

Neutral Citation Number: [2024] EWHC 2989 (Ch)

**Claim Nos. PT-2021-LDS-000173**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN LEEDS**  
**PROPERTY, TRUSTS AND PROBATE LIST**

Date: 22 November 2024

**Before:**

**Mr Andrew Sutcliffe KC, sitting as a Judge of the High Court**

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**BETWEEN:**

**RICHARD GORDON ARMSTRONG**

**Claimant**

**-and-**

**(1) SIMON JAMES ARMSTRONG**

**(2) GEORGE ROBERT ARMSTRONG**

**(AS ADMINISTRATORS AND BENEFICIARIES OF ALAN ARMSTRONG DECEASED)**

**Defendants**

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**Mr Duncan Heath** (instructed by **Wilson Bramwell Solicitors**) for the Claimant  
**Mr Jordan Holland** (instructed by **Parisi Solicitors Ltd**) for the First and Second  
Defendants

Hearing dates: 3-5, 8-10 July 2024  
(further written submissions dated 24 July 2024)

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**JUDGMENT**

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### MR ANDREW SUTCLIFFE KC:

#### Introduction

- 1 The claimant, Richard Armstrong, brings a claim against the estate of his late father, Alan Armstrong, pursuant to the doctrine of proprietary estoppel. He says

that promises were given to him by Alan over many years that he would inherit one of his parents' two farms and that he relied on those promises to his detriment such that it was unconscionable for Alan to execute a will shortly before his death which left that farm to Richard's nephew and made no provision whatever for Richard.

- 2 In the alternative, Richard seeks reasonable financial provision from Alan's estate pursuant to the Inheritance (Provision for Family and Dependents) Act 1975 (the **1975 Act**).
- 3 Evidence was given by many members of the Armstrong family at the trial. Without intending any disrespect, I shall refer to the various members of the family by their first names.

## **The Issues**

- 4 The issues I have to decide in relation to the proprietary estoppel claim are as follows:
  - 4.1 Were promises made to Richard by Alan that he would inherit the farm where he lived and worked and were those promises of sufficient clarity to found a claim in proprietary estoppel?
  - 4.2 Did Richard rely on those promises to his detriment and, if he did, was his reliance reasonable?
  - 4.3 Did Alan renege on his promises and, if he did, was it unconscionable for him to do so?
  - 4.4 Did Richard receive countervailing benefits and, if he did, do those benefits affect the remedy to which he is entitled?
- 5 The issues I have to decide in relation to the 1975 Act claim are as follows:
  - 5.1 Was Richard financially dependent upon Alan?
  - 5.2 Does Alan's will fail to make reasonable financial provision for Richard and, if so, what would be reasonable financial provision?

## **The Proprietary Estoppel Claim**

- 6 Testamentary freedom is firmly rooted in English law. It is a well established principle that a private individual is entitled to dispose of his property in any way he chooses: see Blathwayt v Baron Cawley [1976] AC 397. Alan was fully entitled to change his will shortly before his death by leaving the farm to his grandson and nothing to Richard, unless Richard is able to establish that Alan was prevented from doing so by the doctrine of proprietary estoppel or that he has a claim on

Alan's estate by virtue of the provisions of the 1975 Act. I consider first Richard's proprietary estoppel claim because it is his primary claim. His claim under the 1975 Act is only brought in the alternative.

## **The law on proprietary estoppel**

- 7 In order to establish his claim in proprietary estoppel, Richard must prove that:
- 7.1 Alan made him an unambiguous promise which reasonably appeared intended to have been taken seriously and which Richard could reasonably have understood as being one on which he could rely (the **promise requirement**);
- 7.2 he reasonably relied on that promise and as a result of such reasonable reliance, he suffered substantial detriment (the **reliance and detriment requirements**).

### *The promise requirement*

- 8 In order to fulfil the promise requirement, Richard must prove that he believed the promises or assurances made to him by Alan were binding and irrevocable. Neither statements made to Richard as to Alan's current intention nor mere encouragement by Alan to Richard to believe that he would inherit the farm would be enough. What is required is a promise which was intended to be taken as such.
- 9 The stringency of the need for the relevant statement to be made with the intention of it being taken as a serious promise which could reasonably be relied on is illustrated by the decision in Cook v Thomas [2010] EWCA Civ 227, in which the Court of Appeal upheld the trial judge's finding that words substantially along the lines of the property in dispute "*all going to be yours when I am gone*" were insufficient to constitute a promise on which an estoppel could arise but were rather an indication of the deceased's then expectation that if all proceeded smoothly the defendants would be allowed to live at the farmhouse after the deceased's death: see [35] and [36]. Similarly, in James v James [2018] EWHC 43 (Ch), the court found that statements made to the claimant by his father that he would inherit the farm after his death were insufficient to fulfil the promise requirement as they were merely a statement of his then current intentions: see [24]. That was so notwithstanding that the court accepted that the claimant, as the only son of a farming family, reasonably expected to inherit his father's farm and that such expectation was shared by other members of the family: see [30].
- 10 The question of how clear the promise or assurance must be is dependent on the context in which it was made. As Lord Walker said in Thorner v Major [2009] 1 WLR 776, HL at [56]:

"I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in Walton v Walton [1994]

CA Transcript No 479 (in which the mother's "stock phrase" to her son, who had worked for low wages on her farm since he left school at 15, was "You can't have more money and a farm one day"). Hoffmann LJ stated, at para 16:

"The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made."

- 11 The relevant promise must be made by the person with the interest himself or with his actual authority. If that actual authority is missing, it makes no difference if a claimant believes that the person making the promise had such authority: see Fielden v Christie-Miller [2015] EWHC 87 at [25]-[26].

*The reliance and detriment requirements*

- 12 Any detriment which a claimant suffers is only relevant to the issue of proprietary estoppel to the extent that it was carried out in reliance on the promisor's promise. The reliance requirement therefore raises an issue of causation: see *Snell's Equity* (34<sup>th</sup> Ed.) at (12-043). In order for the reliance element to be fulfilled it is necessary to establish that the course of action which is said to have given rise to the detriment was undertaken *on the faith* of the promise and not merely in its belief: see Taylor's Fashions Ltd v Liverpool Victoria Trustees Co Ltd [1982] QB 133 at 156C.
- 13 The reliance requirement is generally stated as requiring proof of a "*sufficient causal link between the assurance relied on and the detriment asserted*": see Gillett v Holt [2001] Ch 210 at 232E-F. In practice, this amounts to the "but for" test (i.e. but for the promise would the claimant have acted in the way that is said to have given rise to the detriment): see *Snell's Equity* (34<sup>th</sup> Ed.) at (12-043) and *The Law of Proprietary Estoppel* (2<sup>nd</sup> Ed.) by Ben Macfarlane (at 3.112-3.113 and 3.174-3.187).
- 14 As to detriment, this must result directly from the reasonable reliance: see Thorner v Major at [29]. It must also be detriment suffered by the claimant directly. Detriment suffered by parties related to him is not relevant: see *The Law of Proprietary Estoppel* (2<sup>nd</sup> Ed.) by Ben Macfarlane (at 4.107 to 4.112).
- 15 Detriment is "*not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial*": see Gillett v Holt at 232D-E. In testing detriment, the court does not undertake an exercise in forensic accounting but must "*stand back and look at the matter in the round*": see Gillett v Holt at 233H.
- 16 In assessing whether the requirement of substantial detriment has been met, the court must take into account any countervailing benefits acquired by the claimant as a result of his reliance: see *Snell's Equity* (34<sup>th</sup> Ed.) at (12-044). This requires the court to weigh the disadvantages suffered by the claimant against any countervailing advantages: see Henry v Henry [2010] 1 All ER 988 at [53].

## **Factual background**

### *The Armstrong family and the two farms*

- 17 Alan Armstrong (who died on 5 October 2020 aged 85) and his wife Margaret (who predeceased him on 26 September 2018 aged 81) had five children: David, born in 1959, Christine born in 1961, Richard born in 1964, Kathryn born in 1966 and Simon born in 1967.
- 18 Alan and Margaret were both from farming families, although neither of them inherited a farm from their parents. They purchased two farms during their marriage, the beneficial interest in each of which was held by them in equal shares as tenants in common. Those farms were as follows:
- 18.1 Allerton Grange Farm, Allerton Park, Knaresborough, North Yorkshire (**Allerton Grange**). Allerton Grange is comprised of a five-bedroom farmhouse, a 3-bedroom cottage, a number of farm buildings and 122 acres of agricultural land. Its estimated current value is £2,365,000. Alan and Margaret continued to live at the farmhouse in Allerton Grange until their respective deaths.
- 18.2 North Cowton Grange Farm, North Cowton, Northallerton, North Yorkshire (**North Cowton**). The distance between North Cowton and Allerton Grange is about 40 miles. North Cowton comprises a four-bedroom farmhouse, a two-bedroom farm bungalow, a number of farm buildings and 266 acres of agricultural land. Its estimated current value is £3,128,000. North Cowton was originally farmed by Margaret's family and was purchased by Alan and Margaret from Margaret's parents.
- 19 David is the eldest of Alan and Margaret's children. After leaving school he worked with his parents in the farming business until he was 25. When he was in his early 20s, Alan wanted to send him to North Cowton to oversee the farming business there. However, by that stage David had decided he did not want to work for his father long-term due to Alan's difficult and controlling nature. When he turned 25, he had the opportunity (with support from Margaret) to buy some land away from the family farm and since then David and his wife have worked hard building up their own business, running a small hotel.
- 20 Richard was the second eldest of Alan and Margaret's sons. After leaving agricultural college, he also worked with his parents in the farming business. Richard moved to North Cowton in 1987, when he was 23, and oversaw the farming operations there, albeit that Alan continued to make the important decisions and exercise control. Richard and his wife Sarah moved into the farmhouse at North Cowton when they married in June 1988 and have lived there ever since. They have had three sons who were all brought up at North Cowton.

- 21 Simon, the youngest of Alan and Margaret's three sons, also joined the family farming enterprise after leaving school. He worked principally at Allerton Grange and lived nearby. Although Kathryn assisted with bookkeeping from the office at Allerton Grange, neither she nor her elder sister Christine have been directly involved as adults in their parents' farming enterprise.

*A & M Partnership & Sons*

- 22 From the early 1990s, the farming enterprise at Allerton Grange and North Cowton was farmed by way of a partnership between Alan and Margaret, Richard and Simon, known as A & M Partnership & Sons. The executed partnership agreement has been lost but a note of advice prepared for Alan and Simon by their solicitor Stephen Baylis (**Mr Baylis**) in November 2019 refers to a signed partnership agreement as well as a declaration of trust both dated 5 May 1995 as documents handed to him at that time (November 2019) by Alan and Simon. Of some interest in the context of this litigation is the fact that Mr Baylis noted in his advice that the "*net effect*" of the declaration of trust is that Richard and Simon "*in reality*" already owned a 25% share in both farms through the partnership. Mr Baylis did not give evidence and, without seeing these documents, it is difficult to ascertain precisely what he meant when he gave this advice.
- 23 A draft, undated version of the partnership agreement created in 1995 still exists. This document records that a partnership between Alan, Margaret, Simon and Richard governing the businesses carried on at Allerton Grange and North Cowton commenced on 6 April 1993 and profits were to be split between Alan (70%) and the other three partners (10% each). However, the partnership accounts suggest that the partners did not split profits in those ratios. In practice, Alan and Margaret each took 40% and Simon and Richard each took 10%.

*The golf course venture*

- 24 On 5 May 1998, Alan, Margaret, Richard and Simon entered into a deed of partnership with Brian and Ian Mattocks (the **golf course venture**). The Armstrongs and the Mattocks brought into the golf course venture 129 acres and 152 acres respectively. They agreed to develop the combined land into a golf course and hotel. Simon was married at that time to Brian Mattocks' daughter, Karen, but they have since divorced. The partnership deed records that the Armstrongs were to receive 60% of profits, Brian Mattocks 20% and Ian Mattocks 20%. Simon contends that he is entitled to 25% of the profits in this venture but that is not a matter I have to resolve.

*Alan and Margaret's wills - June 2000*

- 25 On 9 June 2000 Alan and Margaret executed wills. The will executed by Alan provided for Margaret, Richard, Simon and a solicitor called John Barrett to be appointed as his executors. It created a nil rate band trust (of which Margaret and Mr Barrett were trustees), the objects of which were Margaret, Alan's children and remoter descendants. In the event that Margaret predeceased him, Alan left legacies of £100,000 to each of Christine and Kathryn and £25,000 to David. Alan

left his interest in the golf course venture as to 60% for Simon and as to 40% to Richard. The remainder of Alan's residuary estate was devised to Simon and Richard in equal shares. The will executed by Margaret was in mirror terms to Alan's will.

*Grant Thornton's 2006 letter*

- 26 A letter to Alan dated 17 February 2006 from a tax manager in Grant Thornton concerning the possibility of Alan gifting a further interest in the farms to Simon and Richard refers to the farms being "*currently owned by you and Margaret in equal shares with Simon and Richard each having a 1% share*". It is not clear if or how this gift was perfected. A firm of solicitors in Gloucestershire called Loxley Solicitors Ltd (**Loxley**), acting for Simon and George in their capacity as administrators of Alan's estate, have indicated in a letter dated 5 November 2020 that "*in or around 2000 and acting on tax advice from their then accountants [Alan and Margaret] gave [Richard] and Simon a 1% beneficial interest*" in both farms and accepted that Richard was entitled to be paid the value of his beneficial interest as part of the administration of Alan's estate.

*Thomas starting work at North Cowton*

- 27 In about July 2012, when aged 18, Richard's son Thomas started work on the farm at North Cowton.
- 28 Thomas and Simon did not get on. One of the reasons for this is likely to have been that in mid 2013, in response to what Thomas referred to as Simon's constant complaint that North Cowton was losing money, Thomas visited the farm office at Allerton Grange and went through the accounts with Margaret to see whether this was correct. He said that he and Margaret discovered, from looking at the partnership bank statements, unexplained payments amounting to some £100-200,000 going into Simon's bank account. Thomas said that Simon then appeared and when asked by Thomas about these payments in Margaret and Alan's presence, Simon told him he did not know what he was talking about.

*The police incident in October 2013*

- 29 Not long afterwards, in October 2013, Simon came to North Cowton with three other men. Simon's evidence was that he and the other men had intended to go to Sunderland but as he had been told by Alan that Thomas had attacked his grandfather by pushing him and kicking him, he decided to divert to North Cowton in order to tell Thomas that this should not happen again. He said Thomas ran away and there was a bad tempered exchange between Richard and himself concerning Thomas.
- 30 Richard reported the matter to the police who attended on Simon at Allerton Grange on 24 October 2013 and issued a harassment warning against Simon. An email from a police officer reporting to a colleague about his visit to Simon records Simon as having said he attended North Cowton because Thomas had attacked Alan pushing him over and that Thomas was "*out of control and something needs*



*doing about it*". The email records that Simon refused to sign the harassment notice saying he needed to attend North Cowton for work reasons and so would have to break the conditions. The officer said he had had to deal with the matter by giving Simon words of advice about causing his brother and his family any problems and that Alan should have contacted the police about the assault by Thomas rather than Simon trying to sort the matter out himself.

*The incident between Alan and Thomas on New Year's Eve 2013 and subsequent meetings with Mr Morgan*

- 31 On 31 December 2013, there was a further physical altercation between Alan and Thomas at North Cowton. The nature and extent of the altercation are disputed. As a consequence of the altercation, a consultant called Nick Morgan was appointed. Mr Morgan had several meetings in January 2014 with various combinations of the family.
- 32 On 7 January 2014, Mr Morgan met with Alan and Simon at Allerton Grange. His note records Alan as saying that North Cowton was run as part of the family business with payroll and finance managed from Allerton Grange and Richard acting as manager and that the farm did not perform well. Alan then proceeded to give his account of what occurred on New Year's Eve, referring to the fact that Thomas had come into the shed talking in agitated tones about mouldy barley causing trouble with the pigs' health, causing Alan to be distracted and the mill to overheat resulting in some grist beginning to smoulder. According to Alan, Thomas then started shouting at him and told him to get out, punching Alan who raised his arms to protect himself and in the fracas Thomas then kicked him. Alan called the police who on arrival at North Cowton spoke to both Alan and Thomas and encouraged Alan to seek a solution within the family which he agreed to seek to achieve.
- 33 On 10 January 2014, Mr Morgan met with Richard at North Cowton. His note records Richard saying he did not witness the altercation but that Alan was constantly criticising and pressurising Thomas and that there was constant trouble within the family. Richard is also recorded as having said it was always his fault if the farm did not perform but it was the supply to the farm from Allerton Grange that was often the problem. He agreed the situation was stressful and had been going on for years. Richard said he needed the situation resolved quickly as the farm needed Thomas back at work.
- 34 On 13 January 2014, Mr Morgan recorded in his note of a meeting with Alan, Margaret and Simon at Allerton Grange that he had interviewed Thomas separately to Richard and that Thomas had denied starting the fracas and had given "*a quite different side to the events*", saying it was all led by Alan and he had only defended himself with minimum force. The note then proceeds to set out what appeared to be three options for the business. The first two options involved terminating Thomas' employment which might lead to claims by Thomas in the employment tribunal where there would be a greater than 50% chance of the

- partnership losing the case. The third option was to split the North Cowton accounts from the Allerton Grange accounts. Mr Morgan's note of that meeting also records: "*A divestment of [North Cowton] should be considered as a means of resolving the conflict and at the same time avoiding a possible legal action over Thomas. An alternative home and income would be required to be found for Richard and his family*".
- 35 Mr Morgan then met with Richard and Sarah at North Cowton, probably on 14 January, to discuss these options. Mr Morgan's note of that meeting, if it existed, was not in evidence. However, his note of his meeting with Alan and Margaret on 15 January refers to this second meeting with Richard (which Sarah also attended) at which the three options were "*fully discussed*" and continues: "*Richard and Sarah made clear they were desperate to stay on at [North Cowton] despite the offer of a fresh start elsewhere without the stresses associated with managing [North Cowton]*". A further (fourth) option then developed which focused on measuring management performance and using facts to "*reduce emotion in the general debate around [North Cowton's] future*". It was proposed that the accounts of Allerton Grange and North Cowton should be split with Richard visiting Allerton Grange on a weekly basis to review finances and agree each cheque with Alan and Kathryn. Both farms were to operate in accordance with budgets and plans produced by Richard and Simon and agreed by Alan. Both farms were to act on guidance given by vets approved by Alan and to use chemicals and medications advised by vets in respect of animals and by Alan in respect of arable. Richard was to prepare a single page plan to return North Cowton to breakeven within 12 months.
- 36 There was then a final meeting at North Cowton on 23 January 2014 attended by Mr Morgan, Alan, Margaret, Richard, Sarah and Thomas. Mr Morgan's note records that the shareholders agreed to implement this fourth option, the focus being on a permanent resolution with all family members embracing a significant change in the way they worked together. Those present agreed, amongst other matters, to North Cowton having quarterly performance reviews and that, if there were three adverse reviews, Richard could be required to leave the farmhouse upon the shareholders providing a suitable alternative residence. It was agreed that Thomas, who had been suspended pending Mr Morgan's investigation, would be reinstated. It was also agreed that a number of actions would be implemented at both North Cowton and Allerton Grange and that both managers (i.e. Richard and Simon) "*should be held accountable for their respective performances*".
- 37 There is no evidence that, in the months and years following this meeting on 23 January 2014, any review of the performance of either Richard or Simon was ever conducted in the manner envisaged by Mr Morgan's note.

#### *Lloyds Bank charge in 2016*

- 38 On 8 January 2016, a legal charge was granted to Lloyds Bank over North Cowton and part of Allerton Grange (as well as land at Marton-cum-Grafton owned by the

partnership which had been purchased in 2011 or 2012 and was registered in the partners' names in January 2016) in order to secure lending. Simon's evidence was that the partnership has an overdraft with Lloyds Bank that is reviewed annually but is currently set at £625,000 and two secured loans with over £1.6m outstanding. North Cowton has the benefit of a loan from Lloyds Bank of £500,000 and an overdraft facility of £125,000. Barclays holds a charge over the main site at Allerton Grange. It is not clear how much debt is secured by this Barclays' charge.

*Separation of Allerton Grange and North Cowton businesses in 2017*

- 39 David gave evidence of an occasion in the first half of 2017 when his parents called at his house and Alan stated Richard would have to leave North Cowton because it was losing money and they were worried he would run the business into the ground. He said his parents were planning to buy another house in the village so that Richard would have somewhere to live. David sought to talk his parents out of this decision by suggesting that if Richard was so adamant the financial problems were caused by Simon at Allerton Grange, the way to prove that was to separate out the finances at North Cowton from those at Allerton Grange. He suggested they set up Richard as a separate business, giving him control of the cheque book. This would give Richard an opportunity to make a go of things. David said that is what his parents decided to do.
- 40 This led to a meeting at North Cowton on 19 June 2017 between David, Margaret, Kathryn and Richard to discuss the splitting of the Allerton Grange and North Cowton businesses. (Kathryn referred to Thomas also being at the meeting, although Richard, David and Thomas himself did not recall Thomas being present, so she is probably mistaken in her recollection). Alan did not attend the meeting and there was some disagreement as to whether Alan was aware of the meeting either before or after it had taken place. I find it is likely Alan was aware of this meeting before it took place. It is consistent with David's evidence that Alan had already accepted his (David's) proposal that the businesses should be split. Moreover, there is no doubt that Alan will have been informed of what was said at the meeting shortly after it took place.
- 41 Kathryn recalled they explained to Richard at the meeting that two bank accounts would be created for the two farms, rather than everything going through a single account, as Richard had always said he could easily make much more money at North Cowton but it was Alan's control of the decision-making or Simon's "*financial inability*" which was preventing this from happening. The splitting of the accounts was presented to Richard as an opportunity for him to prove he could make a go of the North Cowton business.
- 42 The meeting lasted about half an hour and they all then went to look at the work done by Thomas to the bungalow where he was to live. Thomas moved into the bungalow in 2017.

- 43 After the meeting, Kathryn typed up her notes as to what had been discussed which she sent to Richard. The notes were entitled “*Notes on the division of A & M Armstrong & Sons 19 June 2017*” and stated as follows:

*“The following was discussed with Richard:*

*Richard is to have:*

*The Farmhouse, Bungalow and Farm Yard*

*£500K overdraft*

*Pay rent to mum and dad for the land – (£50/acre??)*

*Richard is happy to pay a monthly haulage bill for John and wagon*

*The 270 acres approx at North Cowton Grange is to stay in Dads name”*

- 44 As this note indicates, the proposal was for Richard to become solely responsible for the North Cowton business which would be set up with a bank account that was separate from the Allerton Grange bank account. Richard agreed to pay a rent to his parents and the monthly haulage bill for stock to be delivered to North Cowton by John Armstrong, Alan’s brother. He also agreed to be responsible for the £500,000 Lloyds loan.
- 45 Both David and Kathryn accepted when they gave evidence that Richard was not told at the meeting that he was being given one last chance to stand on his own two feet and to make a go of the business at North Cowton which is what they said David persuaded his parents to do in order to talk them out of the decision they had already made that Richard needed to leave the farm and the business and be bought another house in North Cowton.
- 46 The proposal put to Richard was readily accepted by him. I find he did so because, whether or not his belief was well founded, he genuinely believed that the financial problems associated with the existing partnership were due to Simon’s mismanagement of Allerton Grange and that he would be able to make North Cowton more profitable if he was allowed to operate the business on his own.
- 47 Richard’s evidence, which I accept, was that shortly after this meeting he discussed the splitting of the two farms with Alan who told him it was being done because he (Alan) would not live for ever and it would be easier for Richard to keep running North Cowton after he inherited it when Alan died. The arrangement was that Richard would pay Alan a monthly sum, effectively as a pension, but that he would have no further involvement in the farm at North Cowton. It was Richard’s understanding that Alan had a similar arrangement with Simon.
- 48 In about November 2017, although no new partnership agreement was entered into, a new partnership at North Cowton was established between Richard, Alan and Margaret, known as “A, M and R Armstrong” (the **North Cowton partnership**). Richard registered the North Cowton partnership for self-

assessment with HMRC on 25 April 2018, indicating that the partnership had commenced on 1 November 2017.

*Events following Margaret's death in 2018*

- 49 Margaret had a stroke in January 2018 and died on 26 September 2018. It was Richard's evidence, which I accept, that Alan's life changed dramatically after Margaret had her stroke and that her death hit him very hard. He was struggling mentally before she died, being preoccupied with her care, and he rarely came up to North Cowton to visit. He continued to speak to his father over the telephone on a weekly basis but was left to run North Cowton on his own in accordance with the arrangements made in the previous year.
- 50 Under the terms of Margaret's will, Richard was entitled to 40% of Margaret's share in the golf course venture and 50% of her residuary estate subject to Alan's life interest in the income of the estate. It was Richard's understanding that this accorded with his parents' intention that he would inherit North Cowton and Simon would inherit Allerton Grange and that Simon's receipt of 60% of his parents' share in the golf course venture was due to the fact that Allerton Grange is a smaller farm than North Cowton so this was intended to balance things up between them.
- 51 The night before Margaret's funeral, Simon rang Richard and said he wanted to change the solicitors dealing with Margaret's will. Richard said they should remain with the solicitors who had drawn up her will as they would have the background information as to her wishes. When he went to the first meeting called to discuss Margaret's will which took place at Allerton Grange on 16 October 2018, he discovered that new solicitors, Cowling, Swift and Kitchin (CSK), had been appointed.
- 52 Two solicitors from CSK, Jonathan Hanley and Claire Spence, attended a meeting with Alan on that day. Ms Spence's note of the meeting indicates that she gave Alan advice as to the advantages and disadvantages of the discretionary will trust created by Margaret's will and the fact that the executors and beneficiaries might wish to enter into a deed of variation which would have the effect of revoking the will trust and passing Margaret's estate to Alan.
- 53 Ms Spence's note records that Alan explained his oldest child David had received gifts from Margaret in his lifetime and accepted he would not benefit further from his and Margaret's estates. He referred to Simon and Richard as farming "*but they are drifting apart and the business seems to be going in the direction of 2 separate businesses*". The note also records Alan as having said that "*Simon wants £1.5 million to leave the business*". Simon denied he had ever said that and thought his father was confusing him with Richard. I do not accept Simon's evidence about this. It is clear from Mr Morgan's note of his meetings with Richard in early 2014 and David, Margaret and Kathryn's meeting with Richard in June 2017 that Richard always intended to stay at North Cowton and never indicated he was

prepared to be bought out. It is likely that Ms Spence was told by Alan that Simon wanted £1.5 million to leave the business, as her note states.

- 54 Ms Spence’s note says she advised Alan as to his options, being (1) “*do nothing as [Alan] inferred that it would be very hard for the family to agree*”, (2) “*get probate of the original will which [CSK did] not advise*” and (3) “*agree a settlement between them all, vary the Will and take out a Grant with the amended Will. This is something we will need to discuss*”.
- 55 As the solicitors were about to leave the meeting, they discovered that Simon, Kathryn, Christine and Richard were in the house waiting to see if their presence was required. Ms Spence’s attendance note records that Alan showed surprise that Richard was there. The four children and Alan then went back into the dining room and Ms Spence read out Margaret’s will to them and explained its provisions. Ms Spence’s note records that they all seemed to agree to a deed of variation and confirmed they would be available to attend a further meeting on 13 November.
- 56 On 13 November 2018, Mr Hanley and Ms Spence met with Alan and all five of his children. David Thomas, the family accountant, was also present at this meeting. Ms Spence’s note of the meeting records that when questions were asked of Mr Thomas, he did not know the answers and that David “*seemed to act as a go-between between his father and the siblings and the accountant...*”. The note suggests that little information was provided to the solicitors regarding assets and liabilities. It continues: “*However one thing the family did confirm is that there should be a deed of variation of the existing will so that the estate in its entirety goes to Alan and the executors would be Alan Richard and Simon*”.
- 57 In December 2018, Mr Thomas prepared the financial accounts for the North Cowton farming partnership, trading as A M & R Armstrong, for the period ended 5 April 2018. These accounts were signed by Richard on 10 January 2019 and by Alan and Simon (the latter signing for Margaret as one of her executors) on 22 January 2019 and they show that in the period of less than six months between 1 November 2017 and 5 April 2018, the North Cowton partnership made a small net profit of £7,489, having deducted charges and expenses in excess of £90,000 including nearly £20,000 of loan interest and depreciation.
- 58 The accounts for the year ended 5 April 2018 in respect of A & M Armstrong & Sons were also prepared by Mr Thomas in December 2018 and signed by Alan and Simon (who signed on his own behalf and as Margaret’s executor) on 22 January 2019 and showed the partnership making a loss of £288,952, having deducted charges and expenses in excess of £570,000 including nearly £100,000 of loan interest and depreciation.
- 59 On 20 February 2019, Alan went to see his GP with his son who is not identified in the GP’s notes but is thought to have been David. The notes record that the son is concerned regarding Alan’s memory issues and states “*generally forgetful i.e.*

*forgetting peoples names, forgets where door is, repeats himself". On 13 March 2019, Alan visited the same GP in the company of Christine. The notes record "daughter states that the son he came with last time had got him drunk on 3 double whiskeys beforehand; daughter states son is trying to get power of attorney - financial disputes among family following passing of their mother and they run a very successful farm; thinks the son got Alan drunk intentionally so he would score badly; Alan is coping well at home; daughter lives with him and says he is very high functioning; ... son was concerned re-memory; daughter feels there are no memory concerns".*

*Meeting at Allerton Grange on 2 April 2019: execution of the deed of variation*

60 On 2 April 2019 Mr Hanley and Ms Spence returned to Allerton Grange for a further meeting with the Armstrong family. Apart from Christine, all Alan's children were present. Ms Spence's note indicates this was a long meeting. Richard says that he was presented with the proposed deed of variation at the meeting itself and told the solicitors that he did not want to sign it because he did not understand its full implications. He also said he believed Margaret's estate had been undervalued. According to David, Richard was alleging Simon had stolen £100,000 from the business and he wanted to see the bank statements.

61 David and Richard then stepped out of the room. David told Richard to speak on the telephone to David Thomas, the family accountant, to ask his advice which he did but (according to Richard) Mr Thomas did not appear to understand what Richard was talking about. It appears from Ms Spence's note that Kathryn and David also spoke to Mr Thomas. Richard says David told him that if he did not sign the deed of variation, it would cost them an extra £3,000 in probate fees which would be his fault. He says he went back into the room and was advised by Ms Spence that the way Margaret's will had been written would create difficulties in the running of the business until Alan died and the changes were to make tax easier and would mean that the inheritance of the farms only had to be sorted once, saving money for everyone. She said that Margaret and Alan had written their wills giving Richard 50% of their estates and it would be better if it was altered so he would inherit North Cowton and Simon would inherit Allerton Grange. Richard's evidence, which I accept, was that everyone at the meeting, including Alan, was proceeding on the basis that if Margaret's will was changed in this way, Alan's will would provide for him to inherit North Cowton and Simon to inherit Allerton Grange.

62 According to Richard, after Ms Spence had given her explanation of the need for a deed of variation, Ms Spence said to him "don't you trust your father?" and his father gave him an encouraging look or nod, with the result that he then signed the deed of variation believing that his father was promising that he would receive his inheritance from his mother when his father died and that his father would leave North Cowton to him. David also recalled Ms Spence saying to Richard "don't you trust your father?" or words to that effect. Neither Simon nor Kathryn recalled Ms Spence asking Richard this question, although Simon recalled that Richard and

Alan sat opposite each other at the table. I accept Richard and David's evidence that Ms Spence did ask this question and that Alan responded with an encouraging look or nod in Richard's direction.

63 The last three substantive paragraphs of Ms Spence's note read as follows:

*"Everybody who signed the Deed of Variation realises that at this stage Alan has not made a new will however David advised he doesn't expect to receive anything from his father's will. We left the deed for Christine to sign and post to us. [Kathryn] and Christine are aware that at one time they were going to get legacies of £100,000 but they have both had some lifetime payments. These legacies will need review.*

*Richard and Simon want to make sure that the position about their respective farms is clear.*

*We made it clear that our advice is that Alan give some thought to updating his own will as soon as is possible."*

64 The reference in Ms Spence's note to "*Richard and Simon want to make sure that the position about their respective farms is clear*" confirms that they both anticipated inheriting from their father the farms for which they were responsible, which in Richard's case was North Cowton. I accept Richard's evidence that Alan was fully aware that this was Richard's understanding and that Alan gave him the encouraging look or nod in response to the question put by Ms Spence to Richard ("*don't you trust your father?*") knowing that the question referred to his inheriting North Cowton. In the context of the discussion that took place at the meeting as recalled by Richard (whose evidence I accept), I consider that the inference Richard was reasonably entitled to - and did - draw from Ms Spence's question and Alan's reaction was that, when he came to draw up his new will, Alan would respect Margaret's wishes and act in accordance with the wishes he had already expressed in his 2000 will by leaving North Cowton to him. Far from indicating to Richard that if he agreed to what was proposed by the deed of variation, he risked losing his share of his inheritance under Margaret's will, Alan positively encouraged Richard to believe that his inheritance under Margaret's will would be preserved and that he (Alan) would leave North Cowton to Richard in his will.

65 My conclusion in this regard is fortified by the fact that just over six months later, Alan signed a letter of instruction dated 12 November 2019, indicating to the solicitor instructed to draw up his new will that he wished to leave North Cowton to Richard and Allerton Grange to Simon. I therefore consider that when Alan gave Richard the encouraging look or nod at the meeting on 2 April 2019, he had every intention of leaving North Cowton to Richard. That intention was of course entirely in keeping with his and Margaret's wishes as evidenced by the wills they executed in 2000.

66 The meeting ended with Alan, David, Richard, Kathryn and Simon all executing a deed varying the terms of Margaret's will (the **deed of variation**). Christine



executed the deed of variation at a later date. The effect of the deed of variation was to vary Margaret's will by revoking the provisions which provided for the residue of her estate to be held on a discretionary trust for Simon and Richard and instead for such residuary estate to pass to Alan in its entirety.

*Email exchanges after the meeting on 2 April 2019*

67 Less than a week after the meeting, on 8 April 2019, Richard sent an email to Ms Spence stating that as an executor of Margaret's estate he felt that the information provided to him was insufficient. Amongst other things, he asked for more information regarding the golf course venture as well as bank statements and accounts for the partnership between Alan, Margaret and Simon at Allerton Grange. He also expressed unhappiness about being put under pressure to sign the documentation at the meeting on 2 April 2019 without having had the chance to have it checked by his own lawyer.

68 On 11 April 2019, Ms Spence responded to Richard's email in a letter copied to Alan and to Richard's siblings, noting his enquiries, stating that he would need to liaise with his co-executors Simon and Alan so that they could jointly instruct her to obtain the outstanding information and expressing concern that he felt he was put under undue pressure to sign the documentation.

69 On 14 May 2019, the court issued a grant of probate in Margaret's estate on the basis of documentation that had been signed by her executors, Alan, Simon and Richard, at the meeting on 2 April 2019.

70 On 26 June 2019, Richard sent a further email to Ms Spence indicating that he was unable to sign the IHT 30 in respect of Margaret's estate as he still had not received the financial information he requested in his email of 8 April 2019. Ms Spence responded to Richard by email the following day indicating that she would ask the family again for this additional information.

71 On 5 August 2019, Wilson Bramwell, solicitors instructed by Richard, wrote to CSK asking them to answer the queries raised in Richard's email of 26 June 2019 and to explain what steps had been taken in administering Margaret's estate and what remained to be done so that they could take instructions.

*The letter of instruction dated 12 November 2019*

72 In the afternoon of 11 November 2019, Mr Baylis of Parisi solicitors, also known as PSL (**PSL**), who have acted as Simon's solicitors in these proceedings, contacted a solicitor at Raworths in Harrogate called Caroline Hedges (**Ms Hedges**), asking to discuss with her a possible update to Alan's 2000 will. Mr Baylis made a file note dated 11 November 2019 entitled "*Matter of Inheritance*" which records that he had spoken to Ms Hedges who had "*looked at the instruction letter from PSL and believed that the matter was more complicated than PSL had set out in the initial instruction letter. She believed that the deed of variation had*

- not been properly produced and therefore this needs to be rectified before the matter could move forward”.*
- 73 Not long before having this telephone call with Ms Hedges on 11 November, Mr Baylis had been retained to act as Alan’s solicitor and had met with Alan and Simon at Allerton Grange earlier that day in order to obtain Alan’s signature to a letter of instruction from PSL to Ms Hedges (**the letter of instruction**). Curiously, the letter of instruction is dated 12 November even though it must have been signed by Mr Baylis and countersigned by Alan on 11 November and then sent to Ms Hedges the same day because it is referred to in Mr Baylis’ file note of his conversation with Ms Hedges dated 11 November. The fact that Alan signed the letter of instruction at the Allerton Grange meeting suggests that Mr Baylis prepared it before the meeting so that it could be signed by Alan at the meeting.
- 74 It is not clear how Mr Baylis came to be instructed by Alan. Simon sought to distance himself from the instruction of Mr Baylis, merely saying that it “*did not surprise*” him that his father had turned to Mr Baylis for advice as he had known Mr Baylis for over 10 years and, as a family, they first sought Mr Baylis’ advice when they were trying to sell the golf course. In his witness statement, Simon said he was aware of Mr Baylis’ “*involvement*” in advising Alan on “*how he could terminate the farming partnership at North Cowton and get Richard off the farm*” and continued “*I was aware of [Mr Baylis]’ involvement in that, but it was mainly a matter between him and my father*”.
- 75 However, the contemporaneous documents reveal that Simon’s evidence in this regard was not truthful. Simon was fully involved in giving instructions to Mr Baylis on Alan’s behalf. Mr Baylis’ emails were sent to Simon and addressed either to both Simon and Alan or on occasions to Simon alone. Simon was intimately involved in discussions with Mr Baylis both as regards Alan’s new will and the status of the two farming partnerships.
- 76 The letter of instruction was a two page letter addressed to Ms Hedges headed “*Matter of Alan Armstrong*” signed electronically by Mr Baylis and countersigned by Alan as representing his instructions. Mr Baylis says that he had been asked to assist with “*what is in effect a few minor alterations to the existing will of Alan Armstrong*”. He encloses a copy of Margaret’s will (which he confirms mirrors Alan’s 2000 will) as well as a copy of the deed of variation and continues: “*I am told the family beneficiaries agreed to this variation on the basis that the inheritance rights set out in [Alan’s 2000 will] meant they would receive their entitlement upon his death*”. In other words, Mr Baylis is here saying that Richard and Simon (as the principal family beneficiaries) had agreed to the deed of variation on the express understanding that on Alan’s death they would receive what they expected to receive under Alan’s 2000 will (including what they would have received under Margaret’s will).

- 77 Mr Baylis says in the letter of instruction that Ms Hedges was being employed as “*an agent to sense check the will and see if it is fit for purpose and confirm my proposed changes are sensible*” and that he intended to alter Margaret’s will simply by putting it in Alan’s name and making three other specific changes as follows:
- 77.1 The first was to remove Richard as an executor due to “*the frustration experienced*” by Alan in dealing with Richard as executor under Margaret’s will.
- 77.2 The second was to amend the provision in clause 4(c) of Alan’s 2000 will which divided his share of the golf course venture between Simon and Richard in the proportions of 60% and 40% by providing instead for his share to pass to Simon alone. The reason for this was that Simon “*has carried the burden of attempting to secure the release of the residual funds in that partnership which has involved five years plus of litigation*”.
- 77.3 The third change was addressed in paragraph 9.3 of the letter of instruction and reads as follows: “*[Richard] occupies and farms [North Cowton] while [Simon] farms Allerton Grange. [Alan] now wishes to split the farms so that his sons have title to the land that they farm. The farms are run separately but for accounting purposes while all land is in the name of [Alan] the business trades as A Armstrong & Sons (a partnership). I am therefore proposing a new 4(d) and 4(e) which reads ‘I give all of my interests in the buildings and land at [North Cowton] and any chattel assets situated thereon and any interest in the business carried on from that property to my son [Richard]’. ‘I give all of my interests in the buildings and land at [Allerton Grange] and any chattel assets situated thereon and any interest in the business carried on from that property to my son [Simon]’.*”
- 78 Mr Baylis then says that as a consequence of these two new sub-clauses, existing clause 4(d) would become clause 4(f). That sub-clause divided the residue of Alan’s estate to such of Simon and Richard as survived him and if more than one in equal shares, provided that if either of his sons predeceased him leaving children then those children on attaining the age of 25 would take in equal shares the share which their parent would otherwise have taken.
- 79 The letter of instruction concludes by asking if Ms Hedges would be prepared to look at these matters for him as agent and, if so, what would be the cost so that he could secure payment in advance.
- 80 Ms Hedges responded by email in the morning of 12 November 2019 confirming that her firm was prepared to act as agents of Mr Baylis’ firm in the matter and giving details of their proposed initial charge. Her email continues:

*“However, I have to say that there are obvious difficulties with the deed of variation which I suspect has not completely achieved what it intended to and needs some documentation to put things right. Also I think it would be a mistake to simply amend up Margaret’s 20 year old Will - far better to start again and if I can help you with a joint visit, please let me know. As mentioned, I live near Allerton so am local.”*

- 81 Mr Baylis responded by email to Ms Hedges on 15 November 2019 stating that Alan understood there was *“a need to start from scratch with the will while seeking to achieve the same overall outcome as we have in the current will, subject to the few changes that I had informed you of”*.
- 82 This email chain was then forwarded by Mr Baylis to Simon’s email address with a covering message addressed to Alan and Simon, indicating that he looked forward to hearing from them with a suggested date for a meeting to deal with Alan’s new will.
- 83 It is clear that, at the time Mr Baylis sent the letter of instruction to Ms Hedges, Alan’s instructions were consistent with Margaret’s will and his 2000 Will, namely, *“[Alan] now wishes to split the farms so that his sons have title to the land that they farm”*. In other words, Alan’s intention was that Richard would inherit the land and buildings at North Cowton and Simon would inherit the land and buildings at Allerton Grange.

#### *Mr Baylis’ partnership advice*

- 84 In the evening of 13 November 2019, Mr Baylis sent an email to Simon stating: *“Please see my advice note. The final point is something that we have not discussed but need to”*. Attached to this email was an undated document containing 39 numbered paragraphs addressed to Alan and Simon (the **partnership advice**) which starts by saying: *“It was good to meet with you and [Kathryn] yesterday and discuss what we know and what options we have”*.
- 85 Although the partnership advice was sent on 13 November and refers to a meeting “yesterday”, it seems clear that it is referring to the meeting at Allerton Grange which took place on 11 November. Whilst Kathryn is referred to by Mr Baylis as having been present at the meeting, her evidence was that she did no more than greet Mr Baylis at start of the meeting and took no part in the meeting itself. The fact that Mr Baylis addressed the partnership advice to Alan and Simon suggests that he considered both of them to be his clients at this point.
- 86 The partnership advice contains Mr Baylis’ thoughts about the business partnerships that had existed between Alan, Margaret, Richard and Simon over the years. He refers to the original A & M Armstrong & Sons partnership (what he calls the A & M & Sons Partnership) and to the partnership deed and declaration of trust dated 5 May 1995 which Mr Baylis had in his possession at that time but which are now lost. He then refers to what occurred in November 2017 when the

original partnership business was divided into two partnerships, the first comprising Alan, Margaret and Simon which farmed Allerton Grange (which he calls the Allerton Partnership) and the second comprising Alan, Margaret and Richard which farmed North Cowton (which he calls the Cowton Partnership). He notes that no partnership deeds were drawn up when these two partnerships were formed. Referring to section 33(1) of the Partnership Act 1890 (which states “Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner”), he says that Margaret’s death has potentially dissolved both partnerships. He then says: “*I take the view that the 1995 partnership deed can be argued not to govern the Cowton Partnership as the parties are different. I am sure Richard will argue to the contrary*”.

- 87 The final six paragraphs of the partnership advice, under the heading “*Richard’s property interest in the North Cawton (sic) land*”, state as follows:

*“33. You have asked me to look at this additional point. I noted above the restrictions registered against both farms in favour of Simon and Richard. I said at the meeting these were to protect the partner’s interest in the properties.*

*34. The question therefore has to be considered what interest Simon and Richard have.*

*35. As well as the Old Partnership Agreement you gave me at the meeting a deed of Trust also dated 5 May 1995. This deals with the Allerton and North Cowton properties and in fact [states] that all property while held in the name of Margaret and Alan is brought within the partnership and in effect beneficially owned by the A & M & Sons Partnership.*

*36. The net effect is that Simon and Richard in reality already of [sic] a ¼ share in all the property through the A & M & Sons Partnership.*

*37. Even if the Cowton Partnership were to be dissolved my view is that the A & M & Sons Partnership survives as a purely land holding partnership.*

*38. I need to see how the land has been treated in the A & M & Sons Partnership accounts. I suspect that no accounts were prepared by this partnership after the formation of the Cowton Partnership and the Allerton Partnership. Please ask the [accountants] to send me all family partnership accounts prepared since 1995 so I can see how the land has been treated. If this is not possible, I would ask to see the accounts for at least 2014 onwards.*

*39. I know we discussed obtaining an opinion on what tenancy rights Richard may have North Cowton but we need to deal with the above issue first.”*

- 88 Simon’s evidence was that he did not read the partnership advice from Mr Baylis. He also said he was not interested in what rights Richard might have to farm at North Cowton. I do not consider that this evidence was truthful. It is quite clear that Simon was intimately involved in consideration of the partnership issues considered in the partnership advice and that from this time he and Mr Baylis were considering what arguments Richard might be able to raise if he was asked to leave North Cowton. In fact it is clear that Simon was driving this matter, giving the

instructions to and receiving advice from Mr Baylis. There is no evidence that Alan was aware of this advice or considered the issues raised in it with either Simon or Mr Baylis.

- 89 As already mentioned, the 1995 documents to which Mr Baylis refers in the partnership advice have been lost. It is not known what further steps were taken to address the issue which Mr Baylis identified in paragraph 36 of his advice, namely, that the effect of the deed of trust appeared to be that Simon and Richard each owned a quarter share in Allerton Grange and North Cowton. In view of the fact that (as I find) Simon's objective at least from that time was to have Richard removed from North Cowton and to argue that Richard had no rights in respect of North Cowton, I infer that he took the decision not to investigate the matter further.

*Direct instruction of Raworths and subsequent events in 2019*

- 90 On 18 November 2019, Ms Hedges sent an email to Mr Baylis stating that there was still a need to deal with the deed of variation which was deficient and had not redirected Margaret's entire estate to Alan. She gave a quote to attend on Alan directly to discuss his new will. Mr Baylis forwarded Ms Hedges' email to Simon saying: "*To discuss when you get back*".
- 91 Following Simon's return, Mr Baylis and Simon spoke on 26 November 2019. Mr Baylis' email to Simon sent shortly after that conversation states that direct instructions of Raworths would be "*far more cost-effective*". The email (at point 5) continues: "*In terms of Richard challenging a change of will that is not as easy as he might think provided your Dad continues to be in sound mind up to the point where he alters the will*". Point 6 then states: "*In relation to your brother [i.e. Richard], we had proposed to instruct Wrigleys to advise on his property rights outside of the partnership. You need to review my email of 20 November [not in evidence] which is a draft instructions with gaps for key dates you need to add.*" This suggests that Simon had already discussed with Mr Baylis by that date the need to obtain specialist advice regarding Richard's right to remain in occupation of North Cowton farmhouse once the partnership had been wound up.
- 92 The reference in Mr Baylis' email to the difficulties Richard might face in "*challenging a change of will*" indicates that at this point Simon had raised with Mr Baylis the possibility of Alan changing his will and his concern that Richard might seek to challenge Alan's decision to change his will. This is the first indication in the documents that Alan might be wanting to change his mind about the intentions clearly expressed in the letter of instruction sent by Mr Baylis to Ms Hedges on 11 November 2019, only two weeks earlier.
- 93 Simon said in his witness statement he did not know that Alan had instructed Ms Hedges to prepare his will until she came to visit Alan at Allerton Grange shortly before Christmas 2019. When taken to documents in cross examination which showed that this evidence could not be correct, Simon claimed to have no memory of these events. I am in no doubt this was not truthful evidence. As already

- mentioned, the documents reveal that Simon was intimately involved in the instruction of both Mr Baylis and Ms Hedges and I do not accept he had no memory of these events. Simon also denied ever having had any discussions with his father about his new will. Again, this was not truthful evidence. The fact that he was discussing with Mr Baylis the possibility of Richard challenging Alan's decision to change his will suggests that by that time Simon was contemplating the possibility that Richard might be written out of Alan's new will and it is reasonable to infer that he had already discussed this possibility with Alan.
- 94 On 28 November 2019, Mr Thomas, the family accountant, sent an email to Mr Baylis in response to the partnership advice which Simon appears to have forwarded to Mr Thomas. Mr Thomas says he had not had time to digest the matter fully but was sending the latest accounts for Allerton Grange and the 2018 accounts for North Cowton. He pointed out that the North Cowton and Allerton Grange accounts included the respective land on their balance sheets but said the land was not a partnership asset and was merely used by the partnership on licence.
- 95 On 3 December 2019, Mr Baylis left a message with Ms Hedges' secretary asking if she could meet with Alan at lunchtime on 17 December 2019 as he "*starts drinking in the afternoon*".
- 96 On 6 December 2019, Simon forwarded to Mr Baylis an email he had received from Mr Morgan attaching copies of the reports Mr Morgan had issued back in January 2014, nearly 6 years earlier. Mr Morgan's email to Simon states: "*The situation I was asked to resolve was a family dispute. There was no clear evidence and three conflicting oral statements were presented. The proposed resolution (option 4) I presented on 14 January 2014 to all the family. Both Alan and Margaret and you and Richard were prepared to proceed with the recommendations*". It is not clear why Simon was asking for Mr Morgan's notes at this stage but it is a fair inference that he had asked for them in order to cause trouble for Richard.
- 97 On 14 December 2019, Simon signed the final page of a client care letter from Ms Hedges. The remainder of that letter is not in evidence but it would appear that at least at that stage it was Simon, as opposed to Alan, who signed the letter of instruction to Ms Hedges.
- 98 On 17 December 2019, Ms Hedges attended on Alan with Mr Baylis at Allerton Grange. File notes of the meeting prepared by each of the solicitors have been disclosed and they broadly accord in their summary of what occurred at that meeting. Mr Baylis' note states that Ms Hedges produced an engagement letter which Alan signed. Ms Hedges records that there was:

*"a long discussion about what Alan may wish to do in his new Will and he was minded to leave the farm at Allerton to Simon and the farm at Cowton to George (Simon's son). However, during the conversation it became clear to [Ms Hedges]*

*that Alan did not have the required capacity to give clear instructions, he could not remember the names of all five children or the order in which they were born nor did he have a proper grasp on the extent of the property he owned. He also gave instructions which directly conflicted with those given via [Mr Baylis] in his letter of 12<sup>th</sup> November to [Ms Hedges] when the farm at Cowton was to pass to son Richard. [Alan] had no recollection of these instructions. Eventually, [Ms Hedges] said that she would not be able to take instructions that day but would happily revert should [Alan] have a clear idea of what he wanted to do and could demonstrate to [Ms Hedges] that he understood the extent of his estate and his family and the nature of their various claims on him.”*

- 99 Ms Hedges’ note concludes with the observation that she was aware Alan “*apparently has a drink problem but there was no indication that he had been drinking*”. Mr Baylis’ note records that Alan “*kept moving off the point in talking about Margaret and did not appear to be interested in talking about the will*” and that Ms Hedges noted several occasions when Alan “*was trying to joke with her rather than answer questions*”.

*Events in 2020 leading up to the signing of Alan’s new will*

- 100 On 7 January 2020, Mr Baylis collected Alan from his home at Allerton Grange and brought him to Hillcrest, his home near York. Mr Baylis’ attendance note of this meeting records that he explained to Alan that he needed to tell Mr Baylis what he wanted to happen with his assets before a new will could be drawn up and that

*“Alan stated he wanted the land at Allerton to go to Simon who currently farmed that land and the lands at North Cowton to go to Simon’s son. He wanted to make sure that there was provision made for his son Richard who currently farmed the North Cowton site but believed that this can be done through a provision whereunder circa £400,000 went to Richard under the will. In relation to each the other members of his family he did not wish to make any other provision. This related to his children other than Simon and Richard. Alan was on the whole clear about what he wanted although he still struggled to remember Catherine [ie. Kathryn] and Christine’s name and the name of Simon’s son although he was clear as to what [George’s] plans were with his girlfriend and desire to remain in farming. He contrasted his love and affection for [George] with his concerns about Richard’s son who Alan did not appear well disposed towards. ([Mr Baylis] refused to help Alan with any names at the meeting, hence reference to George in brackets for ease of identification)”.*

- 101 The final two paragraphs of Mr Baylis’ note of 7 January 2020 record that he asked Alan to ensure that, when he met with Ms Hedges, he concentrated on the key issues of the will and what his instructions were, rather than going off the point and trying to make jokes. Mr Baylis also suggested Alan took steps to ensure he could clearly recall his family’s names at the next meeting.



- 102 In the morning of 15 January 2020, Richard and Sarah visited Alan at his home. Richard called Alan in advance to say the purpose of the meeting was to ask him to sign the latest North Cowton partnership accounts. Richard's evidence was that, from the moment they arrived, Alan refused even to look at the accounts and said he would not sign them. He seemed confused and angry. The accounts had been prepared by Mr Thomas and sent to Richard. There was nothing untoward about the accounts and Alan could not have had an issue with their contents as he did not even look at them. Richard could not understand why Alan was so upset and stated "*okay, don't bother signing them*". At this point the atmosphere changed and they talked about how the farm was doing and what they were planning to do in the future.
- 103 In a document described as a proof of evidence (verified by a statement of truth) which Alan signed some seven months later on 18 August 2020 (**Alan's proof of evidence**) (to which I refer in more detail below), Alan says about this meeting on 15 January 2020: "*Richard and Sarah came down for me to sign the accounts but I said no and they were very rude. After that relationship has been bad; Richard hasn't discussed with me the selling of stock and he has just gone and sold things*".
- 104 Sarah gave evidence about this meeting in cross examination. She confirmed that Alan refused to sign the accounts without saying why. She just thought he was being his normal self. When this passage in Alan's proof of evidence was put to her, she did not accept that either she or Richard was rude to Alan.
- 105 Simon was not present at Allerton Grange on 15 January 2020 when this meeting between Alan, Richard and Sarah took place but his evidence was that the visit left Alan very shaken and the fact that Alan had refused to sign the North Cowton accounts makes it likely they had an argument.
- 106 Kathryn gave evidence of an occasion which she thought was in the summer of 2020 when she believed Richard and Sarah came to visit her father at home because they wanted to get him to sign the North Cowton partnership accounts. She was not present but became aware of the visit "*after noticing changes in [her] father's behaviour*". He appeared nervous which was unlike him, would stay in his armchair all night, wanted lights to be left on and did not even seem to take his shoes off. She said it was only after questioning her father about these changes in his behaviour that he told her about Richard and Sarah's visit. He did not give her any details of what they had said to him but it was clear to her that, whatever had been discussed, it had left him frightened. She said her father was not someone who was easily intimidated so it was distressing to see the effect it had upon him.
- 107 In a file note made by Mr Baylis on 21 January 2020, six days after Richard and Sarah's meeting with Alan on 15 January, Mr Baylis records that during the car journey from Allerton Grange to his home near York, "*Alan spoke about a meeting he had had with Richard at which Richard had threatened legal action*". Later in the same note, Mr Baylis records that "*Alan referred to his meeting with Richard*

*in the past couple of days and noting that Richard had said he would break him*". Ms Hedges' file note of the same meeting on 21 January 2020 states: "*Only this morning, Richard has threatened to sue [Alan]*". There is no other evidence of Richard having spoken to Alan that morning and I do not accept there was any such conversation.

108 Where the accounts of Alan (as recorded in his proof of evidence, the solicitors' attendance notes or as recalled by Simon and Kathryn) on the one hand and Richard and Sarah on the other diverge, I accept Richard and Sarah's account of this meeting. I accept Richard's evidence that Alan was in a bad mood from the start of the meeting and refused even to look at the accounts but that his mood changed when Richard indicated that he did not have to sign them and they then had a civil conversation. I find that Richard simply asked Alan to sign the partnership accounts that had been prepared by Mr Thomas. I do not accept that Richard made threats to Alan at this meeting or otherwise acted in an intimidating manner. Nevertheless, it seems clear that Alan reacted badly to this meeting and at least from this time he appears to have resolved not to leave Richard anything and to cut him out of his will altogether.

109 On 21 January 2020, Mr Baylis and Ms Hedges had a meeting with Alan at Hillcrest, Mr Baylis' home. Both solicitors made detailed file notes of this meeting which lasted about an hour and a half. Ms Hedges' note prepared two days after the meeting states that Alan was much clearer in his instructions than he had been at the meeting on 17 December 2019. Her note records that Alan talked extensively about family relationships. It continues:

*"He has a particularly poor relationship with Richard ([Mr Baylis] confirmed this) which has been a problem for many years. Both farms are struggling. Richard claims to run Cowton but actually that farm loses more money than Allerton even though Allerton bears the majority of the borrowings. ... [Alan] was absolutely adamant that he wanted Richard and his family to receive nothing under [his] Will. [Ms Hedges] impressed on [Alan] the seriousness of a decision not to leave anything to Richard who would presumably be expecting to inherit Cowton which was his home but [Alan] was very clear and repeated himself a number of times. [Alan] would like to leave the farm at Cowton and the farming business there to his grandson George (Simon's son) as [Alan] considers George to be the future of the farm and the only one of that generation keen to be involved."*

110 Mr Baylis' note states: "*[Ms Hedges] asked if David, [Kathryn] and Christine would expect the farms to go to Simon and George and Alan said he had told them that this was the case*". What Alan is recorded as having said to Ms Hedges contradicts what Kathryn said in evidence, namely, that she did not become aware Richard was being cut out of Alan's will until after Alan's death.

*Signature by Alan of his new will*

- 111 Just over a week later, in the morning of 29 January 2020, Mr Baylis and Ms Hedges went to Alan’s home for a meeting to present him with the will that Ms Hedges had drafted for Alan following the meeting on 21 January. The meeting lasted about an hour and resulted in Alan signing a new will in the presence of Mr Baylis and Ms Hedges. By clause 5 of this new will, Alan gifted Allerton Grange to Simon and North Cowton to George. By clause 7, Alan left his residuary estate on trust for Simon and George in equal shares.
- 112 Ms Hedges made a short note of this 29 January meeting the following day which stated that she had not taken notes during the meeting as she knew Mr Baylis was taking notes in order to provide a detailed attendance note afterwards. Her note records that “[Alan] confirmed a number of times that he fully understood the provisions of his Will, the consequences of what he was now doing and that the Will as drafted achieved the best result in the circumstances given his financial situation”. Ms Hedges’ note also states that she had reviewed and approved Mr Baylis’ note of the meeting.
- 113 Mr Baylis’ note of the same meeting records that when Ms Hedges asked Alan to confirm what his wishes were in relation to the two farms, “[Alan] confirmed he wanted the farm at Allerton to go to Simon and the farm at Cowton to go to George. He said he was slightly happier with George that [sic] he was with Simon”. Alan said he was leaving the farms “to the only ones who would carry on in agriculture” in circumstances where “the businesses did not have much cash” and that he had to make the decision he had made in relation to the farms because he appreciated the businesses had no monies. Mr Baylis’ note records Alan as having said that “at the moment ‘they’ by which [Mr Baylis] understood him to be referring to Simon and George were trying to put the businesses together to run as one unit. [Alan] said that with the two farms together then the business will be farming a larger acreage”. Mr Baylis’ note also records Alan as having said that “his son Richard was causing him problems because of his poor work ethic and poor farming techniques”. Alan said he thought that Margaret’s will tried to make provision for a house for Richard in North Cowton but he appreciated the family could now only afford to leave North Cowton to George. When Ms Hedges stated that under the will Richard would get nothing, Alan confirmed that he understood this. He said that “he didn’t think that Richard would be able to keep hold of Cowton and run the business properly and he would not have it after 2 to 3 years. He said that Richard was a “lazy bastard”. He noted that [Richard] came down to see [Alan] the other day and was going on about the hours that he worked when in reality he hardly did any work on the farm and he was a “lazy bugger””. Alan confirmed he understood Richard would be off the farm under the terms of his will following his death.

*Instruction of Loxley and subsequent events*

- 114 On 5 February 2020 Mr Baylis sent an email to Alan and Simon following a conversation he had had that morning with Simon, recording his understanding that Alan had asked Simon to obtain advice from Loxley “in relation to any rights

- of occupation Richard may have at North Cowton*” and that, presuming the advice states Richard has no rights, “*we then will look to instruct Counsel to draft papers to force Richard to vacate the North Cowton land*”. The email discusses possible scenarios and indicates that attempts would be made to try to get Richard to negotiate.
- 115 On 24 March 2020, Mr Baylis made a file note of a call he had received from Simon that day concerning advice provided by Loxley (which was not in evidence). The note records: “*Simon had not yet given the advice to Alan but was happy to give it to him after work today or tomorrow. In terms of Richard’s position it looked as if Richard was going to stop direct farming. He had laid off staff and had said he was not taking any more pigs. It looked like he was winding down the pig business and bringing in contractors to farm the land*”. Mr Bailey said this would be of benefit to Alan and Simon if and when they took action to take North Cowton back into Alan’s name on the basis that the partnership terminated.
- 116 The note then records that Alan spoke to Mr Baylis saying he had visited North Cowton recently and “*the farm was in a dreadful state*” and “*Richard had claimed that he was owed some £70,000 by Simon and the other family members in relation to the business but Alan said that he was not owed anything and that Richard had not appreciated that on a dissolution of the partnership or cessation of the business all of the members would be required to pay money back into the partnership. Alan said the partnership at Cowton was in serious financial difficulties*”. Mr Baylis’ note refers to a further call with Simon that day when Simon told him that “*Richard had approached a local agent to sell the Cowton farm machinery without reference to the other partner (Alan)*”.
- 117 On 7 April 2020 a podiatrist visited Alan at his home when Kathryn was present. The podiatrist’s note entered in Alan’s medical records states: “*Subjective: [Patient] has dementia and is quite difficult ... Not done full assessment as not appropriate today*”.
- 118 On 21 April 2020, Mr Baylis wrote to Alan referring to a conversation they had had that day when Alan confirmed he had read and understood the Loxley advice, said he was very disappointed that Richard had laid off men at North Cowton in contravention of Alan’s instructions and expressed the belief that Richard was winding down the partnership at North Cowton, having noted he had no pigs for collection that week.
- 119 Mr Baylis’ wrote to Richard on the same day stating that he was instructed by Alan and referring to advice Alan had received that, as a result of Margaret’s death, the North Cowton partnership needed to be dissolved. Mr Baylis asked for Richard’s confirmation that he would cooperate in the dissolution process and in the meantime asked him not to dispose of any property or grant rights in property owned by the partnership.

- 120 On 27 April 2020, Richard’s solicitors responded to Mr Baylis’ letter indicating that Richard understood CSK were already dealing with the dissolution of the partnership and asking what Alan’s intentions were as to the continued partnership between himself and Richard. They stated that Richard had serious concerns about his father’s health and capacity as well as the extent to which he comprehended the current position. They further expressed Richard’s concern that Simon might be in severe financial difficulties and seeking to influence Alan to act in a manner that served to benefit Simon but was detrimental to both Alan and Richard. They asked Mr Baylis to take particular care to ensure that Simon was not seeking to influence Alan’s instructions to him.
- 121 Mr Baylis responded on 5 May and 16 June 2020 reiterating that the North Cowton partnership had dissolved on Margaret’s death and repeating the request that Richard cooperate with the dissolution process.
- 122 Alan’s medical notes for 21 May 2020 record there was a conversation that day with his daughter (not identified but probably Kathryn) who reported finding Alan on the ground in the farmyard some four weeks previously with a long laceration to his head. The laceration had healed but Alan was still having difficulty following verbal instructions. The note records: *“Has been drinking a lot of alcohol since his wife died and can sometimes finish a bottle of whisky in a day”*.
- 123 The next day Alan had a visit from his GP at home. The GP records that Alan was well-dressed, sitting at the table having lunch and a glass of whisky and it took time to convince him to be examined. The doctor records him as being unable to provide a urine sample, saying: *“I’m not bloody able to piss in the bottle you gave me but I could piss on you”*.
- 124 On 28 May 2020, Alan’s medical records record a telephone conversation between his GP and Kathryn which records *“[patient] not fully mentally capacitous for all decisions every day and has some good days and some bad days”*.
- 125 The medical records for 22 June 2020 record a further conversation between a GP and Kathryn when she wanted to discuss Alan’s alcohol intake. The records state *“has deteriorated a lot, drinking around 1L whisky per day, becomes abusive/nasty if misses it”*.
- 126 Just over a week later, on 30 June 2020, a GP spoke to Alan, Kathryn and a granddaughter. His notes record: *“[Patient] more confused. Thinks his wife is still alive and has been feeding her photo and pouring juice over her photo. Drinking more alcohol and becomes aggressive if family doesn’t get it for him. Poor hygiene and found to be covered in urine and faeces on one occasion. Not sleeping well.”*
- 127 On 2 July 2020, Richard’s solicitors responded to Mr Baylis’ letter of 16 June 2020, expressing Richard’s concern that Mr Baylis was taking instructions from Simon and/or that Simon was influencing his father. They complained that Mr

Baylis had a conflict of interest and could not act for Alan. This resulted in Loxley writing to Richard's solicitors on 27 July 2020 stating that they had been instructed to represent Alan. Richard's solicitors responded by letter dated 4 August 2020 expressing concerns about Alan's possible lack of capacity and the fact that he would have difficulty travelling to Loxley's offices in Gloucestershire unless that was arranged by Simon. They asked whether Loxley had had any dealings with Simon and whether their instructions were being directed by Simon. The following day Loxley confirmed that Alan was their client and that they took their instructions from him. They stated that they did not act for Simon. By a further letter dated 11 August 2020, Loxley sought written confirmation from Richard that the North Cowton partnership was dissolved.

- 128 Richard's solicitors responded at length in a letter dated 20 August 2020 setting out their client's position. They explained the background as follows:

*"Our client has farmed North Cowton farm for over 30 years and has run the farm on a day-to-day basis throughout this time. As well as actually farming the land, our client pays all the bills, deals with and chooses the suppliers, deals with all financial matters including banking and has a separate VAT account in his own name. There has been little input from your client historically, and next to nothing in recent years. To be clear, the basis of the relationship is that the farm has been long promised to our client as his inheritance and our client has run and managed the farm, paying a fixed monthly amount to your client.*

*The family previously ran its businesses as a family partnership trading as A & M Armstrong and Sons (i.e. your client and his deceased wife, our client and Simon Armstrong). The current partnership, which is in reality a family arrangement brought about to suit your client's circumstances, trades as A M R Armstrong. It is important to note that Simon Armstrong also has a partnership with your client which was meant to mirror the agreement between our client and yours (and he is also to inherit "his" farm from your client).*

*Following the demise of A & M Armstrong & Son, our client continued to farm North Cowton farm, but agreed to make payments to his Father as part of a wider agreement within the family as to how they would manage the family finances. The family (primary your client and his late wife) owns very considerable assets. Our client believes there is a very simple explanation for the current alleged issues, namely Simon Armstrong is in financial difficulties and is seeking to cause as much confusion and upset as possible whilst attempting to take control of all of the family's assets to the detriment of both our client and, whether he is truly aware of it or not, yours."*

- 129 Under the heading "A M R Armstrong and the family arrangement", Richard's solicitors stated:

*"We await your explanation as to why you say your client believes this is a partnership at will, but as far as our client was aware there is no written partnership agreement and our client continued to work the farm as he has done*

*for three decades, but agreed to pay the sum of £15,000 per annum to your client (with Simon also paying the same amount). ... Our client's only substantive obligation was to pay the sum of £15,000 per annum to your client which he has done. In passing, Margaret Armstrong had no involvement in the business but did own the farm as a tenant in common (with her share passing to our client on her demise)."*

- 130 Richard's solicitors proposed that the family, or at least Alan and Richard, embrace some form of ADR, preferably mediation, which ought to include agreeing how the remaining partners dissolve A & M Armstrong & Sons. They continued:

*"At this stage, it is difficult for our client to form any sensible view as he has not been provided with any information. Our client's position is simply that he has kept his promises and so should his Father. Our client has clearly acted to his detriment farming the land for decades, and also in relation to the inheritance from his Mother."*

- 131 Under the heading "Your client's relations with ours", Richard's solicitors stated:

*"Contrary to what has been alleged in correspondence, our client's last meeting with your client was cordial, being sometime in March 2020. His father came to visit unexpectedly and whilst the discussions were pleasant, our client was very concerned for his Father's well-being, as well as his physical and mental health. You will appreciate that your client lost his wife only a few months earlier and our client was sincerely worried.*

*This was the first visit in approximately two years and was unannounced. Our client had numerous reasons to be concerned. For example, your client asked, pointing to his watch: "what time is it when the hand points to 7?" And showed our client that he had two bottles of whisky in his Range Rover, commenting "why do I have this whisky, why do I drink the whisky?"*

*Whilst they had a general chat about the farm, your client was surprised to find that our client employed 4 people, as he said that Simon had told him that 8 people were wastefully employed at the farm, and that your client thought this was too many. Your client was also surprised when our client's son, Thomas, who works on the farm came in to meet him. Your client did not seem to recognise Thomas and it had to be explained who he was. Our client had previously heard from other members of the family that Simon had been claiming to your client that Thomas had not worked at the farm for many years, suggesting that as Richard did not have a son and heir, your client should leave North Cowton farm to Simon instead of our client.*

*For our client's part, his Father's purported attempts to terminate their partnership are completely unexplained. Furthermore, they make no sense whatever given that the family arrangement they have between them is intended to provide a regular monthly income for Alan Armstrong (with your client not carrying out any work for the partnership nor having any input into it). Our client*

*had previously tried to speak to his Father about various issues and had no reason to be concerned. Certainly, our client has been promised on many occasions throughout his life that he would inherit North Cowton and has acted to his detriment in numerous ways, including working the land and taking very modest drawings from the business, despite working all hours.*

*To be clear, our client very strongly believes that the threats you are making correspondence are being orchestrated by Simon Armstrong. ...*

*To be clear, our client has dealt with all of the financial and business matters on behalf of AMR Armstrong, to include buying and selling machinery. In recent weeks, our client has been in the process of disposing of some moribund machinery (which the partnership has been paying for) and was using Robinsons. In the interests of transparency, the machines are no longer needed because our client has taken the decision to contract out certain works. This has the result of reducing the capital costs and leasing costs and is, in our client's view, the best way forward for the business.*

*Our client was therefore surprised to be informed by Robinsons that your firm had apparently written to him [sic] (we have not seen a copy of any such correspondence), and that the consequence of your correspondence is that Simon Armstrong or his employees took the tractor (which is worth approximately £50,000 subject to the remaining lease liabilities incurred by the partnership).*

*Please let us have an explanation. On the face of it, it seems that Simon Armstrong owes AMR Armstrong approximately £50,000 ... The result of these actions is that AMR Armstrong still has a liability under the lease but does not have the tractor. If this was your client's decision, then please explain. If Simon has taken it without your client's approval, then the partnership ought to bring proceedings against Simon to recover the goods or seek damages by way of conversion.*

*In passing, a further issue that has arisen is that the telephone numbers of both our client and his son Thomas have been blocked so that our client cannot telephone yours. Our client believes this was done by Simon (or possibly by Simon's son George). Our client understands that your client's telephone is also recently gone missing. This is an attempt by Simon to prevent our client from speaking to yours."*

- 132 Richard's solicitors' letter concludes by expressing Richard's doubts as to Alan's capacity and asks that his GP be consulted before Loxley take further instructions.

*Alan's proof of evidence*

- 133 Two days before Richard's solicitors wrote this letter, on 18 August 2020, Alan executed a lasting power of attorney in favour of Kathryn. Claire Lewis of Loxley acted as certificate provider for the lasting power of attorney. Three days later, on 21 August, Ms Lewis signed a statement of capacity confirming that she attended on Alan at his home on 18 August "to collect from him his proof of evidence in connection with the ongoing North Cowton partnership matter" on which her firm had been instructed. Ms Lewis' statement states that she booked the meeting at 11am to ensure Alan had not had any alcohol and had requested Kathryn to be present for part of the meeting to ensure he was relaxed and felt safe. She says she



did not consider there was any undue influence being placed on Alan and all the instructions were his.

134 Alan’s proof of evidence was taken at the meeting on 18 August by reference to a list of 18 typed questions which is likely to have been prepared by someone at Loxley (possibly a litigation solicitor or possibly Ms Lewis herself) before the meeting. It was Kathryn’s evidence that the proof of evidence itself was completed by Ms Lewis and signed by Alan in front of her and Ms Lewis.

135 The relevant parts of Alan’s proof of evidence are as follows:

135.1 In response to question 5 (namely, “*Did you or Margaret make any promises to Richard or anyone else as to North Cowton farm at any time?*”), the proof of evidence says: “... *It is not true that I promised the farm to Richard, his wife has said I have but this is not true*”.

135.2 In response to question 6 (namely, “*When Richard moved in, did he receive a wage? What was [sic] the agreed terms of his occupation?*”), the proof of evidence says: “*Richard received a wage but did not pay any rent. Richard walked the land but didn’t do any farming.*”

135.3 In response to question 7 (namely, “*When Richard became a partner in 1995 what was discussed as to the partnership assets?*”), the proof of evidence says: “*When I bought the farms it was always mine and Maragets [sic]. I never said the farm was for Richard or Simon. Richard was supposed to farm but he didn’t.*”

135.4 In response to question 8 (namely, “*What was discussed as to the employment of Thomas and his occupation of the bungalow?*”), the proof of evidence says: “*Thomas is very rude and not a good farmer; he says he lives in the bungalow but it is mine. Thomas went out to the farm and sacked a farm worker Dave Jenson and he shouldn’t have, he now works at Allerton.*”

135.5 In response to question 9 (namely, “*What is Thomas’s current role within the farming business?*”), the proof of evidence says: “*Thomas has always been difficult and is a horrible fella, and he has said it is his house and isn’t his. Thomas went to work part-time to neighbour farm. Thomas did help modernise the property; his friend move in but I didn’t receive any rent. Thomas doesn’t do any farming and was working up the road for another farmer.*”

135.6 In response to question 10 (namely, “*In 2006 it appears that 2% of the ownership of North Cowton was gifted to Richard and Simon, what discussions were held at this time?*”), the proof of evidence says: “*I don’t remember that I gave 1% of the farm to Richard or Simon. I don’t*

*remember signing anything; it may have been that the bank suggested I do it. I always wanted it all in my name.”* Later in the proof of evidence, by reference to question 10, Alan states: *“I now remember that the 1% was advised by the accountant; Margaret had 50% and the 1% to each Simon and Richard was from my share but if they stopped farming they had to give me the 1% back. I gave it for tax reasons.”*

- 135.7 In response to question 11 (namely, *“The partnership was split in 2017 what were the reasons for the split? Were any promises made as to North Cowton Farm at this stage?”*), the proof of evidence says: *“Richard was loosing [sic] money and was all coming out of one pot. The accountant said to have two separate bank accounts, one for Allerton Grange and one for North Cowton but I never said he could have any land.”*
- 135.8 In response to questions 12 and 13 (namely, *“What was [sic] the provisions of Margaret’s will?”* and *“What discussions took place after Margaret’s death?”*), the proof of evidence says: *“It was all mine and so everything came to me; the children all agreed and it was just done. Solicitors drafted the deed and it was done”*.
- 135.9 In response to question 14 (namely, *“Is it Alan’s instruction that he wants the partnership dissolved?”*), the proof of evidence says: *“I don’t want to cause any pain to anyone but I want to make sure I keep all the land and buildings and Richard should earn a wage and he isn’t. I don’t want him to take everything”*.
- 135.10 In response to questions 15 and 17 (namely, *“Why does Alan want the partnership to be dissolved?”* and *“Is it Alan’s intention on dissolution of the partnership for vacant possession to be taken over North Cowton Farm?”*), the proof of evidence says: *“I don’t want Thomas in the Bungalow, Richard and Sarah have to leave; it is up to them where they go but I want North Cowton as is mine. I thought I had given them notice told the lady at Loxley”*.
- 135.11 In response to question 16 (namely, *“What obligations does Alan consider he has to Richard and also his other children in light of the structure of his will?”*), the proof of evidence says: *“I don’t have any obligation to give anything to Richard; I owned the farm. Richard’s one son is very sensible but he have [sic] never said he wants to farm North Cowton. I do not think I owe anything to my children and I haven’t promised the farm to Richard.”*
- 135.12 In response to the final question 18 (namely, *“Discuss the provisions of previous and current will?”*), the proof of evidence records Alan’s response over four paragraphs numbered 18 to 22 as follows: *“18. I don’t remember all the dates but my eldest son David may have more information and he was a farmer on the farm. 19. Richard and Sarah came down for me to sign*

*the accounts but I said no and they were very rude. 20. After that relationship has been bad; Richard hasn't discussed with me the selling of stock and he has just gone and sold things. 21. I have drafted my will to leave my estate to Simon and George as they do the farming. There may not be enough money to leave to all my children. 22. I do not want to leave to Richard as he is not farming as his treatment to me has been awful. I used to go to see Richard and he would just be sat in field".*

- 136 On 18 September 2020, Loxley wrote to Richard's solicitors stating that Richard had been contacting Alan "*in recent days*" which had led to arguments over the farming business at North Cowton and Alan's future intentions for his estate which was causing him "*considerable distress*". Loxley asked that Richard cease contacting his father to discuss the dispute and that any communications should be directed through them.
- 137 Richard's solicitors replied on 24 September 2020 to "*set the record straight*". They said that Richard had spoken to Alan on 30 August 2020 and, aside from the usual pleasantries, attempted to discuss the purported problems raised by Loxley in correspondence. Richard found that his father was very confused and unable to comprehend even relatively simple issues. When Richard asked about Loxley's involvement, Alan's response was that he thought Loxley were dealing with Margaret's estate. In order to avoid causing his father any distress, Richard changed the subject and had a conversation with him about farming in general which his father seemed to enjoy. Alan had said nothing about dissolving the partnership and the conversation was cordial. Richard's solicitors concluded their letter by saying they were awaiting Loxley's substantive response to their letter of 20 August 2020.

*Loxley's letter of claim*

- 138 On 29 September 2020, Loxley sent Richard's solicitors a pre-action letter of claim in relation to the farming partnership carried on between their respective clients at North Cowton. They said they acted for Alan alone and it was from him that they received their instructions. They set out in this letter the background to the North Cowton partnership. The main points made by Loxley in relation to the background were as follows:
- 138.1 the farm did not become an asset of the partnership on 1 November 2017 when the North Cowton partnership was formed;
- 138.2 North Cowton remained in the ownership of Alan and Margaret as was evidenced by the fact that the partnership accounts attributed the entirety of the book value of the farm to Alan and Margaret's capital accounts, in contrast to the treatment of the other assets on the balance sheet which were owned collectively by all partners;

- 138.3 by her will, Margaret had left her residuary estate to Simon and Richard in equal shares but, by deed of variation dated 2 April 2019, the terms of Margaret's will were varied so as to bequeath her residuary estate to Alan;
- 138.4 since 1 November 2017, Alan had taken a fixed income from the business of £1,250 per month, rather than a profit share;
- 138.5 despite Alan's position as a partner, Richard had failed to keep him informed about the operation of the North Cowton partnership and the financial position of the business;
- 138.6 although the North Cowton partnership was dissolved by operation of law upon Margaret's death, Richard had refused to accept this and had carried on dealing with partnership assets and entered into arrangements that affected the land at North Cowton as if the business were continuing to trade.
- 139 Loxley sought pre-action disclosure within 14 days of partnership management accounts, bank statements and schedules of existing partnership assets as well as assets sold in the previous 12 months. They sought Richard's confirmation within 28 days that he agreed to a dissolution of the North Cowton partnership (including cooperation in arranging a farm sale and instructing Mr Thomas to prepare draft dissolution accounts) and that he and Thomas would vacate the farmhouse and cottage at North Cowton by 31 March 2021.

*Alan's death in October 2020 and subsequent events*

- 140 Alan died on 5 October 2020, less than a week after Loxley sent this letter of claim to Richard's solicitors and some six weeks after he had signed his proof of evidence.
- 141 On 5 November 2020, Loxley wrote to Richard's solicitors indicating that until Alan's death, they had taken their instructions both from Alan personally and from Kathryn. They enclosed with the letter a copy of Alan's will dated 29 January 2020 (**the 2020 will**) by which he had appointed Kathryn and Ms Hedges as his executors and made Simon and George the beneficiaries of his estate. Loxley indicated that following a meeting between the executors and the beneficiaries, Kathryn and Ms Hedges had decided to renounce their executorships and Raworths (Ms Hedges' firm) had advised Simon and George to apply for a grant of letters of administration in their names on the basis that they were beneficiaries. Loxley indicated that they continued to be instructed by Simon and George to deal with Alan's interest in North Cowton farm and the North Cowton partnership. They indicated that Richard was required to account to Alan's estate for any assets of the partnership he had sold off and any proceeds of sale he had received. He also needed to explain Thomas's remuneration and to account for any income, whether rent or otherwise, paid to him by third parties in occupation of the farm.

*Richard's solicitors' pre-action letter*

142 On 18 January 2021, Richard's solicitors sent a pre-action letter to Loxley concerning Alan's estate. The first part of this letter set out Richard's grounds for contending that Alan did not have testamentary capacity to make the 2020 will. By this stage, Richard had entered a caveat in Alan's estate which prevented a grant of probate being issued (that caveat became permanent following Richard entering an appearance to warning). The second part of the letter set out Richard's alternative claim based on the doctrine of proprietary estoppel. The material points made by Richard's solicitors in support of this claim were as follows:

142.1 Over a period of more than 30 years, Richard had occupied North Cowton pursuant to promises and assurances made to him by both his mother and father.

142.2 It was understood in the family that one farm was earmarked for each of Simon and Richard and that they would both inherit shares in their parents' estates.

142.3 Over the years, numerous promises were made to Richard to the effect that he would inherit North Cowton and Simon would inherit Allerton Grange. Even as a teenager, Richard was promised North Cowton and this influenced his decision to forego a university education in favour of studying agriculture at Askham Bryan College.

142.4 Shortly after leaving college in 1987, Richard moved to reside at North Cowton and had lived there ever since, a period of some 34 years.

142.5 In about 2000, Margaret had read her last will out loud to Richard and told him that Alan's will was a mirror image of hers. She told him that her and Alan's farms and money would be split equally between Richard and Simon. The clear intention was that both Simon and Richard would be able to divide their parents' estates and obtain a farm each and be able to continue their way of life.

142.6 In 2013, Simon and Thomas had an altercation as a result of which the police were called and Simon was given a 12 month restraining order preventing him approaching Richard and his immediate family. Alan told Thomas that North Cowton had nothing to do with Simon and that it was Richard and Thomas's farm. Alan said that Simon was never to come to North Cowton again and, as far as Richard knew, he had not done so.

142.7 In November 2017, Richard was given full control of running North Cowton. Alan told him this was to ensure it was easier for Richard to keep running North Cowton after Alan died.

142.8 Alan's statements to Thomas over the years induced Thomas to invest £40,000 in the renovation of the cottage at North Cowton.

142.9 Richard's inheritance from Margaret's estate was worth at least £1.79 million. Richard gave up that entitlement when he executed the deed of variation on 2 April 2019. He did so on the understanding encouraged by his parents over many years that he would inherit North Cowton from them after they had both died. He was told by Ms Spence in Alan's presence that the reason for executing the deed of variation was to avoid the need for monies to be held in the discretionary trust settled by Margaret's will because the trust would be difficult or costly to maintain. He was also told that the deed of variation needed to be signed that day or there would be an additional charge of £3,000 owing to an increase in probate fees. Before executing the deed of variation, Richard hesitated and Ms Spence asked him "what's the matter, don't you trust your father?". Alan did not suggest at that point that Richard should not trust his father but instead gave him an encouraging look. Richard decided he did trust his father and executed the deed of variation.

142.10 Richard had lived in the farmhouse at North Cowton since 1987 and had never made any other arrangements for the eventuality that he might one day have to leave the farmhouse. He was then 56 years old and if prevented from farming at North Cowton he would be put onto the labour market with no job experience other than as a farmer. Realistically he would not obtain any lucrative employment. He had executed the deed of variation thereby giving up assets worth at least £1.79 million. He would not have given up this interest in Margaret's estate if promises had not been made to him over the years that he would ultimately inherit North Cowton.

142.11 Alan had acted unconscionably in renegeing on his promises and gifting North Cowton to George against the background of assurances made to Richard and Richard's detrimental reliance on those assurances.

142.12 The only just result was for Alan's estate to transfer to Richard 40% of Alan and Margaret's interests in the golf course venture and 50% of Alan's estate (which now included Margaret's estate).

143 Richard's solicitors then set out a further alternative claim against Alan's estate for reasonable financial provision under the 1975 Act and further claims relating to the golf course venture.

*Loxley's response to pre-action letter*

144 Loxley responded to Richard's letter of claim by letter dated 30 March 2021 providing Simon and George's response to Richard's claims. The material points raised in this letter in relation to the proprietary estoppel claim were as follows:

- 144.1 All three of Alan's sons began their careers working for him on the family's two farms. It quickly became apparent to David that working for his father would mean a lifetime of being dependent upon Alan's whims and wishes. From Alan's perspective, whatever the underlying legal or beneficial ownership, both Allerton Grange and North Cowton were his farms and his business in which he alone ultimately called the shots. David was not willing to work for his father on that basis and he refused to go and live at North Cowton to oversee the day-to-day farming operations there. Alan was deeply unhappy about David's decision to leave but had no control over the matter. After David's refusal to go to North Cowton, Alan decided to send Richard instead. Richard had by then returned to work on the farm after agricultural college and as the second son was the natural choice from Alan's perspective to oversee the farming operations there.
- 144.2 The suggestion that Alan promised North Cowton to Richard whether in the late 1980s or subsequently was denied. It was not in Alan's nature to promise anything. He never promised any property to David, even when he was seeking to persuade David to continue working for the family business nor had he ever promised any property to Simon. Alan regarded the farms as his assets, to do with as he wished, and the rest of the family (including Margaret) accepted that that was the practical reality.
- 144.3 Before 1995, both Richard and Simon were employed by Alan. In 1995, a partnership was created but this was not a true partnership. For all practical purposes Richard and Simon both continued to work for Alan. That created tensions between Richard and Simon and also between Richard and his parents. Alan had long held the view that Richard was rather lazy and did not have a sufficiently good work ethic. Alan had concerns about Richard's stockmanship, including matters of husbandry, animal welfare and farm hygiene.
- 144.4 On a visit to David in 2017, Alan and Margaret told him Richard needed to leave North Cowton and the business. David persuaded Alan and Margaret not to kick Richard out of North Cowton. Instead, David suggested they set up North Cowton with a separate bank account to see how well it performed as a separate business unit. It was wrong for Richard to try to characterise his departure from the original partnership as a natural step towards Alan handing over North Cowton to him since in reality the creation of the North Cowton partnership was Alan and Margaret, at David's instigation, giving Richard a last chance to try to make a success of the farming unit there.
- 144.5 It was accepted that the effect of Richard signing the deed of variation was to transfer to Alan an interest in assets which would otherwise have passed to Richard under the terms of Margaret's will. It therefore exposed Richard to the risk that Alan might leave that share to someone else when he came

to make his new will. However, Richard was not alone in being exposed to that risk. Simon placed himself in exactly the same position. It was denied that Richard was put under pressure to sign the deed of variation. It was denied that any promises or assurances were made to Richard by either Alan or Margaret.

*Issue of proceedings*

- 145 On 7 July 2021, Simon and George issued proceedings seeking to admit the 2020 will to probate. Richard defended these proceedings on the basis that Alan lacked testamentary capacity until 3 February 2023 when, less than three weeks before the trial was due to begin, he withdrew his defence and agreed that the 2020 will be admitted to probate.
- 146 Part 7 proceedings, relying on the doctrine of proprietary estoppel, were commenced by Richard against Simon and George on 10 December 2021. At the same time, Richard commenced Part 8 proceedings against Simon and George seeking financial provision under the 1975 Act.
- 147 The trial of both claims started on 3 July 2024. Richard gave evidence in support of his claims and called as witnesses his wife Sarah and son Thomas as well as Alan’s sister Edith Lillie and brother-in-law Peter Wilkinson (married to Alan’s other sister Kathleen). Simon and George gave evidence in defence of the claim, and called the following seven witnesses: David, Kathryn, David Thomas (the family accountant), Laura (Simon’s daughter and George’s sister) and Alan’s three younger brothers (Richard and Simon’s uncles), Donald, John and Robert.

**The witnesses**

- 148 I remind myself of the caution that needs to be exercised in assessing evidence from witnesses’ memories unsupported by contemporaneous documents. This is especially the case where, as here, the witnesses are giving evidence of things alleged to have happened or been said many years ago.
- 149 I have very much in mind what has been said in a number of recent authorities regarding the inherent unreliability of memory. The guidance provided in recent authority is helpfully summarised in R (on the application of Dutta) v General Medical Council [2020] EWHC 1974 (Admin) at [39]-[40]. I take from it the following propositions:
- 149.1 Memory is malleable by nature, is itself changed merely by the process of being revisited and is particularly susceptible to being rewritten/fabricated by the biases inherent in litigating disputes.
- 149.2 A witness can be honest and yet be seriously mistaken about what he says he remembers, to the point of creating “memories” of events which did not in fact happen.



149.3 A witness's demeanour tells a judge nothing about that witness's honesty or the reliability of that witness's memory, which will be inherently fallible for the reasons given above.

149.4 The best approach is to base factual findings on inferences drawn from known or probable facts and from documentary evidence.

Richard and his witnesses

*Richard*

150 Richard was an impressive witness. His evidence was considered, careful and in my view palpably honest. When he did not remember the detail or the timing of particular events, he made that clear. He did his best to answer the questions put to him and where evidence he had given in his witness statement was unclear or needed to be qualified, he readily accepted the need to clarify or correct what he had said. He struck me as someone who had come to court to tell the truth, even if it did not suit his case.

151 It is clear that Alan was a very different character to Richard. Alan was described in various ways by the witnesses but the firm impression they gave was that he could be difficult, domineering, controlling, bombastic and on occasions cantankerous and quixotic. By contrast, Richard is low-key, reserved and non-confrontational. He handled his father well by not confronting him. Even though Alan can be seen from the documents to have expressed strong views about Richard's farming abilities from time to time, I find that those views were rarely communicated by Alan directly to Richard.

152 From the time that Simon became involved in the farming business after leaving agricultural college, he was based at Allerton Grange with his parents, some 40 miles from North Cowton. There was considerable tension between Richard and Simon regarding which farm business was dragging the other down and there is no doubt that Alan got drawn into those discussions. However, apart from the occasion in early 2014 following the incident involving Alan and Thomas (which resulted in one of the options being discussed with Richard and Sarah being that they left the farm and be provided with alternative accommodation and income), Richard was never made aware of there being any question of him ceasing to farm at North Cowton.

153 I consider below the question of whether and, if so, what promises and assurances were made by Alan to Richard. At this stage, I say only that where Alan's version of his dealings with Richard (as recorded, for example, in his proof of evidence) conflicts with Richard's evidence, I prefer Richard's account. By August 2020, when the proof of evidence was taken, Alan had decided to cut Richard out of his will and his answers have to be seen in that light. In other words, they were framed in a way which sought to justify the decision he had already taken and did not, as I find, accurately reflect what he had said to Richard over the years.

*Sarah*

- 154 Richard's wife Sarah (who has worked for the civil service since 1989 and has never worked on the farm) was a cautious, honest witness and I accept her evidence. She met Richard in 1983 at agricultural college and they married in June 1988 when they moved into the farmhouse at North Cowton where they have lived ever since.
- 155 It was Sarah's evidence that, from the early days of their relationship and throughout her marriage to Richard, she was assured on many occasions by Alan and Margaret that Richard would inherit North Cowton when they passed away. She never considered that they were at risk of eviction. Margaret had grown up at North Cowton and was pleased Richard was to inherit the farm because (as Margaret saw it) Richard and her father (William Fell) were close as well as being similar in nature, both being studious, kind and well-respected. Sarah was not in the least surprised to hear these assurances from Alan and Margaret because it meant all three brothers were set up with farms, David having been gifted Clow Beck and Simon due to inherit Allerton Grange. She said that when Thomas left school and came back to the farm to work in 2012, Margaret was delighted at the prospect of there being a grandson wanting to continue farming at North Cowton.

*Thomas*

- 156 Thomas (Richard and Sarah's second son) gave evidence which was broadly consistent with the evidence given by his parents. Again, I consider him to have been a truthful witness. He worked at North Cowton from April 2012 when he left college (starting as a full-time employee in July 2012) until December 2020. His evidence was that both his grandparents repeatedly told him North Cowton would go to Richard when they died.
- 157 Thomas and his uncle Simon did not get on. Whilst Thomas was still at college, Simon told him he was not wanted in the business. Before Thomas joined the business full-time in July 2012, Simon would come to North Cowton roughly twice a week. After Thomas joined, Simon ceased coming to North Cowton. Thomas estimated he had met Simon less than 10 times since 2012, including at funerals.
- 158 The incident in the middle of 2013 when Thomas (aged 19) visited the farm office at Allerton Grange to go through the accounts with Margaret and discovered what appeared to be unexplained payments to Simon from the farm partnership account clearly made Simon even more hostile to Thomas and his involvement in the business. Later that year, Thomas was involved in two altercations with Alan, one in October 2013 and the other on New Year's Eve. Thomas and Alan's versions of what occurred on each occasion were very different and it is not necessary to decide whose version was correct. What is not in dispute is that after the first altercation between Thomas and Alan in October 2013, Simon came to North Cowton with three other men to "talk to" Thomas which resulted in Thomas

leaving the farm for a few days to stay with a school friend and the police visiting Simon at Allerton Grange to discuss the visit he had made to North Cowton.

159 It was Thomas's evidence that Alan said to him at that time that North Cowton had nothing to do with Simon, "*it's not his farm, it's going to be your Dad's*". Richard's evidence is that he was told by Alan (as well as by Thomas) at the time of this incident that Alan had made it clear to Simon that North Cowton had nothing to do with him and it was Richard and Thomas's farm. I find that Alan spoke to Thomas and Richard separately in the terms they have recalled.

160 Thomas spent approximately £40,000 renovating the bungalow at North Cowton in 2017 (his then partner and now wife Jessica also contributing financially) before they moved into the bungalow that same year. He said both his grandparents told him they were pleased he was able to do this work as they were not in a position to assist.

*Peter Wilkinson*

161 Peter Wilkinson was Alan's brother-in-law having been married to his sister Kathleen for 60 years. It was Mr Wilkinson's evidence that he and Kathleen would see Alan and Margaret on a regular basis as Alan was very close to Kathleen. At the time when Richard started out at North Cowton, Mr Wilkinson would meet up with Alan and his brothers for dinner every other Sunday and they would often all visit North Cowton together to see how Richard was getting on. Alan always called it "Richard's farm". I have no reason to doubt Mr Wilkinson's evidence although it is of no assistance in relation to the issues I have to decide.

*Edith Lillie*

162 Edith Lillie was Alan's sister. She said she was never involved in the family farming business but she would hear about it from family members, including Alan and Margaret. She knew that Richard and Simon did not get on. She described Richard as quite a quiet person and Simon as completely the opposite, very loud and full of himself. She said Simon would constantly complain about Richard behind his back. She said that Alan and Margaret would always refer to North Cowton as "Richard's farm". She referred to Alan and Margaret having set up all three of their sons in farming, with David being given his farm first as the eldest and the remaining two being split, with North Cowton going to Richard and Allerton Grange to Simon. She said she understood it was claimed that Alan had a longstanding dislike of Thomas but did not believe that to be the case. She said there might have been issues in the past but Alan had asked Thomas to do a reading at Margaret's funeral on 5 October 2018 which he would not have done if he did not think well of Thomas. I have no reason to doubt Mrs Lillie's evidence although it is of no assistance in relation to the issues I have to decide.

Simon and George and their witnesses

*Simon Armstrong*

- 163 Simon was not an impressive witness. He was evasive and guarded in response to questions. When pointed to documents which showed that his evidence was incorrect, he claimed not to remember even though they involved matters which I find he is likely to have remembered.
- 164 Simon stated in his witness statement he did not know that Alan had instructed Ms Hedges to prepare his new will until she came to visit him at Allerton Grange one afternoon shortly before Christmas 2019. This could not possibly have been correct for the following reasons:
- 164.1 Simon was present at a meeting with Alan and Mr Baylis on 11 November at which the letter of instruction from Mr Baylis to Ms Hedges was discussed and countersigned by Alan.
- 164.2 Emails from Mr Baylis were sent to Simon's email address on 15 November (with the subject "*Will of Alan Armstrong*") and 18 November (with the subject "*Agency Instruction from PSL re Alan Armstrong*") addressed to him and Alan, forwarding emails from Ms Hedges with her estimate of costs for reviewing the papers and preparing Alan's new will.
- 164.3 A further email from Mr Baylis was sent to Simon's email address on 26 November (with the subject "*Ongoing matters*") addressed only to him which referred to a conversation between Simon and Mr Baylis earlier that afternoon and asked Simon to put Mr Baylis "*in funds to deal with appointing Raworths*" (i.e. Ms Hedges).
- 164.4 On 3 December, Mr Baylis sent an email to Ms Hedges, copied to Simon, with the subject "*Alan Armstrong*", informing her that a meeting on 17 December at Allerton Grange worked for "*the family*" and indicating that she could call Simon on his mobile to make sure she had "*whatever T&C and payment arrangements in place*".
- 164.5 On 14 December, Simon signed Raworths' retainer letter and arranged for it to be scanned back to Ms Hedges in advance of her meeting on 17 December.
- 165 When Simon was taken to these documents in cross examination, his default position was that he could not remember them or the matters to which they referred. When he was asked about point 5 of Mr Baylis' email of 26 November which referred to "*Richard challenging a change of will*" and it was put to him that he and Alan must have already discussed Alan changing his will, his reply was "*I knew he was dissatisfied. Father did what father wants to do*". This concession represented a significant change of position from the position adopted in his witness statement (when he sought to distance himself from the three firms of solicitors advising Alan about his will, CSK (Mr Hanley and Ms Spence), PSL

(Mr Baylis) and Raworths (Ms Hedges)) and at the outset of his cross-examination (“*I never had any discussions with my father about the new will, ever*”).

166 Simon was asked about the letter of instruction to Ms Hedges and his initial response was: “*if it’s anything to do with father’s will, I had no involvement*”. It was put to him that he must have been the person communicating with Mr Baylis regarding Alan’s instructions, having been shown a letter from Richard’s solicitors to PSL dated 9 February 2024 seeking disclosure of previous drafts of the letter of instruction, to which PSL had responded: “*The draft letter was a record of a conversation with Simon on 2 October 2019 who stated that he was relaying his father’s wishes as to certain minor amendments he wished to make to this will*”. Simon claimed to have no recollection of this conversation, nor of the meeting at Allerton Grange on 11 November he attended with Mr Baylis and Alan when Alan signed the letter of instruction, nor of the partnership advice which Mr Baylis addressed to him and Alan on 13 November which referred to the meeting on 11 November where they had discussed “*what we know and what options we have*”.

167 I do not accept that Simon was telling the truth in claiming to have no recollection of these matters. I find that Simon was fully aware of Alan’s initial instructions regarding his new will (namely, that he wished to leave North Cowton to Richard and Allerton Grange to Simon) and that he was involved in discussions with Mr Baylis regarding what might happen if Richard was cut out of the will (obtaining advice from Mr Baylis that Richard would not find it “*as easy as he might think*” to challenge the will “*provided your Dad continues to be in sound mind up to the point where he alters the will*”). I also find that it was Simon who was more concerned than Alan about the termination of the North Cowton partnership in respect of which they also sought Mr Baylis’ advice. It was Simon who was principally concerned with Richard’s rights of occupation at North Cowton and was discussing with Mr Baylis the possibility of obtaining specialist advice in that regard.

168 Where Richard’s evidence conflicts with Simon’s evidence, I prefer Richard’s account.

*George Armstrong*

169 Simon’s son George was a credible, straightforward witness. After leaving school in 2009, he studied joinery before returning to the family farm in late 2013 to work for Simon and Alan at Allerton Grange. He never discussed inheritance with either his father or grandfather before the latter’s death and had no expectation he would inherit anything.

*David Thomas*

170 David Thomas is a chartered accountant whose firm had represented the Armstrong family for 20 years during which time they had prepared personal and farm partnership accounts for the family. Mr Thomas was a truthful witness doing his best to assist the court. He did not take contemporaneous notes of conversations

he had with the family, relying on the farm accounts as recording the outcome of any financial discussions to which he was a party. In that regard, Mr Thomas prepared the accounts for the partnership known as A&M Armstrong & Sons which until 1 November 2017 comprised a partnership between Alan, Margaret, Richard and Simon, running the combined farm businesses of Allerton Grange and North Cowton. From 1 November 2017, although no replacement partnership agreements were entered into, the businesses were separated with the result that A&M Armstrong & Sons continued to operate the farm business at Allerton Grange of which Alan, Margaret and Simon were partners (i.e. excluding Richard) and a new partnership was formed in relation to the North Cowton business, called A, M & R Armstrong, of which Alan, Margaret and Richard (i.e. excluding Simon) were partners.

- 171 It was Mr Thomas' evidence that Alan was in control of all major family issues and that as he neared retirement age, although he was happy to take a back seat on day-to-day farming matters, he would always step in when major decisions were to be taken or he did not like the way in which his sons were carrying out their day-to-day farming activities.

*David Armstrong*

- 172 David, the eldest of Alan and Margaret's three sons, was an engaging witness who, whilst called as a witness for Simon and George, was doing his best to assist the court. I bear in mind that from the time David removed himself from the family farms at the age of 25, he was more distant from what was going on at Allerton Grange and North Cowton but his evidence was particularly useful in relation to the splitting of the businesses in 2017 and the meeting on 2 April 2019 when the deed of variation was signed.
- 173 David worked both at Allerton Grange and North Cowton from leaving school until he was 25. He said in his witness statement that, when he was in his early 20s, Alan wanted to send him to North Cowton to oversee the farming business there. However, by that stage, he had decided he did not want to work for his father long term. Alan could be a difficult person to work for, he had to be in complete control of everything and it was clear to David that however many years he worked for Alan, he would always be working for him rather than with him.
- 174 What David did not say in his witness statement but was very clear about in cross examination was the fact that, over the period he was farming with his father, Alan made a series of promises to him about how he would pass North Cowton over to him. First, Alan promised David he would pass North Cowton over to him when he got married. Alan then promised David he would do this when David had children, and then that he would do so when David's children were seven or eight years old. David started to pressurise Alan in relation to these promises but he formed the view that it was never going to happen and he could not rely on these promises. As a result, he told Alan that he was not prepared to live and farm at North Cowton. Alan was upset by this decision but, as David's mind was made

up, there was nothing he could do. Instead, Alan turned to Richard to run the day-to-day operations of the farm at North Cowton and to live there.

- 175 David described Alan as “*a curious man*”, what mattered to him was that he “*retained the power*”. Alan would visit North Cowton frequently when David farmed there and had “*a great aptitude*” for telling David and everyone else how useless they were whilst trying to prove what “*a brilliant man*” he was.
- 176 From his experience of farming at North Cowton, David said it was difficult to make money there, with its heavy clay and the peaks and troughs in the pig business. He said that whilst his father could be an abrasive and controlling character, his mother saw her role in life as keeping the family together and trying to smooth over any differences. He said Alan and Richard did not have a good relationship and he didn’t think it was too strong to say that Richard hated his father. In his view, whilst Richard oversaw the running of North Cowton on a daily basis, Alan took all the business decisions. He said Alan had a better relationship with Simon although that was not saying much. They would frequently argue about the farm business but then reach an agreement on the way forward, whereas Richard would not really speak to Alan. He referred to “*many occasions*” when Alan seemed to be at the end of his tether with Richard, saying he wanted to get him off North Cowton and run it himself, but it was Margaret’s influence that always stopped Alan from following through on that threat. North Cowton came from Margaret’s side of the family and as a partner in the business and owner of half of the land, Alan respected her wishes.
- 177 In David’s view, North Cowton was not well-run and so was not as profitable as it should have been. The business at Allerton Grange also had its ups and downs over the years but there were more opportunities to diversify because of its location. David said that Richard was convinced Simon was responsible for any financial problems affecting the business and that Simon was taking more out of the business than Richard was. David’s evidence was that this inevitably caused tensions between Richard and Simon over the years.
- 178 I have referred earlier in this judgment to David’s involvement in the circumstances in which the businesses of Allerton Grange and North Cowton came to be split. David said that, whilst he may have made the suggestion, Alan would have had to have adopted it or else it would not have happened. He said that his father could “*turn on a sixpence*” and he thought Richard and Simon were risking everything by staying in business with their father.

*Kathryn Garside*

- 179 Kathryn is Richard and Simon’s sister. She helped her parents with their business and personal finances. I did not find Kathryn a particularly satisfactory witness. She was guarded in the answers she gave and reluctant to give a straight answer to a question.

180 Kathryn said she knew Alan had sought advice from Raworths on making a new will but said Alan did not discuss the contents of his will with her. I do not consider that Kathryn was telling the truth about this. She was shown Mr Baylis' note of his and Ms Hedges' meeting with Alan on 21 January 2020 which recorded that when Ms Hedges asked Alan if David, Kathryn and Christine would expect the farms to go to Simon and George, Alan said "*he had told them that this was the case*". Her response was that she did not recall Alan telling her, or otherwise becoming aware, that he was leaving the farms to Simon and George before he made his new will and it was not the "*be all and end all*" to her. I do not consider this response was credible. Kathryn would definitely have remembered being told by Alan that he was leaving North Cowton to Simon and George and cutting Richard out of his will. Even though it did not directly concern her, it was a significant change to what the family had expected to happen and was obviously likely to cause considerable upset to Richard. Unless Alan was not telling the truth when he responded to Ms Hedges' question on 21 January, which I consider unlikely, Kathryn was not telling the truth when she said she did not discuss the contents of his new will with Alan and was therefore unaware that he intended to leave both farms to Simon and George and to disinherit Richard. I suspect she did this because her loyalties lay with Simon and both he and she felt it would assist his case if she said she did not discuss with Alan the contents of his new will.

181 Nor did Kathryn mention in her witness statement the fact that she was present for at least part of the meeting on 18 August 2020 when Ms Lewis of Loxley came to meet with Alan in his cottage at Allerton Grange in order to take his proof of evidence. She accepted in cross examination that by this time she was aware Alan had made a new will but said this was the occasion on which she found out "*in black-and-white*" that Alan was disinheriting Richard and leaving his estate to Simon and George. For the reasons already given, I find that Kathryn was aware of Alan's decision to leave both farms to Simon and George before he made his new will. I also find that Kathryn is likely to have discussed with Simon the need for a solicitor to take the proof of evidence from Alan, in order to minimise the risk of Alan's new will being challenged by Richard.

*Robert Armstrong*

182 Robert is the youngest of the five Armstrong brothers, Alan having been the eldest and 20 years older than Robert. I did not find him a particularly satisfactory witness. His allegiances clearly lay with Simon.

183 Robert gave evidence that Richard was someone who always had "*quite a high opinion of himself*" and "*thinks he is rocket fuel*". He was not sure about the suggestion that Richard was quieter than Simon. His assessment of Richard's character differed from that expressed by David which I prefer.

184 Robert said that Alan told him Richard believed that he was making money at North Cowton and that it was Allerton Grange, run by Simon, that was losing



money but that he knew from conversations he had with Alan and Simon that “*the opposite was true*”.

- 185 Robert remembered Alan telling him about his decision to split the farming business he ran in partnership with Margaret, Simon and Richard. He also recalled conveying to Margaret, at a family wedding around the same time (i.e. 2017), his view (as a result of a discussion he had had with Simon) that Simon was getting fed up with the business, partly because he was always kept under Alan’s thumb, but also because he was always being blamed by Richard (in Robert’s view unfairly) whenever the business had financial problems. He told Margaret she needed to keep an eye on Simon because he thought there was a real risk of Simon walking away from the business. According to Robert, Margaret told him she did not want to leave Richard with nothing but she could see that his future did not lie in running North Cowton.
- 186 Robert said that Alan’s attitude to Richard and Thomas “hardened” after the incident when Thomas assaulted Alan on New Year’s Eve 2013. However, given that he was not a party to any discussions between Alan (or Margaret) on the one hand and Richard on the other, his evidence provides little assistance in relation to the issues I have to decide.

*Donald and John Armstrong*

- 187 Donald and John were the second and third of the Armstrong brothers, aged 85 and 83 respectively. Their evidence was that they would meet on a regular basis with Alan at Thirsk market and would talk about farming and family matters. They said they were not surprised when, in early 2020, Alan told them he had decided to cut Richard out of his will and give North Cowton to George.
- 188 Donald said he knew there had been tension between Alan and Richard for a number of years and long-running tension between Simon and Richard. He said the main problem with Richard was that he did not work. A decent pig breeder would expect to turn out around 27 or 28 young ones per sow to wean in a year, whereas North Cowton was only producing about 15 young ones per sow. He attributed this to Richard’s lack of management and lack of animal husbandry. He said that Richard was supplying only three loads of pigs to Allerton Grange, when he should have been supplying four loads which had a knock-on effect on Simon’s business.
- 189 In Donald’s view, Richard should never have been a farmer and did not ever have any real interest in running North Cowton properly. He said that, in light of his many conversations with Alan, in which Alan was critical of Richard’s husbandry, he would be extremely surprised if Alan had made any promise to pass North Cowton over to Richard. When cross-examined, it became clear that Donald had not visited North Cowton for many years nor could he remember when he last saw Richard. He was constrained to accept that his understanding of Richard’s work

ethic and how the business had been run was derived from what he had been told by Simon and Alan.

190 John said Alan had earmarked Allerton Grange to Simon many years ago but was not prepared to accept that Alan had earmarked North Cowton to Richard. Like Donald, he was very critical of Richard's abilities as a farmer. He attributed a pig disease outbreak at North Cowton to Richard's poor husbandry. His evidence was that Richard did not work and his "*laziness was sinful*". He said that when he came to deliver stock to North Cowton, Richard never came out to help him unload and "*was nowhere to be seen when there was work to be done*" (something which Richard vigorously denied). He said that Richard had an unrealistic view of himself and was "*no good at farming*". He said that when things went wrong with the business or they were losing money, Richard would always try to lay the blame for that at Simon's door when he (John) did "*not think Alan ever thought that for a moment*". He said Margaret "*also knew that Richard was useless*" but "*put up with it for a long time*" before coming to the view which Alan had had for some time that the business could not carry Richard any longer. It was then as "*a last-ditch attempt*" to see if Richard could stand on his own two feet that Alan and Margaret decided to split the business into two. He said Alan was not keen on splitting the business and his preference would have been to get Richard out of the business, but Margaret felt they ought to give Richard a final chance.

191 Like Robert, neither Donald nor John was party to any discussions between Alan or Margaret on the one hand and Richard on the other. It was clear to me that their evidence was coloured by what they had been told by Simon. Both of them were, and remain, close to Simon and have no relationship with Richard. Their determination to denigrate Richard's abilities as a farmer was unconvincing. For example, I accept Richard's evidence that the pig disease at North Cowton was caused by an airborne virus from neighbouring farms and not (as John claimed) due to his shortcomings as a farmer.

192 In any event, neither Donald nor John's evidence provides any real assistance in resolving the issues I have to decide. I am prepared to accept that, in the course of their regular meetings in Thirsk market, Alan on occasions complained about the losses being made in the business and in that context complained to them about Richard's abilities as a farmer. However, I do not consider that the views expressed by Alan to his brothers undermine Richard's evidence that over the years promises were made to him by Alan in relation to his future at North Cowton on which he was entitled to rely.

#### *Laura Armstrong*

193 Laura is Simon's daughter. She gave evidence of mobile phone messages left by Thomas on Alan's phone at various times, and of arguments between Thomas and Alan. She stated that towards the end of 2019, Richard and Thomas were calling Alan repeatedly and, as a consequence, Alan became upset with the result that she

blocked his phone at his request. I did not find Laura's evidence useful in resolving the issues I have to decide.

**Issue 1: Were promises made to Richard by Alan that he would inherit North Cowton and were those promises of sufficient clarity to found a claim in proprietary estoppel?**

194 In deciding this issue, I have regard to all the evidence that was given about the Armstrong family background and how the family conducted themselves and to the inherent probabilities as to what is likely to have happened, as well as to the contemporaneous documents.

195 From the time he moved into the farmhouse at North Cowton, Richard was the only son to occupy a house owned by his parents. Simon and David each had their own houses. It was therefore understandable that Richard would want reassurance as to the security of his and his family's future at North Cowton.

196 Richard's evidence was that when he was a teenager both Alan and Margaret assured him that he would inherit North Cowton and this influenced his decision to forego a university education (where he would probably have studied engineering) and instead to study agriculture at Askham Bryan agricultural college. I accept this evidence. It coincides with the time (about 1983) when David, the eldest son, decided he was not prepared to continue working at North Cowton with his father because David felt he could not rely on the promises that Alan had made to him as to when he would inherit North Cowton.

197 Whilst he did not recall the precise words used or the occasions on which they were spoken, Richard said there were many promises and assurances made to him by each of Alan and Margaret over the years that followed, more than three decades, that he would inherit North Cowton on their deaths. I accept Richard's evidence that these were unambiguous promises or assurances made to him by each of his parents with the intention that they should be taken seriously. I find that they were promises or assurances on which Richard could reasonably have understood he was entitled to rely. I also find that when Margaret made promises or assurances to Richard in Alan's absence that he was to inherit North Cowton, it is more likely than not that she told Alan what she had said. North Cowton had belonged to Margaret's family, Margaret was close to Richard and was concerned to ensure that Richard's future was protected. I consider it highly likely that she discussed with Alan what she had told Richard.

198 Although there is no doubt that Alan was domineering, strong-minded and liked to be in control at all times, I find that, consistent with this character, he was clear in his communications with Richard and Simon regarding the future of North Cowton and Allerton Grange after his death. Those communications are reflected in the will he executed in 2000 which left his residuary estate to each of Richard and Simon in equal shares. They were even more clearly reflected in the letter of instruction he signed to the solicitors retained to draw up his new will, following

Margaret's death and execution of the deed of variation, where he specified that North Cowton should go to Richard and Allerton Grange to Simon. There was nothing surprising about these instructions. They accorded with the promises that I find both Alan and Margaret made to Richard on many occasions over more than 30 years that he would inherit North Cowton following their deaths.

- 199 It is also significant that before Alan began to make promises to Richard, he made a series of different promises to David as to when he would pass North Cowton over to David (see paragraph 174 above). When David put pressure on Alan in relation to these promises and they were not carried out, David formed the view that he could not rely on them and decided that he could not work with his father and needed to set up in business on his own. I note in passing that Loxley asserted in their response to Richard's pre-action letter that Alan made no promises to David (see paragraph 144.2 above). No doubt these were Loxley's instructions at the time but they proved to be incorrect, as transpired when David gave evidence in court.
- 200 The promises made to Richard by Alan were different in nature to those made to David. Alan only ever promised Richard that he would inherit North Cowton on his and Margaret's death. Richard had no expectation of inheriting North Cowton before his parents died. I accept Richard's evidence that he had many discussions with his parents over the years which caused him reasonably to expect that he would inherit North Cowton and Simon would inherit Allerton Grange. One such discussion took place at the time Richard and Sarah went to live in the farmhouse at North Cowton shortly after Richard left agricultural college. Another took place after Thomas was born when Alan said to Richard that he now had "an heir and a spare" by which Alan meant (and Richard understood him to mean) that Richard's children would ultimately inherit North Cowton from Richard.
- 201 I accept Richard's evidence that, in or around 2010, Margaret read out to him the contents of her 2000 will and informed him that Alan had made a mirror will in the same terms. This was not done in Alan's presence, but it is likely that he was told about it by Margaret. It was done in the context of Richard expressing his concerns to Margaret about what Simon was doing at Allerton Grange and Margaret wanting to assure him that his inheritance of North Cowton had already been dealt with by her and Alan in their wills. Although Alan was not present when this happened, the assurance given to Richard by Margaret reading out to him the contents of her will, indicating that Alan's will was in similar terms, did no more than reflect the promises and assurances made to him by both Alan and Margaret prior to that time that he would inherit North Cowton. The act of Margaret reading out her will to Richard, and telling him that Alan's will was in similar terms, reassured him that his parents had put their promises into effect.
- 202 I accept that, when in about 2012 North Cowton and Allerton Grange stopped sharing machinery, Richard was told by both Alan and Margaret that this was the

start of the process of splitting the farm businesses so that it would be easier for him and Thomas to farm North Cowton after he inherited it on their deaths.

- 203 Richard did not raise at either of the meetings he had with Mr Morgan at North Cowton on 10 and (it appears) 14 January 2014 the fact that promises had been made to him by his parents that he would inherit North Cowton. It was at the second meeting with Mr Morgan that Richard and Sarah indicated they were (as recorded by Mr Morgan in his note of 15 January) desperate to stay on at North Cowton. I do not consider that Richard's failure to mention at that meeting the assurances previously given to him by his parents is an indication (as the defendants suggest) that the assurances were never made. On the contrary, the fact that Richard was being offered the opportunity to be rehoused and provided with an alternative income was an indication that his parents felt an obligation to stand by the assurances they had previously given to him regarding his future at North Cowton. The offer was made in the context of a situation in which emotions were running high as a result of the incident involving Alan and Thomas. When Richard made it clear that he did not wish to avail himself of that opportunity, the rehousing option was dropped without any attempt by Alan or Margaret to press the matter. The discussions which followed were premised on the basis that Richard would continue to live and farm at North Cowton, with a scheme being devised regarding the monitoring of the management performance of both North Cowton and Allerton Grange which was never implemented.
- 204 The possibility of Richard and his family leaving North Cowton was never raised again, at least (as I find) never with Richard or his family. Moreover, the incidents in 2013/2014 involving Alan and Thomas had blown over well before 2017, as is confirmed by the fact that the farm partnership continued to employ Thomas at North Cowton and Thomas spent some £40,000 when renovating and moving into the bungalow at North Cowton. Alan and Margaret inspected and expressed their approval of the work in 2017 shortly after it was completed. That amount of money would not have been spent by Thomas on a property belonging at that time to his grandparents had Richard, Sarah or Thomas considered there to have been any danger of Thomas being evicted from the property. The fact that Alan asked Thomas to do one of the readings at Margaret's funeral in 2018 is also an indication that their relationship had not been irretrievably damaged. I accept Thomas's evidence that he was told by both Alan and Margaret that North Cowton would go to his father and Allerton Grange to Simon, with the golf course business being split 40/60 between his father and Simon.
- 205 The strains and difficulties in the business relationship between Richard and Thomas on the one hand and Simon on the other are an important backdrop to the question of whether promises and assurances are likely to have been made by Alan and Margaret to Richard regarding his future at North Cowton. Simon and Richard did not get on, and following Richard's reporting of Simon to the police in October 2013, they rarely saw or communicated with each other. Simon, living at Allerton Grange, had far more regular contact with his parents than did Richard and did not

hold back in criticising his brother's farming abilities in his conversations with them. Richard in turn, on the less frequent occasions that he discussed the performance of the farming partnership with Alan and Margaret, regularly complained that the financial problems of the partnership were caused by Simon's handling of the finances at Allerton Grange.

206 Matters came to a head in the first half of 2017 when Alan and Margaret went to see David at his house. I accept David's evidence that Alan told him they had decided Richard would have to leave North Cowton because it was losing money and they were worried he would run the business into the ground. David persuaded them to give Richard an opportunity to run North Cowton as a separate business, giving him control of the cheque book. This led to the meeting at North Cowton in June 2017 between David, Margaret, Kathryn and Richard when it was agreed that the two farms would be run as separate businesses. Richard was not told at that meeting that his parents had considered asking him to leave North Cowton. The meeting took place so that Richard could be told of David's suggestion that North Cowton should be run as a separate business. Alan was aware this meeting was taking place and what was being proposed. As the notes of the meeting indicate, the North Cowton business was to assume responsibility for the bank loan of £500,000 and to pay rent to Alan and Margaret.

207 I accept Richard's evidence that, shortly after this meeting on 19 June 2017, he had a telephone conversation with Alan about the overdraft required for the North Cowton business in which he suggested that since turnover was £80,000 a month he would need an overdraft at that level but Alan thought he needed an overdraft of £120,000 so that he had the equivalent of a six week cushion in which to pay his bills. In the course of this conversation about the splitting of the two farms, Alan told Richard it was being done because he (Alan) would not live for ever and it would be easier for Richard to keep running North Cowton after he inherited it when Alan died. This was a further promise or assurance given by Alan to Richard consistent with previous similar promises or assurances given by Alan to Richard regarding the fact that he was to inherit North Cowton.

208 In January 2019, some three months after Margaret died, Alan signed the North Cowton partnership accounts for the period ended 5 April 2018 in the knowledge that in the period since 1 November 2017, when the separate North Cowton business commenced trading, it had made a small profit. There is no evidence that at any time prior to his meetings with solicitors and members of his family on 2 April and 11 November 2019, Alan had concerns about the way Richard was carrying on the farming business at North Cowton.

209 Richard executed the deed of variation on 2 April 2019 in the knowledge that under Margaret's will he was entitled to 50% of her residuary estate, which effectively meant that he was entitled to half of North Cowton, and that he had a similar entitlement to the other half under Alan's mirror will. This treatment in his parents' wills was consistent with the promises made consistently to him over many years

that he would inherit North Cowton from his parents after they had died. He was told by Ms Spence at the meeting on 2 April 2019 that the reason for executing the deed of variation was to avoid the need for monies to be held in the discretionary trust settled by Margaret's will because the trust would be difficult or costly to maintain. It was clear to Richard and to everyone else present at the meeting (including David, Simon and Kathryn who gave evidence about the meeting) that the execution of the deed of variation was not intended or designed to alter the effect of the inheritance that Richard and Simon had already received from Margaret and were due to receive from Alan under his mirror will. I find that those present at the meeting understood that the reason Alan needed to update his will was to clarify the position regarding Richard and Simon's respective farms. The clear intention was that Richard would be left North Cowton and Simon would be left Allerton Grange so that, instead of each of them inheriting 50% of Alan's residuary estate (as provided by his and Margaret's 2000 wills), they would each inherit the farms they had farmed for many years.

- 210 It was Richard's oral evidence that he recalled Alan confirming in the meeting that he and Simon would inherit their respective farms. Whether or not Alan made an express statement to this effect, there is no doubt that this was the context in which discussions as to the deed of variation and Alan's new will took place. Kathryn said it was understandable that Richard should have had this impression and then sought to resile from this evidence, having realised what she had said might be harmful to Simon's case. I find that all members of the family attending that meeting proceeded on the basis that Richard would inherit North Cowton and Simon would inherit Allerton Grange which, as far as Richard was concerned, simply confirmed the promises that Alan had previously made to him. Richard only hesitated in signing the deed of variation because it was presented to him for the first time at the meeting and he had not had a chance to consider its terms. This was the context in which Ms Spence said to Richard "*what's the matter, don't you trust your father*". The nod or encouraging look which Alan then gave Richard was intended by Alan, and was reasonably understood by Richard, to be an assurance that he would stand by the indication made by Alan at the meeting (consistent with promises he had made to Richard on many occasions previously) that Richard would inherit North Cowton on his death. It was an assurance by Alan that, if Richard executed the deed of variation, he would leave North Cowton to him.
- 211 Although Richard was not aware of the letter of instruction signed by Alan and provided by Mr Baylis to Ms Hedges on 11 November 2019, its contents were entirely consistent with the indication Alan gave to all members of the family present at the meeting on 2 April 2019 and with the promises and assurances he had previously made to Richard.
- 212 Accordingly, I accept Richard's evidence that Alan and Margaret made promises and assurances to him which caused him to expect that he would inherit North Cowton from his parents from before the time that he started to work and live at

North Cowton and these promises and assurances continued to be repeated over the ensuing decades until the meeting attended by Alan and other members of the family on 2 April 2019. They were unambiguous and were intended to be taken seriously by Richard as statements on which he could reasonably be expected to rely. They were not statements of their current intentions. They were intended by both Alan and Margaret to be binding and irrevocable, as evidenced by their 2000 wills and in Alan's case by what he indicated at the meeting on 2 April 2019 and confirmed in the letter of instruction. Until Alan made his new will in January 2020, his and Margaret's actions were consistent with the promises they had made to Richard. In 2017, when the farm businesses were split, Alan assured Richard that this was being done as he was to inherit North Cowton.

- 213 It follows from my findings in relation to Richard's evidence that I do not accept as truthful Alan's answers to the questions put to him by Ms Lewis on 18 August 2020 which resulted in the proof of evidence prepared by Ms Lewis and signed by him on the same day. In particular, I do not accept Alan's responses to question 5 (where he stated "*it is not true I promised the farm to Richard, his wife has said I have but this is not true*"), to question 7 (where he stated "*I never said the farm [sic] was for Richard or Simon*") or to question 16 (where he stated "*I haven't promised the farm to Richard*").
- 214 Only two days after this proof of evidence was taken, on 20 August 2020, Richard's solicitors wrote to Loxley (Alan's solicitors) in the terms set out in paragraph 128 above. I find that the background provided by Richard's solicitors in that letter is a truthful account, in particular their statement that "*the basis of the relationship is that the farm has been long promised to our client as his inheritance*".
- 215 In their witness statements, both Simon and Kathryn were keen to emphasise that Alan was guarded about his testamentary intentions and would never speak to them about his will or inheritance matters in general. I do not regard that evidence as truthful. When it was tested in cross-examination, it became clear that Alan did in fact discuss these matters with both of them. In particular, I find that Simon was well aware in 2019, as a result of the meetings he attended with Alan on 2 April and 11 November, that Alan intended to leave North Cowton to Richard and Allerton Grange to him. Although I have accepted Kathryn's evidence that she was only present for the start of the meeting on 11 November, it is inconceivable that she was not aware of Alan's intentions in 2019 as a result of attending the meeting on 2 April and conversations she is sure to have had with both Alan and Simon following Margaret's death. Kathryn was also reluctant to accept Mr Baylis' attendance note of 29 January 2020 which stated that Alan had told her, David and Christine at that time of his change of mind and decision that George would inherit North Cowton. I find that Alan did discuss his change of mind with Kathryn and she was fully aware of the implications that would have for Richard.



**Issue 2: Did Richard rely on those promises to his detriment and, if he did, was his reliance reasonable?**

- 216 I find that Richard did rely on the promises and assurances made to him by Alan and by Margaret (the latter being made with Alan's knowledge), and then by Alan alone after Margaret's death, that he would inherit North Cowton when his parents died. I also find that Richard's reliance on those promises was reasonable and that, in so relying, he acted to his substantial detriment.
- 217 Richard's reliance on the promises and assurances made to him by Alan and Margaret, is evidenced in different ways. First, he relied on his parents' promise that he would inherit North Cowton by choosing not to study engineering at university (a degree that would have been available to him having gained A-levels in maths, physics and chemistry) and thereafter embark on a potentially more lucrative career. Instead, he chose to go to agricultural college with a view to working on the farm at North Cowton once his course was completed. That decision inevitably affected the way he has lived his life. Although nothing is certain, it is reasonable to infer that the earnings he might have received from a career in engineering would have enabled him to purchase a property and provided him with greater resources and security than are available to him as a consequence of being disinherited by Alan. If Alan and Margaret had not assured Richard that he was to inherit North Cowton, there is no doubt that Richard would not have continued to farm there. Richard would have sought alternative employment and accommodation, very possibly with assistance from his parents.
- 218 Second, Richard reasonably relied on the continuing promises made to him by Alan and Margaret over the years (confirmed by Margaret reading out the terms of her will to him and telling him that Alan's will was in similar terms) in continuing to work at North Cowton earning a modest income in the belief that he would inherit North Cowton when they died. By the time he discovered towards the end of 2020 that his father was disinheriting him, he had worked on the farm at North Cowton for some 34 years and not made any arrangements for the eventuality that he might have to leave North Cowton, with the result that he has no job experience other than as a farmer. Again, had Richard not been given the assurances he received from Alan and Margaret, I consider that he would have left North Cowton many years ago. He has therefore acted to his substantial detriment in remaining at North Cowton until Alan's death, only to discover that he has been disinherited. Richard is unable to prove or quantify what he would have done but for this life changing choice or what the consequences would have been. However, the fact that such detriment cannot be quantified in monetary terms does not mean the court is relieved of the task of weighing the detriment against countervailing benefits obtained by Richard as a result of living at North Cowton (see Winter v Winter [2024] EWCA Civ 699 at [30] and [52]) and I consider that issue below.
- 219 Third, Richard reasonably relied on those promises when he agreed to assume responsibility for the debts of the North Cowton partnership when the farm businesses were split from 1 November 2017, being the Lloyds bank loan of

£500,000 and liability for the bank overdraft up to £120,000. The defendants counter this by saying that these were not personal debts of Richard but debts of the North Cowton partnership which are liable to be repaid by Richard only to the extent that the assets of the North Cowton partnership are insufficient. Richard's response is to deny that the North Cowton partnership was truly a partnership and to contend that the agreement reached between him and his parents when the farming businesses were split was that only he was entitled to the profits generated at North Cowton and in turn only he was responsible for the losses, with his parents' only interest in his farming operations being that they were paid £1,250 per month for making their land available to him to farm. In any event, Richard's evidence was that the capital account for the North Cowton partnership was overdrawn by £235,000 so that, if the partnership were to be dissolved, he would be responsible for that liability. I accept Richard's evidence that he would not have taken on these debts if he had not believed as a result of the promises made to him by Alan (and Margaret) that he would inherit North Cowton. In the circumstances, I find that Richard acted to his detriment when he relied on the promises made to him by Alan (and Margaret) in 2017 at the time the businesses were split.

- 220 Fourth, Richard reasonably relied on Alan's promise that North Cowton would be left to him on Alan's death when he surrendered his valuable interest in Margaret's estate by signing the deed of variation. The defendants submit that there was no causal connection between the deed of variation and the promises made to Richard by Alan. For the reasons given above, I reject that submission. I find that Richard signed the deed of variation in reliance on the express or implied promise made to him by Alan at the meeting on 2 April 2019 that Alan would arrange matters so that Richard would inherit North Cowton and Simon would inherit Allerton Grange. The consequence of Alan breaking that promise has been that Richard has suffered substantial detriment, in that he has lost his right to a half share of Margaret's estate.

### **Issue 3: Did Alan renege on his promises and, if he did, was it unconscionable for him to do so?**

- 221 I find that Alan repudiated the reasonable expectation Richard had of inheriting North Cowton when he made his new will in January 2020, a matter of months before his death, which cut Richard out of his anticipated inheritance. Given the nature and extent of the promises made to Richard by Alan over a period extending for more than 35 years (from about 1983 to 2019), it was plainly unconscionable for Alan to act as he did by making a new will in those terms.
- 222 Moreover, by promising Richard, and causing him reasonably to expect, that he would inherit North Cowton on his father's death if he signed the deed of variation which had the effect of surrendering his interest in Margaret's estate, Alan acted unconscionably in then reneging on that promise and cutting Richard out of his anticipated inheritance. Richard accepts that by virtue of having signed the deed of variation he is estopped from claiming assets in his mother's estate. However, executing the deed of variation in respect of his mother's estate does not preclude

Richard from claiming assets from his father's estate. By executing the deed of variation, Richard did not represent that he would not claim assets from his father's estate. He was merely allowing his father to have the assets from his mother's estate until his father's death because the understanding had always been that he would only receive North Cowton upon his parents' deaths. As I have found, Alan shared this understanding.

- 223 By early 2020, Richard had been farming at North Cowton for over 30 years and had irretrievably altered his position in life. Given the promises made to him, it was too late for Alan to decide unilaterally that the farming life was not for Richard after all and in so deciding Alan acted unconscionably. I should make clear that Margaret, who made similar promises to Richard to Alan's knowledge, did not act unconscionably. She did not disinherit Richard and her will was left unaltered on her death in 2018.
- 224 In their written opening submissions, the defendants made what I regard as a bold submission which is that Richard was neither a skilled nor a hard-working farmer and that for many years he was allowed to maintain his position at North Cowton not as a result of any wish by Alan that he should do so but rather as a result of his insistence and refusal to consider other options. They further submit that Alan and Margaret allowed him to stay in North Cowton for reasons of familial affection, thereby choosing not to exercise their right to terminate Richard's position. In the circumstances, they argue that it cannot properly be regarded as unconscionable for Alan to have made his 2020 will in the terms that he did. In his closing submissions, counsel for the defendants said that the relevance of the evidence indicating that Alan and other family members expressed views about Richard's deficiencies as a farmer was that it made it inherently unlikely that promises were ever made to him by either Alan or Margaret.
- 225 I reject the submission that Richard was neither a skilled nor a hard-working farmer. These allegations stemmed principally from Simon who took whatever opportunity he could to undermine Richard's position at North Cowton. David's evidence (which I accept) was that North Cowton was a difficult place for any farmer to succeed because of the nature of the land. Alan will have known that too. I find that by the time he came to make his new will and give his proof of evidence in 2020, Alan's criticisms of Richard's abilities as a farmer were largely if not entirely derived from what he had been told by Simon. I accept Richard's evidence that Alan did not make these allegations to him and that, while Alan was a domineering character who liked to be in control, he had a perfectly good working relationship with his father during the time that they worked together at North Cowton when they would speak to each other on a weekly basis.
- 226 I also accept Richard and Sarah's evidence that Richard worked hard and put in long hours. No evidence was provided that Richard lacked the necessary skills to be a good farmer and I reject the evidence of Alan's brothers and David to that effect which was either unsubstantiated or derived from what they had been told

by Simon or by Alan. As David said, Alan had “*a great aptitude*” for telling him and everyone else how useless they were whilst trying to prove what “*a brilliant man*” he was. No doubt Richard did not live up to Alan’s expectations of him as a farmer but that did not mean he was a bad farmer.

- 227 Nor do I consider that the criticisms made of Richard as a farmer by Alan (whether in early 2014 at the time of the Nick Morgan meetings or around the time that Alan signed his proof of evidence and entered into his new will in 2020) make it inherently unlikely that the promises and assurances on which Richard relies were ever made to him by either Alan or Margaret. I accept Richard’s evidence that those promises and assurances were made.

**Issue 4: Did Richard receive countervailing benefits and, if he did, do those benefits affect the remedy to which he is entitled?**

- 228 It is clear from the guidance given by the Supreme Court in Guest v Guest [2024] A.C. 833 that 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. It is hardly, if ever, appropriate to undertake a precise mathematical task of calculating the monetary value of the detriment suffered, and countervailing benefits obtained, by the promisee. The detriment does not need to be equivalent to the expectation. The crucial point is that there has been some substantial net detriment.
- 229 As Robert Walker LJ said in Gillett v Holt [2001] Ch 210 at 232D-F: “*The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The 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 broader inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances*”.
- 230 Richard accepts that over the years he benefited from his and Sarah’s rent-free occupation of the farmhouse at North Cowton and his drawings from the partnership as wages. He has paid to maintain the farmhouse and the land throughout his period of occupation. His evidence was that he usually worked seven days per week and spent most of his days outside doing work on the farm with managerial work being undertaken in the evenings. His defence stated that he was paid a farm worker’s wage of £1,650 per month and was not paid overtime or for his managerial work. He also worked unpaid for some 15 months during foot-and-mouth. During busy periods, he was paid less than the farm workers. When he pointed this out to Margaret, she accepted he was paid less but said he would end up with the farm. In his witness statement, he stated that it cost him £4,715 per month to support the farm for which he currently paid a rent of £1,200 per

month. His evidence was that his total income was considerably less than his expenditure but that family expenses (council tax, heating and the like) were shared with Sarah. Since about 2021, whilst continuing to live at North Cowton, Richard has obtained employment as a machine operator with Cummins Ltd in Darlington for which he receives a net salary of £24,000 per annum.

231 The defendants submit that Richard has had the benefit of occupying a position that Alan did not want him to occupy, for which he was not suitably qualified and which has allowed him to derive a high level of remuneration (estimated by Simon to have a value of £50,000 per annum in addition to the occupation of North Cowton farmhouse) and thereby maintain a higher standard of living than would otherwise have been the case. I do not accept these submissions. The value attributed by Simon to Richard's supposed high level of remuneration does not accord with Richard's evidence which I consider more reliable. Moreover, I reject the suggestion that Richard maintained a higher standard of living than would otherwise have been the case. I find that Richard has suffered a substantial net detriment as a result of spending all his working life prior to Alan's death on the farm at North Cowton in the expectation that he would inherit the same.

232 There is a further substantial detriment that Richard has suffered as a result of relying on Alan's promise that he would inherit North Cowton which is that he executed the deed of variation whereby he gave up assets to which he was entitled from Margaret's estate and allowed Alan to inherit them instead. The value of the share of Margaret's estate to which Richard was entitled is disputed. Richard says it was worth at least £1.79 million. The defendants say that this is in excess of 50% of the gross value of Margaret's estate recorded on the IHT 30 signed by Richard on 2 April 2019. They do not say what the correct figure should be. For present purposes, I conclude that it is well in excess of £1 million which is a substantial detriment suffered by Richard as a result of signing the deed of variation.

### **Conclusion on proprietary estoppel**

233 I therefore conclude that Richard succeeds in his proprietary estoppel claim.

### **What is the appropriate remedy?**

234 The parties are agreed that in the event that Richard is successful in his proprietary estoppel claim, it will be necessary for the court to list a further hearing to consider the appropriate relief in light of the determinations made in this judgment. I do not therefore propose to consider the question of the appropriate remedy required to satisfy the equity that has arisen until I have received further submissions on that issue.

### **The 1975 Act claim**

235 Although I have found in Richard's favour on his primary claim, I still need to consider his alternative claim under the 1975 Act in case an appellate court should

disagree with my decision on the proprietary estoppel claim or, if I decline to make an award in the proprietary estoppel claim which is sufficient to meet Richard's needs, it may still be necessary for Richard to seek to rely upon his 1975 Act claim.

### **The 1975 Act: applicable legal principles**

236 There is no dispute that, as Alan died domiciled in England and Richard is one of his children, Richard is eligible to bring a claim under the 1975 Act: see s.1(1)(c). If Richard establishes that the disposition of Alan's estate under his will is not such as to make reasonable financial provision for Richard, the court may make any of the orders specified at s.2(1) of the 1975 Act, namely:

236.1 An order for the payment of a lump sum or periodical payments to Richard out of the net estate: see s.2(1)(a)-(b).

236.2 An order for the transfer or settlement of property comprised in the net estate to Richard or for his benefit: see s.2(1)(c)-(d).

236.3 An order for the acquisition out of property comprised in the net estate of property to be transferred to or settled for Richard's benefit: see s.2(1)(e).

237 In the case of all applicants under the 1975 Act other than a surviving spouse or civil partner, "*reasonable financial provision*" means "*such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance*". In determining whether reasonable financial provision has been made and if it has not **what constitutes reasonable financial provision**, the court is required by s.3(1) of the 1975 Act to have regard to the following factors:

237.1 The financial resources and financial needs which the applicant, any other applicant under the 1975 Act and the beneficiaries of the deceased's estate have or are likely to have in the foreseeable future: see s.3(1)(a)-(c).

237.2 The obligations and responsibilities which the deceased had toward any applicant or beneficiary of the estate: see s.3(1)(d).

237.3 The size and nature of the net estate: see s.3(1)(e).

237.4 Any physical or mental disability of any applicant or beneficiary of the estate: see s.3(1)(f).

237.5 Any other relevant matter, including the conduct of the applicant or any other person: see s.3(1)(g).

238 So the court is required to determine two questions (albeit that there is a very large degree of overlap between the two and the 1975 Act requires the same factors to

be considered in relation to each): (1) has there been a failure to make reasonable financial provision and, if so, (2) what order ought to be made: see Ilott v Mitson (No. 2) [2018] AC 545 at [23]-[24]. In determining what is reasonable for an applicant to receive for his maintenance, the court must apply an objective standard. The question is not whether the deceased acted reasonably but whether the disposition of his estate has produced a reasonable outcome (albeit that the answer to the latter question may not be significantly different from the former): see Ilott v Mitson (No. 2) at [16]-[17].

- 239 The limitation of applicants other than surviving spouses and civil partners to “*the maintenance standard*” is a deliberate legislative choice. Although provision can be made by way of a lump sum, provision for an applicant’s maintenance must be directed towards the discharge of his daily living expenses at whatever standard is appropriate to him and excludes payments which are equivalent to provision for his wellbeing or benefit: see Ilott v Mitson (No. 2) at [13]-[14].

**Issue 1: Was Richard financially dependent upon Alan?**

- 240 There is little doubt that Richard was financially dependent upon Alan. By allowing Richard to work on the farm at North Cowton and to live in the farmhouse for some 34 years, Alan made provision for both Richard’s income and housing needs. Since Alan’s death and the appointment of the defendants as administrators under Alan’s 2020 will, Richard and Sarah have been given notice to quit North Cowton farmhouse and Richard no longer derives an income from working at North Cowton. I understand that Richard and Sarah continue to live in North Cowton farmhouse and that the notice to quit has been held in abeyance pending determination of Richard’s claim. Richard’s evidence is that currently his expenditure exceeds the income he receives from his employment with Cummins.

**Issue 2: Does Alan’s will fail to make reasonable financial provision for Richard and, if so, what would be reasonable financial provision?**

- 241 Alan made no provision for Richard under his will. In view of the fact that Richard was financially dependent on Alan, I have no hesitation in concluding that Alan failed to make reasonable financial provision for Richard in his will. I therefore need to consider what would be reasonable financial provision for Richard.
- 242 On the basis of the information currently available, I do not consider that it would be wise to reach any definitive conclusions about this until I have considered the question of what should be the appropriate relief to be given to Richard on his proprietary estoppel claim.
- 243 However, I can indicate at this stage that whatever final outcome is considered appropriate, given the level of animosity that exists between Richard and Simon, I would be minded to require an indemnity to be provided by one to the other for any liabilities that may have already arisen or may arise in future in relation to property the other does not own. I also regard it as essential that there should be a clean break so that neither brother is in any way dependent on the other.

244 I am grateful to counsel for their cogent written and oral submissions.