distressed state, howling. They phoned the ambulance and Mary's sister in law and when the ambulance arrived, Mary was taken to hospital. She then made the allegations that form the crux of this dispute.

20. As a result, GA took no further steps and Mary consulted new solicitors with the assistance of her sister-in-law. She has executed a new will in which she leaves her estate to her sister-in-law's grandson. It became clear that there would be no reconciliation, and the Claimants therefore issued these proceedings.

Expert Evidence

21. The parties instructed separate valuers. Mary's expert, Mr Huntington-Whiteley met with Irving and Caroline's expert, Matthew Brown, and they produced a joint statement dated 2 May 2024. Their differing views were helpfully summarised in a table in para 5.33 of that joint statement as follows:

Valuer	Barn	Farmhouse	Trust land	Farmland	Total
MB	830,000	350,000	322,000	480,000	1,982,000
CHW	630,000	360,000	200,000	430,000	1,620,000

22. Mary's Defence initially suggested that she may be advancing a case that her signature had been forged on the TP1 and the Trust Deed, but at the PTR of the action, it was confirmed on her behalf that she accepted that the signatures on those documents were hers.

The Law

Proprietary Estoppel

23. The parties are largely agreed on the relevant legal principles. The key ingredients of a proprietary estoppel claim are representation, reliance and detriment. If those ingredients are made out then an equity arises which the court will satisfy by granting an appropriate remedy. The relevant principles were summarised in *Davies v. Davies* [2016] 1 FLR 1286 at [38], and the proper approach to fashioning the appropriate remedy was set out in the Supreme Court's decision in *Guest v. Guest* [2022] 3 WLR 911. Recent case law has recognised that the non-financial detriment incurred by a claimant who has committed his working life to a Farm is a particularly cogent factor to take into account, the counter-factual being almost impossible to balance against: *Spencer v. Spencer* [2023] EWHC 2050 (Ch) at [97]-[98].
24. In *Davies*, Lewison LJ, after rehearsing the point that all cases based on proprietary estoppel are heavily fact-specific, set out a number of points of principle, as follows:
- (i) *Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: Thorner v Major [2009] UKHL 18, at [57] and [101].*
 - (ii) *The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: Thorner v Major at [29].*
 - (iii) *However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: Gillett v Holt [2001] Ch 210 at 225; Henry v Henry [2010] UKPC 3 at [37].*
 - (iv) *Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: Gillett v Holt at 232; Henry v Henry at [38].*

- (v) *There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: Gillett v Holt at 232.*
- (vi) *Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: Jennings v Rice [2002] EWCA Civ 159 at [56].*
- (vii) *In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: Henry v Henry at [51] and [53].*
- (viii) *Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: Henry v Henry at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: Jennings v Rice at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: Jennings v Rice at [50] and [51].*
- (ix) *In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: Jennings v Rice at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": Taylor v Dickens [1998] 1 FLR 806 (a decision criticised for other reasons in Gillett v Holt).*

25. Those points of principle relating to remedy must now be read in light of the Supreme Court's decision in *Guest v Guest* [2022] UK SC 27, to which I shall return if necessary.

The Trust Deed and Trust Land

26. Section 1(3) of the Law of Property (Miscellaneous Provisions) Act 1989 provides that, in order to have been validly executed, Mary's signature on each of the Trust Deed and TP1 must have been appended in the presence of the attesting witness.
27. If that was not the case in respect of the Trust Deed, it may nevertheless be a valid declaration of trust if the declaration was manifested and proved to have been in

writing made by a person with the relevant *locus standi* to make the declaration: see s53(1)(b) of the Law of Property Act 1925.

28. As regards the TP1, the Claimants say that it was validly executed but, even if it was not, they rely on the proposition that Mary, by declaring the trust as the legal owner of the land in question, validly created the trust notwithstanding the invalid execution. They rely on *T. Choithram International S.A. v. Pagarani* [2001] 1 WLR 1, PC as applied in *Bowack v. Saxton* [2020] EWHC 1049 (Ch) at [43]-[46], a decision of HHJ Paul Matthews:

43. ... I go on to consider the position if each of the bonds was issued to its respective applicant, but never transferred further to the other trustees. In such a case the applicant would be the legal owner of the bond, having entered into a trust deed, by which that applicant and others were to hold it upon trust for the benefit of third parties. It is an elementary principle of English trust law that, in order for a trust of property to be validly constituted, one of two things must happen. Either the owner of the property must declare a trust, whereby that owner becomes trustee, or that owner must transfer the property to another person to hold on trust for the beneficiaries. This is known as the rule in Milroy v Lord (1862) 4 De G , F & J 264, and is a staple of trust law examinations. But in the present case the facts are not quite so simple. The applicant for the bond certainly intended to become a trustee of it, but with others , and the mechanism adopted was for the bond to be assigned by the applicant to the trustees jointly. The question is whether this set of facts satisfies the rule in Milroy v Lord .

44. In T Choithram International SA v Pagarani [2001] 1 WLR 1 , PC, the deceased, having provided for his extended family, and being terminally ill, wished to create a foundation for charitable purposes. This would take the form of a trust, of which he and several others would be trustees. He, and later other trustees, executed the foundation trust deed, and declared that he had given all his wealth to the foundation. But no transfer of the shares registered in his name ever took place before he died. It was argued that these facts did not satisfy the rule in Milroy v Lord . This contention was successful, both at first instance and on appeal, in the British Virgin Islands.

45. On appeal to the Privy Council, Lord Browne Wilkinson said (referring to the deceased by his initials, 'TCP'):

"31. ... Although the words used by TCP are those normally appropriate to an outright gift - 'I give to X' - in the present context there is no breach of the principle in Milroy v. Lord if the words of TCP's gift (ie to the Foundation) are given their only possible meaning in this context. The Foundation has no legal existence apart from the trust declared by the Foundation trust deed. Therefore the words 'I give to the Foundation' can only mean 'I give to the Trustees of the Foundation trust deed to be held by them on the trusts of Foundation trust deed'. Although the words are apparently words of outright gift they are essentially words of gift on trust.

32. *But, it is said, TCP vested the properties not in all the Trustees of the Foundation but only in one, ie TCP. Since equity will not aid a volunteer, how can a court order be obtained vesting the gifted property in the whole body of Trustees on the trusts of the Foundation. Again, this represents an oversimplified view of the rules of equity. Until comparatively recently the great majority of trusts were voluntary settlements under which beneficiaries were volunteers having given no value. Yet beneficiaries under a trust, although volunteers, can enforce the trust against the trustees. Once a trust relationship is established between trustee and beneficiary, the fact that a beneficiary has given no value is irrelevant. It is for this reason that the type of perfected gift referred to in class (b) above [that is, a declaration of trust by the settlor] is effective since the donor has constituted himself a trustee for the donee who can as a matter of trust law enforce that trust.*

33. *What then is the position here where the trust property is vested in one of the body of Trustees viz TCP? In their Lordships' view there should be no question. TCP has, in the most solemn circumstances, declared that he is giving (and later that he has given) property to a trust which he himself has established and of which he has appointed himself to be a Trustee. All this occurs at one composite transaction taking place on 17th February. There can in principle be no distinction between the case where the donor declares himself to be sole trustee for a donee or a purpose and the case where he declares himself to be one of the Trustees for that donee or purpose. In both cases his conscience is affected and it would be unconscionable and contrary to the principles of equity to allow such a donor to resile from his gift. ... "*

Accordingly, the appeal was allowed, as the trust was completely constituted even with only one of the intended trustees holding the property.

29. The Defendant relies on s52(1) of the Law of Property Act 1925 in submitting that the TP1 is void because it was not validly executed as a deed for want of proper attestation and, for reasons I will set out below, *Bowack* does not assist the Claimants in this case.
30. Quite apart from the issue of the attesting witnesses, Mary claims that she signed both documents (and several others) not knowing what they were (*non est factum*) and whilst acting under the undue influence and bullying of the Claimants and/or should be set aside as unconscionable bargains.
31. As regards *non est factum*, Lewison LJ set out the various tests used by the court in *CF Asset Finance Ltd v. Okonji* [2014] ECC 23 at [24]-[31], but for present purposes the short passage at [28] will suffice:

... it is important to keep in mind that the defendant who relies on the doctrine of non est factum must establish not only that his release of the signed document was

not negligent but also that his understanding of the nature of the document was so fundamentally different from what the document actually was as to enable him to disown his signature to it.

32. Turning to undue influence, the relationship of mother and son is not one of those special relationships in which the influence of the son over the mother is irrebuttably presumed. A useful summary of the applicable principles is contained in *Snell's Equity* at paragraph 8-031:

B will need to show that the specific marital or banking relationship was in fact one of influence. The essential question is whether A or X, the alleged influencer, "is in a position to influence [B] into effecting the transaction of which complaint is later made". It is not necessary for B to show that the relationship was one of domination, but clearly the finding of a relationship of influence should not be made on slim grounds, and a mere inequality of bargaining power between B and the alleged influencer cannot suffice. A relationship of influence can be established by proof that B "placed trust and confidence in the other party in relation to the management of [B's] financial affairs", but it would be a mistake to think that B must prove such trust and confidence existed specifically in relation to financial affairs, or that the only relevant relationships are ones of trust and confidence. The question is one of influence, and a relationship of influence may be proved by, for example, evidence of B's dependence or vulnerability. Conversely, closeness or mutual trust between the parties will not, by itself, suffice; nor will the fact that the relationship impose fiduciary duties on the alleged influencer. Everything turns on the specific facts.

33. Once the relationship of influence is established, the question becomes one of whether the influence was "undue". That is achieved by examining the transaction itself. The editors of *Snell* summarise the position thus (at [8-032]):

The existence of a relationship of influence between B and A or X shows that it is possible that B was subject to undue influence when entering into a particular transaction. A presumption of undue influence will arise only if, in relation to that specific transaction, there is "something more ...something which calls for an explanation". It must therefore be shown that the transaction "cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship". Accordingly, the presumption that the transaction was procured by undue influence does not arise unless the nature of the transaction is sufficiently unusual or suspicious that, "failing proof to the contrary, [it] was explicable only on the basis that undue influence ha[s] been exercised to procure it."

34. Finally, at [8-033] of *Snell*, the editors summarise the position once the transaction has been found to require explanation,

If a court finds that there is a relationship of influence and a transaction calling for explanation, the doctrine of undue influence will apply unless A can show that, in fact, B's entry into that transaction was not procured by undue influence. To do so, A must present evidence to justify a finding that, in relation to the transaction in question, B was in fact sufficiently independent of A and so was able to, and did, consent to the transaction free from any undue influence. The presumption of undue influence arises only if there is no explanation for B's entry into the transaction other than the exertion of undue influence, so, technically, evidence rebutting the presumption does not go to the question of whether there was an understandable reason for which B entered the transaction, but to the different question of whether B's admittedly poor decision-making was the product of undue influence. A must convince the court that B's decision to enter the transaction was made as a result of "full, free and informed thought about it".

35. As regards unconscionable bargain, Sir Paul Morgan recently reviewed at some length the relevant authorities in *Azam v. Molazam* [2023] EWHC 2202 (Ch) at [84]-[89] and helpfully summarised them at [90], thus:

Based on this review of the relevant principles as to unconscionable bargains, I hold that it is not enough for a claimant to show that he was vulnerable, that the transaction was at a considerable undervalue and that the defendant entered into the transaction with knowledge of those facts. The claimant must show some further fact by reference to the conduct or behaviour of the defendant which the court regards as unconscionable.

The Evidence

36. The Claimants' witnesses (over and above the Claimants themselves) can be divided into two categories. The first were referred to as "the farming witnesses" and the second as "the professional witnesses", referring to the topics in respect of which they were able to give evidence. The professional witnesses were all summonsed, and I gave permission for the Claimants to call them despite a lack of witness summaries for reasons that I gave at the beginning of the trial.
37. I shall deal first with the Claimants' evidence.

Irving Cleave

38. Irving made one statement in support of his case, including promises made by his parents and grandparents that he would inherit the Farm, and offers of work from third parties coupled with suggestions that, were he to take any other job, the Farm

would be sold. He detailed the extent of his work at the Farm from an early age and the low wages he received. He referred to Elwyn's accident and the effect that that had on his workload, but also detailed how they used to work together and made joint decisions about the Farm. He records the history of the barn development and how it was initiated by Elwyn in 2020; how Caroline had become involved, including financially, together with a request that something was put in writing to reflect that investment. That request was rejected by his parents as a waste of money on the basis that it was unnecessary because "it was all going to [him] anyway". He explained about the genesis of the Annexe; the removal of Margaret Hookway; the evolution of the Trust and his mother's willing complicity in that. He stated that the Trust Deed was signed by all concerned in front of Sarah Moore, but is less explicit about the TP1, stating that "it was signed" in Nula Robinson's presence. He goes on to deal with Mary's swift deterioration after moving into the Annexe, making unusual requests such as for a bookshelf to be placed in the wet room and wanting a bedroom in the main building. He described the distressing events of 20-21 June 2022, and how Margaret, Mary's sister in law, witnessed Mary talking but making no sense and describing her as having gone "*loopy loo*".

39. Irving, in his statement, denied all allegations of abuse and bullying whether by himself or Caroline.
40. In cross-examination, Irving was asked about alternative work offers, and he emphasised the offer from the John Deere dealership for Devon, Cornwall and Somerset, and what an opportunity it would have been for him. He said that his parents had made it clear were he to take the job, they would retire at 65 and sell the Farm. They had said "*we want you on the Farm, not driving tractors around the country*", he said. It was suggested to him that Elwyn and Mary never put actual conditions on their refraining from selling the Farm, to which he replied that Mary put conditions on everything. His evidence in summary was that she is and was a very strong woman who liked to be in control of everything and anyone, and that she was good at manipulating people and situations.
41. In terms of the size of the Farm, it was suggested to Irving that he and his witnesses were exaggerating its size – there were never 380 ewes; 60-70 cows and 20 Charolais cattle. His response was that why did they have a shed for 300 sheep and a parlour for

80 cows if not? He described how, at a time when they had 150 ewes, Elwyn had gone out and bought another 120 sheep, the burden of which all fell on him: “*Guess who had to do it? Me*”. He also said on another occasions that “*I worked my arse off on that Farm for years and years and years*”; and “*I did work full time, morning, noon and night*”.

42. Mary’s case is that Irving did a large amount of contracting, the proceeds from which were kept by him. Irving was taken to his accounts for 2011 which showed contracting income of £7,349. He said that that referred to contracting work he did at evenings and weekends. He stated that all proceeds from his *spraying* work went into the partnership bank account: “*I never saw none of that*”. He said that he did the work, Elwyn did the bills and people would often pay cash. He needed to do other contracting work to supplement his meagre income, he said. It was suggested to him that that meant it was not true that he needed to devote 24 hours a day 7 days a week to avoid being disinherited, to which he replied that it was implied. Irving was taken to other years’ accounts (from which it is notable that 2011 stood out as being a particularly good year) and he maintained that that income related only to non-spraying work.
43. Irving was taken to other documents suggesting he was running other businesses: (1) a log cabin business which he dismissed as being an unsuccessful venture which lasted for 18 months trying to sell at evenings and weekends; (2) a reference to “Entertainment Company Director (Retired)” on his marriage certificate, which he scoffed at, saying that he had raised that as nonsense, and being a reference to his hosting Mr Brass’s mobile stage storage business on the Farm.
44. Turning to Elwyn’s accident, Irving described how his father hated the sight of blood (which meant he could not attend to lambing or calving) and had gone outside when a Panaroma programme had been on showing blood and seems to have fainted, hitting his head on a Subaru pick-up truck. It was suggested that he was exaggerating the effect of the accident on Elwyn, and hence its onward effect on Irving. His statement had referred to Elwyn having been in hospital for a number of weeks and that he had had to run the Farm (totalling 400 acres including rented land, he said) singlehandedly whilst Elwyn was recovering, but Irving was taken to the medical notes suggesting that Elwyn had been released home on 13 December 1991, just 9 days after the

accident. Those same notes, however, have an entry for 13 May 1991 which records that Elwyn returned to work on 22 April 1991, which tends to support his overall evidence that this accident had a serious effect on Elwyn's ability to work for a period. Irving also said that Elwyn was never really the same after the accident, and became increasingly unreliable with machinery, often taking it out and bringing it back damaged. Irving was taken to various medical letters and records suggesting that Elwyn was fully recovered by the summer of 1991 and it was suggested that he was just making things up. He replied that he was not: his father was never the same again; he was slower; he couldn't pick things up; if something was going wrong he could not stop it in time; there were "*all sorts of little things*". However, when he went to the doctor he would always put a brave face on everything, he said.

45. Referring to his statement that the decision between him and Elwyn to move out of cows and into haylage meant the Farm made a profit of up to £40,000 p.a., Irving was taken to the Farm accounts which showed almost perpetual annual losses of mostly between £5,000 and £30,000. Irving said the £40,000 profit figure was what he had been told, but he never got involved with any of the Farm paperwork, so couldn't comment. It was put to Irving that the only way that the Farm could keep going was by Mary selling off parcels of land, including the solar Farm land². Irving said that he had contributed capital sums of £12,000 for a new tractor and £10,000 for a hay turner by cashing in insurance policies. It was suggested that that was not reflected in the accounts, but Irving gave full details of what had been bought and sold (and these purchases are reflected in SE's notes). He later said that he had no idea that the Farm was losing money, and assumed that the funds in the partnership account were there as a "general pot" to be used, provided it was Farm related. He also said that Elwyn had indicated that he could have some of the solar Farm money to go towards the barn conversion.
46. Turning to the barn conversion, Irving was clear that it had been Elwyn's idea. In fact, he said, they had cleaned up a different barn which he had expected was to be given to him, but it had been sold for £50,000. The instant silage barn had next been earmarked for him and Caroline, he said: Elwyn had said that if his and Caroline's future was going to be together, they should get planning permission on the silage

² It is common ground that the Farm had leased fields for a solar Farm which fields had eventually been sold to the solar operator for £365,000, paid into the partnership account.

shed (the barn) up the road. Asked about his alleged £200,000 contribution, Irving said that this was not just from policies, but included the £172,000 that Kivells had negotiated for the land at Trosswell which his grandmother had left him directly. He accepted that he must have made a mistake in his statement when he had referred to contributing £200,000 in pensions and policies alone.

47. Irving was taken to an internal SE document entitled “*Background to conflict of interest and timeline of dispute and our involvement*”, which was produced after the dispute had arisen. Irving suggested that Caroline had paid in more than the £100,000 attributed to her in that document, more like £125,000-£150,000, he said; and he clearly considered that he had contributed more than the £50,000 there attributed to him. He thought that they must not have had the figures to hand. I note that this was clearly an internal document which contains many estimates and surmises.
48. Elwyn apparently³ suffered a bad reaction to a Covid vaccine in January 2021 and went into hospital. After a short spell back at home he went back into hospital and then into a care home. He died on 18 April 2021. During that time, Irving said that Mary indicated that she wanted to change her will, to include provision not only for him and Caroline, but also Caroline’s daughter. It was put to Irving that the suggestion for a change came from Caroline. Irving was adamant that it had been Mary, and that Caroline did not want her daughter to be involved at all, but mother insisted, he said. Upon being asked why that would be, Irving said that it was about control: she wanted to control people. Asked if that was wrong, he said that “*Well, there’s control and there’s control; she liked control over people and if Caroline’s daughter was in the will she felt she could dictate to us for the rest of her life. She is a control freak*”. He was asked if Caroline was the one that wanted to control Mary, and Irving said “*No. No way. When Caroline moved in, [Mary] said that it was the best thing on earth. “She’s saved my life – the best thing since sliced bread”*”.
49. Irving was asked about Mary becoming more vulnerable mentally after Elwyn’s death. Irving said that she started worrying about how she would pay for a care home. When pressed, he said that he and Caroline had looked after her “*morning, noon and night*”. It was suggested that he and Caroline had immediately set about pushing Mary to act in their favour, to which he replied “*No way, no way*”. He was taken to extracts

³ This is disputed by Mary who implicates Caroline in Elwyn’s death.

from PPW's files which suggested that he had contacted them by telephone regarding Mary's will, referring to all of the money being in Elwyn's name in various accounts and commenting that the barn conversion was taking a lot of money. It was suggested that this was further evidence of Irving trying to channel funds his way. He denied this, saying that he may have misremembered that it was him who contacted PPW and not Caroline, with so much going on: his father dying and his Parkinson's diagnosis. Irving accepted that PPW had not visited Mary regarding the will and that she had not gone to see them. He also accepted that he was not present when the will was signed and witnessed by Mr and Mrs Parrish, although it was likely that Caroline was there to make sure instructions were adhered to.

50. Despite this line of cross-examination, Mary later confirmed that she *had* wanted to change her will; that it had been her idea, not only to change the will but to include Caroline's daughter. I shall refer to this as "the 2021 Will".

The Annexe

51. It was suggested to Irving that Mary was never keen about moving out of the farmhouse. Irving replied that you needed to see the state of it to understand: it was not liveable, he said. He accepted that it had been his idea to add the Annexe, but his mother had been very pleased with the idea: she was adamant that she did not want to go into a care home. He denied that it was done for his advantage; she was "*very, very keen*" he said. He cited the fact that she was abusing the assistance button that he and Caroline had provided to her, such that the monitors in Bristol had refused to respond on one occasion because she had pressed the button four times that day. They had contacted Irving and specifically told him to have a word with her. He and Caroline had had to assist Mary on that occasion. She was "crying wolf", he said, trying to get attention in the Farm house. He remarked that she was so keen to proceed with the Annexe that she had been willing to fall out with the neighbours to obtain planning permission.

The Plots of Land

52. It was suggested that the only reason these three plots were sold was to raise money for the barn, i.e. to benefit Irving and Caroline alone. Irving denied that and said that the plots were specifically ideal for the neighbours and gave them security in terms of

development. Mary knew that they wanted them and had sent him to make an offer, he said. It was suggested that he and Caroline had pushed her into the Annexe idea and were pushing it along. He denied that, and said that they consulted her with everything. “*We sat down and talked through everything*”, he said; she said that it was a good idea, and she wanted to do what he and Caroline wanted to do. As to the authority for the professionals to deal with Caroline and Irving on her behalf, Irving said that it had all been explained by solicitors and accountants and she was more than happy with the idea.

53. Mary’s evidence that Irving would put things in front of her and shout “*Sign the bloody thing!*” was put to Irving who said that that was all lies: she never signed anything that she had not read and which had not been fully explained to her, he said. He denied that he wore her down, saying that she was not that sort of person. It was put to him that this bullying and shouting behaviour had been used to obtain her signature in respect of each of the forms of authority; the 2021 Will; the Deed of Trust and the TP1. Irving adamantly denied this: he said that everything that she had signed had been explained to her “*100% perfect*”.

Trust Land and Remainder

54. Irving said that SE had advised them to set up the Trust in the way that they did in order to save tax, on the basis that it was all due to come to him anyway, although Mary needed to retain some land in her beneficial ownership in case she needed care. It was suggested to Irving that the proposed scheme was only for the benefit of him and Caroline, and that Mary was saving nothing by the scheme: Mr Ball suggested to him that the best way for her to save tax was for her to do nothing. Irving replied that they were always acting on their accountants’ advice, and were all going to gain from the project. He accepted that it was his idea, but said that “*someone had to have an idea*” because otherwise the agricultural buildings would fall down as he could no longer Farm the whole Farm due to his Parkinson’s. It was suggested to him that if she chose to let them fall down, that was her prerogative, to which he replied that he had worked all his life on the Farm for very little. It was due to come to him, he was the only son. He said that most farmers’ sons would get a bungalow built for them on the Farm. He confirmed that he had been promised everything, but was asked why he couldn’t wait until Mary’s death to which he replied that he and Caroline had cashed

everything in and that they needed money to complete the projects. It was suggested to him that that was the motive for persuading his mother to join in with the plans, but he insisted that all were in total agreement, and it had been a joint decision. In response to Mr Ball's suggestion that whilst Mary might have understood what was going on, she was never happy to agree to it, Irving denied that: he said that Mary had been completely happy up to the date that she left, when suddenly it was all wrong in her eyes.

55. Regarding PPW's refusal to act in respect of the Trust Deed, Irving said that they had been told it was because of a lack of available time, so they had asked Kivells who recommended GA. Irving said that it was always Mary who opened the post: she really looked forward to it, he said, and so she would have received a letter from PPW explaining that they had insufficient time and that there was some concern that the trust was not in her best interests. Irving said that Mary had said that it was a good idea to go to GA if Kivells had recommended them and PPW didn't have time.
56. Irving was certain that Sarah Moore, their neighbour and a retired chartered accountant, witnessed Mary signing the Trust Deed, although he was not so sure whether Caroline had been there as well. He was certain that Ms Moore had visited the Farm to witness the deed's execution. Ms Moore had made three witness statements in which she had first said she could not remember witnessing Mary's signature but did recall witnessing Irving's and Caroline's, but had filed a third which stated that she was able to say "*with confidence*" that, due to her familiarity with formal documents from her professional career, she would not have signed to say that she had witnessed something when she had not. It was suggested to Irving that he had gone to her to persuade her that she had initially been wrong, and had put words in her mouth or persuaded her to change her mind. This was strongly denied by Irving, as was a similar allegation that was put to him about a letter that a Mr Johns had signed at his request regarding Elwyn's health which Mr Johns had retracted. Irving said that he had been quite happy to sign it at the time.
57. Mr Ball moved on to ask about the TP1. Irving accepted that he had been less detailed in his statement in this regard, but he recalled calling Damian Martin, to ask him to be a witness, but he had been busy and so he had suggested asking his partner, Nula Robinson (who is the alleged witness to the TP1). Irving said that he had initially

gone down to see her, but then asked her to come up to the Farm to witness the document. Irving accepted that he had told Nula that this was “*something to do with tax*” and that he needed it done very urgently. Irving said that he did not know what the document was himself; all he knew was that it would be saving Mary 40% in tax. As regards Nula Robinson’s witness statement in which she says that she had not witnessed Mary’s signature, just Irving’s, Irving said that she had previously agreed to do a statement for *him*, but had changed her mind when Caroline had allowed her horse to stray onto Nula’s lawn. He was very sceptical about how Nula had “*suddenly come up with all this*” and suggested that Mary might have promised her the last three acres of land that she wanted. He was adamant that Nula had visited the Farm to witness Mary’s signature and had not, as alleged by Nula, simply presented the document to her and said “*sign here and here*”.

58. Irving was asked about what Mary alleged in her statement, namely that he had come into the Annexe whilst she was in the bathroom and shouted at her to “*bloody well hurry up*”, and had got her to sign a document which she suspects may have been the TP1 but did not know, and then 5 minutes later saw his pick-up “*racing back down the road*” to or from Nula’s. Irving’s response was “*Funny that – you can’t see the road from there. I am telling you it’s not true*”.

Moving In

59. It is common ground that Mary moved into the Annexe in early-mid June 2022. Irving’s evidence was that all was well for the first little while. He and Caroline (who were still living in a caravan because of the diversion of building efforts into the Annexe) were cooking her meals and popping over to see if she was alright, doing cooking, cleaning and shopping for her. They moved her cat in with her which pleased her greatly, and she was very happy with the views, he said.
60. Irving had said that Mary’s behaviour began to deteriorate, asking for things to be put in unusual places, as I have alluded to above. Mr Ball suggested to him that the deterioration was because they had forced her to move out of the farmhouse against her will; that she was isolated and unhappy to be in the Annexe, to which Irving replied that there was no possibility of her being able to have stayed in the farmhouse, and repeated his evidence of the call-button difficulties. He explained and how she had asked for the bookshelf to go into the wet room; how she got upset because there

was a delay in installing a landline (because they had moved her in as quickly as possible), and that she refused to have a mobile phone, even one with large buttons, he said. He was asked whether Mary had been told that she could not go into the rooms in the main house, to which Irving had replied that was because none of them were finished and it was dangerous. These matters upset her in an irrational manner, he said. She had suddenly turned completely impatient. Irving said that there was no way that Mary would have said that she wanted to go into a care home: it was her worst fear.

61. Mr Ball suggested to Irving that he and Caroline had got Mary to sign everything, and then set about trying to isolate her by preventing her from having a phone and making sure she was stuck in the Annexe, including locking a door. Irving denied this completely and said that one door was locked because there was a disused slurry pit close by and it was extremely dangerous to have had Mary going out of that particular door. He also denied an accusation that they had removed Mary's walking frame from her room to make it more difficult for her and that they had removed all of her food from the fridge.
62. One night, Irving described a "*bit of a hoo-ha*" with the books, and Mary had "*laid into*" him. He was asked whether Caroline had picked up a pillow which Irving denied: he said she had come in because there was a bit of a "*kerfuffle*". He thought Mary may have suggested that she wanted to "*do away with herself*" but said that she had made such threats many times. He never thought that she would ever do it. He said he knew nothing about her paracetamol overdose until the following day, and so did not say anything like "*Take the whole lot*" as Mary alleges. He had phoned Margaret (Mary's sister-in-law) as requested and he may well have said that Mary was talking nonsense: she had taken an overdose. She was suddenly talking about living on her own and everyone was so shocked and upset, he said. He denied saying that he wanted her gone, and never wanted her back: Margaret was a liar, he said. He had gone to see her in the back of the ambulance before it left and not, as Margaret had alleged, just walked off.
63. Finally, Irving was questioned about Farm machinery that he had been selling online. He said that all of that belonged to him, and that he needed to start making progress

on the agricultural buildings because they had time constraints on the planning consents.

Caroline Cleave

64. Caroline's witness statement detailed her life at the Farm from her arrival; Mary's limited role in farming compared to Irving; her good relations with Mary and Elwyn and the assistance she gave to them; the evolution of the Annexe idea and her involvement with the professionals concerned. She also gave her version of the events of 20-21 June 2022, denying that she had tried to suffocate Mary.
65. Caroline gave a bit more detailed evidence about the special adaptations made to the barn conversion design to accommodate Irving's future needs arising out of his Parkinson's.
66. She was asked about the conversations she referred to in her witness statement with Elwyn and Mary and the family generally about Irving wanting to live at the Farm for the rest of his life and how he was led to believe he would inherit it.
67. Caroline described how she had moved into the farmhouse around Christmas 2020, and how she had joined in the general help required with two elderly family members in the house. It was not suitable for the long-term and so she and Irving moved into the caravan after about 6 weeks.
68. Mary always opened the post, Caroline said: she had a paper knife and would lay the post out and would enjoy doing it. They would discuss the post together once Mary had opened it.
69. Referring to the prospect of the Annexe, Caroline was firm that Mary was not just pleased with the prospect of moving in to it, but was "*over the moon*". Mary was excited about choosing her own furniture and a special adapted bed, she said. It was all discussed in good spirits, "*because that is what you do*", she said. It was agreed that Mary would keep the farmhouse and some land which Mary referred to as her "*nest egg*". Challenged that this was about allowing Mary to keep what was already hers, and was not generosity on the Claimants' part, Caroline said that it was part of an overall agreement and trying to make the Farm a lovely place to be for all concerned.

70. Caroline was asked about the Trust and the 2021 Will. She said that apparently Mary changed her will quite a lot, and she was aware that she had done so more than once when Margaret Hookway was on and then off the scene. She assumed that Irving would inherit the Farm because he was Mary and Elwyn's only son, and then she said that Mary had told her that that was the case.
71. It was put to Caroline as it had been to Irving, that the Trust arrangements saved Mary nothing because she could have just kept it all. Whilst Caroline agreed with that, she said that that would have left a redundant Farm with a son suffering from a degenerative disease. She said that they were trying to make the most out of the place: it was all they ever wanted to do. That was not limited to her and Irving, she said, but included Mary as well. Pressed on the point that this was only going to save the Claimants money, Caroline said that all three of them took advice from professionals. *"We didn't embark" on anything; we obtained advice for an elderly lady potentially needing care"*, she said. *"maybe it does set off alarm bells but it couldn't be further from the truth"*, she added. It was suggested to Caroline that she always wanted to be in charge, to which she replied that she was asked to be by Mary and Irving.

PPW and the Disputed Deeds

72. Caroline was cross-examined in some detail about how she became involved with PPW, and how she had fallen out with Ms Woolsey. The theme of the questioning was that Caroline was pressing hard to get the Trust Deed done quickly and that she was deliberately keeping Mary away from the process. This was why, it was suggested, Ms Woolsey would not accept instructions for the Trust Deed. It was suggested that she consistently ignored the obvious difficulty facing Ms Woolsey, namely that she had not heard from Mary herself. Caroline was adamant and consistent in saying that the problem was with PPW. They had sat back and done nothing for days on end when they knew timing was critical and had promised to come back to her when they did not. She said that if she had had the slightest understanding that Mary needed to make direct contact with PPW she would have organised it, but PPW were the professionals, she said, and at no point prior to refusing instructions did they complain to her that they had not heard from Mary direct. It was their omission, she said. This was why she had become irate with Ms Woolsey: she felt the solicitors were letting the family down. If they wanted to

contact Mary, they could have done so direct, she said. She said that they would always come to the house, and had no idea why they didn't do so on this occasion, and she wished they would have done: they would have had any suspicions allayed.

73. Caroline was asked about Mr Cusack's visit to see Mary when GA were first instructed. Caroline said that she was feeling awkward and wanted GA to feel comfortable so was going to keep away. However, Mary wanted her there when professionals visited so that she would not feel bamboozled by the technicalities. It was suggested to her that Mary was never completely happy about executing the Trust, but Caroline stated that Mary certainly was: they all were, and all trusted each other and the professionals.
74. Mary signed her new will with Caroline present (although she was not a witness). Caroline was asked why she had not mentioned this in her statement, and she replied: why would she? It was suggested that it was part of Mary's case that she was regularly pressed into signing documents, and it would have been natural to have mentioned it. Caroline denied that: there was no attack on the will, and Mary *always* asked her to be present on such occasions, she said. She did not recall the actual event, but accepted that she was probably there to ensure compliance with the instructions for signing the will given by GA.
75. Turning to the TP1, Caroline was quite vague in her recollection, and felt that Nula would have witnessed her signature at a different time to Mary's, but said that she felt that it would have been done in accordance with their instructions.
76. It was suggested to Caroline that she took a strong lead in selling the plots of land because they needed money quickly and she was "*pushing people around*", including Mary, and controlling the agenda. Caroline denied this, stating that she was not a 'control-freak' but that she was doing what she was being asked to do and what she was good at: getting things done. There is an email dated 12 April 2022 from Caroline to Natasha Smith at GA stating that Caroline has spoken to Mary and she was quite happy to sign the TP1 for the Trust Land in front of an independent witness, and so Ms Smith need not attend on the coming Thursday. It was suggested to Caroline that she had not in fact spoken to Mary and Mary was not happy to sign the TP1. Caroline denied that.

77. Caroline was then cross-examined about a large number of cash withdrawals from Mary’s bank account in the sum of £200 (a total of £4,900). Caroline says that these were for the builders because of the Annexe – they were running out of money. She also did shopping for Mary and used her card. She was clear that she was not helping herself to Mary’s money by these withdrawals.

Mary’s Move to the Annexe

78. In her statement, Caroline had set out what she described as Mary’s deterioration after she moved out of the farmhouse and into the Annexe: a period of about 10 days over which Mary’s attitude to them and the whole situation changed dramatically for the worse, which Caroline attributed to the move from a place in which she had lived all of her life to unfamiliar surroundings and without Elwyn. It was suggested to Caroline that this was the moment when Mary had realised that she and Irving had wrestled control from Mary, to which Caroline replied that Mary always controlled everything at the Farm: not just in her life but the “*whole shebang*”. When challenged that that might be because it was entirely her Farm, Caroline said that she wasn’t saying otherwise; and she “*wasn’t knocking it – it’s ok to be strong*”.
79. Caroline strongly denied that she taunted Mary that the Farm was no longer hers, and asked why would she? It was suggested that, if the documents are effective, it would be true, which Caroline also denied, and in response to the suggestion that at least a good proportion of it would be, Caroline said that it was because that is what Mary had wanted.
80. When Caroline was asked whether Mary was complaining about being moved and being out of control, she said that that had never been raised. Mary was so happy that they had made such an effort to prioritise the Annexe to get it finished, and she was appreciative of how much she and Irving had pushed themselves. Mary was now in a proper environment and safe, she said, and added that if that was how Mary felt, she never said anything. It was put to her that on the night of the incident, Mary had started screaming and shouting: was that not telling them?, she was asked. Caroline said that it was a debacle: “*why had she not said anything before?*” She said she would never have taunted Mary about the Farm not being hers: that would be a cruel thing to do and they were not cruel people, she said.

81. Caroline repeated Irving's evidence about the books and the phone. They had brought books from the farmhouse and offered a mobile phone designed for the elderly, but Mary had refused, insisting on a landline immediately which was impossible because the Annexe had been finished earlier than expected. She had brought all sorts of things up from the farmhouse to make Mary feel at home, she said, and they had all needed cleaning which she had done. She also referred to Mary expressing an irrational desire to have a room in the main house which was still under construction. It got to the point (in very short order), Caroline said, that you could not have a conversation with her. She strongly denied having told Mary to "*Shut up you daft slut*". She denied trying to smother Mary with a pillow, saying how devastating it was to be accused of that. She denied that she had taken Mary's walking frame away. She further denied that she had urged Mary to "*take the lot*" referring to the paracetamol. She said she had left her to calm down and was not present when she took the paracetamol.
82. When Caroline was asked how she could explain the sudden change if everything had been so good before, Caroline said that she did not know. Perhaps Mary was not comfortable, she said, but she wished she had said something rather than "*bring us to this place*" referring to the court, referencing all the grief and hurt, and how she had felt devastated when accused of trying to suffocate Mary. It was suggested that Mary was unlikely to change in this way just because she was unhappy, to which Caroline answered "*I am not in Mary's head*".

The Farming Witnesses

Mr David Stanbury

83. Mr Stanbury is aged 65 and a local agricultural tradesperson, currently being a sales executive for a local tractor dealership. He has been dealing with Irving and Elwyn for over 30 years. He has traded mowers, feeders, spreaders and tractors and would visit the Farm 2-3 times per year. He always dealt with Irving and Elwyn who worked together whilst Elwyn was alive, and all decisions had to be made jointly, he said. He considered them to be hard working and looked after their machinery well, often delivering haylage and bales up to 20 miles away. He found Irving to be honest, and a man of his word.

84. In cross-examination, Mr Stanbury acknowledged that Irving was more technically minded and so would have been keen to be there when appointments made for his visits. However, he was not aware of Irving doing any significant amount of work off the Farm. He thought that the Cleaves had made good money from the haylage and bale work, and was surprised to hear that the accounts showed that the Farm rarely turned a profit.

Mr Peter Ross

85. Mr Ross is 71 years old and a retired farmer, having farmed a neighbouring Farm, Lower Thorndon Farm, since 1966 which is across the valley from Great Knowle Farm. He came to know the Cleave family well, he said, but they did not socialise as friends as such.

86. Mr Ross saw Irving less than Elwyn, but always considered them a team, he said, whether it was selling livestock at market; exhibiting at St. Peter's Fair at which they often won prizes, or working on the Farm itself. Irving was nearly always at the Farm, he said. He thought that the position between the Cleaves was the same as his own, namely, he had worked with *his* father on the Farm, and always perceived his father's Farm as *their* Farm and he was always going to take it on. It was suggested to him that, because of his own experience, he had merely *assumed* that Irving was always there. He replied that he could only say what he saw: Irving lived on the Farm and worked on the Farm. In terms of the succession, Mr Ross said that it did not come into conversation as such: it was simply the natural progression.

87. He corrected his witness statement to refer to the fact that the invoices for Irving's spraying work carried out in his Farm came from Elwyn and Mary and they would have been paid by cheque rather than cash. He did not know what happened with other farms for which Irving did contract work.

88. Paragraph 8 of Mr Ross's his statement reads as follows: "*I can almost guarantee that Irving has worked Great Knowle Farm all his life from what I have seen, whenever I would drive past the Farm, he was running it with Elwyn, father and son running the Farm. Everyone could see that*". Mr Ball asked him whether he should replace the word "guarantee" with "assume". Mr Ross, replied that Mr Ball could say that, "*but I saw him*". I asked him to clarify, and he said that Irving lived and worked on the

Farm. “*He was part of a family unit and I don’t see any doubt about it. He was there the majority of the time.*” He then referred to there being times when his Farm needed a piece of machinery e.g. telescopic loader to help a cow that was stuck and would ring the Farm, and “*at the drop of a hat [Irving] would be over whether first thing in the morning or in the evening. That’s another reason to think he was there*”. He accepted that that meant he was at the Farm although not necessarily working.

Mr Lindsay Ellacott

89. Mr Ellacott is aged 68 and has known Irving Cleave and his family for 35 years. He is a neighbour and family friend and over a period of several years has also provided services to Irving such as agronomy (e.g. soil management) and agricultural machinery through his business. In his statement he says that he saw Irving working closely with Elwyn over the years, and that he had assumed that Irving already owned at least part of it due to tax-efficient accelerated inheritance. He was also aware of Irving’s contracting work off the Farm. They had a common interest in solar farming as they both undertook it.
90. In cross-examination, he was asked about seeing Irving working “*consistently*”. He said that whenever you did meet Irving and spoke to him, his involvement with the Farm was evident. He was asked whether he ever saw him do anything else. He said that Irving would explain that he had spent 35 years working at Great Knowle, but it was not just his own information, but talking to friends and around the area, the whole time Irving was working at the Farm.

Mr Ian Brass

91. Mr Brass is aged 72 years and was until recently a partner in a stage hire company. He has known Irving, Elwyn and Mary for what he described as “*well over 20 years, as a family friend and through business*”. He used Great Knowle Farm as a base for his stage hire business and host for a lorry operator's licence. He said that it was always his understanding that the Farm was owned by the family: Mary, Elwyn and Irving. This, he said, was because Irving was always at the Farm, living and working, and it was Irving who undertook most of the work because Elwyn was engaged by the NFU to investigate claims.

92. He had kept stage hire equipment there for most of the 20 years he had known the family. The storage was of a 10-meter mobile stage which is towed behind a lorry or a 4x4 vehicle. In the winter it was put into barn; from May to September it was out on the road at various events returning to the Farm between engagements. They always returned at the end of the day if they could because of security issues which the Farm storage solved.
93. Mr Brass described Irving being “*always at the Farm*”, referring to him being on the tractor somewhere; out in the fields. They would have lunch together with Elwyn and Mary. He regarded himself as a personal friend of the family and would have lunch and coffees and the like whenever he was there. He said he was there once or twice a week in the summer season and Irving was always working, he said. It was not a big Farm so you knew where people were: you could see and hear them in the fields.

Mr Gareth Castle

94. Mr Castle is now an HGV driver but used to be a Farm-hand at Great Knowle Farm. He regards himself as a personal family friend of the Cleaves. He described Irving as being the one who carried on the general running of the Farm whilst Elwyn concentrated on the milking and Mary he described as a “typical farmer’s wife” running the house, though she did help with bottle-feeding calves when necessary. He said he worked with Irving on many tasks, including potato picking; tending to livestock and mineral spraying.
95. In cross-examination he said that he used to play skittles with Elwyn (Irving did not join them). He was living down the road and knew the family really well. It was Irving who would ask him to undertake work on an *ad hoc* basis and they would usually work together, and it was otherwise only Elwyn and Irving who would work on the Farm and he did not see much of Mary.

Mr Christopher Duke

96. Mr Duke is 68 and states that he has known the Cleave family for over 50 years. He knows Irving very well and regards him as a close friend. He also states that his parents were very good friends with Elwyn and Mary and that the Cleave family were like a second family to him, and he would help out whenever needed. He worked at Great Knowle Farm as a contractor since 1999 assisting with everything from slurry

making to being a security guard for the solar Farm. He describes how Elwyn and Irving worked the Farm together but Elwyn gradually did less, particularly after the milk herd was sold in 2012. Mary would do “yard work” but otherwise the Farm work was done by Irving and Elwyn, and it was Irving who would ask him to work when needed.

97. In cross-examination, Mr Duke said that Irving would assist his employers with contracting work using his own equipment. He had worked with the Cleaves since he was 14 for ‘pocket money’, but he started working “seriously” for them in 1999. Mr Duke said that he was needed less prior to 2016 because Elwyn was able to work, and he was busy on many farms in Devon and Cornwall. Elwyn was only working about 4 hours per day by 2018, he said, and with Irving’s illness he was required for more fiddly parts of maintenance.
98. Mr Duke said that he was not particularly aware of the contracting work that Irving is said to have done on other farms. Over the past 10 years, Mr Duke said that he and Irving had worked every part of the Farm and knew it very well: all of the land (including the rented land) was farmable at different times of the year.

The Professional Witnesses

Mrs Joanna Tope

99. Mrs Tope is a Chartered Accountant and Tax Adviser who works for SE and dealt with the Cleave family throughout the events with which this case is primarily concerned. The Cleave family had been longstanding clients of SE from when Mrs Tope joined the firm in 2016. She used to see Elwyn once or twice a month, primarily at Holsworthy Agricultural Market, where they would chat about many things, including things going on at the Farm, for example, the possible sale of the solar panel fields and the potential planning permission on the barn. In contrast, she had met Mary only once or twice at an annual agricultural show, before Mrs Tope got involved in the tax advice which led to the Trust, and first met Mary professionally on 17 January 2022. She dealt with Mary’s and Irving’s annual tax affairs by post.
100. Although Mrs Tope had no knowledge of the day-to-day running of the Farm, her records show that there no cattle on the Farm from when she joined and the sheep gradually dwindled as Elwyn got older, and all livestock was sold after Elwyn’s

death. Only two fields in the Farm were partnership assets having been purchased in the 1960's; otherwise the Farm was owned personally by Mary. Mrs Tope confirmed the documentary evidence that the Farm business tended to show losses rather than profits but the profit-share was 33.3% each from Irving's admission until Elwyn's death when they reverted to 50% to each surviving partner.

101. Mrs Tope gave a detailed statement of 45 paragraphs setting out how she had visited Mary, Irving and Caroline on 17 January 2022 and again on 3 March 2022 with her specialist tax partner David Shearer. Each is recorded in an attendance note.
102. On the first occasion she met with Mary alone and then separately with Irving and Caroline. The attendance note might be read as suggesting that Irving had been providing the information, but in cross-examination, Mrs Tope clarified the situation: Irving was present at the beginning of her meeting with Mary to "*set the scene*" on the planning position, but after that it was Mary who did all the talking. Irving left to do something, and then came back to collect Mrs Tope and take her up to see Caroline, Mrs Tope said.
103. The witness statement and attendance note are detailed and I will set out excerpts from the latter below, though the very clear overall impression is that Mary was fully engaged; that the family had clearly discussed and agreed the outline of the way forward; that Mary was expressing her own understanding of what the family wanted to achieve; that Mary was "perfectly happy" with the intention to give the barn and about 18 acres to Irving outright, and very happy with the prospect of moving into the Annexe. She expressed a clear acknowledgement of the work that Irving had put into the Farm over the years and had earned his right to the barn conversion and land in his own name. Mrs Tope said in evidence that from her understanding of the meeting, Mary wanted to "*see Irving right*". He was to have the barn and 18 acres; the agricultural buildings would be put into the Trust and the remainder of the Farm with the farmhouse would remain with her.

Mary is now in the farmhouse along and although doing very well for 89 (?), She does rely on a walker and the house is quite dated now so really it would be easier for her to have a smaller place or a modern setup.

...

Mary said she was happy for all our liaising to be with Irving (although obviously as the seller she will need to have some correspondence directed to her as it's her tax) and that she and Elwyn (late husband) had always looked to SE and we'd seen them write this far so she'd keep relying on us.

She is perfectly happy to give the remainder of the Farm to Irving, she thinks he's earned his reward of that and she's being housed in the annex so isn't being forced into care or anything, apart from the fact that she was born in the farmhouse, I think she knows it's too big for her now.

104. There is an attendance note of the second visit, when Mrs Tope attended with the tax partner, Mr Shearer. It is less detailed but the meeting appears to have been attended by Mary and Irving. There is a line recording "*Mary happy to get anything sorted as needed*", and it is clear, too, that the Annexe and Trust were discussed.
105. Mrs Tope was hardly cross-examined on her evidence, which is understandable because her notes and manner of giving evidence were both very convincing. She was briefly cross-examined about the nature of the tax savings that would be achieved by the Trust, and how the property needed to be put into the trust before the planning application was approved. The idea was to protect Mary from a large Capital Gains Tax bill on the development, which would leave the Trust to be charged on a transfer to a third party. There were quite complicated interrelationships between CGT and Agricultural Relief. However, the January meeting had been a fact-finding exercise, and Mrs Tope had concluded that specialist tax advice was needed given what the family wanted to achieve.
106. I asked Mrs Tope whether she considered the Defendant was merely passively taking part, and she said that Mary was like many clients: they knew what they wanted to achieve and why, but not about the "*nitty gritty*" which they regarded as detail. I also asked whether she had any concerns about whether Mary understood what was happening and/or was voluntarily entering into these intended transactions. She was clear that she had no concerns: otherwise she would have made a note of them, she said, and "*there is nothing to suggest that, either in the note or my recollection*". Mr Ball asked whether there reference to how SE "looked after the family" and that she wanted them to continue to do so could be read as a note of concern, and Mrs Tope said no: it often happens, and they always have to make sure that it is the clients who have to make the actual decisions.

Mr Matthew Rose

107. Mr Rose was instructed on the Trust. He said his initial involvement had been a call received on 5 April 2022 via the office whilst working from home. It was Caroline who advised she needed trust advice. She gave her background as being Irving's partner and Mary being his mother who owned the Farm. They were living on a Farm in Holsworthy, and Kivells had referred them to GA regarding the trust. The reason was that they had received tax advice from accountants who were assisting Mary. Caroline had explained that matters were time sensitive because it was likely that planning permission was coming through and the advice had been that the land and buildings need to be transferred prior to the grant of planning permission. Caroline had asked whether GA could undertake this for them, and Mr Rose had said that he could deal with the trust whereas a colleague would deal with the transfer.
108. Mr Rose asked Caroline about deeds to the property which she said were with PPW. He asked why PPW were not dealing with the transfer and Caroline had said that they didn't have capacity to deal with the matter quickly enough. Mr Rose felt that he could deal quickly and asked for the deeds. He was not clear about the trust details at the time but Caroline explained that SE would know those details and she would put them in touch with him.
109. Mr Rose said that he took contact details. Caroline explained that Mary had no email. She also explained that Mary's age and Irving's health were considerations in wider succession planning, and it was very time sensitive. Mr Rose agreed to open the file and send out terms and conditions immediately.
110. Mrs Tope of SE sent Mr Rose the heads of terms on 7 April 2022 and he sent out GA's terms and conditions to Mary the following day. He sent the draft Trust Deed to Mary on 27 April 2022. Mr Rose could not recall whether there had been an immediate response, but felt that Mrs Tope's heads of terms were very clear and did not feel the need to question anything further. He said that he chased the deeds from PPW and Ms Risdon a partner there confirmed that she would send them.
111. Mr Rose recalled a brief meeting on 4 May 2022 attended by Irving and Caroline alone at the GA offices. The reason was for them to bring the original deeds from PPW. He said that he recalled the meeting well because they brought a framed

overhead photo of the Farm. He recalled some discussions regarding tax advice along the lines that only 90% of the property should be put into the Trust. He confirmed that the trust was as per Mrs Tope's heads of terms and they agreed that Mary was happy with that and changed nothing from the draft. Mr Rose said that it was at this point that he considered whether the trust should be a pilot trust to start with and to execute the transfer separately. He said that he had Mr Cusack of GA in mind because of his agricultural experience.

112. Mr Rose was taken to an email from PPW to SE dated 6 April 2022. That reads as follows:

“Under different circumstances, we may be able to act in the creation of lifetime trusts, we have certainly done so in the past.

In this case, however, having discussed the matter with my fellow partners we considered it was too high risk.

The timescales involved are very short. Whilst your email with Heads of Terms is dated 30.3.22 I was not in the office and only saw it the following day.

...

I also felt uncomfortable especially because Caroline and I got off on the wrong foot.

Plus I am concerned about undue influence since I have had no instructions from the client. Nothing at all from Mary Cleave.

I have told Caroline that I have declined to act as she is not my client.”

113. Mr Rose said that he not seen that email before, and was disappointed that GA didn't know about it. Mrs Tope's email with its heads of terms came only 1 day later, he said, and that he would have refused instructions because, although safeguards can be taken regarding undue influence, they are more time consuming and this was very time-sensitive, so he didn't want to put the firm in difficulty when dealing with the tax implications. He had not made contact with Ms Woolsey either before or during these proceedings.
114. Mr Rose accepted that the Trust Deed had been executed without his input and that checking and dating the completed deed had been his last substantive involvement.

115. In cross-examination, Mr Rose said that he had used the post because Mary did not have an email address, and he had sent the draft Trust Deed to her in that manner.
116. He said that he was aware that they were undertaking estate planning due to Irving's Parkinson's, and so farming couldn't continue in the long term. He was conscious that he had clear trust provisions from Jo Tope. As he understood it, estate planning was necessary because Irving had Parkinson's, and so farming couldn't continue.

Mr Anthony Cusack

117. Mr Cusack is the partner at GA who dealt with the TP1. He had no direct involvement prior to having been instructed to deal with that aspect of the matter.
118. He received a call from Kivells after the Trust Deed had been executed. He was informed that PPW couldn't or wouldn't act and said that GA would be willing to assist. Mr Cusack went to see Mary, Irving and Caroline on 15 May 2022. He subsequently produced an attendance note which is important, and so I shall set it out in full.

“They show me around the property and tell me about their plans for development. I am aware that a discretionary trust has been set up by our Matthew Rose and am appraised with their development plans. Essentially they will be developing one barn to provide for 3 four-bedroom houses and a four-bedroom house in the place of the existing barn which is located on the other side of the yard. They also hope to have a holiday cottage in what used to be the old hairdresser's salon. I explain the plans will need to be drawn and they say that they have pretty much done these already as the architects have submitted planning. Planning is awaited and is likely to be here by the end of the month. However, they all agree that the development land is to be transferred into the discretionary trust so as to minimise tax liability.

Mrs Cleave's house and the paddock that is adjacent, as well as the farmland, is to stay outside of the trust and in Mrs Cleave's sole name for the time being. I say that the property is currently unregistered and my advice would be to make an application for first registration at the same time. In short, the house and farmland would stay in Mrs Cleave's name but the development land will be transferred into the three names of Irving, Caroline and Mary Cleave pursuant to the terms of the trust.

This has to be completed no later than the 30th March and I say that that is achievable.

I speak at length to Mrs Cleave about transferring the land into the discretionary trust and she is obviously very able to conduct her own affairs and confirms her intentions to do that. She tells me that Irving and Caroline are getting married

and that this is going to help them in the future. She has also allowed them to build their own house on the land which is nearly completed, and they show me around, and she will be moving into an annexe within that property and then her property being the Farm house itself and the one acre paddock alongside, is to be sold for renovation purposes. She confirms on numerous occasions that she is happy with the terms of the transfer.”

119. Mr Cusack was asked about who had been present during which parts of the meeting. He said that he had arrived and been met by Irving and Caroline. They showed him the work on the barn and walked him round the site, and for information purposes showed him some of the land sold off to the neighbours and the development land.
120. He went on to say that all three of them then went to meet Mary in the farmhouse kitchen. He was asked where in the attendance note that Mary had become involved, and he said that it was from “The Property is currently unregistered”.
121. He was asked about his recollection of Mary’s demeanour during the time recorded by the last two paragraphs of the note. He said that he could remember very clearly. It was the reason he went there, he said. It was important to physically meet clients, especially with rural properties. He wanted to make sure the instructions he was receiving were correct and from Mary herself. He said that he spoke “*at length*”, although he admitted that all three were in the room. He said that he is experienced enough to understand if there are any issues regarding inadequate instructions and he assessed Mary as being fully competent. He could remember the meeting very clearly, he said: Caroline was to Mary’s right and Irving to her left. He spoke to Mary on numerous occasions and it was clear that she was happy with the terms of the transfer, he said. She wanted to give the Trust Land to Irving and Caroline: they were getting married and it was for their future. Mary was “*jolly and lucid*”, he said, and she “*fully understood what was going on*”. Mr Cusack said that if he had had any concerns whatsoever, he would have terminated the meeting or seen Mary alone. He was adamant that at no stage in the meeting did he have any concerns whatsoever.
122. He was asked whether he thought he was sufficiently experienced to spot any doubts, and he replied saying that he had dealt with property transfers for 27 years. He was instructed regularly by financial institutions specifically for the purpose of identifying issues. It was important that Mary already had advice from SE and Mr Rose, so there were two prior professional engagements.

123. Asked about the demeanour of Caroline & Irving, Mr Cusack said that Irving didn't add much to the conversation, and added that "*to be fair to Caroline and Irving, 90% of discussion was with Mary. She did most of talking*". He stated that at no stage was there any concerns, and she confirmed many times that she was happy to transfer the property. He said that he had no concerns whatsoever when he left the meeting.
124. Mr Cusack sent letters to Mary explaining the transfer and registration process and confirmed that he had had no involvement with the physical execution of the TP1. He distinctly recalled an email that was missing from the copy file in the bundle in which he had reserved rights of way which needed to be reviewed. He stated that 80% of documents are now emailed for printing and signing and that the Land Registry is happy to accept electronic signatures. He said that he would have sent full instructions for executing the TP1, and that he had used the same wording for last 25 years.
125. Mr Cusack was asked about the process when he received the TP1 back. He replied that he had just received the email and dated the transfer. He did not register the TP1 because he received information regarding its validity from Mary's new solicitors. He recalled making the changes to incorporate the 90/10 split on the transfer which was achieved by simply referring back to the terms of the Trust Deed, he said.
126. Mr Cusack was cross-examined by Mr Ball. He confirmed that he did have instructions when attending the Farm: the firm had been instructed to draft the TP1. It was suggested that by him assuming vicarious instruction by dint of the firm's instructions, then they were only as good as Mr Rose's instructions (who had not met Mary), to which he agreed.
127. The meeting lasted 2 hours, Mr Cusack said: he did not charge for travel, hence the invoice being in respect of that period of time.
128. Asked about his vigilance at meetings like this, Mr Cusack said that he is not qualified to be on the lookout for capacity: he is not a doctor. He said that he was on the lookout for whether the person understands what they are going to do. If there appeared to be capacity issues, he said that he would refer the client to a doctor. Mary had been through two other professionals, he said.
129. Mr Cusack was then taken to the email from Claire Woolsey to Mrs Tope dated 6 April 2022 set out above. He said that he had become aware of the reasons later. He

didn't know why GA were asked to draft the Trust Deed. He knew that PPW were historically used to convey property for the Cleave family and did not know why they hadn't been instructed on this occasion. He said that he had never seen the email before. He said that if he had seen it, he would have acted differently. He was asked whether he would have conducted a face to face conversation with Mary in private to which he replied, no, it would not be fair to say that. He felt that it would have cast doubt on whether GA could have acted at all and that he felt it was slightly unfair that GA were not given that information. He acknowledged that it was only an opinion of Ms Woolsey's, but he would have respected it. He also acknowledged that one reason for him not being concerned was that the whole process had gone through two sets of professionals: Mrs Tope and Mr Rose. He said that it was not for him to question Mr Rose's conduct or Mrs Tope's.

130. In re-examination, Mr Cusack said had he known about Ms Woolsey's email he would have approached things differently. Putting issues of capacity to one side (as they were not raised), he was asked how he would have dealt with the situation. He said that, had he been made aware, he would have seen Mary alone . The only undue influence could have come from Caroline and Irving. He said again that when he saw Mary he didn't think there was any cause for concern, but nevertheless, he always looked for indications of whether the client is happy to be doing the transfer. He repeated that he had no concerns regarding Mary's understanding and that "*she was happy to do it. Very happy – they were getting married*", he said. He thought Mary was acting of her own free will. He appreciated that she was 90 years old, but she was clear and lucid. Cognitively she was well able to understand, he said: there was no suggestion of any lack of understanding. This was for Irving's and Caroline's benefit and future so far as Mary was concerned.

131. In answering a question from me, Mr Cusack did say that it did not occur to him to see Mary alone. Had he had the slightest inclination of anything behind the scenes which didn't seem correct, then he would have done so, he said.

Mrs Natasha Smith (Witness Summoned)

132. Mrs Smith confirmed that her attendance note of 28 January 2022 recorded Mary giving authority to Irving and Caroline to deal with day to day matters relating to the sale of the small plots of land, and asking that any appointments were to be at the

Farm rather than PPW offices. When asked who had rung whom, she could not recall exactly but thought she may have called Mary back after a call from Caroline in order to get instructions from Mary directly. It was because Mary stated that she struggled to hear that she attended in person to avoid the phone.

133. Mrs Smith said that she met with Mary in person on a couple of occasions. The first was on 11 March 2022 when Mary and Caroline were both present, and there is a detailed attendance note at page 89 of Bundle 3. I say immediately that this attendance note discloses an extremely thorough understanding of the sale of the three plots. Plot 1 was proceeding to completion on that day, subject to Mary's approval. This understanding is not limited to the fact of the sale, but Mary is giving very detailed approval (in relation to Plot 1) and instructions (in relation to Plots 2 and 3). She explained why she wanted to have the restrictions in relation to Plot 1, in case there were problems in the future. She said that she had spoken to Damian (the Plot 1 purchaser) direct about a storage facility and agreed this separately (this is relevant because Mary denied knowing Damian or even ever having seen him before when she gave evidence). In relation to Plots 2 and 3, she gave instructions about wanting to do things to protect her interests, insisting that they are put on the title; about rights of way, including prohibitions on the purchasers obstructing and/or parking; requirements for the purchasers of Plots 2 and 3 to close and lock gates after use; the limitations on the scope of the rights of way; various restrictive covenants, which she specifically wanted to be reciprocal to prevent purchasers feeling aggrieved if one or other was more or less restricted; the precise positioning of a septic tank on Plot 2, and reciprocal rights of access for maintenance. She specifically stated that she wanted the proceeds of sale to be paid by CHAPS into her joint account with her late husband i.e. the Farm account.
134. Mrs Smith explained that each purchaser was a neighbour buying odd strips. Mary had been quite chatty about the village and the buyers. She wanted to make sure it was protected and tied up and no access over the land.
135. She was asked about Mary's demeanour and said that Mary always seemed to be aware of what she was doing. She was very able and confident. She gave clear instructions as to what she wanted and what was to be done. She was always very chatty and very friendly. Mrs Smith had no concerns regarding Mary's capacity.

136. As regards Caroline's role, Mrs Smith said that she was there just for comfort, if anything. She said it was clear it was a good relationship, and that Mary wanted Caroline there so that she could explain things if necessary. Mrs Smith was then taken to the contract and the TP1 and she said she had witnessed it on 11 March.
137. The next visit was on 14 April 2022 when she visited Mary and Irving was in attendance. This was a discussion about Plots 2 and 3; Plot 3 being ready to complete that day. Asked about Mary's demeanour, Mrs Smith said that she was happy. She thought that on that occasion, she had seen Mary on her own initially. She was fine and happy. She said that they were just going through and completing, and Mary said to complete as soon as possible because she was getting a bit frustrated with the time it was taking. She said that Mary was aware of what she was doing and was very happy. She then rang Irving to get him to come up which is how the conversation about the will transpired. Mrs Smith recalled having seen Mary alone in the kitchen to go through all of the completion documents and accounts, after which she rang Irving and said about the will. Mrs Smith had discussed the Trust with a colleague. This is referred to in the attendance note, thus:

“You say that you want the deeds and the Will given to you on completion of the two transactions, you've received a very snooty letter and you're not very happy with how you have been treated. I apologise for this and so that it is but it is best to speak to Claire or whoever the letter was from. You say that they will not even speak to you. I do apologise but hope you have been happy with my service.”

This demonstrates that Ms Woolsey's letter of 7 April 2022 which mirrors the email dated 6 April 2022 sent to SE (set out above) (for it must have been a reference to that) was raised openly with Mary in the room.

138. On 29 April 2022, Mrs Smith visited Mary a third time. The attendance note records Irving being present, but in her oral evidence, Mrs Smith thought that he was not there the whole time. The purpose of the visit was to execute the Plot 2 Transfer. Mary asked for her original deeds in order to give them to the solicitors in Plymouth dealing with matters for her. The note records that “you” had an appointment with those solicitors at 4pm. Whether Mary thought she was going there, or whether Mrs Smith was referring to Irving's visit, is not clear. Mrs Smith explained that for technical

reasons this request would be difficult to comply with but she would revert as soon as possible.

139. Mrs Smith knew that a new will was being drafted and that it was being done by a Plymouth firm, and so she had taken a form of authority with her to visit Mary.
140. As regards the Trust Deed, Mrs Smith had warned Caroline in early March that she thought timescales might be tight for PPW to undertake the work. She had offered to email Claire Woolsey on 4 March 2022; Mrs Smith had spoken to Ms Woolsey and emailed Caroline saying that PPW could not undertake the work in the timescale required. On 7 March Caroline had emailed Mrs Smith and said they would prefer to use PPW if possible for the Trust Deed, and asked what was the best timescale they could achieve. Mrs Smith had replied saying she would contact the trust department asking for someone to make contact. Caroline called on 16 March chasing, and Mrs Smith emailed Ms Woolsey on 17 March asking her to contact Caroline because she still wanted to use PPW. Mrs Smith was asked why there was the gap between 8 and 17 March, but she could not give a reason.
141. Mrs Smith was then taken to an attendance note dated 23 March 2022 which records the irate conversation between Caroline and Claire Woolsey, which resulted in the email of 6 April to SE and the letter of 7 April to Mary. That attendance note records *inter alia* that Ms Woolsey had understood that they had been given three days to execute the trust which she described as being “*quite frankly ridiculous*”. Even after being informed of a time extension, Ms Woolsey said she could not commit to that, “*plus we don’t even have instructions from the client*”. Noting that Mrs Smith visited Mary for instructions, Ms Woolsey asked if Caroline could bring her in. Caroline had replied that that would be quite difficult but presumed that Ms Woolsey could attend Mary at the Farm because it was only 5 minutes away. Ms Woolsey had replied that “*it is not as simple as that. The Discretionary Trust is very complex. I would have to ensure that [Mary] understood the ins and outs of it.*” She set out a variety of details that would be needed. Caroline had said that all she knew is that Jo Tope had advised that the trust was needed, and it was the solicitor’s job to “*know the ins and outs of it*”, at which point Ms Woolsey refused the instructions saying that they “*just didn’t have time and certainly could not commit to the deadline which is only three weeks away.*” Ms Woolsey suggests asking SE to do undertake the work.

142. Mrs Smith was asked if she could understand Caroline’s frustration, and she said that she and others at PPW were doing their best to do a professional job, but that both she and Ms Woolsey worked part-time.
143. Mrs Smith was asked to respond to paragraph 23 of the Defence and Counterclaim in which it is pleaded:

The Defendant denies that she approved of the sale of two small plots of land, however she has no knowledge of the alleged sales and puts the Claimants to strict proof regarding the same and the utilisation of the proceeds of sale.

Mrs Smith said that when she met Mary, she seemed fully competent and aware. If she had any concerns that she was not fully aware or of any capacity issues, she would not have continued. She always saw her in person because of her age and to ensure that there was nothing there that I was concerned with, she said. Asked about her impression of Mary’s free will (or otherwise), Mrs Smith said that had she had any doubts, she would have reported back to one of the partners, and would have got someone else to go with her. And had there been any sign of a lack of free will, we would have stopped acting, she said.

144. In cross-examination, Mrs Smith was taken back to the attendance note from 14 April 2022 and was asked whether the whole of the conversation recorded in the paragraph I have set out above was between she and Irving, and Mrs Smith replied that it had been Mary alone, and then she said that, when Mary started getting frustrated with delays “*I think she rang him to attend where will come in*”, but was sure that it had been Irving who spoke about the “snooty letter” referred to in the attendance note.

Mrs Mary Cleave

145. Mary’s statement reflects her pleaded case, and is very generally summarised in my introduction to the issues as set out above.

Inheritance

146. In cross-examination she confirmed that she had been born on the Farm in 1933 and married Elwyn in 1958. They lived in a bungalow her father had built because the “manor house” had burnt down. It was small and Irving shared a bedroom with his grandparents. After her father died in 1970, Mary sold the bungalow and rebuilt the

farmhouse and they moved into that. In her father's will everything was left to Mary, but her mother was given a life interest plus £1 per week. She had been disabled since the age of 5 due to an accident but she lived until she was 105 being cared for entirely by Mary save for a nurse's visit twice a week for a bath. Mary claimed carer's allowance.

147. Mary was taken to paragraph 3 of her mother's will by which she gave Irving freehold property known as East Trosswell, North Petherwin. Mary immediately disputed this and said that it was wrong:

"It's not true ... just a minute ... my mother never gave it to Irving – it had to go down the line. I inherited that property. I said we couldn't Farm that all the way apart. I spoke to Elwyn. We gave it to Irving for a back-up. Mother did not give that to Irving."

She accepted that it was her mother's signature on the will, and was asked again whether she accepted that the land had been given to Irving, and she replied:

"No – it's all lies. I haven't got my father's deeds or anything. Trosswell came to me and I gave it to Irving."

She was taken to the executorship accounts which referred to the specific gift, and she replied, *"My mother never gave it to Irving, I did"*. She was asked whether it was estimated to be worth £40,000, and she said:

"Yes, my mother had pensions. Mother never said anything at all. I did it of my own free will. It was only nice to give Irving something – a start in life."

She was asked whether her mother wanted Irving to inherit the Farm, and she said,

"She never said anything about it – we were farmers with one son – we were not going to give it to anyone else – it was never discussed."

148. Mary was then taken to a manuscript notes for a will written by her and dated 27 May 2000. The first page reads:

"To my son Irving John Cleave I leave the Home Farm to him alone, Great Knowle bought by my Father and Mother (in 1926) Albert Neck [sic] Bowden and Mary Elizabeth Bowden, and their wish is their Granson [sic] Irving should have it, which I agree with and carry out. (all bought and Paid for)."

Mary immediately said *“That’s not right. My father left it to me. We were so close to each other. Father left it solely to me because I might want to sell. So Irving should not go on the will”*.

149. She was asked if it was her handwriting, to which she replied *“It’s been proved it is but, ... just a minute – never left to Mary Elizabeth. It’s my handwriting ... I don’t know where this came from. My mother never left anything to Irving. It was not hers. She got Troswell and Dad got the Farm. I would have given it to Irving ... I wouldn’t have given it to anyone else”*. Mary was then asked if she had written the document on 27 May 2000, and she said *“I don’t know what I have written. I have been bullied and bullied ... I don’t know what I have squeezed out.”* She was asked to confirm that it was in her handwriting, and she said *“It was bought by my father. It was 1925 not 1926. My writing, but I don’t know. My father was the boss and it automatically came to me. I gave it to Irving not my mother. It was not bought, and it was mine wholly and solely. And it was my wish is to give it to Irving when I die. It was automatic.”*
150. Mr Troup suggested that it must have been her parents’ wish, too, to which Mary replied *“Of course it would come to me then Irving. Inherited. My father told me what the will was. That sort of thing was never discussed.”* Asked how she knew it was her parents’ wish, Mary replied *“It was bound to go to the next one. I have only one son. I could have had another son,”* but she denied that her parents had ever told her as much.
151. Mary was then taken through the rest of the note, which left her share in the Farm partnership to Irving together with all live and dead stock, to Farm in partnership with Elwyn if Mary died first. The contents of the house (given to her by her mother and aunt) were to stay with the house *“for my son Irving”*. She had listed her various accounts and left them all to Irving, saying that Elwyn *“has all the same above as I have and we both hand it down as we die”*. Tellingly, the fourth page of the will provided that, should she die first, Elwyn could live at the house unless and until he remarried or took a *“common law wife, or partner”* in which case *“he would have to find a new home of his own, but if he stayed on his own their [sic] is a home for him at Great Knowle the same as ever”*. Mary said that that was just too bad if Elwyn remarried. He would have to find somewhere else and it would go to Irving.

152. Mary confirmed these details, but said that “*That’s there, but everything altered since then.*” She confirmed that Irving was to own the Farm, but that was to be after her death, and she was still here. She said “*If I died first and when Elwyn died, the same. Happens with all farming families. I wasn’t going to give the Farm to anyone else.*”
153. Mary was asked whether the will executed on the basis of this note was made when her father died and when she inherited everything, to which she replied that she must have done because it is in her handwriting, but she denied signing it. In fact, her signature appears on each page.
154. Mary was emphatic that her mother would never have discussed such things as the devolution of the Farm as Irving had claimed, along the lines of, “one day, all of this will be yours”. She said she would never discuss such things with children.
155. Asked whether Elwyn wanted Irving to have the Farm, Mary said “*Of course we did, both of us.*” Asked whether they would tell Irving that, Mary said “*Yes*”.
156. All the farming accounts were done by Elwyn, Mary said, and when taken to a note in SE’s papers suggesting that Elwyn had been discussing inheritance planning, and that there had been a suggestion that they would transfer assets to Irving, Elwyn had indicated that he would consider it. Mary denied discussing anything like that with Irving, but said emphatically that they would transfer assets when they were both dead and not before. Various possibilities were contained in a number of SE’s documents to which Mary was taken, suggesting Elwyn was actively considering the tax efficient devolvement of the Farm by transferring assets to Irving *inter vivos*, but Mary was adamant that no such discussions were ever had, and then she said “*I don’t understand a thing*”.

Margaret Hookway

157. Mr Troup then turned to Margaret Hookway. In her statement, Mary spoke highly of Margaret who said she worked more on the Farm than Irving had done. She said at paragraph 21 that all was well with the relationship until Caroline had come along. It was suggested to her that that was not true and that Mary in fact did not like Margaret, and that Mary felt that she caused many problems for Irving. Mary insisted she did like Margaret; that they always got on well together, and that she was a nice person.

158. Mary was then taken to what appear to be two manuscript notes in her handwriting referring to Margaret Hookway which are held on PPW files. The notes are not dated, but appear in the file alongside a letter from PPW to Margaret Hookway's solicitors following a claim in proprietary estoppel made by Margaret Hookway when Irving (and he would say together with his parents) were trying to evict her from the Farm following the breakdown of their relationship. They seem to have been produced by Mary to provide PPW with material with which to respond to this claim. The notes can only be characterised as being vitriolic about Margaret Hookway. The first is two pages long and starts, "*I have never heard any one say any thing nice about Margaret. All Irving's friends hate her attatude [sic] but had to tolerate her for his sake (We had to tolerate her as well). Elwyn and I have never trusted her or her girls – they stop at nothing ... she could not tell the truth if she tried*", and continues in the same vein.
159. The second note is seven pages long, and begins "*Margaret Hookway and her family are the biggest liars in the West Country. They don't know what the truth is.*" She continues with many allegations, including that Ms Hookway in effect stole from people, including she and Elwyn; that Ms Hookway had accused Caroline was poisoning Elwyn by giving him vitamins; that Ms Hookway took food from Mary and Irving and so forth. Two further phrases are worth setting out: "*Hookway isn't like a normal woman she is like the devil falling out of another planet*" and "*Hookway said she gave up her job hairdressing to do farming (she did not) ... and as a farmer (God help us) she is no good at all, in fact I did all the lambing work*".
160. Mary said that he had been turned against Margaret Hookway by Irving and, more particularly, by Caroline. Irving had told her of all this, and she could not believe that Margaret was ever like that. She said she did not know what was going on and that the police "*virtually lived at the place*". She did not know what was going on: it was all going on behind her back, she said. She accepted Elwyn hated Margaret, but that was because of his hot temper combined with one incident about his hair not being cut by her. Referring to the comparison with the Devil, Mary said that she had "*got Caroline in, who we thought was alright at the time*". It was put to Mary that she had mentioned many grievances that were well before Caroline's time, to which she replied "*I didn't know what was going on in the background. Nobody ever told me anything.*"

161. Mary was taken to a PPW attendance note which record her instructions to change her will in June 2018 (it is common ground that Caroline did not arrive on the scene until October 2018). It appears clear from this note that this new will was executed specifically to exclude any possibility that Margaret Hookway would claim an inheritance. The note records that Mary had said that she did not like Margaret who was described as Irving’s partner. Mary had specifically asked that the draft will was sent to her without franking the envelope with PPW’s name. The will itself is elaborate and leaves only a life interest in the Farm to Elwyn and Irving, and a trust fund, the beneficiaries of which were Elwyn and Irving during their lives and after their deaths to two charities.
162. It was pointed out to Mary that the attendance note was made before Caroline was on the scene. She said, “*Everything turned tipsy turvy. I never went anywhere to make a new will. I was told to write a new will.*” She was asked about her instructions to keep the envelope anonymous to which she replied, “*I was worried about Irving. I am terrified of Irving and Caroline.*” Again it was pointed out that this was before Caroline, Mary said “*I don’t know, he told me 2018*”. Having taken her through some of the terms, Mary said “*Everything was lies from the start. Is this a new trust?*”. Then she said, “*Yes that was right. I must have. I didn’t know what was going on.*” She accepted that she had executed the will, it having been witnessed by PPW staff.
163. Turning to the barn conversion, Mary said that they had asked Elwyn but not her, “*nobody ever asked me anything*”, she said. Asked about assurances given to Caroline because of her investment in the conversion, Mary said “*It was never ever discussed so the answer is no. Nothing was ever said to me. What was said was between the others, I don’t know, the answer is no. Nobody ever mentioned anything to me about changing the barn into a house.*” It was put to her that they had discussed it and she had said that there was no point because it was all going to Irving anyway, to which Mary replied “*All this – never been discussed. The answer is no. I don’t know nothing about what was going on.*” Taken to Caroline’s schedule of investment, Mary said, “*I don’t know anything about anything. The answer is no I don’t know a thing. You are talking double Dutch. Nothing was ever discussed with me. No one ever asked if they could turn that into a house.*”

164. Mary denied any knowledge of Irving selling the land at Trosswell or the sale of his pensions and policies. She said repeatedly that she did not know what was going on “*and so the answer is ‘NO!’*.” She repeatedly said that Irving and Caroline had done it over her head or behind her back. She said “*I don’t know anything at all. I am in the dark and my answer is no, no, no, no, NO!*”.

2021 Will

165. As I have referred to above, Mary ultimately agreed that she gave instructions for her 2021 will which left everything to Irving and then, not only to Caroline but in turn her daughter, Eve. She did so willingly and intended to do so. However, Irving’s cross-examination on this aspect of the dispute did not reflect this stance.
166. Mary was taken to an attendance note suggesting Irving had telephoned PPW to inform them of her wishes. She said “*I don’t know how it all led to this. I knew I was making a will. I was beholden to Irving when my husband died and told what to sign and I have done things that I shouldn’t have. Everything has been done behind my back. There was so much going on with everybody. Backwards and forwards – I didn’t know anything.*” She was asked whether she felt bad about the mere life interest that she had given Irving against the promise of leaving everything to him. She said “*I don’t know what you are talking about. Why was Margaret Hookway having the police against us all the time and I could not understand it.*” It was suggested to Mary that with Margaret off the scene she wanted reinstate Irving to inherit the Farm. “*I just don’t know what was going on behind my back. Everyone was telling lies, lies, lies. My answer is no – I don’t know anything.*”
167. She was then taken through the letter from PPW enclosing the will, which she claimed never to have seen before. But then went on to accept that she had received the will and had executed it properly and it reflected her wishes at the time but, she said, “*things change*”.

Early Years

168. Mary was taken to Irving’s claims about how he had worked on the Farm from an early age, helping with milking before going to school etc.. Mary said, “*That’s a load of bunkum. It’s not right. He was never made to do anything. He was never up at 6 when Elwyn and I did the milking. Irving was going to school.*” She was asked about

special arrangements made with a teacher, Barry Megson, to pick him up, to which she responded “*I never knew him pick him up in my life. No. Elwyn and I did the milking. Irving liked tractor work. And cleaned the yard. You wouldn’t think I was alive. Every form I filled out was farmer/farmer’s wife. I worked harder than my husband or my son. He can tell what lies he likes. This is a laugh if I start laughing. He never prepared his own breakfast. Paragraph 17 [of Irving’s statement] is the biggest load of bunkum I have ever read in my life. None of it is true – on the bible. Irving never worked on the Farm doing anything like that. We put the cows out at night. We didn’t have to go to the road. We did the milking together. Told him it would be his? Lies, lies, lies.*”

169. Mary denied ever having heard of the John Deere job opportunity. She said “*He can’t drive properly at all. No good as a salesman.*” She denied that they had threatened to sell the Farm if he took that job: “*The answer is NO!*”, she said. She denied that he had attended Bicton College. Taken to Irving’s schedule of work he’d said he had done, she said that it was only her husband that did the spraying. She said that Irving had sprayed manure for a Farm and at Highgrove, using a quad bike. She said that Irving was good with a tractor but he was no stock-man; and that they had a workman, a Mr Jack Wackley, who had now retired. They had people come in and spread manure and deal with the slurry pump for them.
170. It was suggested that Mary did not see what was going on because she was in the farmhouse, looking after her mother and dealing with the NFU administration. She denied that, saying she didn’t spend much time in the farmhouse. She worked as hard as any of them, she said. “*I don’t know what he was told. Elwyn and I did the majority of the work. He had so many jobs anyway – he went from one job to the other – as the gypsy said. He loved machinery and tractors and was good. But as for looking after cattle – things he did would shock you.*” She denied he worked 16 hours a day on the Farm and said that he never did contract spraying, but that Elwyn had done that but had to give it up. She said that Irving had done a lot of mineral spraying, but never knew what he earned.
171. Mary denied that Irving paid anything into the Farm account. She said he kept everything, and they had no idea what he earned. However, she then went on to say that she did not know whether he was paid £125 per month: “*I never touched that side*

of the work, but yes. I was doing NFU work – what was going on between them I don't know – I can't tell you.” Asked about the rise in 2016 to £250pcm, Mary said, *“No I don't know. I was doing all of the NFU work for Elwyn and he was doing the business.”* Referring to SE's reference in an attendance note to Irving receiving a “nominal wage”, Mary said, *“I had no idea what he was earning. Whatever Elwyn paid him, he paid him”*. Mary accepted that Elwyn worked as an NFU assessor and kept the money, but denied that it took up much time. She denied that Irving was looking after the Farm in these periods, she said that he would be *“here, there and everywhere”*. She said she was the one that was at home running the Farm: *“I was diving in the back of the sheep. Not Elwyn or Irving. I was farming to the last day we had stock”*. She denied looking after her mother took up any real time.

172. So far as numbers of animals, Mary said it was *“bunkum”* that they ever had the number suggested by Irving or his witness. The acreage wouldn't support it, she said. The most cattle they ever had was 47, she said. Referring to Mr Castle's evidence, she said, *“That's the biggest pack of lies I have ever heard. He never worked on our Farm”*.
173. Mary accepted that they had rented additional land. It was suggested it was about an additional 60-70 acres, to which she replied she had never given it a moment's thought how many acres. It was then suggested that that was how they were able to have the larger number of animals, which Mary denied, because the land was wet, she said. One wonders why the land was rented if it was of no use to them.
174. Mary made reference to Irving working all over the place but not at the Farm, except on tractors. She said that any offers of other jobs were *“a pack of lies”*, and if he'd wanted to go, he would have gone.

Elwyn's Accident

175. This occurred as described by Irving, Mary agreed, but Mary was of the opinion that he had fully recovered in a few days. *“It wasn't serious, he just knocked himself out a bit”*, she said. He was as bright as anything, and never stood back from the Farm.

Contributions

176. Referred to a note from the SE file about Irving paying £12,000 into the account to buy a Deutz tractor, Mary said, “*Irving had never put money to anything on the Farm. We were the farmers and we did all the paying and he never put a penny to it. Where are you getting the lies from?*” Asked whether it may have been because she was not involved in that side of the business, Mary said “*I can’t understand you*”. She had the same reaction to £10,000 recorded as having been paid by Irving for a hay-turner.
177. Mary was taken to Irving’s schedule of financial contributions, and she said, “*I have no idea about any money to do with any of it. Elwyn did all the Farm and finance.*”
178. Mary admitted that the solar field had been sold, but claimed that Irving and Caroline had misappropriated all of the proceeds – she said that she was penniless when she went to her current care home.
179. Mary’s witness statement at paragraph 26 implies that Caroline had something to do with Elwyn’s death by secretly administering drugs to him when dealing with his medicines. She said that he seemed drugged, “*like he was hypnotised. He went crazy again*” she said. She agreed that she was blaming Caroline for Elwyn’s death but she “*[had] no proof of anything. They have every document I had*”. Asked what documents she needed to make good the allegation, Mary said, “*everything was at home upstairs. I have lost my balance and told not to go upstairs so what went on I don’t know. I have seen photos of my home all sixes and sevens - mess everywhere. I couldn’t get into my house. She called me a slut and a dirty pig. See the photos you’d think that was right. I have no evidence of Irving and Caroline – they have it all.*”
180. Mary was then taken to Mrs Smith’s attendance note of 28 January 2022 regarding the sale of the plots of land and asked if she remembered the conversation. Mary said, “*I don’t know her. He sold some with my knowledge. I don’t want to get murdered again. I was agreeable for Paul Giles and prof Fitzpatrick but not the other.*”
181. Mary was asked about Damian Martin, and whether she agreed to sell to him, and she said, “*I didn’t say they could do it, he did it. And it was done, and they have had the money not me. I have never spoken to Damian at all. I would not know if he walked in.*”

182. Asked if Mrs Smith had visited her regarding the Plot 1, Mary said “*The answer is No to that. Caroline and I have never talked about it. Irving said that he had sold some land to Damian. I have never seen Caroline do anything at all.*” Asked if she remembered Mrs Smith going through it with her, Mary said, “*I can’t remember – there was so much going on. I have never had the chance to read anything. Nobody has ever seen – the only person who saw me sign anything was the Parishes with the will. Nobody seen me sign anything except Irving who would tell me to bloody well hurry up and sign it.*” Taken to her signature on the TP1 for the Plot 1, Mary confirmed that it was her signature and then said, “*She witnessed it [referring to Mrs Smith]? I have been bullied into everything. I have been bullied into signing everything.*” It was pointed out that this was in front of a solicitor, and Mary said “*Irving told me that I had to sign everything. He and Caroline – I bloody well had to sign it. I have never asked – if I signed anything, I was bullied into signing anything. Bullied, bullied - 6 foot man behind me telling you to sign I had to sign. Not aware of anything.*”

183. It was pointed out that Irving was not at this meeting, and Mary said,

“I don’t care if he is or isn’t. He used to behave so well to me. What son would take his mother to court. If they had looked after me. I was only asking for a few books. Gave me a few circulars. You won’t need that f’ing thing anymore. She grabbed the pillow and shoved it over me. It was only a cat’s whisker away – it didn’t touch me. If Irving hadn’t been there, she would have killed me. I managed to get out of bed. The doors between were locked. Only one door instead of two. I managed to get up and put my hand on the chair and got to dining room table. Went to the tap and got water and then to fridge and got tablets out. Took 24 tablets. Caroline said to me take the bloody lot. I took the last four and I went and sat down. Slumped into chair. Mum and Dad were there and said my grave was waiting. In the morning I suddenly woke up and thought it was light – what the heck am I going to do. Irving rang a distant relation and told me I was dead. He came back and put water in front of me. I said I’m still alive. He said you’re not living with me. Go to the Farm house or to a home. I said I wanted to go to a home – I had had time to think. He said, no bugger would have me. Two brothers there they said what happened. He said that bloody woman tried to murder me. In the middle of the night I saw the light go on. Caroline came in and stood behind me for 2 mins or more and went past. I was sure I was going. I turned over all the cards with my capsules. I went back and knew what I was going to say, but I was speechless and she just walked past. In the morning, I gave him Margaret’s number and asked him to ring and say what had happened. Irving - he rang Margaret and I don’t know what he said to her. She came over very quickly. I told her where my bag was. He came back with my bag and went to Barnstaple.”

184. Turning to the Plot 2, Mary was asked if it was signed in her presence. She said “*I have never signed anything in front of anyone except Irving. I was happy because they would look after but not Irving.*” And relating to the Third Plot, Mary said, “*Any document I have signed, nobody seen me – only Irving.*” Asked if she remembered Jo Tope from SE and her meetings, Mary said “*They mutter away and I am so deaf and I don’t know anything. Once. They all talk so fast. I was absolutely beholden to them and it hasn’t worked out.*”
185. Mary was referred to Mrs Tope’s attendance note referring to her having been perfectly happy to give the remainder of the Farm to Irving, and she said, “*I don’t know what all that means, really. I just had to do it – I had no option. I don’t understand any of it. Whatever I signed I was bullied by those two back there.*” She was asked about her meeting with Mrs Tope and David Shearer, and she said, “*I don’t know, so the answer is NO!*” She was asked whether she agreed to the yard and barns being put into the Trust, and she said, “*I had to agree I was bullied into it. I wasn’t really agreeable but I had to.*” It was suggested that she could have said to Mrs Tope and Mr Shearer that she was not happy. She replied “*I couldn’t live in the farmhouse by myself. Irving had sold my car. I couldn’t get shopping. I was totally reliant. Fighting three – Caroline and her ex-husband and Irving. Caroline only once been to see my husband. It was Covid – Caroline said if you get a second job you get a lot of money. Caroline said she wanted to see the wet room. Elwyn asked if he’d had a stroke. I said no. He said he was fine. He asked to come home. I said when his legs were better. When he came home his legs were fine. But when he went to the bathroom, all the back of his legs were red blotches. He went back to the Home, Caroline asked Elwyn to sign a form and have the nurses as witnesses. They said no – they had to wait for the Matron. She made him sign the form. Caroline said we had to go. She never answered me and kissed him on the forehead, saying we’ll be back again. On the way home, I knew they’d paid for 6 weeks, but we couldn’t afford to pay for up there. Caroline said Kelvin would pay. It’s her ex-husband – she had two husbands, not one.*”
186. Mary was adamant that she had never signed any other document in front of anyone but Irving. She hadn’t been able to read anything because it had been snatched away from her. She had never seen a letter with a trust, she said. So far as the post was concerned, sometimes she opened it, but would then give it to Caroline. She

complained that she had no proof of anything. Asked whether it was her signature on the Trust Deed, Mary said yes, but it had been snatched from her after presented to her coming out of toilet. She never had time to read anything. And she couldn't understand why Sarah Moore could not remember being a witness; "*a woman can't remember aged 63?*" she said. "*I signed that form before anyone else did – the only person there was Irving. I was told to bloody well sign it and I did. I never read it.*"

187. Mr Troup asked about Mr Cusack, and Mary said "*I don't know – everything is such a muddle. Everything is haywire*", and that he had promised to return but had not. Mary repeated her complaints about the signing of the documents; how she had been bullied, and her never being happy with any of the arrangements, which had all been pushed at her, she said. She said, too, that she could not live in the Annexe because she is terrified. She was now away and safe, she said.
188. Mary was taken to the TP1 for the Trust Land. She said it could be seen that her signature was written in a hurry, and that she had never seen anybody else sign anything. Asked whether she had signed in the presence of Nula Robinson, Mary forcefully said "*NO I DID NOT. Most emphatically NO*". Mary was asked about the move to the Annexe where it was intended she should live. She said, "*Everything is NO! That's what they thought. My stove and telephone went wrong on the same day. I was living in farmhouse in the cold. The stove was out. When I went up there it was all wrong. The fridge was inadequate. I needed another fridge freezer. When I was home I had two fridge freezers – to do the baking. They said it was too muddy and rough and I was never allowed to see anything up there. The answer is NO! Everything was to get rid of me.*"
189. Mary denied being shown brochures; choosing her reclining chair, bed and sofa. Everything was "no", she said: "*Life was sheer hell. I don't want to go outside, I don't want a knife shoved into me. The answer is NO to everything. They thought I was gone but I didn't want to die. No one could live in the Annexe – I have been told that her ex-husband is living in it.*" It was suggested that Caroline and Irving had done a great deal of work instead of leaving Mary in the farmhouse, and she accused Mr Troup of trying to tie her in knots. Asked why they had built the Annexe, Mary replied, "*Because they wanted to get rid of me. The answer is no to that and I am still alive. I don't want to know. I should be dead but I am not ... I had to [go to the*

Annexe]. I had no telephone. Fridge freezers there. I made all my own things. I have now been told so many things. I am not giving in to anything. I had to go to the Annexe and it didn't work. I don't know what you are talking about and the answer is NO! There was no room for china; the bathroom was too big; the bed was too high ... I'm not saying anything. NO! NO! NO!"

190. It was suggested that the barn conversion had been Elwyn's idea, to which Mary replied, "*I am saying nothing. All done behind my back. I don't know what was done. Whatever you put in front of me my answer is no. I thought that they should bales in the barn. Why put them in the yard, when a fine barn.*"

191. Mary was asked whether the problem with the Annexe was the phone and books, and she said "*I haven't understood a word you said. I was told that I would have a phone, and then told I wouldn't need one because I am old and don't know people to ring up.*" Asked whether she was offered a mobile, Mary said that she did not know what Mr Troup was talking about. It was suggested that Caroline had brought her books down from the farmhouse and cleaned up the book-case. Mary said, "*There was no room to put anything. Bath and bed could have been smaller. But nothing right. There was no china; nowhere to store cooking food and a perishing great dustbin. Everything was wrong. The only thing was to get the heck out of there.*"

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192. Mary confirmed that Margaret Cleave's (her sister-in-law) statement was true. Asked why she had not mentioned to her sister about the smothering, Mary said that she had. Asked why she only mentioned the phone and the books, Mary replied that she told her everything, and she is telling the truth.

Financial Situation

193. Mary had been given permission to file a witness statement dealing with her finances. Asked about it, Mary said "*I don't know what you are talking about. Everything is the biggest pack of lies. I won't say anything more.*"

194. Mary denied knowing about Elwyn's estate, despite being his executrix. She said he did everything: all the bookwork and finances. "*I did housework and outdoor work and NFU work.*" Mary was asked about Elwyn's shares with Cornwall Farmers and

Milk Link. She replied, *“It all went into the Farm account. It was an old manor Farm. Things we added were marvellous. Irving is ruining it and selling everything off. When finished milking everything went into bank account.”*

Re-examination

195. Mary was asked where most of the information regarding Margaret Hookway had come from, and she said Irving. She said that they (she and her husband) never disbelieved him at the time, but she could now see where they went wrong.
196. She was taken to Irving’s schedule of alleged work he used to do at the Farm, and gave her assessment of each item listed. Some were conceded, most were partially denied. In relation to Irving’s activities away from the Farm, Mary said that he did mineral spreading for *“heaps of people”* and that he was paid for by whoever he worked for. He was away sometimes for a whole day. He would come home at different times - whenever wanted, she said: *“He came back when he came back”*. He was doing different jobs and away a lot. They had to have a workman every other week because Irving was going away. If he enjoyed it and making his money Mary and Elwyn were willing and they didn’t mind. What he made he kept, she said, and there was always fuel in the pick-up for him, and he took two mineral spreaders with him.
197. Mary was asked about Caroline’s ex-husband, Kelvin, and his role in things. Mary said that he’d come down and have a cup of tea and eat cake. She would give him cake to take away. She thought he seemed very nice. But then he had brought miniature roses to give her which at first she thought was wonderful, but which turned out to be just cuttings stuck into a pot. She thought he was a nice man but he was not. She was told by him that he had cancer in order to get sympathy, she said. He seemed to be dismantling things, she said. She blamed Kelvin as the *“third man”* coming in and spoiling things. This was the first mention of Caroline’s ex-husband save for that mentioned above.
198. Mary finished by saying that she had lost over a million pounds, and *“we don’t know where it is all gone.”*

Mrs Margaret Cleave

199. Margaret Cleave is married to Elwyn's brother. She was born on the Farm in which she now lives, five miles from Great Knowle Farm. In her statement she says that Caroline took over at the Farm in very short order after having moved in and seemed that she was trying to keep Elwyn and Mary from her, making up reasons when she phoned to arrange a visit. For example, excuses given to her that Elwyn had Covid when they wanted to visit him in hospital were not true, according to the doctor, she said.
200. In cross-examination, she was asked whether she was aware that Elwyn and Irving had intentions to convert the barn. She said that she had heard about it. Margaret was asked whether she visited the Farm after Elwyn's death, and she replied that she did, but that Mary would ring. And then the calls stopped, she said. And her husband had said to go and see her the following day, but then "*this blew up*", she said.
201. Margaret accepted that the farmhouse was in a poor state but that money could have been spent to improve it. She accepted that it was not very practical for Mary to live alone there, but said that it was her home. She accepted that the Annexe had been intended for Mary. She had only visited once – on the occasion of the 21 June. She said that Mary had said about moving in, that she supposed that she would have to do it. Margaret accepted that there were no amenities in the farmhouse, and that the only alternative was care. She accepted that the Annexe was the best alternative.
202. Margaret was asked that, had Mary objected, she could have told her that, and she replied that "*We didn't really ... didn't dwell on it.*" Margaret thought that Caroline and Irving intended to sell the farmhouse, and so did not want to leave Mary there.
203. Regarding the morning of the 21 June, Margaret said that the builder had convinced Irving to ring her, although she did not say how she knew that. Margaret was not aware that the landline was in the process of being installed. She said that she could not see the bookcases or books. She said Mary had not mentioned anything about another room in the main house.
204. It was suggested that Mary had not mentioned to Margaret that Caroline had tried to kill her, and Margaret replied that she had. It was pointed out that this was not anywhere in her witness statement, and Margaret simply said "*OK, but she did say it*".

It was suggested that one would have expected that to have been a big headline in the statement, and she simply said, “*She did say it*”.

205. Margaret was taken to an internal PPW email asking Ms Woolsey to call Margaret. This email is heavily endorsed with a number of manuscript comments which look like they are someone from PPW taking instructions over the telephone. Margaret said that she had called Paul Cottle (a conveyancer at PPW). The manuscript is difficult to follow, and runs out of space and appears to re-commence at the top. Insofar as is legible, it reads as follows:

Mary (your s-in-law) doing OK. big upset in the family, how quickly can we do a will. The business has been taken away from Mary – she knows nothing about it and does not know what’s happening. MC [Mary] is in NDDH [hospital] and then will be going home. ... She’s afraid to go back to the Farm. Irving governed by this new lady – some awful things have been going on. She didn’t know which was ... Irving building a barn – cost over £500k “it’s a mess”. They are trying to force her to sign over and M won’t! We’re trying to protect Mary. Irving has got Parkinsons; she’s a gold digger! She is capable and very switched on. Social Services said “hasn’t she got her marbles”! She has. Irving has chosen CT [Caroline] – wants nothing more to do with mum. Don’t think we can get involved NO guarantees. You understand and thank me. You’ll continue with enquiries to see if a sol can make a will. Difficult @ the mo – on a ward – Mary worried that Irving will die and leave to CT. Police involved – CT trying to get MC [Mary] out + IC [Irving]. We would not have released without proper [?] authority! They stand over her and make her sign. CT put pillow on her head. Police”

206. Margaret said that Mary was worried that everything would go to Caroline and her ex-husband. In relation to the passage which suggests Caroline is trying to get Mary and Irving out of the Farm, Margaret said that she had no idea where they got that from. It was nothing to do with her – she couldn’t care who lives there, she said. She denied that she said the comments from “don’t think that we can get involved” – it could have been Mary saying it to the solicitor, she said, but did not explain how that might be.
207. Margaret said she did not put the “*pillow thing*” in her statement because she couldn’t prove it. Of a list of belongings that Margaret had produced with Mary’s input for collection, Margaret said that Irving had initially said yes, but then refused to allow them to have anything. She said that they could get no documents from the Farm.

They could not get information on Elwyn's premium bonds because they did not have the numbers.

208. Margaret said that what Mary was cross about was Irving taking the money and leaving Mary to pay the tax. It was put to her that she says she didn't know what was going on, to which she replied "*OK. But not nice to be left paying tax.*" She said that they had closed the Farm account because so much going out and they were not aware why. She was asked whether she knew that that Mary had come out of the partnership for tax purposes, which Margaret denied, saying that she had had to come out because Irving taking everything and selling it. She was unaware of any tax reasons.
209. It was suggested to Margaret that Mary was able to exaggerate and make up allegations when it suited her, to which she replied that she had been working with Mary since 21 June 2022 and it had never happened with her, but she did not know before that.
210. Margaret accepted that she had power of attorney for Mary and was able to contact PPW to ask for papers regarding the estate. She was willing to do that. Regarding NFU pensions she was asked about the fund value of the pensions, and she said that she had no documents or policies because they were all at the Farm. She was pretty sure that Mary cannot draw down on them and that they expire on her death. Margaret was taken to a letter from the Claimants' solicitors dated 20 February 2024 which made it clear that they had never attempted to prevent Mary's representatives accessing the farmhouse. She was asked whether she had many any attempts, and she referred to Irving apparently only reluctantly agreeing to hand over Elwyn's death certificate. However, she admitted that she had not asked for keys nor made any attempt to gain access to the farmhouse since Mary had left. She said that she would "*not to stoop to go there the way they have treated us*".

Ms Sarah Moore

211. Ms Moore is a close neighbour of Great Knowle Farm and is a retired chartered accountant, having practised for 31 years before retiring and moving to her current address in 2020.
212. As indicated above, Ms Moore has produced three witness statements, all of which say that she has no specific memory of witnessing Mary's signature on the Trust

Deed, but the final one concludes that, given her extensive professional experience in dealing with formal documents, she would not have signed a statement saying that she had witnessed a signature if she had not so witnessed it. In her oral evidence, she stated that her memory had deteriorated over time. It was suggested to her by Mr Ball that Irving had persuaded her to change her evidence. She recalled that Irving had visited and had told her that she had visited the Farm with him, but she maintained her position that she did not remember the actual event. However, she reiterated that she would not have signed as witnessing a signature when she had not in fact done so, and she was fully aware as a result of her professional experience of the need for attesting witnesses to see the signature of the person executing the deed.

Mr Andrew Parrish

213. Mr Parrish is a close neighbour to the Farm, his bungalow being just across the road from the Farm in which he has lived for 35 years. He has known the Cleaves since he moved in.
214. Mr and Mrs Parrish witnessed the 2021 Will. Mary had telephoned to ask him to do so. He and his wife had gone across to the Farm to do so, and Caroline had, he said “appeared suddenly” and directed all present as to where their signatures should be applied. He said that he and his wife had commented on the way home that they were both surprised that this was being done whilst Elwyn was in hospital and how in control Caroline appeared to be. The clear implication is a suspicion that Mary may have been taken advantage of at a vulnerable time and that Caroline was behind the new will.
215. Mr Parrish also commented that he felt that Irving was work-shy (save for tractor work) and the farming had all been done by Elwyn and Mary.
216. In cross-examination, he said that he was a metal turner and had worked from home until 1990, and then a daily commute and sometimes he was away Monday to Thursday until he retired in 2012. Pre-1990 he worked in a workshop. From there he could see the silage barn (the conversion in which Irving and Caroline live) but not the fields. He accepted that he would not see the Farm on a daily basis, but Elwyn would tell him what was going on, he said.

217. He accepted that he had fallen out with Irving because he did not like the way that he had treated his mother. He initially denied that he did not like the barn conversion, but accepted that he had strongly objected to the Annexe and encouraged the parish council (of which he was a member) to oppose it. He accepted that he had attended a meeting at which Caroline spoke in support of the Annexe and he had spoken condescendingly to her. He accepted that there had previously been a contretemps between him and Caroline when she had complained that he had driven too fast and close to her horse and when she went to complain, he had shut the car door “*in her face*”. Asked whether relations were now strained, Mr Parrish said they were “*finished*”.
218. Mr Parrish was asked about his comments about Irving being work-shy. He said that he had had many conversations with Elwyn who was a good friend. He did not give evidence that Elwyn had told him that. In fact, in re-examination, he specifically stated that he had *not* had any conversations with Elwyn about it. He said that it was his (Mr Parrish’s) opinion and nothing would change his mind about that, but denied that that had been affected by his falling out with Irving.
219. In re-examination, he was asked about his comments about how Irving had treated his mother. He said that Irving wanted the Farm and he’d put his mother “*through hell*”. He said that Mary was very close to them and a good family friend, particularly with his wife whose family farmed opposite the Cleaves’ Farm. When asked about how he knew about Irving’s mistreatment of his mother, he said that it had been what Mary had said after she had left the Farm. He found out when he got back from Southampton, but he had no knowledge prior to that.
220. In answer to questions from me, Mr Parrish said that Mary was looking forward to moving into the Annexe, partly because they would be neighbours and she could pop over to his wife for a cup of tea. He had had specific conversations with Mary about it. He didn’t know of any plans for the farmhouse, but knew of the development potential for the barns in the Farm yard but did not object.

Mr Damian Martin

221. Mr Martin is a neighbour of the Farm to whom Plot 1 was sold. His partner witnessed the TP1, and he recalled Irving describing it as a tax document.

222. Mr Martin said that he had helped move Margaret Hookway's belongings from the barns, and had met Mary a few times. She had served him tea and cake. He was sure she would know him if he turned up at the door.
223. His discussions about Plot 1 had been with Irving alone. He had no concerns that he had had no discussions with Mary as the owner as they (she and Irving) had always been close, and Elwyn had died recently.
224. He said that Irving had called him first to witness the transfer, and had said it was a tax document which urgently needed signing and returning to accountants. Mr Martin was at work but suggested he try his partner, Nula Robinson, who might be at home.

Nula Robinson

225. Ms Robinson is a long-standing family friend of the Cleave family. Her witness statement was to the effect that Irving had telephoned her stating that he needed a tax document signed urgently which was to save his mother £50,000 in tax to which she agreed. He had then appeared at her property and told her to sign in three places, which she did, and he had left immediately. He was there only for a few minutes.
226. She also said that Irving had tried to get her to say that she had in fact witnessed the signatures on the document because his mother had "*gone doolally*" and no-one was taking any notice of her, but that she had refused.
227. In cross-examination, Ms Robinson said that she had seen only the back page of the document which had been folded over. She could not remember whether Irving had signed in front of her. She said that it had been a sunny day and she had "*had a glass of wine*" and had been sitting on the balcony. She hadn't read the document, including where it said "signed in the presence of", and she was annoyed with herself for not having done so. When asked if she could be mistaken, she said "*Absolutely 100% not*".

Closing Submissions

Mr Troup for the Claimants

228. Mr Troup handed up written closing submissions to which he spoke, emphasising certain aspects.

229. He commenced by dealing with the witness evidence, suggesting that Caroline had come across as a capable woman doing her best in difficult circumstances in the Cleave family: aging and sick parents; a strong and at times difficult character in Mary, and Irving's own illness. He said her frustrations with PPW were justified, and Ms Woolsey's concern about undue influence were based solely on a lack of instructions from Mary herself and had nothing to do with Caroline.
230. Irving had made appropriate concessions and his evidence was straightforward, submitted Mr Troup.
231. He submitted that the farming witnesses spoke with one voice, and all showed Irving as a central part of the farming operation. Irving had accepted that he kept some money given the level of wages he was paid, but Mr Ross's invoices came from Elwyn and Mary, which suggested he did not keep it all. Mr Brass gave direct evidence of a job on offer he had made to Irving. He also gave direct evidence of Mary and Elwyn talking about handing the Farm on to Irving. This was not challenged in cross-examination, Mr Troup said. Mr Duke gave clear evidence of Elwyn's decline which was consistent with Irving's evidence about his post-accident contribution, he said.
232. The professional witnesses were transparently honest, Mr Troup submitted. They gave clear support for Irving's proprietary estoppel claim as well as the state of Mary's knowledge and support for the plans for the Farm and the lack of any concerns regarding undue influence. In particular, Mrs Tope's recording of Mary's words that Irving had "earned his reward" showed a quasi-transactional basis for the proprietary estoppel claim and remedy; Mrs Smith's record of her detailed and complex instructions regarding rights of way and covenants etc. showed a clear mind and understanding, as well as fortitude and Mr Cusack's oral evidence that Mary had been doing 90% of the talking.
233. As regards the Defendant's witnesses, Mr Troup gave a detailed critique of Mary's evidence, both in terms of its content, and the manner of delivery, the latter showing that Mary was a very strong character who was prone to make exaggerated claims on a whim and make serious allegations which are then dropped. I have taken all of these criticisms into consideration. Mr Troup submitted that Margaret Cleave had very limited involvement until 21 June 2022, and her statement omitted the alleged pillow

incident which was an attempted murder and as such would have been front and centre if it had been mentioned. The suspicions implied in Mr Parrish's witness statement regarding the Caroline's involvement with the execution of the will did not survive Mary's own evidence that she did so willingly. Whilst he was clearly antipathetic to Caroline and Irving, even he gave evidence that Mary was looking forward to moving into the Annexe.

Proprietary Estoppel

234. Mr Troup submitted that the legal principles are summarised in *Davies v Davies* [2017] 1 FLR 1286 at [38] and (as regards remedy) *Guest v Guest* [2022] 3 WLR 911 the former of which I have set out above.

Representations

235. Mr Troup listed 9 pieces of evidence which supported his submission that repeated and clear representations had been made.
- (a) Mary's handwritten notes for 2000 Will;
 - (b) the fact that Mary's mother gave Land at Troswell to Irving;
 - (c) Elwyn's will named Irving as sole beneficiary if Mary predeceased him;
 - (d) Ian Brass's evidence;
 - (e) Elwyn's IHT planning discussions with Simpkins Edwards, all of which are based upon Irving inheriting the Farm;
 - (f) Mary's instructions to PPW not to frank the envelope when sending her the 2018 Will: she knew that she was renegeing on her promise;
 - (g) Caroline and Irving's substantial financial contributions to the barn conversion would only sensibly have been made on assurances, and Mary was happy to help fund the Annexe and move into it;
 - (h) Mary willingly made her 2021 Will naming Irving as beneficiary, with substitutionary provisions in favour of Caroline and then Eve;
 - (i) the will made by Mary since the dispute provides that her residuary estate goes to Margaret Cleave's grandson, but only on the basis that she wanted to avoid Caroline getting anything. This is evident from the manuscript notes of Margaret's phone call to PPW.

236. Mr Troup submitted that these strongly refute any suggestion that the assurances were somehow conditional. Likewise, he said, it is clear that the representation was not a mere statement of present intention but an assurance which was intended to, and was, taken seriously and relied upon by Irving.

Detrimental Reliance

237. Mr Troup referred to a number of evidential matters in support of Irving's case.
- i) Irving committed his working life to the Farm, confirmed by the Farming witnesses who spoke with one voice as compared to Mary's sole witness who was prepared to come to court. Irving provided a list of the kind of jobs which Irving carried out which, Mr Troup said, Mary accepted that Irving was involved in a substantial amount of this work. The animal movement records completed by Irving and Mary's dismissive evidence should be rejected, especially given her ability to usefully comment given her other responsibilities.
 - ii) Irving's meagre wage of £125 per month, rising to £250 per month in February 2016 (when he was aged 54). Mr Troup provided a table showing wage differentials which were stark, even taking into account the other work.
 - iii) Irving's work increased as Elwyn's work decreased following his accident in 1990, supported by the independent evidence of Christopher Duke. Irving said that Elwyn put on a good face for doctors, classically typical of a male farmer of that generation, submitted Mr Troup.
 - iv) Irving gave up other job opportunities: the John Deer job (with significant health and pension benefits) and Mr Brass's offer.
 - v) Irving paid £12,000 towards a tractor in 2014 and £10,000 for hay turner in 2018.
 - vi) Caroline paid £127,882.84 towards barn conversion and Irving paid in excess of £100,000.
 - vii) Irving's other capital contributions to the Farm are set out in a Schedule at page 67 of the Core Bundle.
238. In terms of remedy, Mr Troup referred the court to *Guest v Guest*, and in particular to paragraphs 74-80. In light of those paragraphs, Mr Troup submitted that the following were the most relevant considerations:
- a) There is no evidence that Mary needs to sell any of the Farm to pay the care home fees: *Guest* at [74]. Such evidence as does exist suggests that her placement is funded by the local council, referring to page 30 of

Bundle 12. There is however some evidence that the farmhouse and orchard was earmarked for sale to raise funds if needs be: paragraph 68 of Irving's witness statement.

- b) A particular feature of this case is Mary's late and incomplete evidence about her current financial position. In particular, the value of her two pensions and her ability to drawdown on them remains unclear; there has been no attempt to search the farmhouse despite Mary's solicitors being told in February 2023 that they were free to access it; the value of Elwyn's estate remains a mystery; and there has been no proper explanation of how Mary is paying her lawyers.
- c) The starting point is that "*the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise*": see *Guest* at [75].
- d) Specific performance would not be out of all proportion to the detriment. "*Prima facie, wherever the reliant detriment has (as here) had lifelong consequences, a detriment valuation analysis will fall on stony ground*": *Guest* at [72].
- e) Cases where the date of performance lies in future are likely to be the most difficult in terms of finding an appropriate remedy: *Guest* at [77]. But in this case there is no need to fashion a "clean break" because Mary has already moved to care home. Carving out the farmhouse would represent a discount for early receipt and meet the risk that Mary may need to realise part of the Farm to pay for care fees: *Guest* at [79].
- f) The court should also take into account the fact that Irving and Caroline now live in the Barn conversion to which they have contributed substantial amounts of their own money, and which has been especially adapted to meet Irving's needs (as amplified in Caroline's oral evidence). Irving will also have care needs of his own in future.
- g) Tax is also a relevant factor. A transfer of land now to Irving will trigger CGT, whereas a transfer on death should give rise to reduced (and possibly no) IHT given the proprietary estoppel claim: see *McFarlane on The Law of Proprietary Estoppel* (2nd ed.) at paragraph 10.17.

239. Mr Troup submitted that, taking those matters into account, the appropriate remedy is as follows:

- a) An immediate transfer of the Barn conversion (together with land as shown on attached plan) to Irving and Caroline (so as to give them security and the ability to borrow to raise funds for Irving's care if needs be).

- b) Mary should retain the farmhouse, orchard and paddock. The joint valuation is £350-£360,000. Assuming the lower valuation of £350,000, after payment of costs of sale at 3% (£10,500) plus the CGT on the Barn (£58,439), Mary will be left with £281,061.
- c) The Trust Land should be sold and divided 10% to Mary and 90% to Irving and Caroline, as was always intended. The Trust Land is jointly valued at between £200,000 and £322,000. Assuming the lower valuation, after payment of costs of sale at 3% (£6,000) Mary's 10% share will be worth £19,400. When combined with her share of the farmhouse, she will be left with funds of £300,461.
- d) The balance of the farmland should pass to Irving on Mary's death, as was always intended, subject to him having the right to access and Farm it during Mary's lifetime.

The Trust Land

240. Mr Troup identified the two issues as being (1) valid execution and (2) whether there are grounds for setting aside the Deed of Trust and the transfer.
241. As regards valid execution, Mr Troup submitted as follows:
- i) The Deed of Trust was witnessed by Sarah Moore, who retained no memory of acting as witness but said that she would not have signed unless she had been in Mary's presence and seen her sign.
 - ii) The TP1 was witnessed by Nula Robinson, who denied that she had seen Mary signing, but accepted that her memory of events 2 years ago was imperfect (she admits in paragraph 11 of her statement that she cannot remember whether she witnessed Irving sign). She also said that the whole process took 10 minutes and she had been drinking wine.
 - iii) Where, as here, a deed includes an attestation clause which expressly records that the transferor has signed "in the presence of" the witness, there is a presumption of due execution which can only be rebutted on the "strongest evidence": see *Wright v. Rogers* (1869) LR 1 PD 678 as applied in *Channon v. Perkins* [2005] EWCA Civ 1808 at [6]-[11].
 - iv) The evidence of Nula Robinson is not enough to rebut the presumption of due execution.
242. In any event, Mr Troup submitted that the Trust was properly constituted for the following reasons:

- i) The Deed of Trust would be valid, even if not witnessed, by virtue of s.53(1)(b) of the Law of Property Act 1925.
 - ii) The fact that Mary, as the legal owner of the Trust Land, signed the Trust Deed followed by the Transfer would be sufficient to constitute the trust: see *T. Choithram International SA v. Pagarani* [2001] 1 WLR 1 as applied by HHJ Matthews in *Bowack v. Saxton* [2020] EWHC 1049 (Ch). In both cases, a settlor, who was the legal owner of the assets, established a trust with the intention of transferring the assets to the trustees (who included the settlor himself), but the transfer/assignment to the trustees was ineffective. The trust was nevertheless held to have been validly constituted.
243. As regards the setting aside, Mr Troup submitted that Mary’s attempt to argue that the Deed of Trust and transfer should be set aside is unsustainable in light of the professional witness’ evidence from which it is clear that she was acting of her own free will. Specifically, he submitted:
- i) The court should reject Mary’s allegation that Irving forced her to sign documents against her will, an allegation which is squarely inconsistent with the professional witness’ evidence and the evidence that Mary was happy to enter into the transaction.
 - ii) No presumption of undue influence arises because the transaction is readily explicable given Mary’s wish to pass the Farm to Irving as her only son and to allow him to raise funds by ultimately selling off the Trust Land given his inability to Farm due to his Parkinson’s Disease. This is not a transaction which is “explicable only on the basis that undue influence has been exercised to procure it”: *National Westminster Bank v. Morgan* [1985] AC 686, 704H, as cited in *Snell’s Equity* (34th ed.) at 8-032. Any presumption would in any event be rebutted by the evidence of the professional witnesses which makes it clear that Mary was acting of her own free will.
 - iii) This is not a case of *non est factum* because Mary admits signing the Deed of Trust and Transfer and there is no evidence that she was misled: *CF Asset Finance Ltd v. Okonji* [2014] ECC 23 at [28] and [31].
 - iv) This is not a case of unconscionable bargain. This was a gift, not a contract. Mary was advised by accountants and solicitors. And Irving and Caroline did not act unconscionably in the sense of knowingly taking advantage of Mary: *Azam v. Molazam* [2023] EWHC 2202 at [85].
244. Mr Troup invited the court to declare that the trust is valid and to remove Mary as a trustee. He also invited the court to declare that the Trust Land is held as to 10% to Mary absolutely and as to 90% the trust, given that the evidence shows that this was always intended even if it was not expressly recorded in the TP1 but, as explained by Mr Cusack, it is referable back to the Trust Deed.

Ford Sierra Cosworth

245. Mr Troup submitted that Irving’s evidence in paragraph 92 of his witness statement was not challenged in cross-examination:

“The car referred to in the Letter was a Ford Sierra Cosworth purchased by dad and I on 5 November 1990 for approximately £13,000.00. We made equal contributions to the purchase price and it has always been owned by the both of us jointly. For the last 28 years the car had not been driven at all. Prior to his death, dad suggested I sell the car and invest the money into the Barn, as mentioned above. I listed the car for sale on eBay and it sold for £26,600 less £1,600 in commission.”

246. Mr Troup continued that the mere fact that the car was listed in the partnership accounts sheds no real light on its ownership: *Ham v. Bell* [2016] EWHC 1791 at [51]-[52]. That is particularly so here, where a Ford Sierra Cosworth is not an agricultural vehicle. The court is invited to accept Irving’s evidence and declare that the vehicle passed to Irving by survivorship.

Mr Ball for the Defendant

247. Mr Ball commenced by responding to some of Mr Troup’s submissions in relation to the evidence. I have taken all of those submissions into account, but will refer to a few of the more important ones here. Mr Ball said that Mrs Tope’s record of Mary having said that “*Irving had earned his reward*” has limited relevance because it comes after all of the reliance. He said, too, that it could have just been a throw-away remark.
248. Mr Ball said that Mary’s engagement with the reciprocal property rights with the plots of land arose significantly before the relevant time, and was more consistent with Mary retaining the land than getting rid of it, and there was confusion amongst the professional witnesses about what was going to happen to the various parts of the Farm.
249. What Mr Ball described as Mary’s “No mode” in her cross-examination was largely in response to the deed executions and came after a long period of cross-examination. Mary had proved herself willing to come to court to answer questions, he said.
250. Mr Ball challenged Mr Troup’s characterisation of Mary’s case that there had been inconsistent evidence about assurances. Mr Ball explained that Mary’s case was that

indeed there had been a natural expectation that Irving would inherit, but denied that it was said to him when young or that it had anything to do with hard work. There were no conditions on Irving's life at the Farm – he could come and go as he pleased, Mr Ball submitted. Mr Ball also submitted that Mary's obvious confusion over the provenance of the Trosswell Land is irrelevant save that it showed that the Claimants understood the documentation well and Mary had always just got it wrong in her head, he said.

251. In terms of Margaret and the pillow incident, Mr Ball pointed out that it had appeared on the PPW manuscript note.
252. Mr Ball submitted that, on any view, a lot of money has gone from the partnership account. The Farm hardly ever made a profit and so the account cannot be said to have been a general pot from which partners could help themselves which is what Irving seemed to have been saying, he said. The lifestyles were funded from Mary's land being sold from time to time.
253. Mr Ball distinguished two of the authorities relied on by Mr Troup on the facts of this case.
254. *Wright v. Rogers* (1869) LR 1 PD 678 as applied in *Channon v. Perkins* [2005] EWCA Civ 1808 can be distinguished, submitted Mr Ball, on the obvious grounds that those cases were dealing with wills, which have a peculiarly individual feature, namely that the testator is dead and cannot him or herself give evidence as to whether their signature was witnessed. In this case, we not only have the witness saying that she did not sign in the presence of Mary, but we have the person whose signature was said to have been witnessed saying so. Further, the policy behind wills cases is to preserve the wishes of the testator and here, Mary is saying that these were not her wishes. Further still, a will requires two witnesses to have attested at the same time, so it would require two attesting witnesses to have falsely attested. This is an *inter vivos* deed where the purpose of the witness is to assist with a dispute between the parties to the deed.
255. The case of *Bowack v. Saxton* [2020] EWHC 1049 (Ch) can be distinguished in the following way, submitted Mr Ball. That was a case involving bonds and shares: it was not real property and so the formalities applicable to real property did not apply.

256. Further and in any event, the terms of the trust itself prevent the principle in the case applying, Mr Ball submitted. He took me to the Recital to the Trust Deed which makes it clear that the original declaration of trust was in respect of the £10 referred to in the Schedule. Further funds etc. may be paid or transferred to the trustees by way of addition.

257. Clause 1.7 of the Trust Deed provides (insofar as relevant) that:

The Trust Fund shall mean:

i) *the property specified in the Schedule;*

ii) *all money, investments or other property paid or transferred by any person to, or so as to be under the control of, and, in either case accepted by the Trustees as additions; ...*

258. This means, submitted Mr Ball, that in order for the Trust Fund to be effectively added to, there has to be a valid transfer of property into it. A void TP1 will not suffice and thus there is no transfer to effect the transfer in. Furthermore, there would need to be a signed acceptance by the Trustees which is not present here. Therefore the Trust Land was never transferred to, or transferred to be under the control of, anyone because the transaction does not satisfy s52(1) of the Law of Property Act 1925. In summary, he said that the transaction fails to meet the conditions of the very trust that it is attempting to engage with.

259. In terms of *non est factum*, Mr Ball submitted that Mr Troup's submission that the signatory must think that he or she is signing a document that is *different in nature* to the one they think they are signing; it applies equally to a document that the signatory has no idea what the document is because it is out with their experience which applied to the documents that Mary was bullied and coerced into signing.

260. Turning to his main submissions, Mr Ball said the starting point was that the Trust Deed and the TP1 was the starting point, having been procured by undue influence/duress/*non est factum* etc. The TP1 was not a deed and therefore the trust is effectively empty, he submitted: Nula Robinson did not witness Mary signing it, and it was therefore not a deed. The implications go much further than the validity of the deed, he said. The undue influence and duress here, was not of the physical variety, but of the wearing down variety, causing the victim to give in by virtue of overbearing conduct. Mary gave the appearance of going along with things because she

had no choice in the matter, Mr Ball submitted, and Irving had spent all of the money in the partnership account. He and Caroline had pushed to get the plots sold because of the building project.

261. Mary was not in the driving seat here, he said. Much more modest sums could have been spent on improving the farmhouse. The Claimants had pretty much taken over and were using Mary's property as their own. The Claimants were boasting about the standard of the accommodation and their adaptations for Irving's sake when it was all Mary's money they were spending. By the time of the execution of the documents, Mary felt that she had no choice but to sign them, and by then she had no money to do anything else. On being questioned why she did not act sooner than she did, Mr Ball said that she was aware of the large sums being spent on the barn and Annexe and was being told it was all going to be marvellous. She was not keen, but willing to give it a go, he said. It could have been alright, but after she got into the Annexe and Caroline started being nasty towards her, it was the straw that broke the camel's back. It was connected to the experience of moving into the Annexe and the awful unpleasantness that followed, submitted Mr Ball.
262. Mr Ball submitted that if everything that the Claimants had been saying were true, *why* would Mary have reacted as she did – *why are we here?*, he asked rhetorically. It can't possibly be just because the books were in the wrong place, he said. The Claimants say that Mary went "*crazy, bonkers, loopy-loo*", but the appropriate finding is that Mary was always unhappy about signing those documents. She only signed them because she was under pressure and being sworn at. If everything had been fine and Mary happy, it would have been the easiest thing in the world to have the documents executed in a regular fashion.
263. The demeanour of the professional witnesses is illusory, submitted Mr Ball. Mrs Tope's visits were fact-finding. At neither did she produce the final form of the Trust Deed. Mrs Tope had felt that undue influence issues were for solicitors not her. She was so blasé about it that she did not even forward Mrs Woolsey's email to GA. Once Mary was in the hands of GA, Mr Rose never saw her and Mr Cusack was relying on the preceding three professionals, submitted Mr Ball.
264. In terms of execution, Mr Ball said that the Claimants' evidence was contradictory as to the Trust Deed, and Sarah Moore's evidence was unreliable, and affected by

Irving's intervention. This was even worse when it came to Nula Robinson, suggested Mr Ball. The witness statements are almost silent on it, and Caroline's evidence was all over the place. All of it was contradicted by Ms Robinson's evidence, he said. Added to that, there is Nula's evidence that Irving tried to persuade her to change her evidence and lie to the court. This smacks of fraud, Mr Ball submitted.

265. As regards proprietary estoppel, Mr Ball stated that the Defendant resisted the claim partly on the basis of clean hands. This manifests itself in several ways and is not as simple as it sounds, he said.

266. In *Fiona Trust & Holding Corporation & Others v Yuri Privalov & Ors*[2008] EWHC 1748 (Comm) @ 17 in dismissing the Defendant's claim that material non-disclosure in an injunction application was sufficiently connected with the subject matter of the main claim to deprive the Claimant of its equitable relief by virtue of the clean hands doctrine, Smith J cited Lord Scott in *Grobelaar v News Group Newspapers, [2002] UKHL 40* at para 90:

“... it is long-established practice that an equitable remedy should not be granted to an applicant who does not come before the court with ‘clean hands’. The grime on the hands must, of course, be sufficiently closely connected with the equitable remedy that is sought in order for an applicant to be denied a remedy to which he ordinarily would be entitled. And whether there is or is not a sufficiently close connection must depend on the facts of each case.”

267. Mr Ball submitted that the conduct of Irving here in using unlawful means to obtain the TP1 and the Trust Deed which was intended to accelerate the transfer of his mother's property to him was sufficiently close to the relief sought in the proprietary estoppel claim to invoke the clean hands maxim.

268. Mr Ball referred to paragraphs 56-57 of *Thorner v Major* and submitted that there was nothing in the instant case that goes beyond a statement of mere intention, which could mature into a binding representation. But in any event, that would require conduct on the part of the promisee which would alert the promisor that the promisee was relying on it. Because estoppel looked back to the moment that the promise was broken, this links the conduct with the proprietary estoppel claim, not just as bad behaviour to put into the balance, but because Irving would never have been in a position to complain if Mary had legitimately depleted the Farm during her life, and therefore his conduct in trying to secure the property in advance of Mary's death, was

tantamount to securing 100% of her property in advance of his entitlement to it. Mr Ball summarised the proposition thus: “*I promise to leave all of this to you, provided that you don’t try to steal it from me first*”.

269. In the instant matter, Mr Ball submitted that we are not looking back to the moment of death but the moment that Mary changed her will in 2022: in light of both Claimants’ conduct, it was not unconscionable for Mary to have done that. It is akin to a repudiation of a contract, he said. The conduct here was so dishonest that it should deprive him of the basis for the claim entirely, although he did in discussion with me agree that it was not a case of black and white, and the maxim could be used proportionately.
270. Turning to the evidence, Mr Ball submitted that the farming witnesses’ evidence was patchy. It was not surprising that Irving was there when Mr Stanbury visited because he was the technical one out of he and Elwyn, and Mr Stanbury visited by appointment. Mr Ross’s evidence was not strong enough to show Irving working “*morning, noon and night*” as Irving claims. He had said it was mostly Elwyn who worked the sheep but assisted by Irving. Mary did not dispute that Irving did *some* work on the Farm. Mr Ball submitted that Mr Ellacott’s evidence was extremely thin, seeing Irving 3-4 times per year, sometimes with Elwyn in the pub which left 1-2 times per year on the Farm; otherwise, his evidence was assumptions. Mr Brass only saw Irving 1-2 times per week, but he was in a different job. Mr Castle’s evidence was weak because he spent a lot of time on other farms and could only really speak of 2009/10. Similarly, Mr Duke was absent between 1999 and 2016. During the last 8 years, both Irving and Elwyn were less able, hence his presence.
271. Mr Ball submitted that together, the evidence of Irving’s detrimental reliance was not sufficient to mature a statement of intention which was not an assurance into an assurance. This is because the third party evidence is patchy and Irving’s work was patchy. He was only earning £125 per month, but he was getting free board and lodging and use of the partnership’s equipment and fuel. There was a distinction between doing work as an investment into one’s future and detrimental reliance on a firm assurance, Mr Ball pointed out. There was no sense that Irving *had* to do the work on the Farm, at least not until the last few years of Elwyn’s decline, he said. In

summary, this was no more than tit-for-tat benefit with an anticipation that he would inherit when the time came.

272. In terms of remedy, Mr Ball urged the court to avoid bringing forward property ownership: that would complete what the Claimants had been trying to do unlawfully. It should be more in line with the promise, and he agreed with Mr Troup that no clean break was required here. He pointed out that Irving does not intend to keep the Farm going: he is physically unable to do so, and has already sold the machinery. The Farm land would be useful for Mary to rent out and have as security.

Reply – Mr Troup

273. Mr Troup pointed out that Irving’s own accounts show that his earnings were somewhat paltry, with only one year where profit exceeded £5,000 and often a loss.
274. The lack of clean hands argument was based entirely on undue influence or abuse. Even if the deeds are improperly executed it does not mean they were obtained by fraud, he said. The Claimants had no intention to steal the land but to accelerate transfer in accordance with tax advice and everyone’s agreement.
275. In relation to *Bowack v Saxton*, Mr Troup said that the distinction drawn by Mr Ball between bonds and shares and real property was one without a difference. HHJ Matthews had proceeded on the basis in *Bowack* that the bond transfer in question had been ineffective. The principle is not about the nature of the asset, he said, but about the effect of the settlor’s actions on his or her conscience. Equity would not permit the law to deny the existence of a trust in a factual scenario which otherwise satisfied the conditions laid down in the *Pagarani* case. This meets both the wording of the Trust Deed argument as well as the conceptual objections, submitted Mr Troup.

Discussion and Conclusions

Professional Witnesses

276. It is convenient to start by the assessment of the professional witnesses. Perhaps not surprisingly, and as Mr Troup says, they were transparently not only honest but also accurate and had, except where stated otherwise, a good recollection of the events about which they were being asked. There was no hint (nor suggestion) that they were

trying to cover their own or each other's backs. They spoke to their attendance notes and correspondence with ease and openness. I found all of them impressive. I fully accept their evidence, and I also find that they were appropriately vigilant for concerns, niggles, an 'atmosphere' and other similar tangible and intangible signs that Mary may have been, not just the subject of undue influence, but that she might have been just "going along" with the plans for the Farm, not being either in control or positively contributing to them.

277. I am completely satisfied on the basis of the three professional witnesses who gave evidence having met Mary that she knew and fully understood what the plans were and how they were to be achieved in the sense that a lay-person would. She knew that there was a plan to give the barn to Irving and Caroline outright and immediately and that this reflected what Elwyn had had in mind before he died and she would have wanted to make good that intention. She knew that there was a plan to develop the Trust Land and that it was to go into a trust fund in order to save tax. There was every intention to leave everything to Irving and Caroline and Mary agreed that it was sensible to be as tax efficient as possible. Furthermore, she knew that Irving's farming potential was limited and that the Trust Land provided an opportunity for him and Caroline to be secure if and when his Parkinson's progressed. She knew that she was retaining what she referred to as her "nest egg", namely the farmhouse and most of the land which gave her comfort. Mary reluctantly had had to accept that she was having falls and that the farmhouse was no longer suitable for her. The Annexe seemed the best alternative and she was fully behind the project. All of this is reflected in the professional witnesses' evidence, both written and oral, and reflected in the correspondence.
278. I also specifically find that the same evidence strongly suggests that Mary also *wanted* these things to happen save, perhaps, the move from the farmhouse, though, as Margaret Cleave acknowledged, remaining (with or without renovations) was not a practical option. There does remain the possibility that Mary was so oppressed or threatened that she gave the appearance of being as enthusiastic about the plans as she did. I will return to that possibility after my assessment of the rest of the evidence.
279. I reject Mr Ball's submission that the evidence of the professional witnesses does not have the status urged on me by the Claimants. Mrs Tope's visits were indeed fact-

finding, as he suggests, but those facts included the very things to which I have referred. She needed to know what Mary wanted and that she understood how those aims were to be achieved, even if it was in a non-technical way. It is true that she did not produce a final form of the Trust Deed at those meetings, but that was not her role: that was for solicitors. Her role was as I have stated. I doubt that Mary would have understood any more than she did by pouring over the terms of the Trust Deed, although I am quite sure she would have done so when she received it. Mrs Tope thought that capacity was an issue for solicitors, but clearly felt obliged to ensure that Mary was happy and that she understood what was planned. She was not blasé about it as suggested by Mr Ball. She did not read the email of 6 April 2022 from Ms Woolsey as requiring to be forwarded. She knew that Mary was instructing other solicitors and was content to leave them to make their own assessments. I am not impressed with that email, and I will return to it below, although I am conscious that Ms Woolsey was not called as a witness and was not therefore able to explain herself.

280. I accept of course that Mr Rose did not meet Mary and so his evidence is of limited relevance. It does, however, indicate that between them, Mrs Tope and Mr Shearer were able to give sufficiently clear instructions based on their own interactions with Mary, Irving and Caroline.
281. From Mrs Smith's evidence it is clear that Mary was fully aware of the plans and talked about them without demur, even though she was not dealing with the now controversial aspects of them. It is notable, however, that Mary in her evidence was as critical of Mrs Smith's aspects as the others, even though in these proceedings they are not being challenged. In particular, Mary's insistence that she signed absolutely nothing in front of anyone except Irving, save for the 2021 Will.
282. Furthermore, however, Mrs Smith's evidence shows just how alert and astute Mary was in relation to the detail of the transactions and what she wanted to achieve with them and why. She was demonstrating a cogent ability to look ahead and anticipate problems and suggest solutions in relation to rights of way and the like, and she was clearly keen to get the transactions completed. Finally, it is clear that it was Mary who, when getting frustrated about the lack of progress with the sales, turned her attention to her new will and asked that Irving joined the meeting to discuss (although PPW were not dealing, I think that Mrs Tope had a consent form of some sort).

283. Mr Cusack was very impressive, and he is a very experienced solicitor who, he says, is regularly instructed to assess would-be transactors on behalf of large financial institutions, by which I take him to mean for *Barclays Bank v O'Brien* type purposes. His evidence about Mary's understanding and willingness to participate in the plans is of high quality and, in my judgment, completely reliable.

Mary

284. This evidence of the professional witnesses does of course provide a sounding board to help assess the other witnesses of fact where their evidence differs from the professional witnesses. Not least, it corroborates both Caroline and Irving's evidence on the level of Mary's knowledge and understanding of the plans and transactions, and to a large extent, her enthusiasm for them. I fully accept that the way the case is put by Mr Ball and Mary's advisers is not that Mary did not understand the plans or transactions, but rather that she did understand them but did not genuinely agree to them, but had to go along with them because she was being pressured and bullied into doing so. To that end, it is said, the professional witnesses cannot give relevant direct evidence as to what went on behind closed doors.

285. However, Mary's approach and her evidence goes a lot further than that careful framing of her case. As alluded to, one of the reasons that I have set out Mary's evidence as I have is an attempt to demonstrate the force with which it was given; the strength and level of belief that Mary has in that evidence; the unwavering attachment to it and the force of Mary's character. For example, when juxtaposing Mary's evidence about the documents that she executed with full knowledge and understanding in front of, and witnessed by, a solicitor with no-one else in the room with that of Mrs Smith, it is crystal clear that Mary's role as an historian is very unreliable. Mary stands out in my judgment as a person who, once she has made up her mind, nothing will shake her from that belief. Even in the face of almost incontrovertible evidence such as the TP1s for Plots 1-3 and the surrounding documentation and Mrs Smith's evidence, Mary was adamant that her signatures had only ever been witnessed by Irving (or in the case of the 2021 Will, Mr and Mrs Parrish).

286. Mary even went so far as to say that she had not met Mrs Smith. She denied knowing Damian Martin despite the attendance note of her having come to a specific and

separate agreement with him about storage (quite apart from his own evidence that she had served him tea and cake and met her on several occasions).

287. The same applied to the Trosswell Land having been inherited by Irving directly from his grandfather which Mary was adamant she had given to him. Mary was even given a way out by it being suggested that she might have been confused because she was the executrix of her father's will, but she was absolutely adamant, and all but accused the will in the bundle of having been tampered with.
288. Mary continued to deny that Irving had not paid £12,000 for a tractor and £10,000 for the hay-turner despite the clear documentary evidence from the SE file that he had.
289. Another remarkable example is Margaret Hookway. First, there is incontrovertible evidence that she changed her will in June 2018 to produce a very elaborate will to ensure that Margaret Hookway could not make any sort of claim against Irving or his estate. She told her solicitor that she did not like her and referred to her as his partner (refuting any suggestion that this was based on a break-up in the relationship). And yet Mary's evidence, both in her statement and in the witness box, was that Caroline had been at the heart of the campaign to mislead her into disliking Margaret Hookway. When that evidence is combined with the two manuscript notes about Margaret Hookway, Mary's insistence that she liked her very much and, but for the calumny exercised by Irving and Caroline, she would not have written such things, is extremely difficult to accept, and I reject it. The manuscript notes, even if they had been brought about by being misled, or indeed only for the purposes of defeating Margaret Hookway's claim, would serve to illustrate the extreme opinions, very firmly held, that Mary is apt to express despite being based, on Mary's case, only on what she had been told by others, even though the notes don't contain that proviso.
290. Mary's pleaded case was that it was Irving who had made the planning application in respect of the barn. Contrary to that, in her oral evidence, she denied any knowledge of who had done it, despite the entries in SE files to which she was taken that it had been Elwyn in May 2014 and October 2020 who had made this suggestion.
291. Irving alleges that Mary retired from the partnership for tax reasons, but Mary's pleaded case is that she did not retire from the partnership at all, or she did not do so willingly. SE's notes dated 23 January 2023 support Irving's assertion.

292. These denials and assertions by Mary are not made with any reservations or hesitation. Quite the opposite, they are made strongly and vociferously. They reflect a very strong woman with strong views who will not be persuaded from her chosen course. This was also very evident when Mary was presented with any document in the witness box about which she was going to be asked questions. She simply would not proceed with the process until she had had time to read as much or as little of the document as she chose to, irrespective of whether those parts of the document to which she was directed were minimal, or indeed if the detailed content of the document was not the subject of the question. More than once Mary strongly and loudly told Mr Troup that she would not contemplate answering any question from him unless and until she had had a chance to read what was in front of her.
293. I pause there to observe that this corroborates Irving's evidence that there was no possibility that Mary would ever sign anything without reading it, and that she would not have signed anything unwillingly. In fact, I consider that it is possible that Mary's recollection of being told by Irving to "*just sign the bloody thing*" was caused by his impatience arising out her insistence that she read every word of whatever document she was being asked to sign until she was satisfied of what she was signing. Her case is that he said that more than once, but I find that she is exaggerating that, even if it did happen on one occasion.
294. Consistent with the strength of these denials and accusations, I find that Mary is and was capable of making very strong accusations against people without appropriate evidence to support them, and then sometimes (when it suits) feeling free to withdraw them at will. Some examples are as follows:
- 294.1 The allegation that the 2021 Will was obtained by fraud, when in her oral evidence she accepted that she had entered into it willingly and it accorded with her intentions at the time.
- 294.2 The maintenance of her option to rely on an allegation that her signatures had been forged on the Trust Deed, the 2021 Will and the TP1 for the Trust Land continued right up until the PTR despite requests to clarify the situation from the Claimants' solicitors. They were then abandoned. This reflected her oral evidence which ranged from emphatic assertions or denials to protestations that she knew nothing about anything.

- 294.3 Mary's pleaded case (on instructions, of course) was that she did not know where the proceeds of sale from the solar Farm field had gone (the obvious implication being that Irving had misappropriated them), and yet her oral evidence was that the field was co-owned by her and Elwyn (incorrect), and that proceeds of sale were paid to the NFU and Lloyds, both accounts being in the Defendant's name (along with Elwyn).
- 294.4 The insinuation of Caroline's involvement in Elwyn's death, for which there is absolutely no evidence, and which contradicts the medical records which suggest a respiratory condition connected with Covid.
- 294.5 The vitriolic manuscript notes about Margaret Hookway which were not tempered in any way nor did they state that they were based on hearsay, and the complete disavowal of their content by Mary in the witness box.
295. Apart from the strength and determination with which Mary dealt with these issues, there is good evidence that Mary is a woman of strong character who is unlikely to be pushed around or persuaded to do something that she does not want to do. Some examples are as follows:
- 295.1 As per the notes to her 2000 will, Mary was not prepared to countenance Elwyn living in the Farm if he formed another relationship after her death.
- 295.2 She was astute to control her neighbours' future behaviour in respect of the three plots of land sold to them.
- 295.3 She was astute to ensure Margaret Hookway was excluded from any chance of inheriting anything from the Cleave family and was virulent in providing evidence to her solicitor to refute her claim for proprietary estoppel.
- 295.4 In her undated letter dictated to Margaret Cleave after 21 June 2022 but intended for Irving's consumption, Mary, in her fragile state of mind, concluded with the words "*I am the boss, you don't tell me what to do*". (Interestingly, in that letter she also accuses Irving of having received "*hundreds and hundreds of pounds and Trosswell and £8,000 in cash*" which differs from her current case quite markedly in respect of the alleged theft of money which ranges from £500,000 to £1 million).

295.5 If their evidence is to be accepted, both Irving and Caroline gave evidence that Mary was both eager and adept at controlling her environment, such as including Caroline's daughter in the 2021 Will which gave her a sense of control over all of their lives.

296. I must also assess Mary's evidence that she was subject to bullying and abuse prior to June 2022 in light of the documentary and extrinsic evidence of the parties' previous relationship. A number of pieces of evidence support the proposition that the parties' previous relationship was good. A selection of them is as follows:

296.1 The professional witnesses' evidence suggests that Mary was in a very good relationship with the Claimants.

296.2 Mary accepted in oral evidence that she made the 2021 Will willingly, naming Irving as beneficiary with Caroline and then Eve as substitutionary beneficiaries which she did at her behest.

296.3 Elwyn's medical notes contain a telling entry 11 February 2021: "*Mrs Cleave is very happy and chatty. Reports her son's partner does the housework for them and shopping. Mrs Cleave appears to be very happy with her support and praises her*".

296.4 None of the local witnesses who profess themselves to be very good friends with Mary (e.g. Mr (and Mrs Parrish through him) and Nula Robinson) give any evidence of concerns expressed to them or felt by them. Mary adduced no evidence nor called any witnesses to suggest that there were any difficulties or tensions between her and the Claimants.

296.5 The fact that Mary complained to no-one at all prior to 21 June 2022 about the Claimants' behaviour despite ample opportunity to do so, not only to neighbours but also to the professional witnesses.

296.6 Margaret Cleave gave no evidence of any pre-21 June 2022 difficulties or tensions.

296.7 Andrew Parrish confirmed in his oral evidence that Mary was excited to move to annexe. This is consistent with Irving's witness statement

evidence: “*She was so excited and happy about moving into the Annexe. She even told friends and neighbours how much she was looking forward to it*”.

296.8 Mary stated in her oral evidence: “*Caroline did say I do love you, and I said I do too. I thought we were really going to get on well but I’m afraid it didn’t work out*”.

297. For all of the reasons set out above, and as a result of seeing and hearing Mary give evidence, I conclude that her oral evidence or that reflected in her pleadings or witness statement cannot be relied upon unless corroborated by independent or documentary evidence where it is challenged. For the avoidance of doubt, I do not consider that she is deliberately lying. She believes what she says, but it is unsupported by any credible evidence and runs against much credible evidence.

Irving and Caroline

298. Their evidence could of course be described as self-serving. However, it is entirely consistent with the evidence of the professional witnesses and the farming witnesses and largely only contradicted by Mary’s evidence which I have found to be unreliable.
299. There are other reasons for preferring their evidence.
300. Caroline presented as a confident, efficient and straightforward person. She fully accepted that she was good at organising and enjoyed it, and that was why Irving and Mary had asked her to assist. It is now being turned on her, she implied in her evidence. I agree and so find.
301. Caroline came into contact with the Cleave family at a difficult time for all of them, and I find that she took all of the issues on her chin. She clearly got on very well with Elwyn and also with Mary. That was quite an achievement in such a traditional farming family who had just been through a negative experience with Margaret Hookway. She also had to take on Irving’s Parkinson’s.
302. Caroline’s evidence was delivered with a measured and thoughtful tone. She was appropriately combative when challenged but her demeanour and choice of phrase also reflected the poignancy and emotional challenge of some of the evidence. I find

that she was genuinely shocked and hurt to have been accused of trying to suffocate Mary as well as being implicated in the death of Elwyn. Caroline did not try to present herself as perfect, and accepted that Mary could be difficult at the same time as admiring her strength of character.

303. Caroline's account of events was not as slick as it might have been had she been making matters up. The inconsistencies between her evidence and Irving's could easily have been ironed out ahead of the trial had the intention been to present a false united front. Instead, Caroline came across as someone doing her best to assist the court to recount events in what must have been difficult and emotionally draining circumstances: living in caravan with a recently deceased 'father-in-law'; ongoing building work; a 'mother-in-law' in failing health; ongoing rather complex and time-constrained planning and legal arrangements and Irving's own illness. Her evidence about Mary's involvement and enthusiasm for the plans was convincing, as was her desire to make the Farm buildings and land work for everyone involved given the somewhat constrained circumstances they all found themselves in.
304. As Mr Troup suggested, Irving came across as a classically typical Devonshire farmer. He was not prone to verbosity, and could be described as fairly taciturn. His answers were direct and to the point. He was able to recall elements of detail which, when challenged, were corroborated by documentary evidence, such as the purchase of the tractor and hay-turner. Irving's evidence about his school-teacher picking him up instead of him having to take the bus would be a strange thing to make up (particularly as he named him), and had the ring of truth about it. Mary's dismissal of the arrangement as lies reflects her ability to simply blank out people and events.
305. Irving clearly feels very strongly about the abrupt change in his mother's position, but also evinced a poignancy reflective of the personal aspect of that change of position, and at times appeared genuinely confused by it which is, if his version of events is true, not at all surprising. The family have been a close unit for over 50 years and he is the only child. It must be devastating to him to have his mother turn on him in such a startlingly intense way, particularly as he and Caroline were, as I find, genuinely trying to do their best for this elderly and vulnerable widow and hitherto close mother. Irving is not, of course, perfect. He revealed some traits of impatience and stubbornness and, perhaps not surprisingly, resentment and a sense of entitlement.

However, if, as he claims, his whole life's work and commitment is threatened by his mother's *volte-face* at this stage in his life, then those are appropriate emotions.

306. Nearly all of the documentary evidence supports Irving's oral evidence. He made mistakes as one would accept of an honest witness, such as the source of his contributions to the barn conversion, but his corrected evidence makes good sense and is supported by contemporaneous material. Where it does not, Irving's reactions were appropriate. A good example is the lack of profit being made from the hay production. He seemed genuinely surprised and perplexed when confronted with the accounts which demonstrated that the Farm rarely made a profit. He was simply unable to give an explanation and I accept his evidence that he had been told otherwise, and believed it. It was common ground that Elwyn was in complete charge of the financial side of the business. Irving could not have known anything other than what he was told. He did not know that the family was living off the capital as liquified from time to time. Irving contributed what he could to the Farm, and I have to be realistic and presume that some of the Farm earnings were in cash and possibly not fully recorded. So far as Irving was concerned, the Farm and the family's combined work efforts produced a living for them all, subsidised by his own work on the side.

20-21 June 2022

307. Something dramatic happened in Mary's mind on these days. Caroline and Irving say that they had noticed a change in Mary's behaviour leading up to the incident. There was no medical evidence before the court. However, I can only conclude that the move from the farmhouse into the Annexe triggered a reaction in Mary which has given rise to her current position. Whether this was a delusional episode or something else is not clear, but the effect was to cause Mary to behave in an irrational and incoherent way, inconsistent with her previous behaviour. The fact that she wavered between allegations of bullying and abuse to expressing her hope right up until the evening of 20 June 2022 that things would go well between the parties reinforces my conclusion that something happened in Mary's mind to cause the incident. I don't accept Mr Ball's submission that the sudden and dramatic change in Mary's stance can only be explained by a long history of abuse culminating in her realisation that it was occurring after she had moved into the Annexe. Or that the move caused her to finally react against such abuse. Mary had ample opportunity to complain to third

parties, including her sister-in-law and close friends and neighbours, and there is no evidence whatsoever, even from Mr Parrish who clearly does not like Irving, that she had any concerns. I accept that it is not uncommon in abusive relationships that a person hides it from the outside world until something happens which causes them to escape. However, in my judgment, on the assessment of all of the evidence that I have seen, heard and read, this is not what happened in this case.

Margaret Cleave

308. Almost all of Margaret Cleave's evidence was hearsay, having been derived from what Mary had told her after 21 June 2022. She clearly had no concerns prior to this date. The evidence about what had happened on 21 June morning is consistent with a dramatic change in Mary's state of mind and it is quite feasible that Irving was confused and upset that morning. Margaret's attitude to Irving has clearly and unsurprisingly been coloured by what she has been told by Mary and, as a result, her evidence of what occurred that morning has to be seen through that prism but, in any event, little turns on what she can give direct evidence about.

Discussion and Conclusions

Proprietary Estoppel

309. It will be apparent that I accept Caroline's and Irving's evidence and prefer it that of Mary where they differ, unless Mary's is corroborated by independent documentary or oral evidence.
310. I accept that Irving was told from a young age by his grandmother and by his parents that the Farm would one day be his. I accept that there was an agreement and understanding that, provided Irving stayed around and worked on the Farm with his father as assisted by Mary, that he would inherit the Farm. This is reflected in Mary's own evidence in which it was irrefutably clear that the whole family knew that Irving would inherit the Farm, and the totality of the evidence strongly suggests that, in order for there to be a Farm to inherit, it would be necessary for him to stay on and keep it viable. Irving was told that by his parents and felt obliged to stay on, safe in the understanding that if he did so, the Farm would be his one day. I reject Mary's dismissal of Irving's contribution. Mary seems to be recalling days, either when Irving was very young and unable to assist and/or concentrating on the aspects of

farming in which she took a role, namely the lambing. Elwyn was unable to assist with those aspects because of his issues with the sight of blood. It may have been the case that when Irving was in his teens he took less of an interest in the Farm and tried, as most teenagers would, to avoid the hard work. From all of the evidence, Irving certainly does have an interest in, and natural ability to skilfully drive and operate, tractors and other Farm machinery. Even Mary (albeit not consistently) did acknowledge this skill.

311. However, I accept that Irving committed himself to working hard on all aspects at the Farm. That is reflected in the direct evidence of the farming witnesses, but also the general understanding of those witnesses that Irving was the classic farmer's son: devoting himself to the Farm fully, working on it and in allied contracting all of which contributed to its continued existence. This is evidence gleaned from living locally and being a part of the farming community in which reputations emerge. Irving's reputation amongst members of the farming community was that he was a good hard-working farmer all of whom understood that Irving would inherit the Farm in due course.
312. Mr Ball was suggesting to Irving that the assurances that he would inherit the Farm were not based on a 24 hours-a-day, 365 days-a-year commitment to the Farm. That is an unrealistic suggestion, and if Mary's case is that, in order for Irving to succeed on the assurance aspect of proprietary estoppel, he must demonstrate a condition of that magnitude, it is wrong, but I am not sure that that is what Mary's case is. I am proceeding on the basis that Mr Ball's case is that there were no conditions at all: that there was nothing more than a tacit understanding that Irving would inherit the Farm, largely because there was no one else that any ordinary farming family would leave it to. Irving was free to do as he pleased and, all other things being equal, he would in due course inherit. The problem, as I understand how Mr Ball has put the case, is that Irving has tried to accelerate that position and secure, by nefarious means, the bulk of the value of the Farm in advance of Mary's death in order to provide him and Caroline a large and comfortable home at Mary's expense and without Mary's active agreement. Those nefarious means include bullying and oppression and taking advantage of an elderly and vulnerable person who reposed trust and confidence in Irving and Caroline. The facts as I have found them do not support such a case, and Mr Ball recognised the importance of the factual findings in this case.

313. I accept that Irving was offered the John Deere job, and that he seriously considered it, but was discouraged from taking it, and was positively pressured into refusing it in favour of remaining on the Farm to enable his parents to continue farming into their old age supported by him. The recent authorities suggest that creating a counter-factual is an almost impossible task to undertake accurately, and that the very fact of the life-long commitment to the Farm based on the assurances and understanding reached between the family members can be sufficient evidence of detrimental reliance provided there is a causative link between the two (e.g. *Anaghara v Anaghara* [2020] EWHC 3091 (Ch); *Spencer v Spencer* [2023] EWHC 2050 (Ch)) , provided that the court carries out an exercise to assess whether there has been detriment (*Winter v Winter* [2024] EWCA Civ 699). The offer of the John Deere job, and more importantly, Mary and Elwyn’s reaction to it do, however, demonstrate that there was a positive understanding, arising out of conversations and discussions between Irving and his parents that he would inherit the Farm if he committed to it, and that he was needed at the Farm in order that the Farm could be retained to enable him to inherit it. There is therefore a causative connection between the assurances and understanding and the commitment that Irving made by turning down the job. In itself it may amount to a detriment that is difficult to assess (there are so many variables between him accepting the offer and what today’s position might have been), but evidentially it shows that there was a conditionality to the assurances given to him about inheriting the Farm.
314. Irving at that point and both before and since, committed himself to the Farm on the positively shared understanding between the family that he would inherit the Farm in due course. The Court of Appeal (*Winter v Winter* [2024] EWCA Civ 699) have recently emphasised the need to carry out a balancing exercise when assessing whether a claimant has suffered detriment in reliance on the assurances or understanding that he or she would inherit property on the basis of a life-long commitment. Between them, those instructing Mr Troup and Mr Troup carried out an exercise in comparing what an agricultural worker might expect to have earned between January 1987 and May 2022 using publicly available data and taking into account overtime and holidays. They produced a very detailed spreadsheet showing their workings, and I acknowledge the hard work that must have gone into this. My forbearance from carrying out a detailed analysis of the spreadsheet is not intended to demean this work. Mr Troup was the first to acknowledge that this was a very rough

guide only, but that it did serve to illustrate, on a crude financial comparison, the detriment that Irving suffered by staying on at the Farm on the very low wages of £125 per month for so many years (rising only in 2016 to £250 per month). The result of the calculations indicates that, had Irving gone on to work elsewhere as a Farm worker of a rising grade as he gained experience and qualifications, he would have earned nearly £610,000 in that period. Instead he has earned £74,000. Of course, he would have had to pay for his board and lodgings, but he does not strike me as an extravagant man, and so these would have been modest expenses. This comparison suggests a significant detriment in my judgment.

315. That is the direct comparison with Farm work. Had he taken the John Deere job, he may have gone on to do all sorts of further things in the mechanical sphere of farming. As an employee, he may well have been in receipt of medical insurance which would have been of huge advantage given his unfortunate diagnosis of Parkinson's Disease. He may, of course, have lost that job, but that would take us into the realms of pure speculation. His aptitude in driving tractors which caused the offer to be made suggests that this was a career path which had been open to him.
316. Instead, Irving has worked on a small and, as is now apparent, financially failing Farm which is declining in size for that reason. He has had to work outside even normal farming hours to supplement his income. He has had to live in a deteriorating farmhouse, a log cabin and a static caravan over the years, albeit for free. He has had to support his ailing father on the Farm and latterly his ailing mother. He played a significant part in the establishment and later sale of the solar Farm which has provided a substantial sum of money for the family, but is being criticised for using the funds available in the Farm account for farming-related activity. If, as I have found, Mrs Tope properly recorded Mary's words and general demeanour, Mary herself reflected the element of detriment that Irving had suffered over the years by her reference to his having "earned" the gift of the barn conversion and the Trust Land by the time that Mrs Tope visited. I do not accept Mr Ball's submission that that was irrelevant because it was after the event. Far from it, its relevance is the very fact that it was after the event: Mary was acknowledging the work and commitment as well as the contractual-type assurances that had been given, received and relied on within the family. The detriment was a *fait-accomplis* by that stage.

317. I have reviewed and taken into account the factors set out in *Davies v Davies* and *Winter v Winter* above. In my judgment, taking all of these factors into account, Irving has acted to his detriment in relying on the assurances and understanding that he would inherit the Farm on his parents' death, such that it would render it unconscionable for Mary to resile from those promises and leave what is *bona fides* left of the Farm by the time that Mary dies.
318. Although that finding is sufficient to deal with the proprietary estoppel claim in its entirety, I should note that the proprietary estoppel claim in respect of the barn conversion is almost irrefutable, a position that Mr Ball all but acknowledged. This applies to both Irving and Caroline in terms of their contributions, but in particular to Caroline who, when the project first started, was not married to Irving and was thus extremely vulnerable in terms of her contributions. She is a very practical woman and in no circumstances would she have proceeded with the barn conversion without specific assurances that no "paperwork" was required to safeguard her investment: she and Irving were told that it would be a waste of money because it was going to be gifted to them.
319. It will be apparent that pursuant to my findings of fact, I find that Irving and Caroline come to the court seeking assistance with clean hands.

Remedy

320. In terms of remedy, *Guest v Guest* provides the framework. The relevant paragraphs are 74-80 which I take into account. The aim of the remedy for proprietary estoppel is the prevention or undoing of unconscionable conduct, not expectation fulfilment or detriment compensation. In many cases, once the equity is established, the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties might call for a reduced or different award.
321. The starting point in this case is, in my judgment, the fulfilment of the promise. Irving has completed his part of the arrangement as far as he has been physically able to do. The Farm can provide him with the security that he needs in his later years. This is not by being a working Farm because this is no longer possible for him, even if it was a viable economic farming unit, which seems to me to be rather unlikely. Mary has left

the Farm and her evidence was that she was very happy living in the nursing home in which she currently resides. There is real uncertainty about the funding of that accommodation and the associated care. There was evidence that the costs to date were in the region of £80,000 which is being absorbed by the Local Authority for the time being. I suspect that they will be looking to Mary or her estate to recoup the sums they have currently paid to the nursing home once these proceedings are complete and the legal and beneficial ownership of the Farm has been established.

322. Mary's current financial position has been the subject of inadequate disclosure. Margaret Cleave (as Mary's attorney) complained that she had no access to Mary's papers because they were in the farmhouse. Her reasons for not seeking access, which Irving's solicitors had specifically said she could have (though she did not need their permission), were completely inadequate. I am unable to finalise the remedy I will order without further information. Regrettably, therefore, I will have to hold a further hearing following proper disclosure of Mary's financial position unless the parties can agree the balance of matters beyond my provisional views which I set out below.
323. On the facts as I have found them, the parties had agreed what they considered to be a practical and fair way forward at this stage of their respective lives, making best use of the capital resources of the Farm and providing each with the appropriate level of security. Mary had agreed to accelerate the delivery of the promises she had made to Irving and Caroline to the extent provided for in the arrangements for the immediate transfer of the barn to Irving and Caroline and the creation of the Trust. These arrangements can be viewed as the best way of providing a remedy which would do justice between the parties in terms of preventing unconscionable conduct. Alternatively, they might be viewed as modifying the promises by virtue of fresh detrimental reliance. The investment in the barn conversion was a direct reliance by Irving and Caroline on the assurances that their interests would be catered for. This included the provision of capital resources via the Trust because that was always going to be required to make the barn conversion a viable option if they were to remain on the Farm. Either way, the parties had all agreed that this was the best way to use the assets available to them in light of the then current circumstances. The parties had agreed that the farmhouse, orchard and paddock would be sufficient for Mary's security, although it has to be borne in mind that that was on the basis that she

would be living in the Annexe. Although Mary is 91 years old, her mother lived until she was 102 years old as Mary was keen to emphasise in the witness box.

324. In my judgment, Mary's current accommodation and care arrangements are two factors of the sort Lord Briggs was referring to in *Guest* which might lead the court away from the full fulfilment of the promises made to Irving, but only in a limited way to meet these partially unexpected circumstances. Mr Troup's proposed remedy largely reflects the arrangements that the parties had come to prior to Mary's change of heart. I am concerned that Mary should be left with access to sufficient capital to cover her living and care costs and also about the tax implications of Mr Troup's proposals.
325. As regards proportionality, as I have already said, Irving had fulfilled his side of the bargain by the time Mary repudiated the promises. He had devoted his whole life to the Farm and for caring for his parents (latterly along with Caroline). He and Caroline had made provision for his mother's accommodation (albeit funded in good measure by Mary's own money) and had committed to caring for her insofar as they were able. However, this is far from the Fabergé jewellery example given by Lord Briggs in *Guest*, and in my judgment there is no obvious disproportionality in requiring Mary to make good on her assurances and the understanding reached between the parties. A lifetime's devotion to the Farm based on the promise of its delivery to Irving deserves a reflection of that promise. I accept that paragraph 72 of *Guest v Guest* is applicable in this case: "*Prima facie, wherever the reliant detriment has (as here) had lifelong consequences, a detriment valuation analysis will fall on stony ground*".
326. There are no third parties unfairly affected by requiring the promises to be fulfilled or in the method I propose in doing so, save of course for Margaret Cleave's grandson who would otherwise have received a windfall.
327. Taking all these factors into account, it is my provisional judgment that the best way to achieve justice between the parties is, first, to transfer the barn to Caroline and Irving forthwith. Secondly, in relation to the Trust, if I am wrong below about its existence, for tax advice to be obtained in relation to the Trust Land and, if necessary and appropriate, to require Mary to enter into a trust which would achieve the same aims as far as possible as the original trust, which should be held as to 10% beneficial interest to Mary and 90% to Irving and Caroline. I am satisfied that Mary is no longer

an appropriate trustee because of the serious derogations from her promises and her obvious enmity towards Irving, and should be removed as such from the Trust.

328. Mary should retain the farmhouse, the orchard and the paddock, to be dealt with as she pleases. However, she will need to pay the CGT on the barn transfer and may well need to sell these parts of the Farm to fund her care in any event. The joint valuation is £350-£360,000. Assuming the lower valuation of £350,000, after payment of costs of sale at 3% (£10,500) plus the CGT on the Barn (£58,439), Mary would be left with £281,061. This would represent a discount for Irving's accelerated receipt of some of the Farm as well as providing what Mary referred to as her "nest egg".
329. It is how to deal with the remainder of the Farm on which I require further information before concluding. It should be held on such terms as is most tax-efficient and it must pass to Irving upon Mary's death. However my preliminary view is that Mary should be able to access the capital value of such of this land as is reasonably required for her care and accommodation as would have been the case all other things being equal. It may be that Mary will need the income it can generate for the rest of her life, but that will have to be assessed after disclosure of her financial position. If it *is* necessary to allow Mary to receive its income, how that can be achieved without requiring the parties to have to deal with one another to an unacceptable level and how it might be possible to prevent a cynical use of the land which might damage it or reduce its future value to Irving can be explored at the hearing to which I have referred (or prior agreement). It will be apparent that I will also need evidence of the land's income potential which the experts should be able to provide at modest expense.
330. I hope that the parties can agree on the disclosure required which will include more information on Mary's accommodation funding (historic and going forward) and care requirements; her income and her capital resources (if any) e.g. whether her pensions can be drawn down upon. If the parties cannot agree, then they should inform the court of their areas of disagreement and directions can be issued.

The Balance of the Evidence; the 2021 Will; the Trust Deed and the TP1

331. It will be apparent from the foregoing that I accept the evidence of the farming witnesses. They all presented as being honest, straightforward and wishing to assist

the court. I accept that some of their evidence was limited in its scope, but the cumulative effect of it was to paint a picture of Irving's historic role in the Farm which accorded with his own account.

332. Although the 2021 Will has no legal status any more, I find that there was nothing suspicious about Caroline being present when it was executed. Mary's own evidence was that she wished to execute the will in its drafted form and with its named beneficiaries. It is the natural thing to do to have someone in Caroline's position ensure that the instructions sent by the solicitor are complied with. I accept the evidence from the professional witnesses that Mary was much happier dealing with formal matters in Caroline's presence and with her assistance.
333. Turning to the execution of the Trust Deed, I find as a fact on the balance of probabilities that it was duly executed and witnessed by Sarah Moore. Ms Moore was clearly an honest witness and was very frank about gaps in her memory and explained Irving's approach to her after her initial witness statements had been served in a calm and convincing manner. It was quite apparent that she had not been disturbed by it nor had she been unduly influenced by him to change her evidence: she simply approached it from a logical perspective as a retired chartered accountant with many years of dealing with formal documents.
334. Finally, there is the issue of the TP1. I accept the thrust of Mr Ball's submissions that the authorities dealing with the significance of the attestation clause relied on by Mr Troup do not have the force advanced on behalf of the Claimants on the facts of this case. This is primarily because they are dealing with wills whereas the TP1 is an *inter vivos* instrument and the signatories are all alive and able to (and did) give evidence. It is also relevant that wills require two attesting witnesses to be present at the same time whereas the TP1 only requires one. However, it cannot be ignored that the attestation clause states that the witness is signing "*in the presence of*" the other signatories, and the starting point must be that the witness was in the presence of those signatories when they signed saying that they were.
335. I have no hesitation in concluding that there was nothing suspicious in Irving telling Nula Robinson that he needed her to sign a "*tax document*" or words to that effect. Irving did not apply his mind to the technical status of the document: to his mind, he

had been told that the document, if executed in time, would save a significant amount of tax.

336. Irving's witness statement in relation to the signing of the TP1 is weak. It is carefully non-committal in its language. In this regard, Irving's oral evidence was vague and to some extent evasive. He said that Ms Robinson was initially going to provide a witness statement for him, but I suspect that that was a reference to him asking her to do so as she said in her witness statement. Although her oral evidence was very short in duration, I found Ms Robinson to be a straightforward witness. She recalled the occasion with an airy demeanour, referring to the fact that she had been sitting on the balcony in the sunshine drinking a glass of wine. I do not accept that because she had had a glass of wine that that meant she would have forgotten that she had gone to the Farm to witness Mary signing the document. She does not recall whether Irving signed in front of her, but again, that is a different order of mis-recollection to forgetting visiting the Farm. I conclude that either Ms Robinson was lying or that only Irving signed the TP1 in front of her. Irving was in a big rush on the day in question. I suspect that he was panicking as this is reflected in the evidence of both Ms Robinson and her partner Mr Martin. Irving has never stated that he took Ms Robinson to the Farm or otherwise how she came to be in Mary's presence when she witnessed the TP1. On the balance of probabilities, therefore, I find that Ms Robinson only witnessed Irving's signature on the TP1. Accordingly, the TP1 was not effective to transfer the Trust Land into the Trust. Despite this, Mary had intended it to be transferred, and there was no nefarious action on Irving's part in acting as he did, either in obtaining Mary's signature or those of Ms Robinson. His main motive was to get the TP1 completed and he did not apply his mind to the specific content of the attestation clause when obtaining Ms Robinson's signatures.
337. That is not the end of the matter, however. I accept Mr Troup's submissions in relation to the application of *T. Choitheram International S.A. v. Pagarani* [2001] 1 WLR 1, PC as applied by HHJ Matthews in *Bowack v. Saxton* [2020] EWHC 1049 (Ch). Here, Mary was the settlor of a trust which was validly declared. I have found that it was her settled intention to transfer the Trust Land into the Trust as signified by her signature and the evidence of the professional witnesses, and she was the legal owner of that property. This set of facts therefore satisfies the rule in *Milroy v Lord* and the trust is duly constituted to include the Trust Land.

338. I do not accept Mr Ball's submissions that this case can be distinguished from those authorities by virtue of the fact that here we are concerned with real property. The relevant fact in each case is that there was a failure to complete an effective legal transfer of the relevant property. The reason for that failure is not significant in the reasoning behind the *ratios* of both cases: the issue was whether the settlor was bound by the declaration of trust coupled with the declared intention to transfer the property into the Trust. There can be no distinction between a failure to execute effective transfers of shares (*Pagarani*) or bonds (*Bowack*) and the effective transfer of land. The crux of the issue is the failure to transfer, not the reasons for that failure.
339. Mr Ball submitted that the Trust Deed defeats a transfer in of property in this way, as I have set out above. I do not agree. The effect of these authorities is that, in the context of the requisite facts, the trust is successfully declared in the terms intended, and cannot be defeated by reference to a non-compliance with formalities. If it were otherwise, it would defeat the purpose of the rule. Mary's intention was to act in accordance with the professionals' advice and declare a trust into which the Trust Land would be held on the 90/10 basis advised by SE. Even if Mr Ball was correct, and the Trust Deed did not *per se* govern the Trust Land, the effect of these authorities is to achieve a declaration of trust on the same terms as the Trust Deed, but with the Trust Land as the subject of the trust instead of the £10.
340. Accordingly, I find that the Trust is properly formulated and the Trust Land is held by Mary on the terms of the Trust Deed.

Undue Influence, Non Est Factum, Duress, Unconscionable Bargain

341. I accept Mr Troup's submissions on these causes of action. On the facts as I have found them, the transactions do not call for an explanation because they are not explicable only on the basis that undue influence has been exercised. The Farm was always going to be left to Irving and he had worked hard so that it could be retained for his whole life. The transactions were the result of Mary and the family having willingly taken and accepted advice from professionals on how best to deal with the Farm assets given the parties' health, their needs and their position in life at the time. It was clear that Irving could no longer actively run the Farm to its fullest extent, even if it were economically viable.

342. Mary knew that the Trust Deed was and she knew of its intended effect. It had been explained to her on more than one occasion and she was content to sign it which she did of her own free will. As I have said above, I find that Mary would not have signed anything without having read it first. There was no evidence that Mary was misled at any point – far from it: she was at the meetings when the professionals explained what was happening. See: *CF Asset Finance Ltd v Okonji* [2014] ECC 23.
343. From the facts as I have found them, there is no question of duress playing any part in Mary’s signing the documents that she did. She signed them of her own free will and following advice.
344. Irving and Caroline have not acted unconscionably. They have done their best to ensure that Mary knew and understood the strategy that they were all intending to follow as regards the Farm assets. They have sought her agreement all along, and the professional witnesses all did the same. There was little more that Irving and Caroline could have done to ensure that Mary was onboard and, until 21 June 2022, she was onboard, with full knowledge and consent.

Ford Sierra Cosworth

345. I accept Mr Troup’s closing submissions as set out above in this regard. I accept Irving’s evidence in paragraph 92 of his witness statement and that the mere fact that the car was listed in the partnership accounts sheds no real light on its ownership: *Ham v. Bell* [2016] EWHC 1791 at [51]-[52]. This is emphasised by the fact that the Ford Sierra Cosworth is not an agricultural vehicle. Accordingly, I shall declare that the vehicle passed to Irving by survivorship.

Finalised Remedy

346. I will in due course hear from Counsel as to the finalised remedy in respect of the proprietary estoppel and will publish a supplemental judgment upon doing so.

Schedule

The plan below shows the specific elements. These are:

- The Barn, garden curtilage, hardstanding and buildings opposite (shaded red)
- The Farmhouse, garden, verge, the orchard (the former cabin site) and field west of The Farmhouse (shaded blue)
- The Trust Land (shaded purple)
- The remaining farmland (shaded brown).

