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1. [Re estate of Dale \(deceased\) Sharpe v Dyson and another \[2022\] EWHC 2462 \(Ch\)](#)

Client/Matter: -None-

**Re estate of Dale (deceased) Sharpe v Dyson and another [2022] EWHC
2462 (Ch)**

Chancery Division, Leeds District Registry
Upper Tribunal Judge Mark West (sitting as a High
Court judge)

4 October 2022 Judgment

Sarah Harrison (instructed by **Taylor and
Emmet LLP**) for the **Claimant**

Renata Del Luongo (instructed by **Elliot
Mather LLP**) for the **Defendants**

Hearing dates: 11-14 July 2022

(2) Mrs Sharpe has two daughters, Riki Ann Sharpe (“Miss Sharpe”) and Emma Hewins (“Mrs Hewins”). Mrs Sharpe and Mrs Hewins are estranged.

(3) Mr Dyson, who was born in 1984, was the younger son of Mrs Dyson. He is married to Kathryn Dyson (“Kathryn Dyson”).

(4) Mr Ellis, who was born in 1972, was the elder son of Mrs Dyson. Mr Dyson and Mr Ellis are therefore the nephews of Mrs Sharpe.

3. Mr Dale had been married previously and had 3 adult children of that marriage, but he had had no contact with his children, from whom he had been estranged for many years at the time of his death.

4. By the terms of clause 2 of his 2019 will Mr Dale appointed Mrs Sharpe and Miss Sharpe to act as the executrices of his estate and by clause 3 he left the residue of his estate to Mrs Sharpe.

5. Mr Dyson and Mr Ellis seek to propound the validity of Mr Dale's earlier 2003 will. Under its terms Mr Dale appointed Mrs Dyson, Mr Dyson and Mr Ellis to act as his executors. He left his estate to Mrs Dyson if she survived him by 28 days and otherwise to Mr Dyson and Mr Ellis in equal shares. In both clause 3 (the appointment clause) and clause 5 of the will (the absolute residuary gift) Mr Dale described Mr Dyson and Mr Ellis respectively as “my friend” rather than by any other description.

6. On 15 June 2020 Mr Dyson lodged a caveat (reference no 1592-2118-1129-3138). That was warned on 20 November 2020 and Mr Dyson entered an appearance on 8 December 2020 alleging that the 2019 will was procured by the fraudulent calumny of Mrs Sharpe. Mrs Sharpe issued her Claim Form with Particulars of Claim attached on 1 June 2021.

Approved Judgment

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on Tuesday 4 October 2022. The parties may be told the result not more than 1 hour before the formal promulgation of the judgment.

Introduction

1. This claim concerns the estate of the late Brian Dale (“Mr Dale”) who died on 28 May 2020. The Claimant, Sharon Jane Sharpe (“Mrs Sharpe”), seeks to propound his last will dated which is dated 16 August 2019 (“the 2019 will”). The Defendants, Wayne Terrance Dyson (“Mr Dyson”) and Andrew George Ellis (“Mr Ellis”), allege that the 2019 will ought to be set aside as having been procured by the fraudulent calumny of Mrs Sharpe and they seek to propound the earlier will of Mr Dale dated 1 October 2003 (“the 2003 will”).

2. The relevant family relationships in this action are as follows:

(1) Mrs Sharpe is the sister of the late Mrs Ann Elizabeth Dyson (“Mrs Dyson”) who died on 6 March 2019. Mrs Dyson lived with Mr Dale at 34 Woodside View, Holmesfield, Dronfield (“the property”) from July 1995 until her death.

The Allegations of Fraudulent Calumny

7. Mr Dyson and Mr Ellis aver that, although Mr Dale was not their biological father, he raised them as his own children and cohabited with their mother for around 30 years. Mr Dale and Mrs Dyson made mirror wills (although it is not alleged that they were thereby rendered mutual wills). Mr Dyson and Mr Ellis were the natural beneficiaries under the 2003 will.

8. The allegations of fraudulent calumny are contained in paragraphs 14 and 15 of the Defence and Counterclaim. What is alleged is that Mrs Sharpe poisoned Mr Dale's mind against Mr Dyson and Mr Ellis, who were the natural beneficiaries under the 2003 will, by casting dishonest aspersions on their character, for the purpose of inducing him to alter his testamentary dispositions.

9. In paragraph 14 the following particulars are pleaded:

(a) Mrs Sharpe had a historic and well-publicised dislike of Mr Dale during his lifetime

(b) she had a limited relationship with both Mrs Dyson and Mr Dale in their lifetimes

(c) Mr Dyson and Mr Ellis were raised as Mr Dale's sons and by the 2019 will he entirely disinherited them of both their mother's and Mr Dale's estates

(d) by the 2019 will Mrs Sharpe and her daughter effectively became Mrs Dyson and Mr Dale's sole beneficiaries, despite receiving nothing under the 2003 will of either Mr Dyson or Mr Dale

(e) Mrs Sharpe suddenly began to visit her sister when she was terminally ill in around late January 2019

(f) following Mrs Dyson's death on 6 March 2019, Mrs Sharpe began suddenly visiting Mr Dale at his property, having previously had very little to do with him

(g) following Mrs Dyson's death, Mrs Sharpe was responsible for reporting Mr Dyson and Mr Ellis to the police to prevent them visiting Mr Dale

(h) following Mrs Dyson's death, Mrs Sharpe was responsible for changing the locks of the property to prevent Mr Dyson and Mr Ellis from visiting Mr Dale

(i) Mrs Sharpe falsely told medical professionals that they were supplying Mr Dale with alcohol so that he would die as a result of alcoholism

(j) Mrs Sharpe failed to inform them of Mr Dale's death or funeral arrangements.

10. In paragraph 15 the Defendants aver that, after their mother's death, Mrs Sharpe made false representations to Mr Dale about them:

(a) they prevented Mr Dale from visiting Mrs Dyson whilst she was in hospital

(b) they wanted to evict Mr Dale from the property

(c) they wanted all of Mr Dale's money

(d) they had stolen money from him

(e) they were harassing him

(f) they were trying to bribe Mrs Sharpe not to tell Mr Dale what they were doing or planning to do

(g) Mr Dale should not allow them or their families to visit him.

11. In paragraphs 16, 17 and 18 the Defendants averred that Mrs Sharpe knew that the representations about them and their character were false or that she was reckless as to whether they were true or not, that the false representations and assertions caused Mr Dale to execute the 2019 will in her favour and that as a result, since the 2019 will was produced by fraudulent calumny, the Court should pronounce against it and in favour of the 2003 will.

12. In paragraph 8 of the Reply and Defence to Counterclaim Mrs Sharpe noted that

the Defendants did not assume Mr Dale's surname and always referred to him as "Brian", not as their father. She also noted that in the 2003 will he referred to them as "friends" and not as his sons. By the time of her sister's death, she averred that Mrs Dyson and Mr Dale had only rare contact with the Defendants. Whilst she admitted that her sister and Mr Dale had cohabited from 1990 onwards until her death, they both had alcohol problems and a volatile relationship.

13. In paragraph 10 Mrs Sharpe denied the allegations of fraudulent calumny and asserted that Mr Dale made his 2019 will in the terms in which he did because

(a) he did not want Mr Dyson and Mr Ellis to inherit his estate because of the problems and upset which they had caused since Mrs Dyson had died

(b) they had closed Mrs Dyson's account and were holding the monies which he needed to live on without his permission

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(c) he wanted to benefit Mrs Sharpe because of the assistance with which she had provided him after Mrs Dyson's death.

14. In paragraph 14 she averred that, following her sister's death, the Defendants resented the fact that she had left her estate to Mr Dale and not to them. Their relationship with Mr Dale then broke down because

(a) one or both of them submitted a small estates declaration form to National Westminster Bank and took the £17,000 balance held in the account into their hands. Mr Dyson had then purported to pay himself the sum of £2,100 and to make gifts of £2,500 (including £1,000) to himself from those monies. He held the remainder of the monies which he refused to pay over to Mr Dale as he had requested. Mr Dyson alleged that he did that as that was what his mother wanted and to stop Mr Dale from spending the money. He also claimed that he provided Mr Dale with a weekly sum from the account.

(b) the Defendants became abusive to Mr Dale and made threatening calls and sent distressing text messages to him and to Mrs Sharpe. One text message read

"If you want to play games I'm a lot better than Sharon just try me Bryan please"

A voicemail message was left on Mr Dale's telephone by one of the Defendants which included the words

"You know what I'll be fucking up to see you tomorrow you twat. Yeah you can't even be arsed to talk you selfish bastard".

15. Owing to that behaviour she averred that Mr Dale decided to make a new will, for which he gave instructions on 25 July 2019. I shall refer to the will instructions and the intervention of the solicitor in more detail below.

16. In paragraph 14 she averred that the refusal of the Defendants to transfer the proceeds of the account to Mr Dale led him to instruct the firm of Taylor and Emmet to act for him. A grant of probate was taken out by him to Mrs Dyson's estate on 28 November 2019, with power reserved to the other executors. Thereafter National Westminster Bank paid Mr Dale a sum equal to the monies which had been held in the account and Mr Dale vested the Dronfield property in his own name.

17. In paragraphs 15 and 16 she denied the particulars

of wrongdoing levelled against her and asserted that

(a) she did not dislike Mr Dale, but was concerned that both he and her sister had alcohol problems and that that was not healthy for either of them

(b) she did not have little contact with her sister and Mr Dale. She was close to her sister. There were tensions between Mrs Sharpe, her sister and Mr Dale at times because she was concerned about their drinking problems, but they never fell out with each other. During Mrs Dyson's lifetime, Mrs Sharpe saw her sister every week and telephoned them regularly. She would take them food shopping once or twice a week. In addition Mrs Sharpe attended all of her sister's hospital appointments with her. After Mrs Dyson was admitted to hospital, Mrs Sharpe visited her every day during her last illness

(c) she did not start to visit her sister only when she was terminally ill nor did she only start visiting Mr Dale after her sister died. Prior to Mrs Dyson's admission to hospital, Mrs Sharpe had been close to her sister and had assisted her. When Mr Dale was 50, Mrs Sharpe prepared a special photograph album for him

(d) she had reported the Defendants to the police to stop them threatening Mr Dale. The police spoke to her and Mr Dale on 21 August 2019 about the reports. Mr Dale informed the police that his relationship with the Defendants was no longer good and that they believed that they were entitled to the property and to the monies in the account

(e) she had changed the locks of the property at Mr Dale's request after he had been in hospital to prevent the Defendants from having access to the property as they had keys to it. While he was in hospital, he had sent a text message to Mr Ellis asking for the keys to be returned to him. Mr Ellis called him back and was abusive to him. That led to Mr Dale asking Mrs Sharpe to arrange for the locks to be changed

(f) she did not tell any medical professionals that the Defendants were supplying Mr Dale with alcohol so that he would die, although following Mrs Dyson's death they did provide him with alcohol

(g) she accepted that she did not inform the Defendants about Mr Dale's death or funeral arrangements as they were estranged from him and would have caused trouble

(h) Mr Dale did not visit Mrs Dyson because he did not want to do so, even though Mr Dyson tried to persuade him to. In any event Mrs Dyson had asked Mrs Sharpe during her last illness to tell Mr Dale that she did not want him to visit her at the hospital and the care home and Mrs Sharpe was simply relaying that message. Mrs Dyson was concerned that Mr Dale would cause difficulties if he had been drinking

(i) Mr Dale considered that his relationship with the Defendants had broken down because they had wrongly taken and kept the monies in the account and they had threatened him.

The Witnesses

18. In the course of the trial I heard from 11 witnesses, 4 for Mrs Sharpe (including herself) and 7 for Mr Dyson and Mr Ellis (including themselves).

The Claimant's Witnesses

19. I begin by considering the Claimant's Witnesses.

(a) Sharon Sharpe

Mrs Sharpe is not a person of great sophistication (it was noticeable that a number of questions had to be rephrased in simpler language before she could answer them), but I am satisfied that she does not have the nefarious guile to have embarked on a campaign of casting dishonest aspersions on the Defendants in order to prevail upon Mr Dale to change his will in her favour. She was not a good historian, but contrary to Miss Del Luongo's submission that she was making up evidence and telling lies to cover her tracks I am satisfied that she was doing her honest best to answer the questions put to her. In particular, I accept her evidence that, whatever issues she may have had with Mr Dale during the lifetime of her sister, she felt sorry for him after her death and that she helped him as much as possible. Where her evidence conflicts with that of the Defendants, I prefer her evidence, unless the contrary is stated.

(b) Riki Sharpe

Miss Sharpe's evidence was limited and at times vague (particularly as to when she had last seen her aunt or when she had seen Mr Dale before the incident on 22 July 2019 or as to the closeness of her relationship with him and her aunt) and she accepted Miss Del Luongo's proposition that she had a selective memory (although

having seen her give evidence I am not sure that she quite understood what a "selective memory" was). She did, however, provide confirmation of Mr Dale's upset on 22 July 2019 when listening to the abusive voicemail from Mr Ellis. I accept her evidence in that respect. It was suggested that there was something sinister or untoward in her then boyfriend finding a solicitor to prepare Mr Dale's new will, but I can see nothing untoward in that process. I am satisfied that she had no part to play in the will-making process.

(c) Jayne Ward

Mrs Ward was a friend of Mrs Sharpe's. She had not known Mr Dale or visited him before he was hospitalised in March 2019. She provided confirmation of the care which Mrs Sharpe provided to Mr Dale. She also provided confirmation of Mr Dale's concern when he was still in Calow hospital about his house keys and the abusive phone call which he received from Mr Ellis when she had texted Mr Ellis on Mr Dale's behalf to ask him for the return of the keys. I can see no reason why she should have invented that incident or her evidence about Mrs Sharpe. She was clearly doing her best to assist the Court in giving evidence to the best of her recollection and belief. I accept her evidence.

(d) Hollie Ridgway-Coates

Mrs Ridgway-Coates was admitted to the Roll of Solicitors on 3 June 2013 and is now the Head of the Private Client department at Coates Solicitors and practised in the area of wills and probate. She was highly experienced in will writing and had written hundreds of wills in her 9 years of practising as a fully qualified solicitor. She took Mr Dale's instructions for the execution of his new will at the property on 25 July 2019 and attended again on the occasion of its execution on 16 August 2019 together with her secretary, Clare Antcliff. She was a clear and careful witness who had made contemporaneous notes in her will file which matched the evidence which she gave in court. Her evidence was not shaken in cross-examination. I accept her evidence in its totality.

The Defendants' Witnesses

20. I now turn to the Defendants' witnesses.

(e) Wayne Dyson

I agree with Miss Harrison that Mr Dyson was a witness worthy of no credit. There were numerous matters which

were unaccountably omitted from his witness statement which he purported to remember and rely on subsequently, for example consulting Mr Dale about the NatWest monies and washing and cleaning for him after he was discharged from care. He also frequently contradicted himself, for example in claiming to have treated Mr Dale as a father and that Mrs Sharpe hated Mr Dale, but yet being content to leave Mr Dale in her care. He alleged that Mrs Sharpe had said awful things about Mr Dale to his mother, but did not bother to report them to the staff in the care home. Astonishingly he said that his brother's abusive language to Mr Dale would not have upset him and that he considered his own actions to be blameless.

(f) Andrew Ellis

Mr Ellis was aggressive and uncooperative in his evidence. It is clear that he had little time for Mr Dale after his mother's death and his contempt quickly manifested itself on more than one occasion, as will be apparent from the narrative which follows. He was content to allow his brother to abstract the NatWest monies and never bothered to ask where they had gone. He was abusive to Mr Dale on a number of occasions and I am satisfied that there were other instances of such abuse which terrified Mr Dale, but of which there is no longer any extant record. It was the evidence of both Mr and Mrs Hodgskin, which I accept, that Mr Dale was terrified of Mr Dyson and Mr Ellis and I conclude that it was that which led him to change his will rather than any aspersions cast on them by Mrs Sharpe.

(g) Kathryn Dyson

Kathryn Dyson seemed unable to remember very much and was singularly and markedly unwilling to comment on a number of matters which were put to her in cross-examination, particularly anything controversial. For example, when she was asked by Miss Harrison whether Mr Dale had been abusive to Mr Dyson, her response when pressed, after an initial denial, was

"No, I couldn't comment on abusive treatment. If she mentioned it to Wayne, he never mentioned it to me",

a pattern which was repeated throughout her evidence. As Miss Harrison put it, her stock answer was that either things happened before she knew her husband or that she knew nothing. Her evidence did not tally with that of her husband in a number of instances and she did not confirm his ongoing involvement in Mr Dale's life after March 2019. I formed the distinct impression that she

was uncomfortable throughout in giving her evidence and I could place little weight upon it.

(h) Julie Bagshaw

It was apparent that she was not a close friend of Mrs Dyson and Mr Dale and that she knew little, if anything, from her own knowledge. Her recollection was poor. I derived no assistance from her evidence.

(i) Nicholas Hodgskin

I cannot regard Mr Hodgskin as a witness of truth. I regarded Miss Harrison's cross-examination of him as nothing short of devastating. The care records, which were put to him at some length, contradicted his testimony in almost every particular. He made numerous serious allegations about Mrs Sharpe, but then withdrew significant parts of his testimony in cross-examination and admitted that part of his evidence was a lie. As Miss Harrison again put it, he appeared to have no conception of the importance of giving evidence on oath. What he did admit, and what I do accept, is that Mr Dale was terrified of Mr Dyson and Mr Ellis.

(j) Joanne Hodgskin

Similarly I do not regard Mrs Hodgskin as a witness of truth. She seemed to have a wholly cavalier regard to whether she had told the truth in her witness statement or not. She too withdrew many significant parts of her testimony in cross-examination and admitted that she had not reported the alleged abuse of Mr Dale by Mrs Sharpe to anyone. What she did admit, and what I do again accept, is that Mr Dale was terrified of Mr Dyson and Mr Ellis.

(k) Tony Masters

Mr Masters accepted that he had socialised and gone on holiday with Mrs Dyson and Mr Dale perhaps 30 years ago. He confirmed that Mr Dale had always been a heavy drinker ("God, yes"). He was not sure whether Mr Dyson and Mr Ellis had ever called Mr Dale "Dad": it had never crossed his mind. He had not seen Mr Dale towards the end of his life – certainly not for "a good few months" and not to talk to for up to a year before he died - since he had been seriously ill with cancer himself. He was not aware of the accusations made against Mr Dyson or Mr Ellis. He accepted that the statements which he had made in his witness statement were not supported by any evidence of what he himself knew or had seen. He believed what had occurred because that

was his opinion. He had no proof of what he believed, but he was entitled to have his opinion. Given that Mr Masters had not seen Mr Dale for some time and not to talk to for up to a year before he died, and given that he admitted that his statement was based on his opinion rather than any evidence, I can give no weight to any of the assertions made by Mr Masters in his witness statement and do not regard them as assisting me in resolving the issues which I have to decide.

(I) Emma Hewins

A witness statement had been provided to the Defendants by Mrs Hewins, Mrs Sharpe's estranged daughter. However on the morning on which she was due to appear to give evidence, Miss Del Luongo explained that she no longer wished to give evidence against her mother. Miss Del Luongo nevertheless sought to admit the statement, although she had not served the relevant Civil Evidence Act notice. She needed permission to serve such a notice out of time, which I declined to give. The contents of Mrs Hewins' evidence, although brief, were wholly contentious and, in the absence of her being called as a witness by Miss Del Luongo (whether under compulsion or not) and cross-examined by Miss Harrison, it was not a statement on which I could properly place any weight. Admitting the statement, but then not giving it any weight, would not have served any useful purpose.

21. I shall now consider the evidence of the main witnesses with particular reference to the averments in paragraphs 14 and 15 and 16 to 18 of the Defence and Counterclaim (and also paragraphs 8 and 10 and 14 to 16 of the Reply and Defence to Counterclaim, which answer them). Although I have set out the main averments in paragraphs 14 and 15 of the Defence and Counterclaim, it will be appreciated that the allegations and the responses to them are not all neatly self-contained and that evidence relating to one averment may also be relevant to another averment as well (particularly, for example, in the cases of paragraphs 14(a), (b) and (e) of the Defence and Counterclaim). The judgment and its findings must be read as a whole, even if for the purposes of exposition it is necessary to divide up the narrative to reach conclusions on particular aspects of the evidence. In a case such as this it would be artificial to divide up the narrative and the analysis and treat them entirely separately and I have not done so. I have nevertheless considered the submissions of both sides in reaching my conclusions, even though for the purposes of exposition the submissions appear at a later stage of the judgment.

(a) Mrs Sharpe had a historic and well-publicised dislike of Mr Dale during his lifetime

Mrs Sharpe's Evidence

22. Mrs Sharpe admitted that she and Mr Dale had a somewhat strained relationship on occasions during her sister's lifetime. Mr Dale was an alcoholic and her sister also struggled with drinking problems. Mrs Sharpe was concerned about the impact that Mr Dale's alcoholism would have on her sister's life and she accepted that she made her feelings apparent. Mr Dale and Mrs Dyson had a volatile relationship and argued frequently. However, Mrs Sharpe understood that her sister was able to make her own decisions and she accepted their relationship. Her concerns were only ever for the welfare of her sister. As she put it to Miss Del Luongo

"I did like Brian, though sometimes he were hard work".

23. Miss Del Luongo put to her a text message which she had sent to Mr Dyson on 26 January 2019 in which she referred to Mr Dale as a "twat". Mrs Sharpe explained that that was when her sister was in hospital. Mr Dale had said that he would go and see her, but he did not and she was angry with him. She had explained to him what a brain tumour was and he still did not go. (That is also relevant to Mr Dale's reluctance to visit Mrs Dyson in hospital, even though she was terminally ill, to which I shall return later.)

Miss Sharpe's Evidence

24. Miss Sharpe said that the relationship between her mother and Mr Dale was up and down at times. He drank a lot and her mother did not approve of his drinking habits. However, on the whole, they did get along fine. They would spend time together during her aunt's lifetime and her mother continued to visit him after Mrs Dyson passed away.

25. Miss Sharpe never heard her mother making any comments about Mr Dyson or Mr Ellis to Mr Dale.

Mr Dyson's Evidence

26. By contrast, Mr Dyson said that throughout most of Mr Dyson's life, Mrs Sharpe had had nothing to do with Mr Dale as she had always said how much she hated him and tried to get her sister to move out of the house and leave him. Mr Dyson had been present at some of the conversations over the years when she had told her

sister to leave Mr Dale and even one memorable moment when she suggested that her sister should “knock him off” by poisoning him.

27. Over the previous 31 years Mr Dyson would be surprised if Mrs Sharpe had seen Mr Dale even 30 times. She hated him and was not shy about telling everybody that she met that she hated him and how bad he was for her sister because of his drinking. She had nothing to do with Mr Dale at all during their lives and very little to do with the family. She was not close to her sister and her side of the family did not visit.

28. Mrs Sharpe had nothing to do with Mr Dale during Mrs Dyson's illness at all. It was only after she died that she suddenly sprang onto the scene and, though they did not know it at the time, Mr Dyson now believed that she had an agenda for suddenly visiting him so regularly – namely, to manipulate him into believing untrue things about Mr Dyson and Mr Ellis in order to get him to change his will so that she would inherit all of his mother's and Mr Dale's property and their family home.

29. It was strange that Mrs Sharpe started visiting Mr Dale when she openly disliked him and had for so many years. Mr Dyson thought that she was just being nice or a good relative in helping her nephews out in supporting Mr Dale, but now he believed otherwise.

30. When Mr Dale was transferred to the rehabilitation unit in Darley Dale (in fact it was the unit in Babington) on 18 April 2019, Mr Dyson and Mr Ellis became aware that Mrs Sharpe was suddenly visiting him regularly. In fact she only visited him once. When he was released back home on 2 May 2019, Mr Dyson and Mr Ellis both went round to the house to move Mr Dale's bed for him, but were surprised to discover that Mrs Sharpe was already there with a person whom he had never met before (that was Mrs Ward). They both blanked Mr Dyson and Mr Ellis entirely, which they found very bizarre and they left. They went into see Mr Dale and found that all of his “stuff” had already been moved round to where he wanted. It was very strange and Mr Dyson did not know who the other person with Mrs Sharpe was, just that she was a friend of Mrs Sharpe's who was helping move his bed around for Mr Dale. Mr Dyson said that he and his wife had gone to the house on the previous day to clean it before Mr Dale's return, but could not explain why that was omitted from his witness statement. His evidence to Miss Harrison about Mrs Ward was this

“A. I had never seen her before.

Brian didn't know who she was. I had never met her before.

Q. But she was regularly visiting Mr Dale?

A. I knew he had never met her before.”

31. I do not accept that Mr Dale did not know who Mrs Ward was and I do not accept the veracity of Mr Dyson's evidence in that regard.

32. Mr Dyson and Mr Ellis put the incident out of their minds and continued visiting Mr Dale, taking him meals and shopping, but refusing his repeated requests to get him bottles of vodka again. Then one day when Mr Dyson visited him, Mr Dale told him that he did not want any shopping that week as Mrs Sharpe was now doing his shopping. Mr Dyson was a little surprised, but agreed that if that was what he wanted then that was fine. He still went up every 2 or 3 days to visit him and once or twice ran into Mrs Sharpe whilst he was there. As soon as he arrived, she would leave. It was most strange. Mr Dyson said that he was told by Mr Hodgskin that Mrs Sharpe was buying him the bottles of vodka which Mr Dyson refused to get him and he believed that that was the reason why he wanted her to do his shopping in the future. Mrs Sharpe was encouraging him to be wholly dependent upon her to meet his alcohol addiction. He had no answer, however, to the social services records of 27 January 2020 which state

“Sue had separately discussed with Nick and Sharon watering down the bottles of wine covertly, which they buy for him which they stated they will do. They stated they had previously done similar when Mr Dale asked them to bring vodka and coke when an inpatient. They had not put any vodka in and Mr Dale had not noticed. Sue asked me not to raise this with Mr Dale”

nor did he have any answer to Mrs Sharpe's text message to Mr Hodgskin on 4 May 2019 that

“Thanks Nick, I've spoken to Brian he understands the alcohol situation he's taking it steady and know vodka is out of the question, he is also an adult I can't tell him what he can and can't have, thanks”.

33. Mr Dyson said that he did not believe that Mr Hodgskin was lying, but as will become apparent in due course I have found Mr Hodgskin to be wholly unreliable as a witness and I place no credence on these

allegations and indeed Mr Dyson was compelled to admit to Miss Harrison that

“Q. You have no knowledge of Sharon providing vodka to Brian.

A. No.”

(b) Mrs Sharpe had a limited relationship with both Mrs Dyson and Mr Dale in their lifetimes

Mrs Sharpe's evidence

34. Mrs Sharpe said that she and her sister had always had a special relationship (“We were very very close, me and Ann”). She was one of eight children and their father was an alcoholic. Her sister looked after her from an early age. Mrs Sharpe was about 9 or 10 years old when her sister became pregnant at the age of 18. Her sister left the family home at that time and moved to a flat in Dronfield. She said that there had been a big family falling out and she was the only one who had taken her sister's side. Mrs Sharpe would regularly visit her flat after school and would stay over during the weekends. After approximately one year, her sister moved to Holmesfield close to Mrs Sharpe's mother's house where Mrs Sharpe lived and she continued to see her sister frequently.

35. The sisters continued to have a close relationship throughout their lives. Mrs Sharpe visited Mrs Dyson and Mr Dale on a regular basis. The sisters would call and message each other nearly every day. She would always speak to her sister if she had any problems. Mrs Sharpe said that she assisted them with the shopping on a weekly basis from around 2017 after Mr Dale had lost his driving licence and she attended all of Mrs Dyson's hospital appointments from around 2016 after she was diagnosed with multiple sclerosis. She did not accept that her nephews were doing the shopping (“the odd loaf of bread now and again, but not shopping that I know of”).

36. Throughout their adult lives, Mrs Sharpe said that she, her sister and Mr Dale used to socialise together at various pubs around Dronfield and Holmesfield, particularly during the summer months. On occasions, they would look after her dog for 2 weeks when she went on holiday in the summer.

37. Despite their occasional differences, Mr Dale was accepted as part of the family. In 2005, the sisters arranged a surprise party for Mr Dale's 50th birthday

and Mrs Sharpe made him a photo album of family memories for his birthday which was in evidence before me.

38. Mrs Sharpe went in the ambulance with Mrs Dyson when she suddenly became ill in January 2019. Mrs Dyson was put into an induced coma for around 4 days and Mrs Sharpe visited her every day. She was informed a few days later that her sister only had a matter of months to live and was devastated by the news. She continued to visit Mrs Dyson every day after she moved to The Green Care Home. She cared for her sister and wanted to spend as much time with her as possible given the situation. Mr Dyson and Mr Ellis would visit their mother occasionally at the care home, but not every day. Mr Ellis would visit at weekends and Mr Dyson on some days throughout the week. Prior to March 2019 she never heard Mr Dale say a bad word about Mr Dyson or Mr Ellis.

Miss Sharpe's Evidence

39. As explained above, Miss Sharpe is the daughter of Mrs Sharpe and was the niece of Mrs Dyson. Mr Dale was, in effect, her step-uncle.

40. Miss Sharpe said that she had always had a good relationship with Mrs Dyson and Mr Dale. She saw them at the pub or at her mother's house or at their own house. In 2016 she stayed with them for around 2-3 weeks whilst finding accommodation for herself. However, she could not remember in cross-examination when she had last seen her aunt. She had not seen her whilst she was in hospital during her last illness. She continued to have a good relationship with Mr Dale following her aunt's death, although it was not a close relationship, as she accepted in her evidence (he did not, for example, go to her house) and again she could not remember in cross-examination when she had last seen him before the incident on 22 July 2019 or whether she had seen him after that incident.

41. She said that Mr Dale did not have a close relationship with Mr Dyson and Mr Ellis. She understood from him that they did not see him often and they did not have much to do with him. She never heard Mr Dale ever call them his children.

42. As to these allegations in (a) and (b) above, I am satisfied that Mrs Sharpe and Mr Dale did have a strained relationship on occasions because of his abuse of alcohol and its impact on Mrs Dyson and that she made her feelings apparent to her sister and her family

on more than one occasion. It may well be that in moments of exasperation that she said words to the effect that her sister should leave Mr Dale. Nevertheless, I am also satisfied that what Mrs Sharpe said about Mr Dale neatly encapsulates their relationship:

"I did like Brian, though sometimes he were hard work".

43. I do not accept the evidence of Mr Dyson that Mrs Sharpe had virtually nothing to do with Mr Dale. She was close to her sister (as to which see the next paragraph) and perforce must have had many more dealings with Mr Dale than the 30 times in 31 years suggested by Mr Dyson.

44. I conclude that the two sisters were close as a result of the family falling out years before when Mrs Sharpe had been the only member of the family to take her sister's side, although there were tensions between them from time to time because of Mrs Dyson's relationship with Mr Dale, which was of obvious concern to Mrs Sharpe and which clearly troubled her from time to time. I reject Mr Dyson's evidence that it was only after Mrs Dyson died that Mrs Sharpe "suddenly sprang onto the scene".

(c) Mr Dyson and Mr Ellis were raised as Mr Dale's sons and by the 2019 will he entirely disinherited them of both their mother's and Mr Dale's estates

Mrs Sharpe's Evidence

45. Mrs Sharpe said that her sister and Mr Dale began a relationship around 1990, although they did not live together until 1995. She pointed to a decision of a social security appeal tribunal which found that they began cohabiting on 18 July 1995, at which point Mr Ellis was 23 years old and Mr Dyson 11 years old.

46. She said that Mr Dale did not refer to the Defendants as his children at any point during his lifetime. Mr Dyson's father lived locally and he continued to have a relationship with his father. She said that it would have been inappropriate for Mr Dale to assume the role of the Defendants' father given the fact that Mr Dyson's father was still in his life and Mr Ellis was an adult. Mr Dale had his own biological children, but she understood from him that he was not in contact with them.

Mr Dyson's Evidence

47. Mr Dyson, who is an information technology onsite technician, was born on 8 February 1984. Like Mr Ellis he considered that he was one of Mr Dale's two sons, although they were not related by blood.

48. Mr Dyson knew that his mother and Mr Dale both made wills on 1 October 2003 through Will Makers of Distinction. The wills were mirror wills by which they left everything to each other, but if they both died, everything was to pass to him and his brother equally. His mother and Mr Dale entrusted their original wills to his safe keeping after they had made them.

49. Mr Dyson said that Mr Dale came into his life when he was around 4 years old and raised him as his son. In his witness statement he said that he would always introduce Mr Dyson as his son and both he and his brother referred to him as their father. Mr Dyson considered him as his father and, although they were not related by blood, they were family. Mr Dyson said that he grew up in a typical family of his mother, Mr Dale, his brother and himself and that they were a close family for 32 years. However, in cross-examination by Miss Harrison he admitted that he never called Mr Dale "Dad", that he never took Mr Dale's name and that his wedding invitation to his mother and Mr Dale was addressed to "Mum and Brian". It was correct that his name was logged on Mr Dyson's mobile phone was "Brian". He thought that the description of him as a "friend" rather than as a son in Mr Dale's 2003 will was the will writer's choice rather than Mr Dale's. His relationship with his own natural father was weak and he might only see him every 3 months, although from childhood once every 2 years.

50. Mr Dyson said that Mr Dale had moved into the house when he was 4 (in 1988) rather than 11 (in 1995). Miss Harrison pointed out that the appeal tribunal had found that the cohabitation between his mother and Mr Dale had begun in 1995, but he said that that was a lie on the part of his mother. Whether the cohabitation began in 1988/9 or 1995 (and I incline to the view that the latter is more likely to be the correct date given the factual findings of the tribunal, although I accept that Mr Dale is likely to have been on the scene for some time before cohabitation began), Mr Dyson (unlike his older brother) was still a boy when it began and is more likely to have seen Mr Dale as a paternal figure.

51. As Mr Dyson became older, he came to realise that Mr Dale did have a problem with drinking. He was an alcoholic. He struggled at various points with his alcohol

addiction throughout their lives. He lost his driving licence 3 times due to drink driving. The first time he was on the way home from a shift in the fire service and because of that he was forced to take early retirement. He then took over management of the Rutland Arms Public House in Holmesfield in 1997 when Mr Dyson was 13 years. Obviously with hindsight that was not a good idea for Mr Dale to become a pub landlord, but it was what he wanted and Mr Dyson was certainly too young at the time to have any involvement in such decisions. The second time he lost his licence was whilst they were living at the pub. Mr Dale really struggled with his alcoholism in the later years of them living at the pub and eventually Mrs Dyson convinced him to sell the pub on and they all moved to live back at her house in Holmesfield. They were certainly living at her house when Mr Dale lost his licence for the third time as Mr Dyson remembered that they had a family meeting about it and convinced him not to reapply for his licence again because they did not want to risk losing him. Mr Dyson and Mr Ellis promised them both that they would drive them wherever they needed to go.

52. Unlike his brother, Mr Dyson was not aware of Mr Dale becoming difficult to live with as he was constantly drunk and abusive towards Mrs Dyson. He said that his brother never mentioned it to him. I am bound to say that I found that answer incredible. If Mr Dale were indeed becoming difficult to live with as he was constantly drunk and abusive towards Mrs Dyson, her son would have known about it. If his brother were aware of it, it is inconceivable that he would not have mentioned it to his sibling.

53. Mr Dyson took them both shopping every week for their weekly groceries and he and his brother took them anywhere else that they needed to go. It was never a burden as they were always a very close family. Mr Dyson met up with them every Sunday for family time and in later years brought his own children along so they could also enjoy a close relationship.

54. Due to Mr Dale's drinking he was not fit to do any gardening or house repairs, so Mr Dyson and Mr Ellis always cut the hedge and lawn and Mr Ellis always performed any maintenance needed on the house for them.

55. Mrs Dyson was diagnosed with multiple sclerosis about 4 years before her death. As she deteriorated, she found it increasingly difficult to get around the house and to go out with her sons for her shopping and trips. Mr Dyson and Mr Ellis made sure that they had

everything they needed. They got their food and shopping every week, maintained their house and gardens for them, took them out individually or together wherever they needed to go, whether that was for doctor's appointments or hospital appointments, or just to get some fresh air going somewhere different. He accepted, however, that Mrs Sharpe took his mother to all of her hospital appointments because both he and his brother were at work, although he then contradicted himself and said that he did not mean "all" of her appointments. He did not accept that Mrs Sharpe and Mrs Dyson were close, at least not towards the end. He did not accept that they spoke every day. Nor did he accept that Mrs Sharpe had compiled a photograph album for Mr Dale's 50th birthday, an album which he had never seen before, although he had taken the photographs.

Mr Ellis's Evidence

56. Mr Ellis said that he considered that he was one of Mr Dale's two sons, although they were not related by blood. He accepted, however, that he had never called Mr Dale "Dad" and said that it would be funny for a 19 year old to call him "Dad". In return Mr Dale called him "Andy" or "Andrew". Mr Ellis accepted that he had a father of his own, but he had brought no evidence of that relationship and it was now too late to do so.

57. He said that Mr Dale had moved in when he was 17, in 1989, and that he had moved in before 1995. Miss Harrison pointed out to him that the appeal tribunal had found that the cohabitation between his mother and Mr Dale had begun in 1995, but he said that that was a lie on the part of his mother. Whether the cohabitation began in 1989 or 1995 (and again I incline to the view that the latter is more likely to be the correct date given the factual findings of the Tribunal, although I accept that Mr Dale is likely to have been on the scene for some time before cohabitation began), the reality is that Mr Ellis was on at least the cusp of adulthood, if not a young man and I do not accept that "We were both brought up by Brian". His brother may have been, but he was not. Mr Ellis accepted that he had moved out of the house when he was 23. Mr Ellis said that Mr Dale "treated us as his sons and Wayne never knew any different as he was so young when Brian came into our lives". His evidence was that

"5. When I eventually got married, he was there as my father together with my mum. When I had children, he came with to all of our children's Christenings and was known by them

as 'Grandad Bri'. They regularly visited me and I them. They doted upon my children, their grandchildren and my children absolutely loved them in turn.

6. My Mum and Brian would come over every Christmas Day morning with Wayne and his family to celebrate Christmas together as a family and watch the children opening their presents.

7. I have always had a great relationship with Brian. He was my father as far as I was concerned. When they struggled for money but needed a small car to get them around, I was the one who found and purchased the car for them. I would repair and service them whenever necessary and help them get their cars through their M.O.Ts.

8. I would also help them around the house, especially after Brian became less capable.

9. We regularly took them out for drinks and meals, celebrated birthdays and special occasions. Essentially, all of the things that a normal family would do."

58. When his mother eventually decided to buy her council house, which he believed was around 2003, it was offered to her at a reduced rate by the Council due to her long tenancy there. The property was purchased solely in Mrs Dyson's name and it was agreed by both her and Mr Dale that her sons would inherit the house upon their death.

59. Mr Ellis said that they went to a solicitor to confirm that in their wills and they gave him a business card with contact details of the solicitor involved so that there would be no misunderstanding in the event of their deaths. He believed that they also passed the wills to Mr Dyson for safe keeping.

60. Mr Ellis accepted, however, that Mr Dale had contributed to the purchase of the house and that thereafter Mr Dale and Mrs Dyson had regarded the house as being theirs. He denied that he and his brother regarded the house as being theirs.

61. He was asked about Mr Dale's alcoholism, about which he had said in his witness statement

"10. Around 2005/2006 Brian's relationship with alcohol got worse and he was admitted to hospital as he was found incontinent and couldn't get off the floor. He became ever more reliant on my mum for care as he was unable to walk upstairs as he was so unsteady. He became difficult to live with as he was constantly drunk and became increasingly abusive to my mum. He was convicted of drink driving at least twice which put more and more pressure on them as a couple which made their lives more difficult. Wayne and I took it in turns to take our mum to the shops to get their weekly shopping and also to doctor/hospital appointments when necessary."

He accepted, however, that since he was away as a long-distance lorry driver, he was not aware of who was taking his mother to her hospital appointments.

62. Mr Dale, he said, was a functioning alcoholic. He was always drunk. When he owned a pub, he drank; when he was a fruit picker, he drank; when he was in the fire brigade, he drank. He agreed that he was a heavy drinker, but nonetheless functional and that he did not need care until later on; exactly when was not clear, but he suggested before 2016. He accepted that Mr Dale was abusive to his mother:

"Q. He was drunk and abusive to your Mum.

A. Yes, he had times when he was a bit abusive. Yes. That's how families function nowadays."

63. Mr Ellis did not, however, have any concerns for his mother's welfare. He explained that in more detail in re-examination. Mr Dale shouted at his mother, but there was nothing physical ("Not at all. That is why I was not concerned. He was not an aggressive man").

64. The pleaded allegation in paragraph 14(c) of the Defence and Counterclaim was that Mr Dyson and Mr Ellis were raised as Mr Dale's sons and by the 2019 will he entirely disinherited them of both their mother's and Mr Dale's estates. It is obvious that by the 2019 will Mr Dale made Mrs Sharpe the beneficiary of his estate and that Mr Dyson and Mr Ellis no longer stood to benefit from his will as they knew they were entitled to be under his previous will. However, the position is more complicated than the averment suggests.

65. Mr Dyson admitted that he never called Mr Dale

"Dad", that he never took Mr Dale's name and that his wedding invitation to his mother and Mr Dale was addressed to "Mum and Brian". It was correct that his name as logged on Mr Dyson's mobile phone was "Brian". Mr Ellis for his part admitted that he had never called Mr Dale "Dad" and said that it would be funny for a 19 year old to call him "Dad". As I have found, the cohabitation of Mrs Dyson and Mr Dale did not begin until 1995 when Mr Ellis was 23 and I do not therefore accept that Mr Ellis was "brought up by Brian" as he suggested. By contrast, Mr Dyson, who was much younger at the time, is more likely to have seen Mr Dale as a paternal figure.

66. However, what is apparent from Mr Dyson's evidence in paragraph 51 and Mr Ellis's evidence in paragraphs 61 to 63 is that the key to understanding the unravelling of their relationship with Mr Dale after their mother's death was Mr Dale's drinking. It is clear that his incessant drinking was a constant source of difficulties for the family and that he was increasingly abusive towards Mrs Dyson, although I accept that the abuse was verbal and did not involve physical violence. Quite naturally her sons (both of whom I am satisfied were aware of his behaviour, notwithstanding Mr Dyson's denial that he had been told anything by his brother) would have taken their mother's side and I find that they tolerated Mr Dale in later years essentially for their mother's sake. Certainly they were both exasperated by his behaviour in their mother's last months when Mr Dale resolutely refused to go to her bedside, whether at the hospital or in the care home, notwithstanding the fact that she was terminally ill. By the time of her death, whatever may have been the state of their relations in earlier years, I am satisfied that they were at the end of their tether with Mr Dale and that they thereafter behaved in such a way that he changed his will in the light of their behaviour.

(d) By the 2019 will Mrs Sharpe and her daughter effectively became Mr Dyson and Mr Dale's sole beneficiaries, despite receiving nothing under the 2003 will of either Mr Dyson or Mr Dale

67. As a statement of fact it is correct that neither Mrs Sharpe nor her daughter stood to benefit under the terms of the 2003 wills of either Mrs Dyson or Mr Dale. In the circumstances which happened, Mr Dale was the sole beneficiary under Mrs Dyson's will. By virtue of Mr Dale's 2019 will, Mrs Sharpe inherited Mr Dale's estate (including that part of it inherited from her sister, Mrs Dyson), although as will be apparent from this judgment the reasons for the making of the 2019 will were much

more complicated than the bald averment would suggest.

(e) Mrs Sharpe suddenly began to visit her sister when she was terminally ill in around late January 2019

Mrs Sharpe's Evidence

68. From around 2017, Mrs Sharpe said that her sister had told her that Mr Dyson would ignore her calls. She said that she had previously asked him to assist her with the shopping, but he would not respond and Mrs Dyson asked her sister to help instead. Mrs Dyson told her that she did not call Mr Ellis as he also would not answer. As Mrs Sharpe put it to Miss Del Luongo

"Q. Do you accept that Wayne and Andrew helped them?

A. I suppose they did. Sometimes Wayne wouldn't answer the phone, so Ann would ring me to help out".

69. Mrs Dyson gave Mrs Sharpe her bank card in late January 2019 for safe keeping and gave her strict instructions not to give the bank card to her sons as "they would blow the lot". Mrs Sharpe had her sister's bank card until 7 March 2019, which was the day after she died. She gave the card to Mr Dyson following her sister's death in order to pay for her funeral expenses.

Mr Dyson's Evidence

70. Whilst Mrs Dyson was in hospital, Mr Dyson made sure that he saw Mr Dale every other day, taking anything which he required with him and taking his children with him more often than not. Mr Dyson knew that Mr Dale would struggle without the constant support of his partner as they had never really been apart in the 32 years of their relationship.

71. Mr Dale loved his grandchildren and they were one of the main reasons which he gave for being able to stay sober for such a lengthy period up until Mrs Dyson's hospitalisation. However, Mr Dyson said to Miss Harrison that for up to a year he had kept himself at a reasonable level, which was quite an achievement for someone with his alcohol issues, but he accepted that latterly there was no good period when Mr Dale was not drunk every day ("He was not, not dry, no. He had gone from drinking a bit to being a functional alcoholic, yes.") Unfortunately, on one of those visits Mr Dyson

coincided with the call of a taxi. It transpired that Mr Dale had been calling taxis and paying them to fetch him vodka. Mr Dyson had quite firm words with him about it, saying that they were losing their mother and he did not want to lose Mr Dale as well. They both got upset and Mr Dale promised that he would stop calling the taxis to bring him vodka. Mr Dyson also spoke to the taxi companies directly and asked them to be aware of the situation.

72. Mr Dyson tried on every visit to encourage Mr Dale to go with him to visit Mrs Dyson in hospital again, but he would just become upset. Mr Dyson believed that he did not want to go because he did not want to see his mother in that condition in the hospital. Mrs Dyson and the family were his life and Mr Dyson believed that he loved her very much, but he could not convince him to visit her in hospital. I note that it was Mr Dyson's own evidence that Mr Dale would not visit Mrs Dyson in hospital. In that event, and I shall return to this later, the first allegation of misrepresentation, that Mrs Sharpe prevented Mr Dale from visiting Mrs Dyson in hospital, must fail.

73. On 6 February 2019 Mrs Dyson was transferred from the hospital to The Green Care Home for palliative care. The care home was very supportive of the whole family, but there were a number of things which Mr Dyson was allegedly told by care home staff which caused him concern and which he believed were relevant to the current case. Some of what he was told by the care home staff they considered so important that they noted it on Mrs Dyson's case notes. He was asked why the staff had not given evidence about these allegations, but said that they did not want to get involved because of the risk to their jobs. He was asked by Miss Harrison whether there was a safeguarding report about these matters, but he said that there was not:

“Q. So the staff were concerned enough to tell you about this, but not sufficiently concerned to make a safeguarding report about it?

A. No.”

74. Mrs Sharpe suddenly started visiting Mrs Dyson in the care home very regularly – that was quite unusual because she did not often visit the family or Mr Dyson's home before that point. At the time Mr Dyson put it down to her wishing to spend more time with her sister through her last days and did not think it unusual.

75. Mrs Sharpe instructed the care home not to allow Mr Dale to have any contact with Mrs Dyson. She claimed that the thought of Mr Dale visiting was upsetting her sister, which was simply untrue. Every time Mr Dyson visited his mother she asked about Mr Dale and how he was and whether they could get him to come and visit her. Miss Harrison put it to him that Mrs Dyson was concerned that he would get drunk and create a scene, which he denied. But his answer to the proposition that it was Mrs Dyson herself who had said that she did not want Mr Dale to go and see her was

“I didn't know that at the time”

76. Again, however, he agreed with Miss Harrison that

“Brian didn't want to go”

then

“He did want to see her, but he didn't want to go.

He wanted to go, but he didn't want to travel.

Q. You could have taken him.

A. I could not physically drag him into the car.

Q. But he didn't want to go. He never wanted to go.”

Again, on the Defendant's own evidence, the allegation that Mrs Sharpe prevented Mr Dale from visiting Mrs Dyson in hospital must therefore fail.

77. Mr Dyson said that Mrs Sharpe put a new sim card in her sister's phone without her permission, which prevented Mr Dale from even speaking to his partner on the phone. Again Mr Dyson did not know anything about that until too late. Mr Dale just believed that his partner did not want to see him or speak to him because of his drinking. Nothing could have been further from the truth. Mrs Dyson desperately wanted to see and speak to Mr Dale – he was her constant companion up to that point and he believed that she loved him very much. When asked by Miss Harrison about how he knew that Mrs Sharpe had put a new sim card in the phone, he said that she had told him, but he could not explain why that allegation had been omitted from his witness statement. Nor did he have an answer to the point that, even with a new sim card Mrs Dyson herself could have phoned Mr Dale on her own mobile, although he accepted that she

did not in fact do so.

78. Mr Dyson was told that the care staff overheard Mrs Sharpe saying nasty things about Mr Dale to her mother and trying to convince her to change her will to remove Mr Dale. It seemed as though, each time Mrs Sharpe visited, she said horrible things about Mr Dale and put pressure on her sister to disinherit him as after each of her later visits Mrs Dyson was left upset and anxious. Mrs Dyson would tell her sons of these conversations when they visited her and they would reassure her that it was just Mrs Sharpe being nasty about Mr Dale as she always had been. She always believed that Mr Dale was bad for her sister and had never been shy about communicating her poor opinion of him to everyone in the family. Miss Harrison asked him when he had found out about what Mrs Sharpe was allegedly saying:

“Q. When were you told this?

A. On a visit, probably in the second week.

Q. What did you do about it?

A. I had a chat with Sharon. She agreed it was not the right thing to do.

Q. Did you make a complaint to the staff?

A. No.

Q. So this happened. It was terribly upsetting and yet no report was made about it?

A. We spoke about it. It was not the right thing to do.

Q. You did nothing.

The care home staff did nothing.

Sharon didn't complain.

Is that really your evidence?

A. Yes.”

79. Mr Dyson drew attention to extracts from the care

home notes and specifically drew to the Court's attention to the entry on 15 February 2019 wherein Mrs Sharpe told the care home workers not to permit a visit from Mr Dale and the entry on 22 February 2019 where Mrs Dyson was left so upset after a visit from Mrs Sharpe that she was constantly repeating “I do not believe it”. Mr Dyson hated to think what Mrs Sharpe had said to his mother which left her so utterly distressed and constantly repeating “I do not believe it”. Mr Dyson believed from what he heard from his mother up to that point and from the carers afterwards that it was yet more nasty comments which Mrs Sharpe was saying about Mr Dale to try and convince her to change her will.

80. He accepted, however, that what the care home notes actually revealed for 15 February 2019 was that his mother was in a totally confused state that day. Indeed it is apparent from them that Mr Dyson was seriously misrepresenting the latter entry in the notes altogether since what the notes said was not that Mrs Dyson was left so upset after a visit from Mrs Sharpe that she was constantly repeating “I do not believe it”, but rather

“Ann was visited by her sister today, sister a bit worried about Ann being incoherent, does not make more sense what she is saying. Checked Ann and she appears to repeat the same sentence no matter what asked “I do not believe it”, sliding off her chair, not able to seat upright in her chair, made comfortable in bed. When mobilizing with her zimmer frame very difficult to follow a command and move her legs in the right direction ... Ann started Fentanyl patches 12 mcg yesterday afternoon, side effects? Increase confusion, drowsiness ...”

81. However, said Mr Dyson, his mother did not fall for her sister's manipulations and did not change her will to disinherit Mr Dale. Mrs Dyson left everything to Mr Dale and left her sons instructions about what they needed to do once she had died.

82. As is apparent from what I have said above, I do not accept that Mrs Sharpe “suddenly began to visit her sister” when she was terminally ill. I do find that Mrs Sharpe regularly accompanied her sister to her hospital appointments and that she went to the hospital with her sister in the ambulance when her sister collapsed in January 2019. She visited her sister every day in the hospital and later during her stay at the care home during the latter stages of her terminal illness.

83. I do not accept the allegations made by Mr Dyson about things which Mrs Sharpe is alleged to have said to the care home staff. The allegation is not borne out by the care home records and Mr Dyson had no answer to the point that, on his version of events, the staff were concerned enough to tell him about it, but were not sufficiently concerned to make a safeguarding report about it. Moreover, as I have found in paragraphs 79 to 80 he has seriously misrepresented the actual meaning of the notes for 15 February 2019.

84. I am also satisfied that it was Mrs Dyson herself who did not want Mr Dale to visit her in hospital or the care home because she was concerned that he might cause a scene when drunk. That concern is supported by the evidence of Mr Dyson that his children went to the house less frequently because it was always a risk taking them with him as Mr Dyson would not know what state Mr Dale would be in when they arrived. Kathryn's Dyson's evidence is also consistent with Mrs Dyson's concerns about how Mr Dale would behave when in drink. In reality Mrs Sharpe was not engaged in some Machiavellian plot to poison her sister's mind against Mr Dale in her last weeks. In any event, it is clear even from the Defendants' own evidence that Mr Dale simply did not want to visit Mrs Dyson during her last illness.

(f) Following Mrs Dyson's death on 6 March 2019, Mrs Sharpe began suddenly visiting Mr Dale at his property, having previously had very little to do with him

Mrs Sharpe's Evidence

85. Mrs Dyson died on 6 March 2019. Mrs Sharpe said that she considered it normal that families might not be amicable at all times, but that tragic events could often bring people together. She had assisted her sister and Mr Dale with the shopping during her sister's lifetime and she continued to help and support Mr Dale following her sister's death. She explained why to Miss Del Luongo

"Q. After her death, you felt you needed to support Brian?

A. Yes, for the last year. Taking him the shopping. He had nobody, nobody to do the shopping. I couldn't leave him. I felt sorry for him.

...

Nick and Joanne were not looking after him. I was doing the shopping and cleaning. They just went round to watch TV. I cleaned and emptied bins, hoovered, doing the washing. The house was clean when he first came out of hospital on 2nd May."

86. Miss Del Luongo put it to her that she hated Mr Dale, as Kathryn Dyson alleged, which she vehemently denied. She also denied that she had ever said, as Mr Dyson alleged, that her sister "should knock" off Mr Dale by poisoning him. She rejected suggestions that she had told her sister that she should leave Mr Dale or shove him down the stairs ("ridiculous") or that it would be better if he died

"Q. You didn't like him.

A. I did. Yes I deny those allegations. I say they're not true. No, I never said anything awful about Brian. No.

Q. Did you ever suggest to Ann that she should leave Brian.

A. No.

Q. Have you ever suggested changing her will to cut him out of it?

A No."

87. On 22 March 2019 Mr Dale suffered from two seizures and was hospitalised in Calow Hospital due to a large consumption of alcohol. He was housebound and was unable to buy the alcohol himself. Mrs Sharpe had previously bought wine for him. Given that he was an alcoholic and had been dependent on alcohol for as long as she knew him, she thought that it would have been dangerous to withhold alcohol from him entirely and he could have suffered from withdrawal symptoms. She therefore bought him some wine, but watered it down before giving it to him. She did not buy any other alcohol for him. She would buy around 8 bottles of wine for a one week period and would give him the bottles over the course of two visits throughout the week. She had informed social services about the situation and they knew that she was watering down his wine and not buying him vodka.

88. She understood from Mr Dale that the Defendants

had keys to his house at this time. She believed that they supplied him with the alcohol which caused him to be hospitalised. She said that there was no one else, apart from herself and the Defendants, who used to visit Mr Dale at that time and she was not aware of any other way for him to have obtained the alcohol. She accepted that Mr and Mrs Hodgskin used to visit him after he came out of hospital, but that was after he had been discharged back home. I note that it was accepted by Kathryn Dyson that her husband and Mr Ellis did indeed buy alcohol for Mr Dale, a matter to which I shall return below.

89. There were some inconsistencies in her evidence as to who was then doing shopping while Mrs Dyson and Mr Dale were in hospital and she was visiting and when she first bought alcohol for Mr Dale, but I do not need to resolve them. Mr Dyson and Mr Ellis must have been doing shopping when their mother was in hospital since Mrs Sharpe was at the hospital with her sister on a daily basis. In any event it was Mrs Sharpe's evidence that she resumed shopping for Mr Dale when he came out of hospital ("because I wanted to look after him"). By then she had been doing their shopping as she put it "for years" since Mr Dale lost his driving licence, though she could not remember when that was.

90. What she did say, however, was that

"Q. Someone else could have been buying him alcohol?

A. No. They [the Defendants] had his bank card.

Q. Do you accept that other people could have brought him alcohol?

A. No. No, no one else went: only Wayne and Andrew and me.

Q. He didn't visit Ann when she was in hospital.

A. No. Brian was not a sociable person. He had no friends. I can't imagine anyone going round to the house."

91. Mrs Sharpe said that she visited Mr Dale when he was admitted to Calow hospital on 22 March 2019. She visited him a couple of times a week there. He was subsequently transferred from the hospital to Babington Rehabilitation Centre on 18 April 2019. She visited him

once there (at a weekend when Mrs Ward's partner, who did not work at weekends, had taken them in his car) and was about to go again when he told her not to bother since he was going home the next day. I am bound to say that, if Mrs Sharpe were engaged in some nefarious scheme to get Mr Dale to change his will in her favour, that is hardly consistent with seeing him only twice a week in hospital and once in rehabilitation over the course of some 6 weeks or thereabouts.

92. On occasions, she would visit Mr Dale in hospital with her friend Mrs Ward. When he was waiting to be transferred to Babington, he asked Mrs Ward to message Mr Dyson asking for the keys to his house to be returned. He was concerned that he would not be able to access his home following his release from Babington as Mr Dyson and Mr Ellis still had the keys to the property. He was weak at the time and Mrs Sharpe believed he did not want the conflict with the Defendants, which was why he asked Mrs Ward to send the message on his behalf. Mrs Sharpe had messaged them several times asking for the keys to be returned, but they would not respond to her messages. Mr Dale said that, if they did not return the keys, he would ask her to get a locksmith to change the locks

"He kept asking me to ask Wayne. He was worried that he would not get into the house when released from Babington.

Q. Why was he worried?

A. He was worried about not getting in to the house. He asked Wayne to drop the keys round my house, but he hadn't done so.

Q. What was his worry?

A. That he couldn't get into the house, physically with the key.

Q. Was it a fear of disinheritance because of a fear of eviction?

A. He didn't think Wayne would give the keys back because of the number of times he had asked him."

...

"Q. Before March 2019 he had said nothing bad about the boys?

him that he needed to ring 101.

What was it then in April which made Brian think that it was not quite right?

A. Ask me that question again.

Q. Why does Brian change his mind about the boys? Why would they do that?

A. He was in hospital because of what Wayne and Andrew had done.

Q. What had they done?

A. Plied him with vodka.

Q. Why was he bothered that they brought him alcohol?

A. He was an alcoholic – vodka was the worst thing.

Q. Brian was upset because the boys brought him alcohol?

A. Yes. He didn't tell me that [sic]. That's why he ended up in hospital.

Q. He was upset because he was in hospital, not because of the vodka.

A. He hardly recognised me. He didn't recognise me at first. He thought that his sister had died. I can't remember whether he said he was upset because they bought him vodka. He was upset because of it.

No, I was not poisoning his mind about the keys."

93. When Mrs Ward messaged Mr Dyson with Mr Dale's instructions from his phone, Mr Ellis then telephoned him within approximately two minutes and began swearing and shouting words to the effect of "It's my fucking house". Mrs Sharpe was present in the room during the phone call and could hear Mr Ellis swearing. Mr Dale was very upset about the call. Two nurses and two other patients had been present in the room at the time. One of the nurses approached him and advised

94. Mrs Sharpe asked Mr Dyson by text message several more times over the next few days to return the keys to Mr Dale and a few days later the keys were posted through her letterbox, she believed by Mr Dyson. She then went to the house with her daughter and Mrs Ward to clean the house and prepare it for his return. That included moving his bed downstairs. In cross-examination she said that the electricity had tripped off and the fridge and freezer were off.

95. Mr Dale was discharged from Babington on 2 May 2019. Mrs Sharpe continued to visit him regularly at his home. She would assist with shopping and domestic tasks such as washing his clothes and taking out the bins. She visited him on average twice a week and continued to visit him regularly until his death.

96. Around a week after Mr Dale had left Babington, he told Mrs Sharpe that he still feared for his safety and asked her to change the locks to the property. She complied with his request and the locks were changed. She said that around that time, in May 2019, Mr Ellis left her a voicemail message asking "why Brian is being a knobhead". She found the message to be intimidating and unwarranted.

97. She asked Mr Hodgskin, Mr Dale's neighbour, if he would check on Mr Dale every so often following his return from Babington. Mr Hodgskin began to visit him on a daily basis following her request. She contacted Mr Hodgskin by text message and telephone on some days when she did not see Mr Dale. She and Mr Hodgskin had a friendly relationship and would message each other informally. Mr Hodgskin never raised any issues regarding her relationship with Mr Dale. He saw Mr Dale every day and would have had many opportunities to speak to him directly and privately during his lifetime if he had any concerns about Mr Dale's wellbeing.

Mrs Ward's Evidence

98. Mrs Ward had known Mrs Sharpe for 11 years as a friend. She had worked in care home for 4 years. Mrs Ward started visiting Mr Dale together with Mrs Sharpe when he was first admitted to Calow hospital in March 2019. Although she knew of Mr Dale, she had never met him until she saw him in the hospital. She said that she did then become close to him through her hospital visits. Mrs Sharpe had called her and told her that she was concerned about Mr Dale and that he was in hospital. She was already going through a difficult time, having

recently lost her sister Mrs Dyson. Mrs Ward started to go with Mrs Sharpe on her visits to see Mr Dale as often as she could to support her as her friend. She said in cross-examination that Mrs Sharpe was concerned about how Mr Dale was and the effect of his illness and that was her only concern at the time.

99. Mr Dale had been left in a dreadful state. He did not have any clothes or toiletries when Mrs Sharpe and Mrs Ward first visited him and it was left to Mrs Sharpe to buy him any items he needed. Mrs Ward never saw Mr Ellis or Mr Dyson visit Mr Dale whilst he was in hospital. In her evidence she said that the nurse had told her that they never visited or left him anything and when they visited him in hospital it was Mrs Sharpe who had to buy him drinks or pyjamas.

100. In April 2019, Mr Dale was waiting to be transferred from Calow hospital to Babington Rehabilitation Centre. Mrs Ward and Mrs Sharpe waited with him in the discharge lounge.

101. Mrs Ward understood from Mr Dale that Mr Dyson and Mr Ellis still had the keys to his house. Mr Dale was worried that he would not be able to get back into his home after he was discharged. Mrs Ward understood from Mrs Sharpe that she had messaged them on several occasions to request that the keys were returned, but they had been ignoring her messages. As she put it in answer to Miss Del Luongo

“He just wanted the keys back for home when he was discharged ... he wanted the keys back to be discharged from hospital”.

102. Mr Dale asked her to send a text message to Mr Dyson to ask that the keys to the house were returned or he would otherwise have to call a locksmith. Mr Dale had been very distressed; he was weak and vulnerable and she believed that he did not feel able to send the message himself. Mr Dale told her exactly what he wanted the message to say. She simply typed up the message to Mr Dyson at Mr Dale's instructions and with his approval.

103. A few minutes after she sent the text message to Mr Dyson, Mr Ellis rang Mr Dale. Mrs Ward was in the room at the time and could hear the phone call. Mr Ellis was shouting at Mr Dale and refused to give him the keys to the house. Mr Ellis was furious and yelled “It's my fucking house, not your fucking house.”

104. Mr Dale was very upset about the call and was reduced to tears. The telephone conversation between

Mr Ellis and Mr Dale was overheard by some staff nurses and some patients waiting to be transferred. One of the staff nurses came up to Mr Dale and advised him to call the police.

105. Mrs Ward was questioned by Miss Del Luongo about this incident, but her evidence was not shaken. She had not called the police, she said, because Mr Dale was on his way to Babington. Why call the police when he was on his way to rehabilitation? He had enough to contend with already. He was distressed by Mr Ellis's shouting. The whole ward could hear the conversation on the phone.

106. I accept her evidence in that regard. What it demonstrates is that Mr Ellis had an animus towards Mr Dale about the house, when he was still in hospital, even before he had moved into the rehabilitation unit and even before he returned home, although she accepted that she had never heard Mr Dale say that they had threatened to evict him. She said that

“He was worried because of what Andrew had said. That's what he thought about why they wouldn't give the keys back”

Mrs Ward understood from Mrs Sharpe that the keys to the house were eventually posted through her letterbox.

107. Mrs Ward, together with Mrs Sharpe and Miss Sharpe, visited Mr Dale's house before he was discharged and cleaned the property ready for his release from the rehabilitation centre. The property had been left in a very poor state; there was rotting food and empty vodka bottles on the sofa. They also moved Mr Dale's bed downstairs as part of his care plan.

Mr Dyson's Evidence

108. Following their mother's death, Mr Dyson and Mr Ellis were there for Mr Dale every other day, popping in to make sure he was all right, ensuring that he ate and grieving with him as they had also just lost their mother. They were Mr Dale's main contacts for all of the doctors and they tried to get him support for help with his grief and with his drinking. Mr Dyson said that he washed Mr Dale's clothes when he was incontinent, but did not realise that he should have explained that in his witness statement, from which it was absent.

109. On 21 March 2019 Mr Dyson rang Mr Dale on the way home from work at around 4pm. He informed Mr Dyson that he could not move or get up off the sofa, so Mr Dyson went straight round. On arrival Mr Dale was

incoherent and immobile and had also soiled himself. Mr Dyson phoned for an ambulance and carried him to the toilet to clean him up. The ambulance service were very busy and did not arrive until approximately 2.30am.

110. Mr Dale was taken into hospital and Mr Dyson was forced to drop his visits to every other day because of the amount of time which he had had off work to support his mother during her illness and Mr Dale after her death.

111. Mr Dyson accepted that Mr Dale was concerned about having his keys to the house returned. Miss Harrison referred him to 5 text messages where Mrs Sharpe asked him to return the keys, but he had not done so. He said that he did not trust her to have the keys. In that case, asked Miss Harrison, why had the keys been returned at all, to which Mr Dyson said that in the end he thought he would have to. He denied that he wanted control of the house. He said that he was not aware of his brother's phone call to Mr Dyson in response to Mrs Ward's text message. He denied that Mr Ellis had a temper; no, he said, he was placid. He did not accept that his brother could not control his temper.

112. I do not accept that evidence. It is clear from the evidence which I heard that Mr Ellis had a temper which he could not control and that there were a number of instances when he lost his temper with Mr Dale. What I do accept, however, is that Mr Dyson had no advanced knowledge of his brother's phone call to Mr Dale in response to Mrs Ward's text message.

Mr Ellis's Evidence

113. Mr Ellis admitted that he knew that Mr Dale wanted his house keys back when he was in hospital, but when he was asked about the threatening words to Mr Dale which he had spoken on the phone to him in response to Mrs Ward's text message sent on Mr Dale's behalf, his response was first

"Where is the evidence?"

and then

"I don't recall it".

114. His immediate response was truculent and aggressive. His next gambit was unconvincing, alleging that he could not recall the incident. The most salient point to be derived from this exchange is that what he did *not* do in that initial exchange was to deny that he

said what was alleged against him. I find that he did say precisely what was alleged against him.

115. Miss Harrison put it to him

"Q. Sharon and Jayne Ward heard you say it.

A. No, I didn't do it. It was not my house.

Yes, I delivered the keys. Why should I give Brian's keys to Sharon?"

116. I found his denial totally unconvincing in the light of Mrs Ward's evidence as to what she heard, which I accept, and in the light of his original responses, which obfuscated and avoided outright denial.

117. I accept Mrs Sharpe's evidence that, notwithstanding her previous issues with Mr Dale and his drinking, she felt sorry for him after her sister's death. She visited him twice when he was in hospital and once when he was in the rehabilitation unit. Thus she visited him three times between 22 March 2019 and 2 May 2019. That is hardly consistent with a concerted campaign to poison his mind to get him to change his will in her favour. If that were her intent, one would have expected her to be an almost daily attender at his bedside casting aspersions on the beneficiaries under his previous will.

118. Nor was she trying to poison him with alcohol. She was providing alcohol to him, as indeed were Mr Dyson and Mr Ellis, because she was concerned about possible withdrawal symptoms, but she was not providing him with vodka, only wine, twice a week and was watering it down. I accept that after Mr Dale came out of hospital she continued to visit him on average twice a week and did so until he died.

119. What is apparent from Mr Ellis's furious response to being asked for the return of the keys to the house, to which no rational objection could have been taken given that the house was now Mr Dale's in its entirety, was that Mr Ellis at least regarded the house as being his (or his and his brother's) and not as being Mr Dale's. Although the only extent evidence of that is the evidence of Mrs Sharpe and Mrs Ward, I agree with Miss Harrison's submission that there must have been other interactions between Mr Dyson and Mr Ellis on the one hand and Mr Dale on the other about the house and their relations in general, of which there is now no record. Mr Dale's concern may simply have started as the purely practical concern of making sure that he had

the keys to get into the house when he went home, but the response of Mr Ellis at least made him very upset and reduced him to tears and caused him to be concerned about his future in the house.

(g) Following Mrs Dyson's death, Mrs Sharpe was responsible for reporting Mr Dyson and Mr Ellis to the police to prevent them visiting Mr Dale

Mrs Sharpe's Evidence

120. At Mr Dale's request, Mrs Sharpe contacted the police on 13 May 2019 and reported his concerns that the Defendants were committing fraud through withholding the money from Mrs Dyson's estate. As she recalled, she provided the police with Mr Dale's contact details. On the day of the intended visit, Mr Dale phoned her and told her that the police would be coming out to see him and asked if she would be there. Mrs Sharpe went to the house for the police visit. Two police officers attended and Mr Dale told them about the threats from the Defendants and the issues following Mrs Dyson's death. A police officer informed him that, if there were any more problems, he should telephone 999 immediately and they would get in touch with the Defendants.

Mr Dyson's Evidence

121. Mr Dyson by contrast said that, when Mr Dale was discharged from hospital on 2 May 2019, Mr Dyson went up to see him the following day and his visits continued regularly. His children would often come and visit with him to see Mr Dale, but they came less so because it was always a risk taking them with him as Mr Dyson would not know what state Mr Dale would be in when they arrived. The whole family visited Mr Dale on Father's Day 2019 (which in that year was on Sunday 16 June) and Mr Dyson's visits began to decrease after that. He would phone Mr Dale and visit, but the latter would tell him that he did not need any shopping, which Mr Dyson found odd as speaking to his brother he had not provided anything. Mr Dyson went up to cut the grass and maintain the hedges, but at this point they became unmanageable by him or his brother, so they drafted in a friend, Alan Pickstone, who was a gardener by trade and he agreed to go up and see what work needed doing. He visited on 21 July 2019. Mr Dyson and Mr Ellis tried on multiple occasions to inform Mr Dale that the visit was taking place, but he never answered the phone. When Mr Pickstone arrived at the house he knocked on the door and explained who he

was. He was then met by a barrage of abuse from Mr Dale and told him to leave. Mr Ellis visited the house later that day and informed his brother that he could not gain access and that Mr Dale would not answer his phone. Mr Ellis then phoned his brother to inform them that he had received a phone call from the police accusing him of harassment. At that point Mr Dyson had to stop visiting Mr Dale as they had been informed by the police that it was considered harassment and that they could not go to his house.

122. Mr Dyson also mentioned that Mr Dale was physically well enough to have attended Mrs Dyson's funeral when it took place if he had wanted to go and the family were still able to support him and visit him regularly at that time, but he was so upset that he would not go. That was very upsetting for Mr Dyson and Mr Ellis because they felt it was the last time that the family would have together to say goodbye to their mother.

123. On 2 May 2019 Mrs Sharpe sent him a text message claiming that Mr Dale wanted to see his will. Mr Dyson dropped it off for him that week, assuming that he wanted to check that it would still work as he intended following Mrs Dyson's death. It was a personal matter for him, so Mr Dyson gave him back the will. He seemed surprised when Mr Dyson gave it to him, but he was slightly inebriated so that was not unusual. I note that this was on 2 May 2019, not in July of that year, and followed in the aftermath of Mr Ellis's behaviour over the phone when Mr Dale asked for his keys back. Mr Dyson believed that Mrs Sharpe now held the will as she was the only one with access to Mr Dale's property and papers. He believed that she also arranged for him to make his new will dated 16 August 2019 under which she inherited everything.

124. On a couple of visits, Mr Dale had been a little off with Mr Dyson. It was nothing that he could specifically put his finger on, but he would have been a bit quieter when Mr Dyson first arrived until they got into the flow of conversation. It was nothing that worried Mr Dyson at the time, but looking back he wondered if those visits followed a visit from Mrs Sharpe.

125. The last time that Mr Dyson ever saw Mr Dale was on 16 June 2019, which was Father's Day (it was wrongly described as 21 June in his witness statement). As he did every year, Mr Dyson took him a large box of shortbread biscuits and his daughter chose him a box of Liquorice Allsorts (he loved these as they were soft and did not hurt his teeth when eating them). He was acting "a little weird" as he kept crying when hugging Mr Dyson

and the children. He said that he never wanted to let go and held on to each of them for quite a length of time compared to how they would normally hug.

126. Things became even stranger in the week after Father's Day. Mr Dyson sent a friend up to Mr Dale's (it was not entirely clear whether this was Mr Pickstone and related to the incident described above or another friend) to help out with some maintenance for him as he had recently been diagnosed with osteoporosis and could not do the job himself. The friend called Mr Dyson on his way back to say that Mr Dale had asked him to leave and that he did not want the jobs doing. Mr Dyson tried calling Mr Dale on the phone several times throughout the rest of the day, but there was no answer. Mr Ellis went up with his little girl to see if he was all right, but was met with a locked door and closed curtains.

127. They were both very worried then as the door had never been locked to them before and they could not see any reason for the front curtains being closed in the middle of the day. Mr Ellis phoned his brother and arranged to come up and get the key so that he could go in and check that Mr Dale was all right.

128. However, whilst Mr Ellis was driving across to his brother, he received a telephone call from the police in which he was told in no uncertain terms that he was not allowed to go to Mr Dale's property, was not allowed to telephone him and that he was harassing Mr Dale. That came as a huge shock to the brothers when they spoke afterwards. They simply could not believe it. They had a number of conversations then with the police to try to explain the situation, that they were Mr Dale's sons and that they were worried about him when he did not answer his telephone or the door. The police had been given a very different account about their involvement in Mr Dale's life and they confirmed that Mrs Sharpe was with Mr Dale and was the one who had initially made a call to the police claiming that they were harassing him.

129. Despite the warning to Mr Ellis from the police, Mr Dyson did not feel that he could just leave things as they were and tried to contact Mr Dale many times, but he never got any reply. He now believed that Mrs Sharpe had changed the sim card in his phone so that he did not even receive any of Mr Dyson's messages trying to get in touch with him. He had since discovered that it was at that time that Mrs Sharpe was getting Mr Dale to make a new will.

130. I am bound to say that I found Mr Dyson's account

of the Father's Day visit very curious. On his account, Mr Dale's behaviour was inexplicable. However, given the threat by Mr Ellis about the house and Mr Dyson's own unilateral action in relation to the money in his mother's account, to which Mr Dale was in fact entitled under the terms of her will, his behaviour becomes much more explicable.

131. Mr Dyson's answers to Miss Harrison about the text messages on pages 485 and 487 of the trial bundle were also bizarre

"Q. He is called a spineless twat and a selfish bastard The tone was obviously a threat.

A. I don't think he would have been upset. [Sic]

Q. He is a vulnerable man, but you say that wouldn't bother him?

A. No, I don't think that would [Sic]."

"Q. Look at paragraph 39 of your witness statement. Why did you not visit Brian after 21st June?

A. There was no answer and no contact.

Q. Was that not worth mentioning in your witness statement?

A. No."

"Q. You say that the police intervention came as a huge shock: you knew about it then?

A. Yes I was a shock.

Q. You were never told anything directly by the police.

A. I was.

Q. Did you speak to the police?

A. Not personally [Sic]."

132. It will be noted that that last answer was entirely inconsistent with his earlier evidence that the brothers

had a number of conversations with the police to try to explain the situation, that they were Mr Dale's sons and that they were worried about him when he did not answer his telephone or the door.

133. It is apparent that on 13 May 2019, following Mr Dale's return home from the rehabilitation unit, Mrs Sharpe was responsible for reporting Mr Dyson and Mr Ellis to the police at Mr Dale's behest.

134. I am satisfied, however, that that was not done to prevent them visiting Mr Dale, but at his behest, not only because of the implicit threat about the house by Mr Ellis, but also because of Mr Dale's concerns, to which I shall refer further below, that the Defendants were committing fraud through withholding the money from Mrs Dyson's estate to which he was entitled under the terms of her will.

(h) Following Mrs Dyson's death, Mrs Sharpe was responsible for changing the locks of the property to prevent Mr Dyson and Mr Ellis from visiting Mr Dale

Mrs Sharpe's Evidence

135. It was Mrs Sharpe's evidence that, around a week after Mr Dale had left rehabilitation in Babington, he told Mrs Sharpe that he still feared for his safety and asked her to change the locks to the property. She complied with his request and the locks were changed. She said that around that time, in May 2019, Mr Ellis left her a voicemail message asking "why Brian is being a knobhead". She found the message to be intimidating and unwarranted.

136. I find that Mrs Sharpe was responsible for changing the locks of the property, but that that was again at Mr Dale's behest, because he was still concerned about his security in the house and that it was not done to prevent Mr Dyson and Mr Ellis from visiting Mr Dale as a part of a concerted plan on the part of Mrs Sharpe to suborn Mr Dale and get him to change his will in her favour.

137. Moreover, the action of changing the locks has to be seen in the light of Mr Ellis's voicemail message asking "why Brian is being a knobhead". That is hardly consistent with the warm and close relationship which Mr Ellis alleged that he had with Mr Dale. Indeed, in the light of Mr Ellis's behaviour on 21 July 2019, it is hardly surprising that Mr Dale wanted to change the locks to enhance his security in the house.

(i) Mrs Sharpe falsely told medical professionals that they were supplying Mr Dale with alcohol so that he would die as a result of alcoholism

Mrs Sharpe's Evidence

138. It is apparent from the police records that on 21 July 2019 Mrs Sharpe told the police of Mr Dale:

"He is alcohol dependant and they had been plying him with vodka – I think to kill him because then they get the house".

Mr Ellis's Evidence

139. After an initial reluctance, Mr Ellis accepted that he and his brother were supplying alcohol to Mr Dale after their mother died (as indeed did Kathryn Dyson):

"Food and shopping.

Just what he wanted.

Yes, we took him cider and wine.

What he normally got.

I don't know what he drank.

Yes, he drank what we purchased."

140. I am satisfied that Mr Dyson and Mr Ellis were foolish and injudicious in leaving Mr Dale sufficient supplies of alcohol at one time in the immediate aftermath of Mrs Dyson's death such that he could consume it all in one go and consequently hospitalise himself, as in fact happened.

141. I do not accept, however, that they were deliberately plying Mr Dale with vodka to kill him so that they could inherit the house under the terms of his 2003 will.

(j) Mrs Sharpe failed to inform them of Mr Dale's death or funeral arrangements.

142. It is not in dispute that Mrs Sharpe failed to inform Mr Dyson or Mr Ellis of Mr Dale's death or his funeral arrangements, but Mr Dale died on 28 May 2020, whereas the new will had been executed on 16 August

2019 and the instructions given for it on 25 July 2019.

143. However, given the breakdown of relations between Mr Dale and Mr Dyson and Mr Ellis, which was completed by the time he gave instructions for his new will in late July 2019, that it hardly surprising. It was also long after Mr Dale had made a new will in Mrs Sharpe's favour and cannot relate to any alleged misrepresentation many months earlier designed to influence him to change that will in her favour, even if such misrepresentation was made.

The Events of 21-22 July 2019

Mrs Sharpe's Evidence

144. On 21 July 2019 Mrs Sharpe received a call from Mr Dale informing her that he had telephoned 999 and telling her that Mr Ellis had been to the property, banging on the door, shouting and threatening him. That coincided with a text message which Mrs Sharpe had received from Mr Ellis stating "you coursing (sic) shit again". Mr Dale asked her to come up to see him and she did the same day.

145. Mrs Sharpe understood that the police records stated that she contacted the police on Mr Dale's behalf, although she did not believe that that was correct. She did contact the police on the same day about the text message which she had received from Mr Ellis, but she only learned that Mr Dale had phoned 999 due to the fact that he phoned her and told her. She also understood from the police records that there was a reference to the police being contacted on 21 September 2019, but she believed that that date was probably incorrect and should refer to July, unless the police were contacted separately. In the light of the police records I am satisfied that it was Mrs Sharpe who phoned the police on 21 July 2019, but that is not decisive in the context of the events of 21 July 2019 taken as a whole.

146. When Mrs Sharpe arrived at the house, Mr Dale said "Thank God we got the locks changed". He was clearly distressed by the events earlier that day. He told Mrs Sharpe that Mr Ellis had also been threatening him on the phone. He showed her a text message from Mr Ellis dated 21 July 2019 which stated "If you want to play games,,, (sic) I'm a lot better than Sharon,,, (sic) just try me Bryan,,, (sic) please do,,, (sic) will do it for my mum". Mrs Sharpe understood from Mr Dale that the police blocked Mr Ellis's number from his phone in order to avoid further contact.

147. On the following day, 22 July 2019, Mrs Sharpe told her daughter about the incident and they went to see Mr Dale together. He mentioned again that the Defendants had been threatening towards him on the phone. He was clearly distressed by the recent contact and appeared to be frightened of answering the phone. Miss Sharpe asked Mr Dale if he had any messages from Mr Ellis or Mr Dyson. Mr Dale let her have his phone to look at his voicemail messages. There was a voicemail in which Mr Ellis said to Mr Dale "you know what I'll be fucking up to see you tomorrow you twat. Yeah you can't even be arsed to talk you selfish bastard." Miss Sharpe played the message out loud so that Mr Dale and her mother could hear it.

148. Mr Dale was distraught by the message. Miss Sharpe told him that she would record the voicemail message on her phone and reassured him that they had the message and could provide it to the police if Mr Ellis did anything to him again. At the time they hoped that that would not be necessary as Mr Dale was already shaken up by recent events and they did not want to cause further anguish by involving the police again.

149. Mrs Sharpe said that she was not involved with Mr Dale's decision to stop communication with the Defendants. He was able to make up his own mind and take any actions which he thought appropriate as a result of the Defendants' direct actions and with the advice of the police.

150. Mr Dale had on occasions called the Defendants a "pair of bastards". She would agree with him when he made such comments as the behaviour which she had seen from them was threatening and cruel. However, she would not bring up the subject of the Defendants without Mr Dale first doing so. He was clearly distressed by their actions and she did not want to cause him any more upset by mentioning them.

"On 21 July.

I can't remember: there was the voicemail; I can't remember the text messages.

Q. So there were 2 things wrong. Anything else.

A. Not that I can think of.

Q. So that was the catalyst: 4 days to change his will?

Re estate of Dale (deceased) Sharpe v Dyson and another [2022] EWHC 2462 (Ch)

A. I don't understand what you mean.

Q. When he changed his will.

A. On 21 July the banging on the door and the voicemail.

He changed his will: Brian arranged it.

Q. It was Brian who arranged it?

A. Yes.

Q. It was Scott [Armstrong]. You are lying.

A. No. Brian arranged it with Hollie and Brian arranged for her to come up as far as I know.

Q. Your evidence is contradictory.

A. I don't think so.

Q. Brian arranged it or Scott?

A. Brian arranged it and Brian arranged for Hollie to come to the house.

I don't recall when he said he wanted to change his will.

He told me that when I went up.

Nick and Joanne might have been there – they were there that day. I believe Nick and Joanne were there.

...

Riki was there on the 22nd. She was there when he said he wanted to change his will.

He didn't want them to have any more money or the house.

Q. So that was because of the banging on the

door and the voicemail [alone]"

A. Yes, he was very upset. He didn't want to say at first. He was not in contact with his biological children - he said he wanted to leave it to me.

Q. When did he tell you this?

A. Before the will writer came. Not sure when.

He was doing well before Andrew did that – then he went downhill.

Q. Did you have a conversation with him between 21 and 25 July?

A. Yes. He had not seen his biological children for years.

Q. He disinherited Ann's children?

A. Yes.

Q. That was strange, wasn't it?

A. No, because of their behaviour.

Q. Banging on the door; leaving a voicemail – was that a reason to disinherit them?

A. ... He hadn't brought them up. Andrew was 23.

Q. Yet it was strange to disinherit them?

A. No, money was stolen, there were threats, banging on the door.

Q. You made no mention of any theft until a few moments ago.

A. I forgot about the money.

Q. You fed him nonsense.

A. No.

Re estate of Dale (deceased) Sharpe v Dyson and another [2022] EWHC 2462 (Ch)

Q. You poisoned his mind.

A. No.

Q. Nothing you have said is true.

A. It is all true.

...

Q. You didn't care.

A. Not true.

Q. All you wanted was to get the house.

A. No. I cared enough to get the carers back in.

...

Q. You targeted an elderly vulnerable man to get his money.

A. No."

Miss Sharpe's Evidence

151. On 22 July 2019 her mother rang her and told her that Mr Dale had called the police the day before as Mr Ellis had gone to his house and had been yelling at Mr Dale and threatening him. She drove her mother to the house immediately following her call.

152. She said that Mr Dale was very distressed by the events of the previous day. He told them that Mr Ellis had also been calling him and threatening him on the phone. Mr Dale was sitting with his phone at the time. Miss Sharpe asked him if there were any messages from Mr Ellis or Mr Dyson and asked if she could check his voicemail messages. Mr Dale said that was fine and gave her his phone.

153. She played the voicemail messages on loudspeaker and heard the voicemail from Mr Ellis: "You know what I'll be fucking up to see you tomorrow you twat. Yeah you can't even be arsed to talk, you selfish bastard. See you tomorrow. Bye, darlings." (The voicemail message was played to me in Court.) Both

her mother and Mr Dale were present in the room when the voicemail message was played.

154. Mr Dale was very upset about the message and began crying. Miss Sharpe and her mother tried to calm him down. She told him that she would record the message on her phone in case anything happened with Mr Ellis and in case they would need to provide the voicemail message to the police.

155. Following the incident in July 2019, Mr Dale told Miss Sharpe that he wanted to change his will. She understood from him that he wanted to change his will due to the behaviour of Mr Ellis and Mr Dyson, including the threats which he had received from the former. She was very vague in cross-examination when asked when he had said this and said that either her mother or Mr Dale had told her that. She had not been told that Mr Dyson and Mr Ellis had stolen money from Mr Dale.

156. In July 2019, Miss Sharpe was dating a man called Scott Armstrong ("Mr Armstrong"). She had told Mr Armstrong about the incident with Mr Dale, including the voicemail message they had heard from Mr Ellis and the fact that Mr Dale had mentioned to her that he wanted to change his will. Mr Armstrong was a friend of the husband of Mrs Ridgway-Coates. Mr Armstrong said that he could provide the contact details for her. He duly provided Miss Sharpe with the contact details for the firm of Coates. She then passed them on to Mr Dale. She understood from Mr Dale that he then arranged an appointment with Mrs Ridgway-Coates to update his will. She had no involvement in the process of the making of Mr Dale's new will.

157. It was put to her that she was happy that he had changed his will since she might now inherit his estate, but she disagreed. She disagreed that she was happy because her mother would inherit the estate. She said that she had not encouraged Mr Dale to change his will and she had no knowledge of its contents until she saw it in evidence after the proceedings had commenced. She did not know why Mr Dale should leave his estate to her if her mother died before her, although she was in effect his niece.

158. The significance of her evidence was that she provided confirmation of Mr Dale's upset on 22 July 2019 when listening to the abusive voicemail from Mr Ellis, although that is hardly surprising given the terms in which that message was couched.

Mrs Ward's Evidence

159. Mrs Ward visited Mr Dale at his home with Mrs Sharpe on occasions after Mr Dale was discharged from the rehabilitation centre. She assisted Mrs Sharpe in helping with his shopping and household tasks such as cleaning. She would usually visit him with Mrs Sharpe, but during lockdown she would sometimes check on him on her own. For example, in March 2020, Mrs Sharpe had to self-isolate due to COVID-19 and asked Mrs Ward to check on him as she had full PPE from working in a care home.

160. Mrs Ward understood from Mr Dale that Mr Ellis and Mr Dyson had been calling him and had been threatening him over the phone. Mr Dale had shown her a voicemail message on his phone from Mr Ellis in which Mr Ellis threatened him. He also told her about Mr Ellis visiting his property in July 2019 and threatening him. Mr Dale was frightened of Mr Dyson and Mr Ellis and seemed like a prisoner in his own home. He always had the doors locked, for example.

161. Again Miss Del Luongo questioned her about that aspect of her testimony. She was asked why Mr Dale should tell her about these matters and she replied that it was because he trusted her:

“Yes, I visited him when he went back home. Yes, he told me this when he was back at home.

“Q. A prisoner?

A. He used to keep the curtains shut, the doors locked, like a prisoner in his own home.

Yes he was immobile ... He was walking round with a Zimmer frame. He went straight downhill again after this happened.”

162. That evidence, as will appear in due course, was consistent with the one piece of the evidence of Mr and Mrs Hodgskin which I do accept: Mr Dale was terrified of Mr Dyson and Mr Ellis.

163. Mrs Ward had never heard Mrs Sharpe talk about Mr Dyson or Mr Ellis to Mr Dale. Mrs Sharpe would try and change the subject if they were mentioned as she did not want to upset Mr Dale.

164. She said that Mr Dale had told her about the Defendants stealing money, although she could not remember when; that was not in her witness statement

because she had not been asked about it. She did not report that matter to the police as she believed that it had already been reported. She said that Mr Dale had never mentioned changing his will. He trusted and confided in her, but he never told her about his will.

Mr Ellis's Evidence

165. The next part of Mr Ellis's evidence was to the effect that:

“14. Wayne and I both tried to support Brian as much as we could following mum's death. As Wayne has set out, we would go and visit him together with our own children but on one day on 21 July 2019 he wouldn't answer the door to me and my daughter. This caused Wayne and I great concern for his health as his door was always open to us and it was strange that he had closed the curtains. I rang Wayne and arranged to go and get the spare key from his house so that we could check Brian was okay but whilst I was driving across to Wayne's house I had a call from the police. I was shocked as I was told that I was not to go near Brian's house again and wasn't to call him on the phone at all. They told me that it had been reported to them that Wayne and I were harassing him. I tried to explain to them that Brian sometimes has a problem with his drinking and that I had gone up to his house because we were worried about him but the police made it very clear that because it had been reported to them as harassment I was not allowed to go near Brian's house again.

15. When we were told by the police not to have any contact with Brian at all and not to go to his home, that was when I first started to realise that Sharon was manipulating him and trying to keep us away from him. I know that Wayne kept trying to contact him but never got any answer.”

166. If Mr Ellis is to be believed, that strange behaviour by Mr Dale was apparently provoked by nothing untoward on the part of either Mr Dyson or Mr Ellis. I do not, however, believe Mr Ellis's evidence on that matter.

167. His replies to the alleged incident of banging on the door and shouting on 21 July 2019 were also revealing:

“Q. On 21 July you banged on the doors.

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A. No, I never did it.

I was not angry at all.

I didn't discuss Wayne going on Father's Day.

I had been to Brian's. I went on several occasions."

168. Again I found the denial of untoward behaviour on his part singularly unconvincing.

"Q. You were not angry? Look at the text message on page 485:

What was meant by that?

A. How he was messing about with us. With the police and all.

Q. When was it sent?

A. I can't tell you.

Q. Look at the text message on page 487. Why was that sent?

A. Sharon was bad at causing trouble in the family.

Aggressive? Not at all [Sic]."

169. That last answer was plainly nonsense. The messages were plainly aggressive.

170. Mr Ellis suggested that the voicemail dated back to March in the aftermath of his mother's death:

"Q. What about the voicemail message you sent?

A. It was after the funeral and I was angry because he didn't turn up: hence "spineless".

Yes, I imagine it upset him.

I was angry about it.

Q. Yes, you were angry. Look at page 485.

A. I can't comment [Sic].

Q. It was a threat.

A. No. [Sic].

I can't comment. After that I didn't go again.

I never contacted him again after that.

Laughed? In the sense of disgusted – that kind of laugh.

I had a big concern for Brian.

I can't say whether I asked the police to pass on an abusive message to Sharon."

171. I am satisfied, however, that the voicemail message was not sent in March after Mrs Dyson's funeral, but on 21 July 2019, a few days before Mr Dale made his new will and that it was a significant factor in Mr Dale deciding to change his will.

172. In reality Mr Ellis clearly no real answer to the text messages on pages 485 and 487 or the voicemail message which I have found that he uttered on 21 July 2019. He argued that on that day

"I knocked on the door. There was no answer. I left.

I didn't do anything to Brian."

173. Again I found the manner of the denial unconvincing.

"I was upset because of the funeral.

There was nothing wrong in the other messages [Sic]",

an answer which is wholly incredible in view of the content of the messages.

174. Miss Harrison put it to Mr Ellis

"Q. You are the author of your own misfortune.

A. No. There was no change in my behaviour

after my mother died.”

That assertion, however, is not borne out by the record.

175. The reality is that Mr Ellis had turned up at the property, banging on the door and shouting and threatening Mr Dale. He sent a text message to Mrs Sharpe saying “you coursing (sic) shit again”. He sent a text message to Mr Dale saying “If you want to play games,,, (sic) I'm a lot better than Sharon,,, (sic) just try me Bryan,,, (sic) please do,,, (sic) will do it for my mum”. He left a voicemail message for Mr Dale which stated

“You know what I'll be fucking up to see you tomorrow you twat. Yeah you can't even be arsed to talk, you selfish bastard. See you tomorrow. Bye, darlings.”

In those circumstances it is hardly surprising that Mr Dale decided to change his will.

The New Will

Mrs Sharpe's Evidence

176. Around May 2019, Mr Dale mentioned changing his will to Mrs Sharpe. He told her that he did not want the Defendants getting any more money from him and that he did not want them having the house too.

“Q. Between 18 April and 2 May, you saw Brian once?

A. At Babington, yes.

Q. Once between 18 April and 2 May?

A. Yes once.

Q. What happened after 2 May to make him have these awful thoughts?

A. He had his suspicions because of the keys ... He was asking him for his bank card. Brian asked me to get back the card from Wayne.

Q. They had the keys when he went into hospital.

A. Yes, he wanted them back

Q. And he gave them back

A. He gave the card back. He asked for the keys again. Yes, they gave them back.

Q. So Brian got back what he wanted.

A. Yes.

Q. So what happened?

A. Andrew banging on the doors; the text messages; the voicemail.”

I find that Mr Dale first thought about changing his will in early May in the aftermath of Mr Ellis's outburst when asked for the return of the keys and given what had happened about the money in Mrs Dyson's bank account, to which he was entitled under her will, but that it was the events of 21 July 2019 which finally made him decide to change the terms of his will.

177. Mrs Sharpe said that Mrs Ridgway-Coates attended Mr Dale's house on 25 July 2019 to take his instructions for a will. Mr Dale struggled with mobility issues, so Mrs Sharpe was at the property, but only to allow access for Mrs Ridgway-Coates. She was not present when Mr Dale provided his instructions for the will and was not aware of the discussions that took place.

178. Mrs Ridgway-Coates again attended the property with a colleague on 16 August 2019 for the will to be signed. Again, Mrs Sharpe was present on that occasion to allow access for Mrs Ridgway-Coates and her colleague, but again she was not present while Mr Dale reviewed or signed the will or for any related conversations.

179. After making the will, Mr Dale told Mrs Sharpe that he had left everything to her and that he had no one else to leave everything to. She questioned that as he had biological children. Mr Dale told her that he had nothing to do with his children and that she was the only person left in his family.

180. Mr Dale told her that Mrs Ridgway-Coates referred him to Taylor & Emmet solicitors for his concerns regarding Mrs Dyson's estate as Taylor & Emmet had a department which could assist with estate disputes. Mr Dale contacted Taylor & Emmet and a meeting was

arranged on 30 July 2019. Mrs Sharpe attended the initial meeting with Mr Dale at his house as he was deeply distressed by the matter.

181. Taylor & Emmet subsequently obtained a grant of probate to Mrs Dyson's estate on 28 November 2019 on behalf of Mr Dale (with power reserved to the Defendants) and dealt with the administration of her estate. Mrs Sharpe understood from Taylor & Emmet that a sum equal to the monies previously held in her sister's NatWest account was paid from NatWest directly to Mr Dale rather than from the Defendants. She also understood that the Defendants had accepted that they closed their mother's bank account as they were two of the three executors of the estate, but did not pay it to Mr Dale as a result of wishes expressed by their mother and with Mr Dale's agreement.

182. Miss Del Luongo put it to Mrs Sharpe that she had made a complaint to the police on 16 August 2019, which Mrs Sharpe accepted. That was very convenient said Miss Del Luongo because that was the day when Mr Dale signed his will. Was she trying to cover her tracks? Mrs Sharpe denied the suggestion

"Q. The only 2 incidents were on 21 July and there was nothing before then.

A. When Brian was being transferred to Babington, he asked Jayne to text Wayne about the return of the keys. Andrew phoned back effing and blinding "It's my house". We were told you will need to ring 101.

Q. You didn't report that until 3 weeks later, but you say it had been carrying on since 8 March. But you have said there was nothing between Brian and the boys prior to 21 July.

A. They had stolen the money.

Q. You do nothing to report that to the police.

A. Not at first."

Mrs Ridgway-Coates's Evidence

183. Mrs Ridgway-Coates attended Mr Dale at his home on 25 July 2019 to take instructions in connection with the preparation of a will on his behalf. She did not personally know him when he instructed her. It was her understanding that the firm had been recommended

through a friend of her husband's. At the time her husband played golf with Mr Armstrong, whom she understood was dating Miss Sharpe, the daughter of Mrs Sharpe, at the time. She understood that Mr Armstrong had made the referral. She did not regard the appointment as strange: the firm had a lot of work through recommendations.

184. The firm did not keep the records of the initial appointment being made, such as the identity of the person who called to book the appointment and the date on which the appointment was made. However, she believed that Mr Armstrong may have arranged the initial appointment with Mr Dale. Her handwritten notes had Mr Armstrong's name next to the date and time of the initial appointment.

185. Mr Dale instructed her verbally at the property. Mrs Sharpe let her into the house, but Mrs Ridgway-Coates requested that she waited outside while instructions were given and Mr Dale instructed her alone.

186. Mr Dale discussed his previous will with her and explained why he wished to make a new will. It was Mrs Ridgway-Coates's belief that he fully understood what a will was and why he was making it.

187. Mr Dale showed her a copy of his previous 2003 will. She also saw a copy of Mrs Dyson's mirror will. He explained that he did not want Mrs Dyson's sons to inherit from his estate due to the problems and upset which they had caused since her death. He told Mrs Ridgway-Coates that his late partner had very little contact with her sons.

188. Mr Dale explained that the police had been involved as Mr Dyson and Mr Ellis had closed their mother's bank account following her death and had taken all the money. He explained that the bank account held the money which he required for direct debits and to live on. He said he had been left with nothing. He also explained that Mr Dyson and Mr Ellis had threatened him to the point where the police had blocked their number on his phone. He said that they were threatening to take the property from him and had claimed that the property did not belong to him.

189. Mr Dale informed Mrs Ridgway-Coates that the locks on the property had been changed to prevent Mr Dyson and Mr Ellis from having access to his house.

190. As a result of the allegations of theft and

threatening behaviour, Mrs Ridgway-Coates suggested to Mr Dale that he contact Taylor & Emmet LLP solicitors who had a contentious probate department (since her firm did not).

191. Mrs Ridgway-Coates was satisfied that Mr Dale was very clear in his wishes in respect of his will and there was no indication Mrs Sharpe had any influence on his decision making. She was not present during their meetings in relation to the instructions for and the execution of his 2019 will.

192. Mr Dale was clear that Mrs Sharpe was helping him with all of his needs since his partner had passed away and that was the reason he now wished for her to be the executor and sole beneficiary. He also mentioned that he did not want Mr Dyson and Mr Ellis to benefit from his estate as they had already taken enough money.

193. Mr Dale explained to Mrs Ridgway-Coates that he had been in hospital previously suffering with depression and alcohol. She understood and was aware of the principle of the 'golden rule', but she had no doubt in relation to Mr Dale's capacity due to age, infirmity or illness to execute the 2019 will. She did not therefore seek a medical expert's opinion.

194. In cross-examination by Miss Del Luongo, Mrs Ridgway-Coates was clear that Mr Dale was not under the influence of drink when he instructed her. He gave clear and coherent instructions. She said that she had asked him the reasons why he was changing his will. She did not regard his reasons for changing his will as strange; people changed their wills for all sorts of reasons. Miss Del Luongo asked her whether there was any concern on her part about him changing his will when he had lost his partner only 4 months before, but she replied that it was quite usual when personal circumstances changed that people would review their wills.

195. She reiterated when pressed that he was not confused and that he could tell her the relevant details when asked. There had been no input from Mrs Sharpe when the instructions for the new will were taken. Only afterwards did she come into the room to take the details of Taylor and Emmet.

196. The contents of the will file bear out Mrs Ridgway-Coates' testimony. The will instruction form consisted of blanks which were to be filled in with the client's full names, address, contact telephone number, any

previous will and its whereabouts, the source of the introduction and the individual and joint assets. There were then 17 numbered sections for completion, dealing with the detailed instructions for the will, followed by a section in which the client confirmed that he had instructed the firm in the preparation of his will in accordance with those instructions and confirmed that he was of sound mind to be able to do so. Mrs Ridgway-Coates had completed the form and Mr Dale had signed and dated it and printed his name beside his signature. She had also made manuscript notes on the back pages of the form, to which I shall come presently.

197. So far as material, what Mrs Ridgway-Coates had filled in on the printed pages of the form were that "Ann's sister Sharon was here – no contact", that his partner had passed away on 8 March 2019 "together 32 years". Of the property she had noted "owned now because of will" on the right hand side of the page and on the left "not said anything about house". She noted that Mr Dale had 3 children, but had no contact with them in 30 years. At the foot of the first page she had written that "Ann had rare

contact with sons". On page 2 she noted that Mrs Sharpe and her daughter were to be the executors. On page 3 she noted that the person who was to receive the residue

of the estate was "Sharon" and if she predeceased Mr Dale then the estate was to go to "Riki". She added the words

"they've already had a lot of money, I don't want them getting everything".

198. On the reverse of the second page of the printed form Mrs Ridgway-Coates had written

"*Sons

Since partner passed away

Will states everything

- Emptied her bank account so he couldn't

touch it - £17K - informed police

Was some of his money in there too

All DD from him, food etc from her

bank acc

- Said house isn't his

- Keeping ringing him + "will sort him out"

Police have blocked them (sons) on his

phone

Threatening him regarding money/house

in estate

No contact in future now

Locks changed also as they had keys

In hospital 6 weeks – depression and alcohol"

199. On the reverse of the third page Mrs Ridgway-Coates had noted the names of Mr Dale's adult children, with whom he had not had contact for many years. They were not to inherit his estate and it is not necessary to name them or to set out anything from that page.

200. Mrs Ridgway-Coates drafted the will in accordance with her instructions and posted it to Mr Dale for his consideration. A second meeting was then arranged in order to execute the will after he had had the opportunity to consider it. She could not confirm who arranged the appointment to execute the will.

201. Mrs Ridgway-Coates attended the property with Clare Antcliff in her capacity as the second witness on 16 August 2019. Mrs Ridgway-Coates read through the will with Mr Dale and he confirmed that it was all correct and accurate. She was clear that Mr Dale understood the terms of the new will and was happy to execute it. She had probably not needed to readdress his reasons for making the new will. Again, Mrs Sharpe was at the property to allow access, but she was not present whilst Mr Dale was reviewing the will or executing it and having it witnessed. There was no doubt in Mrs Ridgway-Coates' mind that Mr Dale had any doubts about the new will. She confirmed her belief was that was not acting under any influence save the desire to change his will.

202. When asked she produced a ***Larke v Nugus*** statement on 20 July 2020. That statement confirmed the details of her will file and witness statement and it is not necessary to set out its contents.

203. Miss Del Luongo sought to make a number of criticisms of Mrs Ridgway-Coates' evidence and its significance, but I do not accept them. That the firm's records do not give details as to how the firm was initially contacted and by whom does not cast any doubt on what passed between Mr Dale and Mrs Ridgway-Coates when she took instruction for the will and when she went to have it executed. In any event she has explained how the referral probably came to be made, via Mr Armstrong and his golfing acquaintance with her husband.

204. Miss Del Luongo sought to argue that Mrs Sharpe had been present at the property when Mrs Ridgway-Coates came to take the instructions (and indeed when the will was executed), but Mrs Ridgway-Coates was clear that, although Mrs Sharpe had let her in, she had not been present in the room when she had taken Mr Dale's instructions for the will nor when the will had been executed. The only time that Mrs Sharpe had been in the room was when Mrs Ridgway-Coates gave her the details of Taylor and Emmet in respect of the problems over Mrs Dyson's estate. It is not in the least startling to note that a different firm was asked to deal with Mrs Dyson's estate at the same time as Mr Dale was giving instructions for his own will. As Mrs Ridgway-Coates explained, her firm did not have a contentious probate department and Taylor and Emmet did. Miss Del Luongo submitted that no details were given as to why Mr Dyson and Mr Ellis could not have shared the estate of Mr Dale with Mrs Sharpe, but Mr Dale was entitled to leave his estate to whomsoever he chose. He was not under any obligation to leave his estate to particular person or to share it out amongst particular claimants.

205. I shall deal with Miss Del Luongo's other criticisms of Mrs Ridgway-Coates's evidence below.

Mr Dyson's Evidence

206. The new will left everything to Mrs Sharpe, yet she had nothing to do with Mr Dale, openly said how she hated him and suddenly came on the scene getting involved in his life when Mrs Dyson had died and all of her assets were passed on to Mr Dale. Miss Sharpe was also mentioned in the will, but she had only ever met Mr Dale twice to Mr Dyson's knowledge.

207. Mr Dyson firmly believed that Mrs Sharpe has manipulated Mr Dale, telling him untrue things about him and his brother and used the police to keep them apart from Mr Dale so that they could not correct her lies

by speaking with him directly. He believed this because:

(a) Mr Dale's closest friend and next door neighbour Mr Hodgskin, had told him that this was happening. Mr Hodgskin visited Mr Dale every single day and took care of him and he was grateful to him for that

(b) the reasons which Mr Dale apparently gave the solicitor when changing his will were all false. The reasons which he gave for disinheriting the brothers and making a new will where he left all of their family money to Mrs Sharpe were:

(i) due to the problems and upset which they had caused since his partner had passed away

(ii) the police had become involved as the brothers had closed his bank account and held money which he needed for direct debits and which he required to live on

(iii) they had threatened him and the police eventually blocked their numbers

(iv) that was not the way in which Mr Dale spoke. Those were words which Mr Dyson believed that Mrs Sharpe had put into his mouth for him to repeat back to the solicitor

(c) the fact that Mrs Sharpe had nothing to do with Mr Dale throughout their lives and suddenly inserted herself as one of his regular visitors after Mrs Dyson had died and whilst Mr Dale was in a very vulnerable state due to his grief and his drinking

(d) he had been told by Mr Hodgskin that Mrs Sharpe was also supplying him with bottles of vodka and essentially made him dependent upon her in order to meet his alcohol addiction.

He accepted that they had all provided Mr Dale with alcohol

"Yes, we all did.

Q. Do you know what alcohol Sharon was providing?

Q. Not as a fact."

(e) Mrs Sharpe utilised the police and allegations of harassment to prevent the brothers from being in any contact with Mr Dale, including in his last few weeks of life

(f) additionally, that appeared to be exactly what she tried to do with her sister in her last few weeks of life.

208. Mr Dyson was also told, following Mr Dale's death, what Mrs Sharpe had been saying to Mr Dale repeatedly, including allegations that Mr Dyson had bribed her, that they did not care about Mr Dale and that they had stolen from him. He was absolutely shocked to hear of these allegations.

"I did transfer the money back. I returned the money. No, not to Taylor and Emmet."

209. The reasons given for Mr Dale changing his will to his solicitor in August 2019 were completely untrue. Mr Dyson did, however, think that he believed that those things were true and that is why he chose to change his will to disinherit Mr Dyson and Mr Ellis and to leave everything to Mrs Sharpe, whom he saw every day, who controlled all of his money and who supplied him alcohol to meet his drinking addiction.

210. It will be apparent from what I have already said and what I say later in this judgment that I do not accept Mr Dyson's evidence in these respects.

Events up to Mr Dale's death

Mrs Sharpe's Evidence

211. Mrs Sharpe continued to assist Mr Dale until his death. For example, she assisted him in applying for PIP. Mr Dale was assessed for PIP on 13 November 2019 by a healthcare professional. On page 5 of the form it was reported that he "has all bad days if it weren't for his sister in law and friend coming everyday he would not even be able to get things out of the fridge". On page 8 of the assessment, the nurse reported that Brian "sees his neighbour and his sister in law and he is fine with them".

212. On 14 February 2020 Mrs Sharpe bought a new sofa for Mr Dale and messaged Mr Hodgskin about the purchase.

213. On 22 March 2020 she contacted emergency services to report her concerns for Mr Dale after he exhibited confused behaviour when on the telephone to her.

214. Mrs Sharpe was the main point of contact for Mr Dale's medical needs and assisted in arranging personal care for him. For example, on 27 March 2020

she requested an update on his carers. She said that she put a lot of time into ensuring that Mr Dale had the help and support which he required. He also requested that she was the main contact for his financial assessment for non-residential and support services in April 2020. At that point Mrs Sharpe had been assisting Mr Dale with his finances for nearly a year and did not have any issues being listed as his main contact.

Mr Dyson's Evidence

215. Again, by contrast, it was Mr Dyson's evidence that, following Mr Dale making the new will whereby Mrs Sharpe inherited everything, her almost daily visits decreased significantly. Mr Hodgskin told Mr Dyson that Mrs Sharpe then began visiting only once a week and sometimes not even that, for 10 minutes or so where she would drop a bag of crisps and a sandwich off to him. She also kept hold of his bank card and controlled all of the money.

216. The statement that he and his brother would threaten a man who had been their father for most of their lives was not only untrue, it was absurd. They never threatened Mr Dale nor would they. He was their father in every sense of the word. The family was always very close. Mr Dyson visited his mother and Mr Dale every week and regularly took his own children with him so that they could have a close relationship with their grandparents. When his mother became ill, Mr Dyson was visiting Mr Dale every other day to support him. The fact that Mrs Sharpe wheedled her way into his life after Mrs Dyson's death and forced them out of his life so that they did not see him again after Father's Day in June 2019 broke Mr Dyson's heart. They did not see Mr Dale and they would not be there to support him through his grief, his alcohol addiction and his last days in the world.

217. The allegations that the police were involved because they had stolen money from Mr Dale was completely untrue. The only time the police were involved was when they telephoned Mr Ellis to say that they were not to go to Mr Dale's house or call him on the phone because they were harassing him. That was also untrue and was down to Mrs Sharpe calling the police on Mr Ellis.

218. Mr Hodgskin was able to step up and care for Mr Dale throughout the period up until his death on 28 May 2020. Mr Dyson said that Mr Hodgskin had provided a witness statement in support of their case as he knew the truth of what had happened, he was there every day

visiting Mr Dale and he had nothing to gain whichever way the case went. He just wanted to do what was right for Mr Dale, who was his close friend.

219. Again it will be apparent from what I have already said and what I say later in this judgment that I do not accept Mr Dyson's evidence in these respects.

220. It was a key part of the Defendants' case that not only did Mrs Sharpe hate Mr Dale, but crucially she did not bother about him after she had manipulated him in making a will in her favour. I am bound to say that this allegation made no sense whatsoever. If she had manipulated him into changing his will, she would have wanted to keep him in thrall to her lest he change his mind again and revoke the will he had made as a result of her influence. I am satisfied, however, that Mr Dale's care and medical records show that allegation to be untrue in any event.

221. Mrs Sharpe was significantly involved in Mr Dale's care long after he made his 2019 will in August of that year. The records show a picture of Mr Dale as a man who retained capacity at all times, who was determined to do as he wanted, was frankly cussed and uncooperative at times with those who were trying to care for him and yet who was grateful to Mrs Sharpe for her assistance.

222. The documentary evidence, which I accept, includes the following

(1) on 26 April 2019 the hospital discharge assessment recorded that

"Brian states that his sister in law Sharon is very supportive, she assists with domestic tasks and shopping"

(2) Mrs Sharpe was named as the emergency contact on Mr Dale's care plan dated 26 April 2019

(3) on 1 May 2019 Mr Dale reported that Mrs Sharpe assisted him and was looking into him claiming PIP

(4) on 10 May 2019 Mrs Sharpe stated that she was attending daily to clean:

"I spoke to his sister in law who informs me that there may not be any tasks for the carers to do because she goes up daily and assists with taking rubbish out and does general cleaning and tidying".

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On the same day, it was noted in the GP records that Mrs Sharpe was Mr Dale's main contact

(5) on 24 July 2019 the social services records state that

"Sharon has regular contact with Brian and visits twice a week"

It is at this point in the chronology that the will was executed on 16 August 2019, but her presence did not tail off after that; far from it.

(6) on 21 August 2019 the police report stated that

"Brian is secure in his address, has regular phone contact with Sharon and she visits twice a week

(7) Mrs Sharpe was present at a meeting at the house on 2 September 2019

(8) on 5 September 2019 Mrs Sharpe raised an issue about Mr Dale's bed and bathroom:

"Sharon advised that there are issues with Brian 'getting stuck' down the side of the bed. Brian also is unable to access his bathroom.

Advised that according to case notes, referral has been made to Therapy for support with mobility issues and aids required. Sharon queries about a DFG for bathroom adaptation. Following discussion with Paul Sherry – advised Sharon that Paul will initially assess for aids/equipment for bathroom before putting Brian forward for a DFG"

(9) on 26 September 2019 the records state that

"he is able to bathe and use the bathlift independently, but will only bathe when Sharon is in the home"

(10) on 13 November 2019 Mr Dale had a home assessment for PIP conducted by a healthcare professional, at which Mrs Sharpe was present. Mr Dale is recorded as saying that

"he has all bad days. If it weren't for his sister in law and friend coming every day he would not even be able to get things out of the fridge

...

He has had 1 and a half sandwiches in 10 days he has no appetite he has build up drinks that his sister in law buys and he drinks 3 of them through the day

...

He can't get to the toilet and he wees in a bucket at the side of the sofa and he can't [get] to the toilet to open his bowels so does that in his pants and then his sister in law will wash them

...

He used to go to the local pubs and liked this he does not get out now and is not bothered anyway he can't get out if he wanted to.

He sees his neighbour and his sister in law and he is fine with them

..."

(11) on 21 November 2019 Mr Dale told his GP that Mrs Sharpe (who was present) was helping him and, against medical advice, he refused to go to hospital

(12) on 22 November 2019 Mr Dale suffered a fall. Mrs Sharpe called 999 and was present when the paramedics attended. He remained in hospital until 15 December 2019

(13) on 31 December 2019 it was recorded in the GP records that there was a written note that Mrs Sharpe was to act for Mr Dale, although no contact details were recorded

(14) on 27 January 2020 a discussion took place with Mrs Sharpe and Mr Hodgskin about watering down Mr Dale's alcohol:

"Sue had separately discussed with Nick and Sharon watering down the bottles of wine covertly, which they buy for him which they stated they will do. They stated they had previously done similar when Mr Dale asked them to bring vodka and coke when an inpatient. They had not put any vodka in and Mr Dale had not noticed"

(15) on 28 January 2020 Mrs Sharpe took part in a

telephone discussion with Mr Dale's physiotherapist

(16) on 30 January 2020 Mrs Sharpe called to state that she had been watering down Mr Dale's alcohol as advised:

"Sharon stated that she has started watering down Mr Dale's bottles of wine as she discussed with Sue. She had initially put 1/3 water and stated he did not notice. She will now try adding half water"

(17) on 7 February 2020 Mrs Sharpe expressed concern that Mr Dale was cancelling care which had been arranged

(18) on 20 February 2020 Mrs Sharpe was present at the property and she had been buying Mr Dale a sofa and pyjamas

(19) on 23 March 2020 Mrs Sharpe reported concerns about Mr Dale to his GP

(20) on 27 March 2020 Mrs Sharpe was called and she said that she would have a "stern word" that Mr Dale must accept the carers and equipment which had been offered. She went for his shopping weekly. The social services records indicated that

"Mr Dale has been doubly incontinent on the sofa and cleans himself with wipes. Sharon leaves clean clothes next to the sofa and he changes the clothes and leaves the soiled clothes for her to collect and wash. Sharon visits approx. twice weekly ... Mr Dale had not allowed Sharon to contact the GP due to fear of hospital admission ... Aware Mr Dale would decline hospital admission if suggested"

(21) on 14 April 2020 Mr Dale stated that he wanted Mrs Sharpe to be the main contact for financial assessment in relation to his care package

(22) Mrs Sharpe liaised regularly with Mr Dale's neighbour Mr Hodgskin by telephone and messaging about Mr Dale's welfare.

Events following Mr Dale's death

Mrs Sharpe's Evidence

223. Mr Dale died on 28 May 2020. Mrs Sharpe registered his death and arranged the funeral. On 29 May 2020 Mr Dyson left her a voicemail calling her a

"twisted evil bitch". She was very distressed and upset to receive the message and reported her concerns to the police on 5 June 2020.

224. Mr Dale's funeral was held on 10 June 2020. She did not inform the Defendants of his death or of the funeral as they were estranged from him. Mrs Sharpe did not feel comfortable contacting them directly due to their threatening behaviour towards her, but she did not prevent anyone else from informing the Defendants of Mr Dale's death or his funeral.

225. To date, she had not cleared Mr Dale's house and produced photographs of the house still furnished with the date stamp 31 December 2020.

Mr Dyson's Evidence

226. Mr Dyson said that he and his brother only found out about Mr Dale's death two days after he had died and then only third hand through a friend. Neither of them was informed by Mrs Sharpe. They were also not informed that his funeral had taken place; none of his family or friends knew about the funeral. It seemed as though Mr Dale was sent off by Mrs Sharpe and a couple of members of her family who did not know him or care about him. Mr Dyson said that that broke his heart and made him cry every time he thought about it. Mrs Sharpe not only took his family home and photos, but more importantly took the last year of being with Mr Dale and his own children seeing their grandfather. When Mr Dyson found out about the funeral having taken place without any of them present, he did get angry and called Mrs Sharpe saying how upset he was and how ashamed his mother would have been of her. She did not answer the call and he left a message on her voicemail to that effect. She immediately called the police alleging that he was harassing her. He said to Miss Harrison that he had not been aggressive when he found out about the funeral, but what he in fact said in the voicemail which he left her was that

"Do you not have any caringness or decency about you at all you evil bitch. You could have let me know, I had to find out through secondhand by the big fucking Julie [Bagshaw]. You evil twisted bitch, my Mum would be ashamed of you."

227. He later found out from Mrs Bagshaw and Mr Hodgskin that Mrs Sharpe started to empty the house the day after he had passed away and she still refused to pass on any of the sentimental items from the house or any of their family photos back to them. She was

simply being vindictive because she had absolute control of everything under the new will that she had Mr Dale make.

228. I do not accept that Mr Sharpe had emptied the house. Certain items may have been removed, but house still had a number of possessions in it, as the photographs in the trial bundle showed.

229. Mr Dyson said that he believed that Mrs Sharpe had manipulated Mr Dale into believing untrue things about himself and his brother, including the specific things which he repeated to the solicitor as reasons for disinheriting the two of them and that she had done so deliberately to manipulate a vulnerable elderly man into leaving her everything – their family home and their family money.

230. Yet again there was a denial that there had been any aggression, yet what Mr Dyson in fact said in the voicemail which he left his aunt Mrs Sharpe was that

“Do you not have any caringness or decency about you at all you evil bitch. You could have let me know, I had to find out through secondhand by the big fucking Julie [Bagshaw]. You evil twisted bitch, my Mum would be ashamed of you.”

231. I now turn to the specific allegations of misrepresentations said to have been made by Mrs Sharpe to Mr Dale to induce him to alter his will in her favour.

(a) Mr Dyson and Mr Ellis prevented Mr Dale from visiting Mrs Dyson whilst she was in hospital

Mrs Sharpe's Evidence

232. During a visit to her sister in February 2019, Mrs Dyson told her that she was scared of Mr Dale and that she did not want him to visit her. She was concerned that he could cause issues if he visited the hospital or care home when he had been drinking. Mrs Dyson was visibly worried and Mrs Sharpe wanted her to feel safe and so she informed the care home staff of Mrs Dyson's wishes out of concern for her sister. She explained that to Miss Del Luongo:

“Q. You told the staff not to let Brian see Ann?”

A. Yes.

Q. So you told them not to let him in?

A. My sister told us to do that. He would be drunk. She didn't want trouble because she was really really ill.”

I accept that evidence, but in fact Mr Dale did not want to go and see Mrs Dyson in either the hospital or the care home in any event.

Mr Dyson's Evidence

233. Mr Dyson confirmed that Mr Dale did not want to go out of the house even to visit Mrs Dyson, but eventually convinced him to go if he took him in a wheelchair and stayed with him the whole time. On the way home from the hospital, Mr Dyson picked him up some shopping and that was the first time that Mr Dale asked him to buy him a bottle of vodka. Mr Dyson refused. Mr Dyson knew that it was caused by upset over his partner's condition and he certainly did not want to enable him.

234. In answer to Miss Harrison, however, Mr Dyson accepted that the reality was that Mr Dale simply did not want to go and visit Mrs Dyson (“No, he did not want to go”). Initially he denied to Miss Harrison that he and his brother had provided alcohol to Mr Dale and then admitted it:

“Q. Look at paragraph 15 of your witness statement. But you were providing alcohol to Brian?”

A. No, not correct.

Yes, we did provide alcohol, but not enough to put him in hospital in March 2019.

Q. But your wife says so in paragraph 9 of her witness statement. Look at p.571. Right?

A. Yes, but Brian was not plied with alcohol. We gave him supplies to get through a difficult period.”

235. Mr Dyson tried on every visit to encourage Mr Dale to go with him to visit Mrs Dyson in hospital again, but he would just become upset. Mr Dyson believed that he did not want to go because he did not want to see his mother in that condition in the hospital. Mrs Dyson and the family were his life and Mr Dyson believed that he

loved her very much, but he could not convince him to visit her in hospital

236. Mrs Sharpe instructed the care home not to allow Mr Dale to have any contact with Mrs Dyson. She claimed that the thought of Mr Dale visiting was upsetting her sister, which was simply untrue. Every time Mr Dyson visited his mother she asked about Mr Dale and how he was and whether they could get him to come and visit her. Miss Harrison put it to him that Mrs Dyson was concerned that he would get drunk and create a scene, which he denied. But his answer to the proposition that it was Mrs Dyson who had said that she did not want Mr Dale to go was

"I didn't know that at the time"

Again, however, he agreed with Miss Harrison that

"Brian didn't want to go"

then

"He did want to see her, but he didn't want to go.

He wanted to go, but he didn't want to travel.

Q. You could have taken him.

A. I could not physically drag him into the car.

Q. But he didn't want to go. He never wanted to go."

Mr Ellis's Evidence

237. Mrs Dyson was hospitalised on 23 January 2019 and died shortly afterwards. Mr Ellis said that both he and his brother had offered to take Mr Dale to the hospital to see her as he was unable to go unaided, but he always declined their offers and never went to visit her in the care home or attend her funeral. Mr Ellis booked and paid a taxi for him on the day of the funeral, but he refused to go:

"Brian was a quiet person, not a person to kick off, but he couldn't bring himself to come to the hospital.

Q. He didn't want to go in the first place?

A. No, he didn't want to go in the first place.

Q. That is completely illogical.

A. He didn't want to go"

238. It is therefore apparent, from the evidence of the Defendants themselves that Mr Dale simply did not want to go and see Mrs Dyson in hospital. There was no misrepresentation by Mrs Sharpe that Mr Dyson and Mr Ellis prevented Mr Dale from visiting Mrs Dyson whilst she was in hospital. He did not want to go in the first place.

(b) They wanted to evict Mr Dale from the property

239. I am satisfied that Mrs Sharpe never said that to Mr Dale.

240. By contrast, it was Mr Ellis who had shouted at Mr Dale that it was his house and not Mr Dale's house.

241. It was Mr Dale, not Mrs Sharpe, who told Mrs Ridgway-Coates on 25 July 2019 when she was taking instructions for the new will that Mr Dyson and Mr Ellis were threatening to take the property from him and had claimed that the property did not belong to him.

(c) They wanted all of Mr Dale's money/(d) they had stolen money from him

Mrs Sharpe's Evidence

242. She understood from Mr Dale that the Defendants also previously had access to his bank account to assist with his shopping. He confided in Mrs Sharpe that he was concerned that they were using his bank cards for their own benefit. For example, between 24 January 2019 and 12 April 2019, cash withdrawals of £1,270 were made from his NatWest account. Mr Dale did not believe that the Defendants had accounted for those transactions. She did not have access to his bank statements at the time when he mentioned his worries to her. The concerns which he had appeared to be entirely based on his own observations after reviewing his bank statements. Due to his concerns, Mr Dale asked Mrs Sharpe to assist with his shopping and gave her access to his bank card for that purpose. She had helped her sister and Mr Dale with shopping during Mrs Dyson's lifetime and was happy to continue assisting Mr Dale after her sister's death. Mrs Sharpe had access to his bank account for shopping expenses from 26 April 2019 and ensured that all the expenditure was

reasonable and accounted for. Mr Dale always had access to his bank statements to review any expenditure independently.

243. She understood that Mr Dyson stated that the Defendants withdrew a weekly sum of £350 for shopping expenses and that any change left over was given to Mr Dale. She did not believe that he received any money from them since he would ask her for money and he would have had no reason to do so if he had received cash from the Defendants every week. He never mentioned receiving any money from the Defendants to her.

244. Mr Dale was the sole beneficiary of Mrs Dyson's estate under her will. Her estate consisted of her property and her NatWest bank account containing around £17,000. Mr Dale asked Mrs Sharpe to help him deal with the estate and so she contacted NatWest bank on his behalf, only to be informed by the bank that the account had been closed while Mr Dale was in Babington on 25 April 2019. The bank did not confirm who had closed the account, but when she relayed her conversation with the bank, Mr Dale immediately suspected the Defendants. He was surprised that they were able to close the account without his authority and reported the issue to NatWest.

245. Mrs Sharpe said that the Defendants withheld the money received from NatWest from Mr Dale. He needed access to the money for general living expenses and was understandably upset about their actions.

246. She believed that Mr Dyson had stated that his mother's NatWest account was closed and that her funeral expenses in the sum of £4,092.28 were subsequently paid from the monies received. However, the funeral expenses in the sum of £2,734.00 were paid directly from her NatWest account on 21 March 2019, as was confirmed by the undertakers, Alfred Dunham Son Ltd.

Mr Dyson's Evidence

247. Mrs Dyson died on 6 March 2019. Mr Dyson said in his witness statement that Taylor & Emmet were instructed to deal with the probate and to assist him and his brother in administering her estate, but he accepted in cross-examination that the firm had not been instructed and that they were waiting for Mr Dale to be, as he put it, in a good position so as to be able to administer the estate with him. The house was transferred into Mr Dale's sole name and her NatWest

bank account was closed. All of the direct debits for the property were changed to come out of Mr Dale's sole account. Mr Dyson accepted that he did not tell Mr Dale that the NatWest account was being closed.

248. Prior to her death, Mrs Dyson had told her sons not to pay all of the money across to Mr Dale immediately because she was worried that following her death he would drink himself to death in his grief. Mr Dyson completely agreed. Mr Dale was not coping well with his partner's illness and prognosis and Mr Dyson believed that, if they had let him have all of the money at once after she had died, he would have drunk himself into an early grave. Mr Dyson told Miss Harrison that he had signed the form as an executor to close the account. She asked him why he had put the money in an account in his sole name, to which he replied that it was safe place and he had not thought to put it in an account in the name of all three of the executors. He said that Mr Dale had agreed to that course of action, but could not explain why that did not appear in his witness statement.

249. The allegation that Mr Dyson stole his mother's and Mr Dale's money was completely untrue. It was also quite hurtful to think that Mr Dale actually believed that, but Mr Dyson put it down to his drinking and Mrs Sharpe's daily manipulations of a vulnerable elderly man. Prior to Mrs Dyson's death she asked him and his brother to make sure that Mr Dale was not given all of her money all at once because she was concerned that his drinking had become a lot worse and that he might use the funds to drink himself into an early grave. She also wanted to make some gifts to her sons because she knew she was dying and that everything would go to Mr Dale. She asked Mr Dyson to make transfers on her behalf as follows:

(a) to Mrs Sharpe £500.00,

(b) to Mr Ellis £1,000.00, and

(c) to himself £1,000.00.

250. After much discussion (and Mr Dyson telling his mother that he did not want the money back) his mother also insisted that he take the sum of approximately £2,100.00 which she and Mr Dale owed them for the shopping for Mr Dale's food, alcohol and cigarettes whilst she had been in the hospital and care home, as well as for items which they had bought her to make her more comfortable in the care home, including a smart TV and internal TV antennae as the signal was poor in

the care home. When Mrs Dyson died they continued to pay for Mr Dale's shopping every week and to care for him until they were prevented from doing so by Mrs Sharpe. Mrs Dyson had specifically asked them to hold the money for Mr Dale and pay for his weekly needs with it. In her words "I don't want him to have the lot in a bank account, he will buy vodka and drink himself to death." Mrs Sharpe was present, witnessed that statement, and openly said "Don't let the twat have a thing!"

251. The brothers continued to shop for Mr Dale after Mrs Dyson died. They took £350 out in cash weekly and the change from the shopping was given to Mr Dale. That was over 14 weeks, until June 2019 and all receipts were given to Mr Dale along with his shopping and change. By Mr Dyson's calculations that equated to £4,900.00.

"Q. £4,900 in 14 weeks?

A. Yes.

Q. Burning through it at that rate it wouldn't last long?

A. No, it wouldn't.

I was looking after him.

Q. His inheritance was wiped out after 14 weeks?

A. I can't comment.

Yes that it correct.

Q. You were really looking after him, were you?

A. Yes."

252. Mr Dyson said that he and his brother began the administration of their mother's will in transferring the funds from her bank account into a separate account in the former's sole name. He made the gifts which his mother had asked him to make prior to her death and made arrangements for her funeral. The total amount transferred was £13,684.87. From that he paid the gifts of £2,500.00, the repayment to himself of £2,100.00, for Mr Dale's shopping £4,900.00 and for his mother's

funeral £4,092.28. Mrs Sharpe then instructed Taylor & Emmet to undertake the administration of Mrs Dyson's estate, claiming that Mr Dale would take the grant and sort everything, notwithstanding his ill health, his alcoholism and Mr Dyson's very real concerns regarding his mental state. Mr Dyson raised his concerns with Taylor & Emmet at the time, but they carried on regardless. Mr Dyson was told by NatWest that they transferred all £13,684.87 from his mother's account into Mr Dale's sole account as he took out the grant of probate – essentially that had been paid out twice. He was now having to deal with NatWest directly to try to reconcile the payments and that was obviously something which Mr Dale's estate would need to sort out, even if the 2019 will was upheld.

253. What emerged in cross-examination was that there had been no discussion of the figure of £4,900 for the shopping over and above the £2,100 apparently discussed with his mother and that there were no receipts for any of the expenditure in question. He could not produce an invoice for £4,092.28 for his mother's funeral. Miss Harrison pointed out that the cost of her funeral was £2,734.00, which had been paid out of the account before it was closed. He said that the balance was for other costs, such as food, drink and flowers. He could not explain why his bank statements which might have evidenced such payments had not been produced on disclosure.

254. Mr Dyson accepted that he had taken his mother's jewellery and had not offered it to Mr Dale, although he denied that he had taken it because he regarded it as being his and his brother's.

Mr Ellis's Evidence

255. Mr Ellis said that he was aware of the closure of his mother's bank account by his brother, although he did not tell Mr Dale about it. He said that he and his brother trusted each other. It was put to him that the money should have been transferred into the names of all of the executors, not just one:

"Q. But the assets should have been transferred into the names of all three executors.

A. Mum said not to give him the money.

I can't say how long it lasted.

No, I was not aware that Wayne had taken £2,100.

She was our Mum. I didn't need to keep an eye on him [Wayne]. If Wayne said it was for a reason, there must have been a reason why.

Yes, I was aware of Taylor and Emmet. We paid NatWest and then they paid him."

256. Of course NatWest did no such thing. What happened is that NatWest compensated Mr Dale for breach of mandate and then sought recourse from Mr Dyson and Mr Ellis. They did not repay Mr Dale. Mr Ellis had no real answer when asked why he and his brother had not paid Mr Dale back. He did not know what his brother had done with the money and could not comment on it.

257. I am bound to say that I regard the treatment by Mr Dyson of Mrs Dyson's monies in her NatWest account (which passed to Mr Dale under her will) with the gravest suspicion and I did not find his explanation for his behaviour to be convincing. The monies were not paid into a joint account in the name of the executors as they should have been, but into an account in Mr Dyson's sole name. He did not tell Mr Dale that that was what he was going to do and indeed he cannot have done so since Mr Dale asked Mrs Sharpe to find out what had happened to the money and later instructed Taylor and Emmet to recover it.

258. No bank statements relating to Mr Dyson's account into which he paid the monies was ever provided. No documentary evidence of the alleged payments of £2,100 for alleged expenses and £2,500 for alleged gifts has ever been provided. Mr Dyson did not suggest that Mr Dale had ever been asked about any of those payments; accordingly, he cannot have agreed to them. Moreover, he had apparently spent £4,900 over 14 weeks on shopping for Mr Dale, a frankly remarkable amount for a man who ate very little, as was apparent from the social services records and the evidence before the Court.

259. It was therefore not a misrepresentation on the part of Mrs Sharpe to say that the Defendants wanted all of Mr Dale's money. That is precisely and exactly what Mr Dyson had helped himself to. It was NatWest who compensated Mr Dale for the breach of mandate; the monies were not repaid to him by the Defendants.

(e) They were harassing him

260. This is a curious allegation. Mr Dale retained capacity and would have known himself whether or not he was being harassed by the Defendants.

261. In any event, there is ample evidence, as I have set out that Mr Dyson and Mr Ellis did threaten Mr Dale and that they were abusive to him.

262. There was no misrepresentation by Mrs Sharpe of the true state of affairs in that regard between Mr Dale and Mr Dyson and Mr Ellis.

(f) They were trying to bribe Mrs Sharpe not to tell Mr Dale what they were doing or planning to do

263. There is no evidence that Mrs Sharpe told Mr Dale that Mr Dyson and Mr Ellis were trying to bribe her not to tell him what they were doing or planning to do. In any event, it is difficult to understand how Mrs Sharpe could have induced Mr Dale to believe any such thing given that he knew full well that they were also threatening Mrs Sharpe herself.

(g) Mr Dale should not allow them or their families to visit him.

264. That is not a representation of present fact. In any event, it is clear that Mr Dale told Mrs Ridgway-Coates that he would not have any more contact with Mr Dyson and Mr Ellis

265. I have set out the evidence of the other witnesses for the Defendants separately from those of the previous witnesses. I have explained above my concerns with their evidence and the extent on which I can rely on it.

Kathryn Dyson

266. Kathryn Dyson contradicted her husband's evidence about whether the two sisters were close. He had said that they were not. She, however, accepted that Mrs Dyson had been estranged from all of her siblings save Mrs Sharpe, at least until they had had a falling out in 2018. She could not comment on the difference between her husband's evidence and her own.

267. Although she said in her witness statement that her husband and Mr Dale had a very good relationship which she described as a typical "father/son"

relationship and that her husband always told her that Mr Dale was the dad he had never had, she agreed that her husband had never called Mr Dale "Dad". As far as she was aware, her husband had never been asked to call Mr Dale "Dad". She could not comment on the description of Mr Dyson and Mr Ellis as "friends" in the 2003 will since she had not then met her husband (they did not meet until 2004). Her husband's natural father was still alive, although they did not have a father-son relationship.

268. She said that Mrs Dyson struggled to get a diagnosis of her condition until 2016 and had a lot of appointments and tests in the intervening years after her health began to deteriorate in 2011. It was only in 2016 that she was diagnosed with multiple sclerosis. Kathryn Dyson did not do the shopping for Mrs Dyson until 2017 when her health deteriorated to such an extent that she had to give up work.

269. Kathryn Dyson said that at that point they tried to spend a lot more time with Mrs Dyson and Mr Dale as she began to feel quite isolated. The family went out for afternoons sometimes and Mrs Sharpe came as well. The sisters got on well initially, but Mrs Sharpe could often be heard trying to persuade her sister to leave Mr Dale, exclaiming that he was no good for her health. On one occasion Kathryn Dyson remembered that Mrs Sharpe told her sister to "stockpile paracetamol, crush it up and hide it in his mashed potato; that will finish him off." It was that which led to a huge argument between the two of them in 2018 as Mrs Dyson remained loyal to Mr Dale and Mrs Sharpe would not accept it. She was not happy that her sister stayed with Mr Dale, believing that he was no good for her. Kathryn Dyson said in her witness statement that they never got back on track with the relationship they used to have as sisters and did not speak much after that.

270. Mrs Dyson accepted in her oral evidence, however, that Mrs Sharpe had been concerned about the effect of Mr Dale's drinking on her sister and that Mrs Sharpe took her sister to hospital for appointments and that that had occurred even after they had had a big row in 2018. When Mrs Dyson went into hospital for the last time in January 2019, Mrs Sharpe had been in the ambulance with her and visited her in hospital, certainly on most days as far as she was aware. Mrs Sharpe attended the hospital as they were told that Mrs Dyson would potentially not live the weekend. She was diagnosed with secondary brain tumours and lung cancer.

271. She said that Mrs Sharpe was angry at that point

with Mr Dale as she claimed that he had not supported her sister enough and he would not or could not attend the hospital. In fact she accepted in cross-examination that Mr Dale did not want to visit his partner in either the hospital or the care home. That confirms the evidence of Mrs Sharpe, Mr Dyson and Mr Ellis.

272. Kathryn Dyson said that she visited Mr Dale many times during Mrs Dyson's hospital stay to provide him with food, cigarettes and cider or wine. He constantly asked her to bring him vodka, but she refused, telling him it would not be what Mrs Dyson wanted.

273. Mrs Dyson was moved to The Green Nursing Home at the request of her sons and Mrs Sharpe and died in March 2019.

274. In her witness statement she had alleged that, during Mrs Dyson's hospital and nursing home stay, she heard Mrs Sharpe on multiple occasions telling her sister to change her will and write Mr Dale out of it. She also alleged that she had overheard Mrs Sharpe telling the nursing home staff that her sister did not want Mr Dale attending as she was scared of him. When cross-examined by Miss Harrison she said that she did not complain to the staff because it was not her place to do so.

"Q. But this was a dying woman being badgered?

A. No solicitor would get involved.

Q. But this is a terminally ill woman being badgered [to change her will]?

A. She was not my mother. It was not my place.

Q. Ann did not want him there because he was drunk and that might lead to a scene?

A. I can't comment."

275. The reality is that, as both Mr Dyson and Mr Ellis admitted, Mr Dale did not in fact want to go and see his partner in hospital in any event. Nor did Mrs Dyson want him to go in any case because of the risk that he would turn up drunk and make a scene.

276. Kathryn Dyson admitted that, following Mrs Dyson's death, Mr Dale became worse, drinking supplies that the Defendants had provided for a few days in one night. Mr Ellis arranged transport for him to

attend the funeral, but he refused. On one night Mr Dyson went to see him and he was unable to move, laid out on the sofa. He had soiled himself, so Mr Dyson phoned for an ambulance and stayed with him for over 8 hours until they were able to attend. During that time, he carried him up to the toilet and cleaned him up.

277. When pressed, however, Kathryn Dyson could not comment on the amount of alcohol which her husband and his brother had provided for Mr Dale and which he had consumed in one go.

278. She said that she took toiletries to Mr Dale in hospital, as well as pyjamas from the house and had washed them before taking them to the hospital.

279. She did not visit Mr Dale in the rehabilitation unit and did not know whether her husband had. She did not accept that Mr Dale had told the hospital that Mrs Sharpe was his next of kin, although she accepted that it appeared from the hospital records that he had done so.

280. She was not aware of the closing of Mrs Dyson's account and was not privy to any decision concerning it. She was not aware of £2,100 being paid out of it. Nor could she comment on money being taken from Mr Dale's account. She was, however, aware that her husband had taken Mrs Dyson's jewellery because Mrs Dyson had told them to have it and share it out amongst Mrs Sharpe and the Dyson grandchildren.

281. It was put to her that Mr Ellis was angry about the house keys, but she denied it and also denied that he had a temper. She temporised when asked whether the Defendants though that the house was theirs:

"Q. They saw the house as theirs?

A. I don't know. Sorry."

282. Miss Harrison asked her why there was such a big gap in visiting Mr Dale between his discharge from hospital until June, to which she candidly replied

"It was not safe to take the children around because of the alcohol. We used to drop stuff off, but not between him leaving the hospital and June."

283. According to her witness statement, however

"11. I last saw Brian at his home on 16th June 2019 (Father's Day) where we visited him with

cards and gifts from Wayne, myself and his grandchildren. He was very agitated and appeared very upset. At points, he seems not to be aware at all that it was Father's Day and became confused as to why we were there visiting him with all of the presents. He became increasingly upset when Jacob and Niamh, his grandchildren, hugged him goodbye.

12. We tried many times to contact him after that with regards to supplies that he would need and to chat but we never got any response. It was very strange. Indeed, the first time he didn't respond to any of the telephone calls, Andy visited the house to check on his welfare because we were so concerned. He was refused access, found a locked door and closed curtains, and then received a phone call from the police accusing him of harassment and warning him to stay away."

284. This account, like that of her husband and his brother, is altogether curious. On her account it was not safe to take the children to the house because of Mr Dale's drinking, but nothing untoward had taken place that might otherwise have affected his relationship with the Dysons and their children. Yet after Mr Dale's curious behaviour on Fathers' Day, all contact was suddenly severed for apparently no reason and when contact was sought to be made the family were warned off by the police, again apparently for no reason.

285. Yet she never saw Mr Dale again after that visit in June, notwithstanding (apparently) that nothing had happened to sour the relationship.

"Q. You never called round after Father's Day?

A. We had a busy life, with 2 small children.

I don't remember, I'm sorry.

I'm sorry, I can't comment.

Q. No one visited him for 5 weeks?

A. I can't remember.

Q. Did Andrew mention the voicemail message to you?

A. I can't comment. I wasn't there.

I was aware of the voicemail through reading the evidence.

No, I don't want to hear it.

I thought it was earlier: at the time of Ann's funeral because transport had been arranged and he [Brian] had not turned up.

Q. He is called a selfish twat and a spineless bastard.

A. I didn't know Brian well enough to know whether he would be upset or not at such a message."

286. That last answer stretched credulity, as did the rest of her testimony about the breakdown of the relationship.

287. She agreed that Mr Ellis's text message that

"If you want to play games ... I'm a lot better than Sharon ... just try me Bryan ... please do ... will do it for my mum"

was not nice and that the text message that

"You coursing [sic] shit again

Take that as a yes,?????

Just like your mum ..."

revealed a side of Mr Ellis that she had never before seen at all.

288. She denied, however, that her husband had ever fallen out with Mr Dale:

"No, Wayne never fell out with Brian ... They never fell out. He didn't tell me if they fell out."

289. Again I find that that answer stretched credulity.

290. The cross-examination continued

"Q. You and Wayne were not blocked on the phone?

A. We were just worried.

We were never contacted by the police.

We did not know the context in which that was happening.

I was not told about Andrew leaving abusive messages."

291. Given that the Dysons were not blocked on the phone, that they (unlike Mr Ellis) had never been contacted by the police and that they were "just worried", one must wonder why they did not attempt to see or make contact with Mr Dale before his death. The answer, as Mr and Mrs Hodgskin both admitted to Miss Harrison (see below), is that Mr Dale was frightened of both Mr Dyson and Mr Ellis.

292. I find that it was not the case that the Dysons did not want to put their children "at risk or to upset them by taking them to visit [Mr Dale] only to find another locked door and a call from the police", but rather that

"It was not safe to take the children around because of the alcohol"

and that, as Mr and Mrs Hodgskin both admitted to Miss Harrison, Mr Dale was frightened of both Mr Dyson and Mr Ellis. In those circumstances it is not surprising that Mrs Sharpe did not inform the Defendants of the death of Mr Dale or the arrangements for his funeral.

293. Kathryn Dyson accepted that she could not know whether Mrs Sharpe's visits to Mr Dale had declined after August 2019 and that she was relying on what the neighbours had told her.

Julie Bagshaw

294. Mrs Bagshaw's house backed on to Mrs Dyson's and Mr Dale's house, but she accepted that she did not watch their house all day. Although Mrs Bagshaw claimed to be a close friend of both Mrs Dyson and Mr Dale, she admitted to Miss Del Luongo that she did not visit them very often, but would see them in pubs or had spoken to them on the phone or saw them "just when we were out". She thought that Mr Dyson was 3 when his mother and Mr Dale began to live together, but Miss Harrison put it to her that he was in fact 11 and she said "Yes, OK if that is the case".

295. She did not know the reason for the row between Mrs Dyson and Mrs Sharpe nor did she know that Mrs

Sharpe had been accompanying her sister on hospital visits. She did not know about Mrs Sharpe washing and cleaning for Mr Dale. She admitted that she did not visit Mr Dale after Mrs Dyson died.

296. It was apparent to me that Mrs Bagshaw's knowledge of the family was not as close as she had made out in her witness statement and that, as she admitted, much of her testimony was based on what the Defendants had told her rather than from matters derived from her own knowledge. In her witness statement she referred to her and her husband visiting Mr Dyson and being shocked to find Mrs Sharpe there because she thought they were not talking. That would not have been surprising given that in fact Mrs Sharpe was regularly accompanying her sister to hospital appointments. Her account continued

"5. We overheard Sharon saying to Ann horrible things about Brian. She said that Brian was complaining about Ann being in the nursing home. It was clearly upsetting Ann what she was saying.

6. We announced our presence and Sharon turned to us and told us how she had spoken to Brian and made clear her opinion of him. She also told us how she told Ann how awful he was, about his drunkenness, and about how she had told the care home staff not to let him in if he turned up. She was also telling us she planned to get Ann a new sim so that he could not keep ringing her. Ann was saying she did not like using the telephone and wanted to see him. Sharon went on about how Brian had no right to come see Ann because he was no good for her and was always drunk."

297. In fact the reality was that Mrs Dyson did not want Mr Dale to go and see her in hospital in case he made a scene when drunk and Mr Dale did not want to go and see her anyway. Miss Harrison asked her why she had not reported the alleged incident to the staff, to which she replied that she was not sure whether she had mentioned it or not and then that she did not like to put her nose in when not wanted. Mrs Bagshaw's account does not tally with the reality of the situation that Mrs Dyson did not want Mr Dale to visit her and that he did not want to go and see her.

298. Although she alleged twice in her witness statement that Mrs Sharpe's visits to Mr Dale's house tailed off after September 2019, that allegation was not

made out in cross-examination:

"Q. You didn't visit Brian?

A. No.

Q. You were not interested in Brian at all?

A. He were just a friend.

No, I wasn't watching who was going in and out of the house.

I could see who was coming and going on the estate.

No, I didn't keep a record of Sharon's visits. No, they were of no interest to me.

... Maybe she was going there, maybe she wasn't.

I don't sit there watching

... I'm not sure. I didn't write it down"

299. She alleged in her witness statement that she firmly believed that Mrs Sharpe had manipulated Mr Dale into changing his will in her favour, but she was forced to retract that allegation by Miss Harrison when she admitted that she knew nothing about it:

"Q. How [can you know that], since you don't know it?

You don't know, do you?

A. No."

300. Again, she alleged in her witness statement that in her opinion Mrs Sharpe tried to get money from her sister by getting her to disinherit Mr Dale and making a new will. When that did not work, Mrs Bagshaw believed that she tried to get him to disinherit the Defendants, so that she would end up with everything as she knew that he would not have long to live because of his ill health and his problems with alcohol abuse. Unfortunately, she succeeded. However, when Miss Harrison put it to her that she knew none of that, she replied that she was told that, but she could not remember by whom:

"Q. You were not party to any of these events, were you?

also an adult I can't tell him what he can and can't have, thanks".

A. I was not aware of them."

301. I agree with Mis Harrison's assessment of her evidence: she was not a close friend of Mrs Dyson and Mr Dale and she knew nothing of relevance from her own knowledge. Her recollection was poor. To which I would add that what she said of her own alleged knowledge did not tally with the reality of the situation.

Nicholas Hodgskin

302. Notwithstanding the very serious allegations which he made against Mrs Sharpe in his witness statement, when he gave oral evidence, Mr Hodgskin almost immediately began to contradict his written testimony. He said that he had no problem with her when Mr Dale was alive and that they were working together to try and look after him. He accepted that he made no allegations about her when Mr Dale was alive; he had not told social services about his alleged concerns nor had he said anything to Mr Dyson and Mr Ellis. Although he said that he had been Mr Dale's closest friend for 6 years, he did not go to Mrs Dyson's funeral nor did he visit her in hospital when she was dying. He visited Mr Dale once when he was in hospital, but did not visit him when he was in rehabilitation and did not know where the rehabilitation unit was. He accepted that Mrs Sharpe asked him to keep an eye on Mr Dale when he came out of rehabilitation on 2 May 2019. Two days later he texted her

"Fine love he's watching snooker now gave my phone number if he needs me",

to which she replied

"thanks nick I feel better that he's got somebody near because I can't always be there thanks xx".

303. It is curious, if he and Mr Dale had been best friends for years, why he had only now given Mr Dale his phone number, although he said that they lived near each other.

304. He had alleged that Mr Sharpe had plied Mr Dale with vodka, but Miss Harrison showed him the text message of 4 May 2019 in which she said

"Thanks nick, I've spoken to Brian he understands the situation he's taking it steady and knows vodka is out of the question, he is

305. He accepted that Mrs Sharpe was not giving Mr Dale vodka and he withdrew the allegation which he had made in his witness statement. He accepted that he was communicating regularly with Mrs Sharpe about Mr Dale's welfare and that he was "sort of" friendly with her. He accepted that he and his wife did buy alcohol for Mr Dale - wine, rather than vodka – and that they were watering it down to protect him from himself.

306. When shown the care records, he accepted that on 26 April 2019 Mrs Sharpe was recorded as being supportive and assisted Mr Dale with domestic tasks and shopping and that on 1 May 2019 she was helping him with his PIP application. He knew nothing about Mr Dale telling his carer on the following day, however, that the reason why he felt the need to drink was that his partner had passed away and his family were taking some of her possessions; Mr Dale had never mentioned it to him.

307. He did not accept that Mrs Sharpe went in daily and assisted with taking rubbish out and doing general cleaning and tidying. "Nobody really" was cleaning the house. Mr Hodgskin was not doing so, but he admitted that Mr Dale did not want carers going in at all. It was not a case of Mrs Sharpe cancelling the carers but Mr Dale.

308. Miss Harrison put it to him that Mr Hodgskin drank with Mr Dale. His initial response was "sometimes", but he amended that to "Yes" when she put it to him that he went round to the house to drink with Mr Dale. He went round twice a day. He eventually accepted that Mrs Sharpe was in regular phone contact with him and visited Mr Dale twice a week.

309. He said that Mr Dale never spoke to him about money being taken from him; it was never mentioned, although Mr Hodgskin was his closest friend. Miss Harrison asked him whether he was aware of problems with Mr Dyson and Mr Ellis. He initially said that he was not, but when Miss Harrison put to him Mr Ellis's comments about it being his house rather than Mr Dale's he replied

"Yes, I think he mentioned that.

Q. He was upset?

A. Well, yes.

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...

Q. The incident on 21 July, the banging on the door: was that mentioned?

A. No.

Q. The abusive text message?

A. Yes, he was upset, yes

Q. Brian declined to go into hospital [on 2 September 2019]?

A. That's right.

Q. He was very stubborn?

A. Yes.

Q. It didn't matter what Sharon said?

A. Yes.

Q. He didn't like having carers?

A. No."

310. He recalled the request for authorisation of a bathlift:

"Q. Sharon was sorting out the problem and he would only have a bath when she was in the house?

A. Yes."

311. He accepted that Mr Dale had nothing wrong with him mentally:

"No, not really. No."

312. He accepted that the care records for 30 January 2020 were an example of Mrs Sharpe being concerned for Mr Dale's welfare and that watering down his alcohol was what she did to protect him from himself

"It was, love [to Miss Harrison]".

313. He confirmed the accuracy of the notes of 5 February 2020 and the reference to Mrs Sharpe watering down the alcohol and that Mr Dale had not noticed

"That's right.

Q. He wouldn't touch hot food?

A. No. He didn't want carers coming in at night"

314. He confirmed the accuracy of the records for 13 February 2020 – that Mr Dale declined assistance from carers and that he had told them that they did not need to attend any more –

"Q. He wouldn't listen to anybody, would he?

A. No."

315. On 23 March 2020 Mr Dale refused to allow Mrs Sharpe to call health services

"Q. He wouldn't let her do anything?

A. No.

...

Q. It was how it was. He wouldn't accept assistance?

A. He wouldn't, no. I tried to persuade him.

Q. You tried to persuade him?

A. Yes.

Q. He refused rehab and an offer of short term residential placement [on 25 March 2020]. He was not having it?

A. That's right."

316. He accepted that on 27 March 2020 Mrs Sharpe said that she would have a "stern word" with Mr Dale that he must accept equipment and carers and that she was collecting his soiled clothing to wash

"A. Yes, that's right

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Q. Brian didn't want to eat?

A. It went right through him.

Q. He didn't want to eat, did he?

A. He'd try.

Q. Sharon bought him special drinks to encourage him to eat?

A. I was aware of that."

317. Miss Harrison questioned Mr Hodgskin about the row witnessed by the occupational therapist on 31 March 2020. The care records state that

"Rachel visited yesterday. The two carers were present and Nick and his partner Joanne. Mr Dale declined for them to attempt to support him to stand from the sofa.

Rachel reported that Mr Dale and Joanne were arguing, and shouting and swearing at each other. Joanne told Mr Dale she and Nick will not visit daily anymore. They assist to ensure Mr Dale has some food accessible and that he has some clean clothes to hand etc. ..."

318. His response was that he did not remember the incident

"No. No, I don't remember, No, I don't remember them ever arguing".

319. He accepted that he had never heard Mr Dyson and Mr Ellis call Mr Dale "Dad", although he said that he treated them like his sons. In his witness statement he said that

"3. Up until that last year, Andy and Wayne always had a great relationship with Brian. Brian thought the world of the both of them. They were his sons and just like any family he cared for them and they cared for him",

but when Miss Harrison put it to him that Mr Dale had been upset by their abuse and that that was why the relationship between them had deteriorated, he replied

"I think so."

320. He had said that

"4. When their mother became ill, Andy and Wayne were almost always up at the house helping them out with shopping and chores around the house and garden. Joanne and I would see them visiting all the time",

but he could not remember when pressed when that was, just "every now and again".

321. The source for the statement that

"5. They visited even more when Ann was taken into hospital and later moved into the care home because Brian had no other family and they were his sons so they were supporting him,"

was, he admitted, what "one of the lads told me" rather than a statement from his own knowledge.

322. He insisted that

"6. When Brian was in Darley Dale (a rehab clinic) Sharon Sharpe suddenly came on the scene. When Brian came home he told me that Sharon had told Darley Dale that she was Brian's sister and therefore his next of kin. I questioned Brian on this and asked him if he was sure he knew what he was doing but he just shrugged his shoulders. This stopped the boys from getting any updates from the hospital about Brian's health and was changed on his medical records. I don't think the boys were told of this when it happened",

but he accepted, when faced with the hospital records, that it was Mr Dale who had told the hospital that he wanted Mrs Sharpe named as his next of kin. He said that he had never seen Mrs Sharpe take her sister to hospital.

323. Although he had said that

"7. When Brian was discharged from Darley Dale and moved back home Sharon started visiting Brian at his home. This was very strange as we had never seen her before – not when Brian and Ann lived there, not when Ann was ill and in the home, and not following Ann's death until after Brian's stint in Darley Dale. She was then suddenly visiting him every week",

he accepted that in fact it was not strange because Mr Dale needed help:

"Q. It was not strange: Brian needed help.

A. Yes.

Q. It was not strange, was it?

A. No."

324. As to the next paragraph, he had said that

"8. Wayne and Andy were both still visiting Brian regularly and Wayne was getting all of his shopping for him every week. I do not know why but Wayne then stopped bringing Brian's shopping and Brian gave Sharon his bank card so that she could do all of his shopping for him. Sharon did his shopping for a while but then suddenly stopped doing it. She had his bank card and therefore controlled his money. She would bring him a sandwich or a crunchy chocolate bar once a week for food and that was it."

325. However, he retracted that evidence as well when questioned by Miss Harrison:

"Q. Brian gave Sharon his card when he was in hospital. Do you want to change that evidence?

A. No, I want to keep it. I remember Wayne doing the shopping.

Q. Sharon already has his bank card.

A. No, I can't remember Wayne doing the shopping after April.

Q. Paragraph 8 of your witness statement is totally untrue, isn't it?

A. Yes.

... She stopped coming up more regularly. She gave him a sandwich.

Q. Sharon was getting him to eat items?

A. Yes.

Q. Then she moved him on to sandwiches?

A. Yes.

Q. She was concerned about that till he died?

A. Yes.

Q. She was giving him build up drinks?

A. Yes.

Q. Do you want to withdraw that evidence?

A. Yes."

326. He claimed that he went round to Mr Dale's house 3 times day, although Mr Dale only ate once day. He accepted that he went round to drink and would go round between 5 and 6 o'clock "for a couple of cans". That was not consistent with his original statement that

"9. Around the middle of July me and Joanne had to buy his food for him. Brian would give us the money out of his wallet and I would deliver the shopping to him and give him his change. We were going round to his house up to three times a day some days to sort him some food out."

327. In paragraph 10 he had alleged that

"10. When Wayne visited Brian on Father's Day in June 2019, we went round afterwards because Brian was really upset. We didn't understand why and Brian told us that he was not going to see the boys again. He broke down crying telling us that Sharon had told him horrible things about the boys, that they had been stealing from him, that they wanted him out of the house, and that they shouldn't be coming round. Sharon coerced Brian into whatever she wanted him to believe. She was the one who phoned the police and reported Andy when he tried to check on Brian and she said that they were harassing him. She told Brian what to say to the police when they asked him about it and he got very upset but he said what she wanted. This stopped the boys from being able to visit Brian. Sharon then went and changed the locks to the property to stop them getting access."

328. However, Miss Harrison put it to him that

“Andrew had insulted him twice and Brian was upset: you have already told me that. That is why the relationship with Andrew went out of the window”

to which he replied

“Yes”.

329. Miss Harrison continued

“Q. You said you were not aware of the 21 July incident involving shouting and banging on the door

A. No.

Q. You can't remember that, but you “remember” that Sharon told the police about it?

A. Yes. Sharon told me she had referred it to the police.

Q. So you did know, didn't you? You said you would notify the police [if it happened again]?

A. Yes.

Q. Your evidence is false.

A. No.

Q. You are two-faced.

A. Exactly [sic].”

330. Then came this exchange (with emphasis added)

“Q. Why not tell social services?

A. I don't know.

Q. You were his closest friend? It didn't happen, did it? The real reason is that Wayne and Andrew were upsetting him.

A. I don't know. He did not want to see them. He was not terrified.

Q. The curtains were closed, the doors were locked, because he was terrified?

A. Yes.”

331. Paragraph 11 of his witness statement did not survive challenge. His original testimony was that

“11. She had brainwashed Brian into believing that Andy and Wayne were the bad guys and Brian could not think straight as he was always under the influence of alcohol. We saw Brian every day so we knew what she was telling him because Brian always told us and no matter how much we said we didn't believe it was true, Sharon managed to convince him of horrible things about the boys. Every time we saw her in the house when we went to visit Brian, Sharon was always bad mouthing Andy and Wayne. It was horrible to see because Brian had always thought very highly of both Andy and Wayne and loved them dearly, but we could see his attitude changing towards them both and he would repeat what Sharon had told him and started believing it. I know that Sharon told Brian repeatedly that:

a. It was the boys that refused him entry to the hospital and the care home when Ann was ill.

b. That Andy and Wayne had stolen money from his bank account.

c. That she knew about it but the boys had been trying to bribe her with some money to stop telling Brian the things he didn't know about them.

d. That they were going to try and evict him from the house as well because all they wanted was his money.”

332. He accepted, however, that Mr Dale had capacity throughout and that he could drink significant amounts (up to 4 litres) without it affecting him. As to the four particular allegation which he had made:

(a) he accepted that Mr Dale did not want to go to the hospital and the care home when Mrs Dyson was ill

(b) he did not know about the money in the bank

account

(c) he did not know why Mr Dale should believe the story about the alleged bribe

(d) he accepted that Mr Ellis had said to Mr Dale "It's my fucking house, not your fucking house".

333. His original testimony in paragraph 12 was similarly shredded by Miss Harrison. He had alleged that

"12. Sharon even told the medical professionals that Wayne and Andy were plying Brian with vodka to try and kill him. They were not and at this time they weren't even allowed to see Brian. Me and Joanne made sure that we would always be present then when we knew medical professionals were due to attend. Sharon stopped caring and wasn't present for any of the other visits. Up to this point we didn't know where Brian was getting the alcohol from – we just assumed that Sharon was bringing it to him as she was his only visitor apart from the two of us."

334. However, in cross-examination he admitted that his testimony was a lie:

"Q. Brian was aware of who was giving him vodka?

A. Yes.

Q. You say that Sharon stopped caring and was not present at any of the other visits. Do you accept that she was in fact present?

A. I don't accept that.

Q. Do you accept that Sharon was caring for Brian until he died? Do you accept the accuracy of the care records?

A. Yes.

Q. How can you say that you didn't know where the alcohol was coming from? This is a total lie, isn't it?

A. Yes."

335. In paragraph 13 he had alleged that

"13. When Brian was discharged from hospital for the second time in around December 2019 Sharon was around at his house, she had bought him some alcohol and within five minutes of him being home from the hospital she had set him up with a bottle of wine and a full glass. We had words with Brian afterwards about drinking and he told us that Sharon would get him what he needed. I believe Sharon was giving him the alcohol to make sure he stayed confused and believed whatever bad things she told him about Wayne and Andy. It also made him dependent upon her and not want to upset her as she was feeding his alcohol problem,"

but that too did not survive scrutiny:

"Q. You were watering down his alcohol?

A. Yes.

Q. So she has this evil plan. Why was she involving you as a witness of her evil? She wanted you round because she wanted him looked after. Why have 2 witnesses [of her evil] in the house?

A. I don't know.

Q. Why manipulate him in December 2019? The will was long done.

A. She wants the house.

Q. Why still keep him confused then?

A. I don't know."

336. In paragraph 14 he had sought to portray an incident in which Mrs Sharpe "knew a nurse that would write a letter to show that Brian was competent and she winked at me when saying it", but he admitted to Miss Harrison that Mr Dale had nothing wrong with him mentally. In paragraph 15 he had sought to portray him and his wife "paying for his food, cooking it and trying to make sure that he ate it", but then admitted that Mr Dale would only eat sandwiches or pot noodles and that, far from going in three times a day as he originally alleged,

"No, we weren't going in three times a day".

337. He admitted that Mrs Sharpe was helping Mr Dale

with his PIP application. He accepted the accuracy of the note in the PIP assessment that Mr Dale “sees his neighbour and his sister in law and he is fine with them” (“Yes, right”) and that Mr Dale soiled himself and that Mrs Sharpe would then wash his clothes (“Yes”). He accepted that Mr Dale had said that

“He has all bad days if it weren't for his sister in law and friend coming everyday he would not even be able to get things out of the fridge”.

338. He alleged in paragraph 16 that

“Whilst Brian was still alive and living in his house, Sharon arranged for a surveyor to visit the house to see if planning permission could be obtained to build a house at the back – on the garden. Ronnie was at the property for the entire visit of the surveyor whilst they worked out how much money they could make from Brian's home.”

339. Given Mr Hodgskin's manifest and admitted untruthfulness as a witness and repeated withdrawals of much of his evidence, I do not accept the truth of that allegation, for which he could in any event not ascribe a date. Nor do I accept the allegation made in paragraph 17 that

“17. Brian fell over on numerous occasions but Sharon was never concerned about this. It was always me and Joanne that had to help him. In around the middle of December this was starting to take its toll on us so we asked Sharon if she could arrange for extra carers to come in and help Brian because he was really struggling and we couldn't do any more for him. Sharon refused. When we repeatedly asked her to bring him some food up because he had no food in and she had all of his money, her reply on the phone was “give up”. I arranged with Brian's GP for a carer to attend to assess his circumstances and Denise as she was called told me that he could do with a microwave so that he could easily heat up a couple of microwavable meals. I phoned Sharon to ask her what happened to Brian's previous microwave and she told me that she had taken it and given it to her daughter Rikki who needed it more. I asked her if she could get him a new one and she refused.”

340. That too was exploded in cross-examination:

“Q. Sharon repeatedly expressed concern?

A. Yes.

Q. Brian wouldn't let anyone call for him.

A. No.

Q. “She never cared” is a lie.

A. No.

Q. You say that it was Sharon who refused to allow carers, but it was Brian who always refused to have them?

A. Yes.

Q. So how can you say that it was Sharon who refused them? That is untrue, isn't it?

A. No.

Q. It was Brian who was refusing the carers, so how can you blame Sharon?

A. She said “don't bother”.

Q. That is a lie.

A. No.

Q. It was Brian who wouldn't accept carers, so why are you making her out to be the evil woman?

A. No.

Q. Food: she was shopping once a week.

A. If she came up.

Q. She gave you money every week.

A. Yes.

Q. The microwave: he wouldn't touch cooked food.

A. The carers wanted it.

Q. That is a pack of lies.

A. No.”

341. He had alleged in paragraph 17(2) that

“17. As far as I am concerned, Sharon never cared for Brian. She came on the scene at the end and bought him alcohol despite knowing of his alcohol problem and muddled his mind to blacken the names of the boys. She convinced Brian of horrible untrue things about the boys. She stopped the boys visiting Brian completely and made sure that Brian was dependant on her for everything by taking his bank card, his money, and supplying him with alcohol. She didn't care when he had no food, when he fell, or when he needed more care and we were the only ones there to help him”,

yet he accepted that he and his wife had also bought alcohol for Mr Dale:

“Q. You were buying alcohol for him?

A. Yes.

Q. So why criticise her?

A. [No reply]

Q. What is the difference?

A. Don't know.

Q. Do you withdraw your allegation in this paragraph in the light of the care records?

A. No.

Q. Sharon was always caring for Brian from the evidence of the care records?

A. No.”

342. He accepted that, when Mr Dale died, he had contacted Mrs Sharpe as his next of kin rather than Mr

Dyson or Mr Ellis. Although he alleged that Mrs Sharpe had begun to empty the property as soon as Mr Dale died, when pressed on the matter he said again that he did not know and that she had taken “a couple of things out of it”

“Q. Only a couple of items?

A. Yes.”

Joanne Hodgskin

343. The contradictions in Mrs Hodgskin's evidence began almost at once. Although she said in her witness statement that

“3. I would like to add that in my opinion Sharon never cared for Brian. We never saw her visiting Brian's home, even when Ann was alive, and she seemed to suddenly start visiting him when he was moved to Darley Dale (the rehabilitation clinic) after Ann's death because he was struggling with alcoholism again”,

she admitted that she did not know that Mrs Sharpe had taken her sister to hospital appointments, she did not know which rehabilitation unit Mr Dale had been in and when asked whether Mrs Sharpe was helping Mr Dale because he was on his own, she replied “I believe so”.

344. In the next paragraph of her witness statement she had alleged that

“4. Sharon inserted herself in his life, visiting him quite often at the beginning, supplying him with alcohol, and manipulating him into believing the worst about Wayne and Andy. Gradually it started to take its toll and Brian started questioning his own mind and whether Wayne and Andy were lying to him and had stolen from him.”

345. However, when cross-examined it was apparent that she knew nothing about the closure of Mrs Dyson's bank account or Mr Ellis shouting down the phone at Mr Dale when he was in hospital and she only knew of the voicemail message because her husband had told her about it. She admitted that she and her husband had bought alcohol for Mr Dale and then she alleged of Mrs Sharpe

“I think she was trying to kill him”.

346. Miss Harrison put it to her that since both she and her husband and Mrs Sharpe were giving Mr Dale

alcohol, it was the same, was it not? She agreed. She did not know that Mrs Sharpe was watering down Mr Dale's alcohol and then she withdrew the allegation that Mrs Sharpe had been supplying alcohol to manipulate Mr Dale into believing the worst about Mr Dyson and Mr Ellis. Then she admitted that, although she believed that Mrs Sharpe had been nasty to Mr Dale and was telling him awful stuff, she did not know how she knew this and could not specifically remember what Mrs Sharpe had said. She then twice repeated that Mrs Sharpe was giving Mr Dale alcohol to kill him. Then she admitted that the allegation made no sense.

347. She had said in her witness statement that

"5. After Father's Day in July 2019 that is when things really changed as Sharon managed to stop either of the boys from being able to visit Brian by involving the police. Then Brian only had what she said to go on and, because he wasn't seeing the boys, he started to believe it. She had him so muddled up from all the alcohol that he didn't know which was up never mind remembering how good the boys had always been to him and how much he loved them. Nick and I both saw him change. He started repeating things Sharon had told him like they were his own ideas and his own thoughts. She had him convinced."

348. However, she could not say why Father's Day was in her mind, although she denied that that was what Mr Dyson and Mr Ellis had told her to say. Then she admitted that she had no reason to remember Father's Day. It was put to her that Mr Dyson and Mr Ellis were not coming round anyway and she agreed

"No. They were not coming anyway".

349. She accepted that she would not like it if she had been called a "spineless twat" and then, as had her husband, she admitted (again with emphasis added) that

"Yes, he [Mr Dale] was afraid of Wayne and Andrew.

I was aware/knew of the threats and abuse."

350. In the next paragraph of her witness statement she had said that

"6. We didn't know at the time that Brian had changed his will in August 2019 but this now makes sense because it was around that time

that Sharon stopped visiting Brian anywhere near as much. She started to pay a lady called Jane to take him alcohol instead of visiting herself and when Sharon did visit herself she would only stay for five to ten minutes with Brian."

351. However, she accepted that Mrs Ward had had to come round when Mrs Sharpe was self-isolating due to Covid. Miss Harrison put it to her

"Q. Don't you think you should take this more seriously.

A. Yes [sic].

Q. Mrs Sharpe was constantly visiting him until he died?

A. Yes."

352. In her next paragraph she had said that it was she and her husband "who had to do all of his shopping and buy his food for him". Miss Harrison put it to her that that was not the case and that it was Mrs Sharpe who did most of the shopping, to which the response was

"Fair enough then. Sharon did it."

353. She had alleged in her witness statement that

"When we asked her to get him a replacement microwave so he could heat up some microwave meals for himself, again she refused even though she had Brian's bank card and control of his money",

but then she immediately accepted that he would not eat hot food and would only eat a sandwich. (A few minutes later she was to contradict herself again and assert the exact opposite.) The cross-examination then became surreal. Mrs Hodgskin had said in her witness statement that

"8. We told her when Brian would suffer from falls and she simply didn't care. Even when we were having to do all of the caring for Brian and it was taking its toll on us and we asked her to get extra carers in to support Brian (again using his own money) she simply refused to get him any extra help."

354. There then followed these exchanges:

"Q. Paragraph 8 of your witness statement is

not true, is it?

"I never shouted at Brian ... never have.

A. No, I accept that it is not true [sic].

No, I never argued with him.

Q. It is a lie?

Q. Why not tell social services?

A. Yes [sic].

A. I don't know.

Q. It was Brian who stopped the extra carers.

A. Brian said not to say anything about Sharon or Riki: they were his rock.

A. It was more Sharon than Brian.

...

Q. There is nothing of that in the care records, is there? It was Brian who didn't want them there, wasn't it?

Q. Brian was afraid of Wayne and Andrew.

A. Yes, that is the truth."

A. ...

355. Miss Harrison put it to her that for some reason she and her husband had subsequently fallen out with Mrs Sharpe, to which she replied that it was "most regrettable".

Because of the banging on door and abuse. What I believe, yes.

Yes, apparently that it why the relationship broke down."

356. Mrs Hodgskin said in her witness statement that

"The very next day after Brian had died she was back at his house and clearing it all out to get it sold",

The Claimant's Submissions

The Facts and The Witnesses

but when pressed she could say no more than that Mrs Sharpe had taken some things away in bags.

359. In paragraphs 7 to 35 of her closing submissions Miss Harrison set out her account of the facts of the case. Since I have largely accepted the Claimant's account of the facts of the case, I do not need to repeat those submissions again here.

357. The tenor of Mrs Hodgskin's evidence can perhaps be summed up in her replies to the questions put to her about the row witnessed by the occupational therapist on 31 March 2020. The care records state that

"Rachel visited yesterday. The two carers were present and Nick and his partner Joanne. Mr Dale declined for them to attempt to support him to stand from the sofa.

360. In paragraphs 36 to 49 she set out her submissions about the evidence of the various witnesses. I have set out my conclusions about the evidence of the various witnesses for Mrs Sharpe and the Defendants in paragraph 19 and paragraph 20 respectively.

Fraudulent Calumny

Rachel reported that Mr Dale and Joanne were arguing, and shouting and swearing at each other. Joanne told Mr Dale she and Nick will not visit daily anymore. They assist to ensure Mr Dale has some food accessible and that he has some clean clothes to hand etc. ..."

361. Where it was believed that the testator had been misled into changing his will the issue of fraudulent calumny could arise. The classic case where the plea would be relevant was where it was alleged that a false representation had been made concerning a person's character or conduct to the testator for the purpose of inducing him to revoke a bequest to that person or not to provide for him at all.

358. Faced with this near contemporaneous and independent record her reply (again with emphasis added) was

362. The burden of proof was on the person who alleged fraud. That person must prove that the will or such part of it as he alleged was invalid was made as the result of the fraud of another person.

363. The first modern case discussing the plea was **Re Edwards** [2007] EWHC 1119. It was alleged that a son of the testatrix had made false allegations about his siblings. Undue influence and fraud were pleaded. The Court confirmed that there was a separate plea of fraud where A poisoned the mind of T against B by casting dishonest aspersions on his character. However, the person poisoning the mind of T had to know that the aspersions were false or not care whether they were. If he believed in the truth of what he said, then the will could not be set aside even if the allegations were objectively untrue. The question was not whether the disposition was fair, but whether the testator was a free agent.

364. The elements of the plea are as follows

- (a) a false representation
- (b) to the testator
- (c) about the character of the existing or potential beneficiary
- (d) for the purpose of inducing the testator to alter his testamentary dispositions
- (e) made knowing that it was untrue or recklessness as to its truth
- (f) that the will was made **only** because of the fraudulent calumny

(see **Kunicki v Hayward** [2016] EWHC 3199).

365. In **Bateman v Overy** [2014] EWHC 432 the Court concluded that the evidence showed that the testator had formed his own unfavourable view of potential beneficiaries and decided to exclude them of his own free will.

366. In **Re Boyes** [2013] EWHC 4027 an allegation of fraudulent calumny failed where the Court found that a daughter T had always acted in the best interests of her father and that, if she had made allegations about the claimants, she had genuinely believed them. *"If a person believes that he is telling the truth about a potential beneficiary then even if what he tells the*

testator is objectively untrue the will is not liable to be set aside." Therefore, a claimant must not only prove the alleged statements were made but that the representor knew them to be false or was reckless as to their falsity. It was of relevance in that case that, although the testator was a very ill man and dependent on T, there was little evidence he had been secluded from others and the evidence was that he was able to form his own views.

367. In **Todd v Parsons** [2019] EWHC 3366 it was suggested that the involvement of a solicitor could be effective to eliminate any causative connection between a false representation and the will made.

This Case

368. The Defence and Counterclaim set out the Defendant's case in relation to fraudulent calumny in paragraph 15. None of the matters alleged in paragraph 14 appeared to be of any relevance to the issues (but they were denied in any event).

369. The following false representations were alleged to have been made by Mrs Sharpe which led Mr Dale to make the 2019 will. No particulars were pleaded as to when she was alleged to have done that or in whose presence. She is alleged to have said that

(1) the Defendants had prevented Mr Dale from visiting Mrs Dyson. That was denied. It would be thought that Mr Dale himself knew whether or not anyone had prevented him from visiting Mrs Dyson. In any event the evidence (including the evidence of Mr Dyson himself) showed that Mr Dale did not want to visit Mrs Dyson

(2) they wanted to evict Mr Dale from the property. Mrs Sharpe never said that. It was Mr Ellis himself who shouted at Mr Dale that the property was not his

(3) they wanted all of Mr Dale's money. Mrs Sharpe never said that. However, it was a fact that the Defendants took control of Mrs Dyson's money and that they did not account to Mr Dale for it. There was also evidence that they took monies from his bank account as they had his bank cards at the relevant time.

(4) they had stolen all of Mr Dale's money. The same reply was made as under the previous sub-paragraph

(5) they were harassing Mr Dale. That was a strange allegation as he retained full capacity and he would have known himself if he was being harassed by them.

There was ample evidence that they did threaten him and that they were abusive to him

(6) they were bribing Mrs Sharpe not to tell Mr Dale what they were doing or planning. That was denied. It was difficult to understand how Mrs Sharpe could have induced Mr Dale to believe that given that he knew full well that the Defendants were threatening Mrs Sharpe herself

(7) he should not allow the Defendants or their families to visit. That was denied, but it was not a representation. Mr Dale told Mrs Ridgway-Coates in July 2019 that he would have no future contact with them.

370. At paragraph 18 of the Counterclaim it was alleged that Mrs Sharpe knew that such representations were false or she was reckless as to their truth. No particulars were given of this allegation. She did not make the representations and her evidence was that she avoided discussing the Defendants with Mr Dale as it upset him. She would only agree with comments which he made about them. However, on any view the conduct of the Defendants to Mr Dale was deeply unpleasant.

371. In relation to the issue of causation, the Defendants bore the heavy burden of establishing that any false representations of Mrs Sharpe were the **only** reason that Mr Dale made the 2019 Will. That was heavy burden given that he discussed his reasons with an independent professional.

372. It was pleaded at paragraph 19 of the Counterclaim that false representations by Mrs Sharpe procured the making of the 2019 will. The evidence shows that Mr Dale had ample reason to change his will and he explained those reasons to the solicitor in very clear terms. His medical records show that he retained full capacity and that he was mentally lucid throughout his life. Wills have been changed for far less than the atrocious conduct which the Defendants displayed towards Mr Dale. The chronology showed that it was their behaviour and the desire to benefit Mrs Sharpe which led him to make a new will.

The Defendants' Submissions

373. Miss Del Luongo contended that the 2019 will was invalid and invited the Court to find that its execution was procured by the fraudulent calumny of Mrs Sharpe and sought to propound the previous 2003 will of Mr Dale. What was certain was that they lived together as man and wife until the date of her death, a minimum of

24 years, but it could have been longer.

374. During that period of cohabitation, at least for the early part of it, both Defendants were living at home with both their mother and Mr Dale. Whilst it had to be accepted that neither of them referred to Mr Dale as "Dad", they both confirmed that he was like a father to them and indeed he referred to them as his sons.

375. The Defendants submitted that the 2003 will, referring to them as friends, was just how it was worded and that they were adamant that Mr Dale thought of them as his sons. It was noticeable that the social services records and the police records throughout referred to them as Mr Dale's step sons.

376. The relevant period of time on which the Court should primarily focus was a narrow one. It was the Defendants' case that Mrs Sharpe's poisoning of Mr Dale's mind commenced shortly after the death of their mother on 6 March 2019; on 25 July 2019 Mr Dale gave instructions to change his will and eventually signed his will on 16 August 2019. Whilst what happened after that was not irrelevant, what the Court must be satisfied of was that, after Mrs Dyson's death, Mrs Sharpe poisoned the mind of Mr Dale and that was the reason for him changing his will.

The Law

377. Like Miss Harrison, Miss Del Luongo accepted that the Defendants must prove on the balance of probabilities that Mrs Sharpe poisoned the deceased's mind by casting aspersions on the Defendants' characters which she knew were false or did not care whether they were true or false. She too relied on **Re Edwards** [2007] EWHC 119 (Ch) at [47], **Christodoulides v Marcou** [2017] EWHC 2632 (Ch) at [29], **Whittle v Whittle & Spicer** [2022] EWHC 925 (Ch) at [58] and **Todd v Parsons** [2019] EWHC 3366, which she said was distinguishable on the facts. I shall refer to all of these authorities in more detail below.

The parties relationships

378. It was not disputed that prior to the death of Mrs Dyson, both Defendants frequently visited both their mother and Mr Dale. They say that they did their shopping for them and took their mother to some of her hospital appointments. Mr Dyson said that she would have monthly check-ups - meaning that if Mrs Sharpe attended each of those appointments, which was disputed, there would only have been 12 visits a year.

She also suggested that those visits started in the 12-18 months prior to her death, not quite the significant amount of time as Mrs Sharpe suggested that she dedicated to her sister.

379. It was initially her evidence that she was indeed shopping weekly for both her sister and Mr Dale and had done so for a number of years prior to Mrs Dyson passing away. In cross-examination she conceded that she had in reality only been doing that for just over a year prior to her sister's hospitalisation, an instance of her not being truthful. She also accepted that both Mr Dyson and Mr Ellis helped their parents, another instance where she contradicted herself by suggesting that they were their parents, despite trying to suggest that Mr Dale was just a friend to the Defendants.

380. Both Defendants worked full time, Mr Ellis as a long-distance lorry driver away 5 nights one week and 6 the other. It was therefore not beyond the realms of possibility that Mrs Sharpe helped, but the Court should not find that Defendants did not care about their mother or did not offer her care when they could.

381. The Defendants said that their mother and Mrs Sharpe were not close. It was accepted that, whilst Mrs Sharpe did take Mrs Dyson to some of her hospital appointments, she rarely went into the house when Mr Dale was there, choosing to wait outside. She made it known that she had a dislike of him; she was said to have tried to manipulate her sister into leaving Mr Dale, something which she denied, but which was evidence of the type of person she was, trying to impose her views on others, although that failed with her sister.

382. Despite her evident dislike for Mr Dale during his lifetime, she seemed to take it upon herself to start visiting him during the period of his hospitalisation after her sister had died. The Defendants said that that was a deliberate move on her part to start her manipulation of an elderly, vulnerable and weak man and she accepted in cross-examination that he was weak and that she called him a "twat". There was also the suggestion that Mrs Sharpe suggested that her sister should "knock him off". Much was made about the Defendants not caring for Mr Dale and being disrespectful for calling him a "spineless twat", yet it was apparent that Mrs Sharpe believed that it was acceptable for her to speak about him in that manner.

Incidents from the death of Mrs Dyson to the new will: 6 March 2019 to 16 August 2019

383. It was noteworthy that Mr Dale was hospitalised on 22 March 2019, transferred to rehabilitation on 18 April 2019 and discharged home on 2 May 2019, very soon after the death of his partner of at least 25 years. This was a man who had not had time to grieve the loss of his partner; he was weak, as Mrs Sharpe admitted, and his alcoholism must have made him somewhat vulnerable, as Mrs Ward described him at one point.

384. He was housebound and therefore reliant on others to provide alcohol to feed his habit. The Defendants said that, when they were shopping for him, they would buy him 4 bottles of wine and 2 bottles of cider for him, which would be his daily intake. Mrs Sharpe admitted in cross-examination that she did not start shopping for Mr Dale until he was discharged from rehabilitation until May 2019.

385. Mrs Sharpe attempted to persuade the Court that the reason for Mr Dale's hospitalisation was the Defendants plying him with alcohol. That was simply untrue; whilst it is accepted that they bought alcohol for him, it appeared that the reason for the hospitalisation was as a result of him consuming a large amount of alcohol in one day – a couple of day's worth. The Defendants did not suggest that they were going shopping daily and it was therefore not beyond the realms of possibility to conclude that Mr Dale had a few day's supply of alcohol and chose to consume it all on the one day, leading to his hospitalisation, a conscious decision which he made.

386. They explained that they saw a taxi delivering vodka to the property. He had money and it was not beyond the realms of possibility that an addict would go to such lengths to avail himself of alcohol.

387. Whilst Mr Dale was hospitalised, Mrs Sharpe told the Court that she visited him a couple of times a week whilst he was in Calow and only once when he was in rehabilitation. She accepted that he was weak when he was discharged. It was suggested that neither of the Defendants visited Mr Dale either in the hospital or in rehabilitation. That was denied, but Mrs Ward accepted in cross-examination that, just because she had not seen them visit, did not mean that they had not. She accepted that there were several visiting sessions and they could have gone when she was not there.

388. It is evident that Mrs Sharpe did not like Mr Dale and it therefore begged the question why all of a sudden in/around April/May 2019 she became very involved with him. When asked in cross-examination she tried to

persuade the Court that it was because he had no-one else. She even said that he had no friends, another untruth. The Court have heard from 3 witnesses, who were all friends of Mr Dale, along with the Defendants themselves, who stated that they looked after him. There was simply no need for Mrs Sharpe to assume the role, apart from it being part of her plan to alienate the Defendants from Mr Dale and thereafter manipulate him into changing his will leaving everything to her. By alienating them from him, she made sure that she was the only one whom he saw and she manipulated him into believing that they had done dreadful unforgivable things which made him believe that they should not inherit from him. She knew that he had no-one else and that she could manipulate him to leave the money to her. It had to be accepted that, after Mr Dale changed his will and neither of the Defendants was allowed to visit him, one could draw the conclusion that he did indeed have no-one, but they could not be criticised for that as they were stopped from visiting as a result of Mrs Sharpe informing the police. Absent was any record from the police that Mr Dale himself had contacted them. Indeed it is was not until the day on which he signed his new will that Mr Dale spoke to the police. Again Mrs Sharpe was present, the very person who had poisoned his mind. The complaint made by Mrs Sharpe to the police on 21 August 2019 referenced the NatWest Bank account. It seemed that, when it suited her, she was happy for the Defendants to have closed the bank account – indeed she texted Mr Dyson to ask when she would be receiving her money from her sister and she indeed did receive the money.

389. Mrs Sharpe tried to suggest that the entry which was the telephone call to the police on 21 July 2019 was a phone call which Mr Dale made and that the police got the entry wrong. That was another untruth she told the Court; it was inconceivable that the police would have made such a fundamental error as to name Mrs Sharpe as the originator and Mr Dale as the linked person. How would they have known that Mr Dale and Mrs Sharpe were linked? It was evidence of her seeking to justify her actions in poisoning Mr Dale's mind by making false assertions about the Defendants which were not true.

390. Absent was any evidence to support the allegations made against the Defendants. When asked on several occasions during cross-examination, Mrs Sharpe said that the first time that Mr Dale mentioned changing his will was following the telephone call he received on 21 July 2019. The will instructions were taken on 25 July 2019, some 4 days after the alleged

crucial turning point by Mr Dale. Mrs Ridgway- Coates said that, whilst she could not confirm the date on which the enquiry came in for the visit to see Mr Dale, she believed that there would have been a 1-2 week delay between the initial enquiry and her being able to go and visit him, a stark contrast to what Mrs Sharpe would have the Court believe, that it was a mere 3 days. That was clear evidence that it was not Mr Dale who wanted to change his will, but that it was Mrs Sharpe. It was not until August that Mrs Sharpe reported the alleged incidents between March 2019 and 12 August 2019 which culminated in the police visit where Mr Dale was interviewed by the police.

391. It became apparent that Mr Dale had asked for the keys to his house whilst he was in hospital. Indeed Mrs Sharpe suggested that he wanted the keys back because he was worried that he would not be able to get in when he was discharged. At the point of requesting the keys, there was no date for his discharge and the Defendants' evidence was that they did not trust Mrs Sharpe and did not particularly want her to have the keys, although they did eventually return the keys to her. In cross-examination when Mrs Ward was asked about this, she told the Court that Mr Dale never told her that the boys wanted to evict him from the house and that her understanding was he was worried that without keys he would not be able to get into the property. What happened between then and the will instructions was nothing; he had his keys and he went home.

392. Indeed Mrs Ward told the Court that Mr Dale trusted her and implied that he confided in her, but she admitted that he never mentioned anything to her about him changing his will and she was vague when asked about allegations that the Defendants had stolen from him, but she admitted that she never reported anything to the police, despite the fact that she was allegedly present when Mr Ellis rang Mr Dale and shouted at him and he was visibly upset.

393. It was not clear how or indeed when Mr Dale indicated that he wanted to change his will. In cross-examination Mrs Sharpe said that she could not recall, but that Mr Dale had told her when she had visited him. She said that she thought Mr and Mrs Hodgskin might have been there as they were there every day, although that was denied by them and they said they knew nothing about it.

394. When prompted, she said that her daughter was there. Miss Sharpe suggested in her witness statement that after the incident in July 2019 when Mr Dale told

her that he wanted to change his will, she admitted that she could not remember the last time that she had seen Mrs Dyson nor could she remember the last time she had seen Mr Dale either; she could not describe the relationship which she had with him, she admitted that he had never visited her house and she may have spoken to him on the phone, but admitted it was not a close relationship. That begged the question why would Mr Dale should tell a stranger of his wish to change his will. The fact was that she was not telling the truth: Mr Dale did not tell her that he wanted to change his will; her mother arranged it.

395. The evidence of Mrs Ridgway-Coates was that the waiting time between her firm receiving a request for a home visit and that visit taking place was between 1-2 weeks. It was startling that in this case the alleged incident which led Mr Dale to choose to change his will took place on a Sunday, 21 July 2019. The earliest that Mrs Ridgway-Coates could have been contacted would have been on Monday 22 July 2019, but Miss Sharpe indicated that she had to get the contact details from her then partner Mr Armstrong, who knew Mrs Ridgway-Coates's husband and that she then passed them on to Mr Dale. Lacking was any detail as to how she provided Mr Dale with those details: it was doubtful that she had his phone number and it is likely that her mother made the arrangements.

396. Miss Del Luongo submitted that Mrs Ridgway-Coates had been contacted before that date and Mrs Sharpe and her daughter had sought to use the date to seek to justify their actions.

397. Miss Del Luongo invited the Court to look at the reasons which Mr Dale gave Mrs Ridgway-Coates for changing his will:

(a) the emptying of Mrs Dyson's bank account with £17,000 in it and informing the police. That was incorrect; he had not informed the police and as an executor Mr Dyson was in theory entitled to close the account. He said that he did so on his mother's instructions so as to prevent Mr Dale from emptying the account. There was no evidence of theft from Mr Dale – the Defendants were shopping for him and spending significant amounts a week to fund his alcohol habit;

(b) being told that the house was not his. It was startling to note that a solicitor dealing with wills and probate did not offer any advice to the deceased surrounding his fears about the property. She accepted that she had a copy of the 2003 will, in which it was clear that the

property was passed to Mr Dale and that should have negated any concerns which he had about the house;

(c) keeping ringing him and telling him they would sort him out. There was only evidence of 2 phone calls to Mr Dale from the Defendants and the statement was again false;

(d) the police had blocked them – that was accepted, but only 3 days before the will instructions were given, which was not a great deal of time to consider matters;

(e) threatening him regarding money/house in estate – no detail was provided as to that allegation;

(f) no contact in future – but that was because Mrs Sharpe had facilitated it by reporting matters to the police and having the Defendants blocked;

(g) the suggestion that the Defendants had stolen money from him - whilst it was untrue, one would have expected a solicitor to explain to him that they were perfectly entitled to have closed the bank account as they were executors in the estate of their mother. She referred to Mr Dale in relation to the probate dispute and said that, despite the note saying that no-one was there, she had spoken to Mr Sharpe who was present at the property at the time. It was clear that Mrs Sharpe was driving the change for her own benefit. It was she who said that the Defendants had been stealing from Mr Dale. She was happy to have the benefit of some of the monies from the closed NatWest account. Again that was the claimant contradicting herself when it suited her.

398. No explanation was offered as to why Mr Dale would seek to make provision for Miss Sharpe, who was not a blood relative and could not tell the Court when she had last seen him prior to her visit on 22 July 2019. She could not say when she had last seen Mrs Dyson either, despite suggesting that she had a relationship with them both. It seemed startling that he would therefore think to make provision for her without any prompting. Also remarkably absent from the will instruction sheet were the names of the Defendants. When asked, Mrs Ridgway-Coates could not offer an acceptable response as to why they were not named there.

399. There was reference to Mr Dale being an alcoholic and suffering with depression, but no further enquiry was made by Mrs Ridgway-Coates and nor was there any detail suggesting that she assessed his capacity

either at the time when she took the will instructions or when she re-visited the property to obtain his signature on the will. Whilst it had to be accepted that there was no claim for undue influence or a challenge to validity of the will on grounds of capacity, those were important considerations for the Court when determining the fraudulent calumny claim presented by the Defendants.

400. A question needed to be raised as to why Mr Dale suggested in a meeting with social services/Derbyshire County Council on 27 March 2020 that a solicitor was coming on Thursday to make a new will. Did he have any knowledge of the previous will which he made in 2019 or was he intending on changing his will again in 2020? Miss Harrison tried to suggest that the notes were incorrect, but that could not be so – they were in chronological order and the entry was clearly part of a conversation on 27 March 2020.

401. Mrs Sharpe tried to persuade the Court that Mr Dale had reported the incident of 21 July 2019 to the police. Absent was any record in the police disclosure of that. She also told the Court that prior to the incident on 21 July 2019 Mr Dale had never said anything bad about the Defendants to her. Indeed Mrs Ward, who despite only meeting Mr Dale for the first time when he was in hospital in Calow and thereafter visiting him in rehabilitation, told the Court that the only things which Mr Dale had told her he was worried about was the Defendants not letting him back in the house. She was asked in several different ways what that meant and she eventually confirmed that he never told her that he thought that they were going to evict him. He was just worried that they had the keys and he wanted to make sure that he could get back into the property when he was discharged. These requests for the keys were made by Mrs Sharpe prematurely. She admitted that she asked for them, not immediately before Mr Dale was due to be discharged completely, but when he was being transferred to rehabilitation. The Defendants said that they were reluctant to give Mrs Sharpe the keys as they did not trust her.

402. Furthermore Mrs Sharpe tried to portray the Defendants as being aggressive and Mr Dale being frightened of them both. It was interesting to note that there were no records of Mr Dyson shouting or being abusive to Mr Dale – yet the police for some reason blocked both of their numbers. Why? That was because Mrs Sharpe told them an untruth. There was no reason why Mr Dyson could not phone or visit, but Mrs Sharpe wanted to alienate both of the Defendants for her own financial gain. Another suggestion of the Defendants

being disrespectful was in reference to “Big fucking Julie”, but she herself gave evidence and told the Court that she was known as Big Julie. Mr Dyson explained his anger and upset at Mr Dale when he called him spineless; he said that for not going to his mother's funeral when they had arranged a car to enable him to go.

403. The Defendants said that the 2019 will was invalid and that

(a) Mrs Sharpe made several false representations – namely that they wanted to evict him, they had stolen from him

(b) to the testator

(c) about the character of an existing or potential beneficiary

(d) for the purpose of inducing the testator to alter his testamentary dispositions

(e) made knowing that they were untrue or reckless as to its truth

(f) the will was made only because of the fraudulent calumny.

404. There was no other justifiable reason for Mr Dale to have disinherited the children who considered him as their father and he their sons. He had in effect disinherited them from their mother's estate, which could not be what she had wanted. They were neither abusive nor threatening to Mr Dale at all during his lifetime nor did they ever steal from him; Mr Dale was not out of pocket and one could even say that he profited from it as he was repaid the full sum without deductions for monies spent on his shopping and indeed the gift to Mrs Sharpe.

405. Much was made about the social services records post-dating the new will and whilst it was not suggested that they were irrelevant, the suggestion was that after the new will Mrs Sharpe's visits tailed off and the Defendants submitted that she had got what she wanted and then left the scene.

406. Whilst it had to be accepted that it appeared that Mrs Sharpe was involved in Mr Dale's care – the Defendants had been removed from his life and were unable to assist, it was worthy of note that a considerable number of those entries related to

telephone contact, as opposed to Mrs Sharpe being involved always in face to face visits and it had to be accepted that his neighbours at that stage were visiting daily and shopping for him – several entries within the records supported that.

407. Miss Del Luongo submitted that Mrs Sharpe was far from an honest and credible witness. She was at times vague in her answers and often asked for questions to be repeated to avoid providing an answer.

408. In fairness to Miss Del Luongo, I have set out her closing submissions at some length, although it will be apparent that I do not accept her case and that I have found for Mrs Sharpe. I have for the most part set out my analysis and conclusions in the preceding paragraphs of this judgment and do not need to rehearse that analysis and conclusions again, although to the extent that I have not done so I deal with any outstanding points which she has made in paragraphs 415 and following of the judgment below.

The Authorities

409. There was no dispute between the parties as to what the law relating to fraudulent calumny was. The dispute between them was as to the application of the law to the facts of this case. Lewison J (as he then was) set out the law relating to fraudulent calumny in **Re Edwards** [2007] EWHC 1119 (Ch), [2007] WTLR 1387 at [47]:

“There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:

- i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;
- ii) Whether undue influence has procured the execution of a will is therefore a question of fact;
- iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears

in proving undue influence as vitiating a testamentary disposition;

iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud;

v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;

vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A “drip drip” approach may be highly effective in sapping the will;

vii) There is a separate ground for avoiding a testamentary disposition on the ground of fraud. The shorthand used to refer to this species of fraud is “fraudulent calumny”. The basic idea is that if A poisons the testator's mind against B, who would otherwise be a natural beneficiary of the testator's bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside;

viii) The essence of fraudulent calumny is that the person alleged to have been poisoning the testator's mind must either know that the aspersions are false or not care whether they are true or false. In my judgment if a person believes that he is telling the truth about a potential beneficiary then even if what he tells the testator is objectively untrue, the will is not liable to be set aside on that ground alone;

ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent."

410. I have set out all nine of his bullet points to put the case in context, although it should be noted that the first six bullet points related to undue influence and that this case was not pleaded as one of undue influence (and indeed could not have been on the evidence), but only as one of fraudulent calumny.

411. Mr Jonathan Klein (as he then was) (sitting as a Deputy Judge of the Chancery Division) summarised the elements of fraudulent calumny and the standard of proof in such a case in **Re Hayward (deceased); Kunicki v Hayward** [2016] EWHC 3199 (Ch) at [122]-[123]:

"122. It seems to me that, to succeed on this plea, Iain must satisfy the following to a sufficient degree; namely, (i) that Fiona made a false representation (ii) to Mr. Hayward (iii) about Iain's character (iv) for the purpose of inducing Mr. Hayward to alter his testamentary dispositions and (v) that Fiona made such a representation knowing it to be untrue or being reckless as to its truth and (vi) that the 2013 Will was made only because of the fraudulent calumny.

123. The degree to which Iain must satisfy these requirements is not in dispute. The standard of proof is the civil standard but a high degree of proof is needed to meet that standard (see Williams, Mortimer & Sunnucks (supra); paragraph 13-64 and the cases cited there)."

412. That any such representation must be made knowing that it is untrue or recklessly, not caring whether it is true or false, was reiterated by DJ Woodburn in **Re Whittle (deceased), Whittle v Whittle** [2022] EWHC 925 (Ch) at [40]-[41]:

"40. C must prove on balance of the probabilities that D1, in particular, poisoned Gerald's mind by casting aspersions on C's character which D1 either knew were false or did not care whether they were true or false.

41. If D1 believed that what she has said about

C's character and behaviour was the truth, the objective untruth of the statement becomes evidentially otiose as the will is not liable to be set aside in those particular circumstances."

413. As to the question of causation, Morgan J explained in **Christodoulides v Marcou** [2017] EWHC 2632 (Ch) at [59]:

"The question for the court is one of causation or inducement. The calumny must induce the change in the testator's intentions. The challenger must prove that on the balance of probabilities. If it is possible that the calumny did induce the change, but the court is not persuaded on the balance of probabilities that it did induce the change, the challenge will fail. If there are other possibilities or other explanations and those other explanations persuade the court to find on the balance of probabilities that the calumny did not induce the change, the claim will fail. Conversely, although the court is given other possible explanations, if the court is nonetheless satisfied that on the balance of probabilities that the calumny did induce the will, then the claim succeeds. That is what is meant by the references to consistent and inconsistent hypotheses in *re Edwards*, which is itself based on *Craig v Lamoureux* [1920] AC 349. However, the use of the word "only" should not be understood as requiring a finding that there must have been no other reason operating in conjunction with the effect of the fraud for the testator to change his or her intentions."

414. Miss Harrison pointed to the interposition of Mrs Ridgway-Coates as negating any causative effect of any fraudulent calumny (assuming any to have existed in the first place), as HH Judge Mathews pointed out in **Todd v Parsons** [2019] EWHC 3366 at [159]:

"A point which is relevant in relation to both undue influence and fraudulent calumny is that the deceased was in the Frenchay Hospital from April 2008 until 7 July 2008, when she moved to St Monica's, and in which she died. Her will was made on 25 September 2008, after she had been interviewed on her own and advised by the second defendant, an independent solicitor. I have found that there was no behaviour by the claimant amounting to undue influence to make a new will in his favour, but even if there were any such

behaviour it would have been negated by the independent advice of the second defendant. Although independent advice by a solicitor does not automatically mean that there cannot be any effective fraudulent calumny, it is obviously relevant in considering whether fraudulent calumny (if any existed) could have caused the new will to be made in the terms it was. In my judgment, not only was there no fraudulent calumny, but even if the conduct alleged to have amounted to this had done so, on the facts of this case any causative effect would have been taken away by the interposition of the second defendant as her solicitor."

The Evidence of Mrs Ridgway-Coates

415. Much was sought to be made of the 1-2 week delay which Mrs Ridgway-Coates said was the general rule in the case of the firm between making initial contact and actually taking instructions for a new will. There is no reason to believe that an appointment could not have been made more quickly if the occasion had required it. Given the connection between Mr Armstrong and Mrs Ridgway-Coates' husband and given the circumstances of the threatening behaviour on 21 July 2019 (in particular the banging on the door of the property and the abusive text message left by Mr Ellis on Mr Dale's voicemail), I have no reason to doubt that an appointment could have been arranged quickly. That is not at all "startling", as Miss Del Luongo suggested.

416. I do not accept that Mrs Ridgway-Coates was contacted before that week in late July or that Mrs Sharpe or her daughter were seeking to use the date as a cover to seek to justify their actions.

417. It is correct that Mrs Ridgway-Coates had a copy of the 2003 will when she took Mr Dale's instructions. However, what was important was that Mr Dale had been told that the house was not his. In the context of his desire to make a new will, whether that was correct in law was not the point and in any event it was only one of the circumstances relating to his desire to change his will.

418. As for the suggestion that one would have expected a solicitor to explain to Mr Dale that the brothers were perfectly entitled to have closed the bank account as they were executors in the estate of their mother, I do not accept that Mrs Ridgway-Coates was obliged to tender any such advice to Mr Dale. Her

retainer was to take instructions for a new will for him, not to advise him about the estate of Mrs Dyson. Her firm did not in any event undertake contentious probate work and she rightly referred him to Taylor and Emmet, which did. In any event, what Mr Dyson was not entitled to do was to close his mother's account and put the money into an account in his sole name. What ought to have happened, assuming that the account was to be closed at all, was that the money should have been put into an account in the joint names of all three executors.

419. Mrs Sharpe was physically present at the property, but I find that she was not in the room with Mr Dale and Mrs Ridgway-Coates either when instructions were taken for the new will or on the subsequent occasion when the will was signed and witnessed. Mrs Sharpe came into the room afterwards on 25 July 2019 to take the details of Taylor and Emmet in relation to the dispute over Mrs Dyson's estate.

420. The absence of the names of the Defendants from the will instruction sheet is not surprising. They were referred to as Mrs Dyson's sons and that was sufficient in the context.

421. Miss Del Luongo sought to suggest that it was startling that Mrs Sharpe was chosen as a beneficiary of Mr Dale's will when she did not have a close relationship with him. It is, however, not at all surprising that Miss Sharpe should be the default beneficiary in the event of the death of her mother, who was the primary beneficiary under the new will.

422. As stated above, Mrs Ridgway-Coates was clear that Mr Dale was not under the influence of drink when he instructed her. He gave clear and coherent instructions. She said that she had asked him the reasons why he was changing his will. She did not regard his reasons for changing his will as strange. Mr Dale explained to her that he had been in hospital previously suffering with depression and alcohol. Although she understood and was aware of the principle of the 'golden rule', she had no doubt in relation to Mr Dale's capacity due to age, infirmity or illness to execute the 2019 will. She did not therefore seek a medical expert's opinion. There was no reason to doubt that he had full testamentary capacity to make a will and no-one has suggested otherwise.

423. Whether Mr Dale intended to make another new will in March 2020 is a mystery, but it is not one which I have to resolve. Whether he remembered in March 2020 the will which he had made in August 2019 is not

material for present purposes. Perhaps he was intending to change his will, but that will now never be known.

Summary Of Conclusions

424. Seven false representations were alleged have been made by Mrs Sharpe to Mr Dale about Mr Dyson and Mr Ellis for the purpose of inducing him to alter his will. As set out above (and as summarised here) I have found as follows:

(1) Mrs Sharpe had prevented Mr Dale from visiting Mrs Dyson. In reality the evidence (including the evidence of Mr Dyson himself) showed that Mr Dale did not want to visit Mrs Dyson. The allegation of misrepresentation in that respect by Mrs Sharpe is not made out.

(2) they wanted to evict Mr Dale from the property. I am satisfied that Mrs Sharpe never said that. Indeed it was Mr Ellis himself who shouted at Mr Dale that the property was not his. The allegation is again not made out.

(3) they wanted all of Mr Dale's money. Whatever Mrs Sharpe may have said on that subject, the reality was that the Defendants did indeed take control of Mrs Dyson's money and they did not account to Mr Dale for it. There was also evidence that they took monies from his bank account as they had his bank cards at the relevant time. Again the allegation fails.

(4) they had stolen all of Mr Dale's money. This is in essence the same as the previous alleged misrepresentation and is again not made out for the same reason.

(5) they were harassing Mr Dale. Mr Dale would have known for himself whether or not he was being harassed and would not have needed Mrs Sharpe to tell him what he could make out for himself. In reality there was ample evidence that they did threaten him and that they were abusive to him. The allegation of misrepresentation again is not made out.

(6) they were bribing Mrs Sharpe not to tell Mr Dale what they were doing or planning. I am satisfied that Mrs Sharpe said no such thing to Mr Dale. In any event it is difficult to understand how Mrs Sharpe could have induced Mr Dale to believe any such thing given that he knew full well that the Defendants were threatening Mrs Sharpe herself.

(7) he should not allow the Defendants or their families to visit. Again I am satisfied that Mrs Sharpe said no such thing, but in any event it was not a representation. Mr Dale told Mrs Ridgway-Coates on 25 July 2019 that he would have no future contact with them and he explained to her precisely why.

425. With regard to causation, I have accepted the evidence of Mrs Ridgway-Coates in its totality. Her evidence was quite clear that Mr Dale knew what he was doing and why he was doing it and that he was a free agent in changing his testamentary dispositions. Mr Dale had been interviewed on his own and advised independently by Mrs Ridgway-Coates. I have found that there was no behaviour amounting to fraudulent calumny, but even if there had been it would have been negated by the independent advice of Mrs Ridgway-Coates. Although her independent advice does not automatically mean that there could not have been any effective fraudulent calumny, her advice is obviously relevant in considering whether fraudulent calumny (if any existed) could have caused Mr Dale's new will to be made in the terms in which it was. In my judgment, not only was there no fraudulent calumny, but even if the conduct alleged to have amounted to such calumny had done so, on the facts of this case any causative effect would have been taken away by the interposition of Mrs Ridgway-Coates as Mr Dale's solicitor in relation to the execution of his 2019 will.

Overall Conclusion

426. In my judgment Mrs Sharpe did not poison Mr Dale's mind against Mr Dyson and Mr Ellis. Nor did she cast dishonest aspersions on their character. As a result of their own behaviour, following the death of his partner Mrs Dyson, Mr Dale formed his own unfavourable views of them and their behaviour. The formation of those views and the views themselves were uninfluenced by the conduct of Mrs Sharpe. I reject any suggestion that there was any fraudulent calumny by Mrs Sharpe. In my judgment Mr Dale acted as a free agent in making the 2019 will. That will represented the disposition of his estate which he wanted to make and he knew of what he was disposing (see *Bateman v Overy* [2014] EWHC 432 (Ch) at [151]).

427. Moreover, whilst in my judgment there was no fraudulent calumny, even if the conduct alleged to have amounted to it had done so, on the facts of this case any causative effect would have been taken away by the interposition of Mrs Ridgway-Coates as Mr Dale's solicitor in relation to the execution of his new will.

The Order

428. The Court pronounces for the force and validity of the last will of Brian Dale dated 16 August 2019.

429. The Court decrees a grant of probate in favour of Sharon Jane Sharpe and Riki Ann Sharpe in solemn form.

430. The caveat reference number 1592-2118-1129-3138 is discontinued.

431. The Defence and Counterclaim are dismissed.

432. I invite counsel to draft a minute of order giving effect to my conclusions.

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