

ENGLAND AND WALES / JUDGMENT

Banfield v Campbell

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Neutral Citation Number: [2018] EWHC 1943 (Ch) Case No: HC-2017-001047 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST (ChD) IN THE ESTATE OF SARAH ELIZABETH CAMPBELL (DECEASED) AND IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975 The Rolls Building 7 Rolls Buildings Fetter Lane London EC4A 1NL Date: 24 July 2018
Before : MASTER TEVERSON

- ----- Between : MR ANDREW BANFIELD
 - and - MR JOHN JAMES MCNEIL CAMPBELL Claimant Defendant
 - -----
 - ----- MR RORY BROWN (instructed by Howell Jones Solicitors) for the Claimant MS ELAINE PALSER (instructed by Garner & Hancock Solicitors) for the Defendant
Hearing dates: 20, 21 and 22 May 2018
 - ----- Judgment Approved MASTER TEVERSON: 1. 2. 3. This is a claim by the Claimant, Mr Andrew Banfield, for reasonable financial provision from the estate of the late Mrs Sarah Elizabeth Campbell (“the Deceased”) pursuant to the Inheritance (Provision for Family and Dependents) Act 1975, as amended (“the Act”). The Deceased died on 7 October 2015 aged 63 on a holiday flight to the Canary Islands. Mr Banfield claims as a cohabitant of the Deceased falling within subsection 1(1A) of the Act. In the alternative he claims under subsection 1(1)(e) of the Act as a person who immediately before the death of the Deceased was being maintained in whole or in part by her. The Defendant, Mr James Campbell (“James”) is the Deceased’s only child. By her will dated 6 August 2001 the Deceased left the residue of her estate on trust for James when he attained 25. James is now aged 35. She left Mr Banfield the sum of £5,000 referring to him as her “friend”. The Deceased was married to Neil Robert Campbell (“Mr Campbell”) on 23 May 1981 when she was aged 28 and he 38. Mr Campbell owned a property 66 Rushetts Close in Long Ditton, Surrey. James was born the following year on 16 September
1982. In 1983 the family moved to 3 Westville Road, Thames Ditton, a three bedroomed semi-detached property. Mr Campbell died on 27 October 1992 aged 49 of cancer. At the time of his father’s death, James was 10 years old and the Deceased aged 40. Mr Banfield had known the Deceased and Mr Campbell socially through living in the same area. It is not in dispute that a year or two after Mr Campbell’s death, a relationship started between Mr

Banfield and the Deceased. Mr Banfield says the relationship started in 1993. The Deceased's friend Mrs Gillian Mills refers to a romantic relationship starting between the Deceased and Mr Banfield about two years after Mr Campbell died. Mr Banfield was unmarried and lived with his mother in Tolworth, Surrey. He was at the time working as a Sales Manager at Fullers of Malden, a Ford Dealership. Mr Banfield was almost exactly the same age as the Deceased. Mr Banfield said in his first witness statement that shortly after their relationship started, he was invited by the Deceased to come and live with her at 3 Westville Road. Mr Banfield said in his first witness statement that by then James was already at boarding school. In fact, as Mr Banfield accepted when giving oral evidence, James did not go to boarding school until he was 17 which would have been in 1999. Prior to that, James attended a local comprehensive school in Hinchley Wood and lived with his mother at 3 Westville Road. At the outset of his oral evidence, before being cross-examined, Mr Banfield told the court (as I understood him) that between 1993 and 2002 he spent three or four nights with the Deceased and the remaining nights with his mother in Tolworth. James in his first witness statement said that Mr Banfield did not move in to 3 Westville Road until around 2002. James said he lived at home until going to boarding school in 1999 and would have known if Mr Banfield lived there. In his oral evidence, James said that Mr Banfield had started to stay over for a night or two at weekends whilst he had been at Hinchley Wood. He said it was really when he went to boarding school, Mr Banfield started staying for longer. Mrs Mills says in her witness statement that it was only in 2001 that Mr Banfield moved to live at the property with Mrs Campbell. Another close friend of the Deceased, Mrs Carol Muat, said that over the years Mr Banfield started to spend more and more time at the property. She said she only really got to know Mr Banfield when he moved in with the Deceased "in 2001 or thereabouts". The impression I gained from the evidence as a whole was that there was not a sudden change when Mr Banfield moved out from living with his mother to living with the Deceased. The process was a gradual one. I am however satisfied that by around 2001 Mr Banfield was perceived by the Deceased's family and friends as having moved in to 3 Westville Road on a permanent footing. Between 2008 and 2010 Mr Banfield spent a significant proportion of the week looking after his elderly mother. He says he stayed with his mother for several days and nights each week but without giving up his residence at 3 Westville Road. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. Following the death of his mother in 2010, Mr Banfield lived exclusively at 3 Westville Road with the Deceased. The relationship between Mr Banfield and the Deceased started off as being a romantic relationship. From 2001 they lived together and shared a bed. Mr Banfield says that in 1999 they became engaged. This is disputed by James who says that the Deceased would not have concealed from him something as potentially significant as an engagement. Mrs Mills and Mrs Muat say in their witness statements that the Deceased had inherited two diamond rings from her mother, that she had the rings re-set and that the Deceased told them Mr Banfield had paid for this to be done. They say she told them as if it were something of a joke that the ring was supposed to be her engagement ring. When they asked if she planned to marry Mr Banfield, they say she replied in an off-hand way "don't be ridiculous I would never marry him". Mr Banfield insisted they were engaged and that their

friends were told. He said they received lots of engagement cards from friends at the time. The evidence suggests that the Deceased regularly wore this ring. I am satisfied that in the sense of a commitment to each other they became engaged. There do not appear to have been any plans to marry. Mr Banfield said in his first witness statement that he was the one who was reluctant to get married. He said in cross examination he wouldn't have wanted to get married because the house would then have gone to him rather than to James. I found that a rather curious explanation. It would of course have been necessary for the Deceased to make a fresh will but there was nothing to prevent her from leaving the house to James by will. I suspect this explanation was an attempt by Mr Banfield with hindsight to explain why the couple had become engaged if they never intended to marry. The nature of the relationship changed as Mr Banfield stopped full time work and suffered a number of health problems. Mr Banfield took voluntary redundancy in

2000. He worked for three further years for another firm delivering cars for people involved in road accidents. He gave up work in his early 50's because he was having problems with his knees.
14. Mr Banfield had and has a number of serious health issues. He suffers from spinal decompression. He underwent a first procedure in 2008. He needed a second procedure in 2009. That left him for a time with the threat of paralysis and thereafter with severe nerve damage. Mr Banfield has longstanding type 2 diabetes and is overweight. These health issues contributed to a somewhat sedentary lifestyle. From around 2011 he found it more convenient and comfortable to sleep downstairs in a reclining chair and only went upstairs in order to take a shower. 15. The Deceased complained to Mrs Mills and Mrs Muat that she was being required to wait on Mr Banfield hand and foot. When they mooted to her the idea, that she might end the relationship, the Deceased said she did not want to be on her own and needed the companionship. She told Mrs Mills that she "needed to be needed". Mr Banfield, no doubt often in pain or uncomfortable, was at times irascible and adopted a hectoring tone. Mr Banfield became set in his ways. He based himself in the living room where there was a television leaving the Deceased to see her friends in the kitchen. He preferred to stay in and have a take away curry on Saturday nights rather than to go out. Nevertheless the relationship continued until the sudden and unexpected death of the Deceased when she and Mr Banfield were going away on holiday together. 16. Section 1 of the Act sets out those who are entitled to apply for financial provision from a deceased's estate. It is accepted on behalf of the Defendant, James, that Mr Banfield has standing to apply under subsection 1(1)(e) but not under subsection 1(1) (ba) of the Act. It was not accepted that Mr Banfield and the Deceased had been living together "as husband and wife" in the two years or more before the death of the Deceased. Reliance was placed on the fact that Mr Banfield slept downstairs from around 2011 onwards and that for sometime prior to that the Deceased and Mr Banfield had slept in separate bedrooms. 17. In *Re Watson* [1999] 1 FLR 878, at 883, it was said by Neuberger J, as he then was, that the test is:- "Whether, in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living together as husband and wife; but when considering that question,

one should not ignore the multifarious nature of marital relationships.” The fact that for more than two years before the death of the Deceased, Mr Banfield and the Deceased no longer shared a bedroom and that from around 2011 Mr Banfield because of his health problems slept downstairs on a reclining chair is not in my view a reason to conclude that the Deceased and Mr Banfield were not continuing to live together as if they were married. Their relationship undoubtedly became more burdensome for the Deceased but I do not think it right or fair to characterise Mr Banfield as being no more than a lodger. The relationship between the Deceased and Mr Banfield continued to contain an element of mutual support, with the Deceased making it clear to her close friends that she did not want to be on her own. At the time of the Deceased’s death, she and Mr Banfield were going away on holiday together. Since the death of Mr Banfield’s mother, they had been able to afford to do this twice a year. There is no doubt that Mr Banfield was shocked by the sudden death of the Deceased. He returned from Portugal (to where the flight had been diverted) on the next day with her body. Mr Banfield had himself made a will in 2009 leaving 50% of his estate to the Deceased with the remaining 50% being divided between his nieces and a nephew. This is consistent with a committed relationship. In my view, applying the test laid down in *Re Watson*, Mr Banfield was “during the whole of the period of two years ending immediately before the date when the deceased died”, living (a) in the same household as the deceased, and (b) as the husband ...of the deceased.” I find that he is qualified to apply under subsection 1(1) (ba). This makes it unnecessary for me to determine whether Mr Banfield was also entitled to apply under subsection 1(1)(e). On behalf of the Defendant, it was accepted that Mr Banfield was in part being maintained by the Deceased through being provided with rent-free accommodation. In my view the provision of rent-free accommodation falls in this case to be viewed principally in the context of the relationship between the Deceased and Mr Banfield. It is in my view the relationship lasting for more than 20 years between the Deceased and Mr Banfield and their open cohabitation from around 2001 which underpins this claim rather than any partial dependency. In the case of an application made by virtue either of subsection 1(1)(ba) or subsection 1(1)(e) “reasonable financial provision is defined by subsection 1(2)(b) of the Act to mean: 18. 19. 20. 21. “such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.” 22. In *Ilott v Blue Cross* [2017] UKSC 17 (“*Ilott*”) Lord Hughes JSC giving the leading judgment of a 7-judge Supreme Court examined the concept of maintenance in paragraphs 12 to 15. In the context of the issues which arise for decision in this case, I think it appropriate to quote at some length extracts from paragraphs 14 and 15:- “14 The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) show that it cannot extend to any or everything which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living... The summary of *Browne-Wilkinson J* in *In re Dennis, decd* [1981] 2 All ER 140 at 140-146 is helpful and has often been cited with approval: “The applicant has to show that the will fails to make provision for his maintenance: see *In re Coventry (deceased)* [1980] Ch 461. In that case both *Oliver J.* at first instance and the Court of Appeal disapproved of the decision in *In re Christie (deceased)* ...[1979] Ch 168 in which the

judge had treated maintenance as being equivalent to providing for the well-being or benefit of the applicant. The word 'maintenance' is not as wide as that. The court, has up until now, declined to define the exact meaning of the word 'maintenance' and I am certainly not going to depart from that approach. But in my judgment the word 'maintenance' connotes only payments, which directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure...

15. The level at which maintenance may be provided for is clearly flexible and falls to be assessed on the facts of each case. It is not limited to subsistence level. Nor, although maintenance is by definition the provision of income rather than capital, need it necessarily be provided for by way of periodical payments, for example under a trust. It will very often be more appropriate, as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years, for example on the Duxbury model familiar to family lawyers: see *Duxbury v Duxbury* (Note) [1992] Fam 62. Lump sum orders are expressly provided for by section 2(1) (b). There may be other cases appropriate for lump sums; the provision of a vehicle to enable the claimant to get to work might be one example and, as will be seen, the present case affords another. As Browne-Wilkinson J envisaged (obiter) in *In re Dennis* (above) there is no reason why the provision of housing should not be maintenance in some cases; families have for generations provided for the maintenance of relatives, and indeed, for others such as former employees, by housing them. But it is necessary to remember that the statutory power is to provide maintenance, not to confer capital on the claimant. Munby J rightly made this point clear in *In re Myers* [2005] WTLT 851 at paras 89-90 and 99-101. He ordered, from a very large estate, provision which included housing, but he did so by way not of an outright capital sum but a life interest in a trust fund together with a power of advancement designed to cater for the possibility of care expenses in advanced old age. If housing is provided by way of maintenance, it is likely more often to be provided by such a life interest rather than by a capital sum." 23. At the risk of over-reduction, the following propositions can be extracted from the above passages:-
 - (1) The concept of maintenance cannot extend to everything which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living;
 - (2) It connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the costs of his daily living at whatever standard of living is appropriate to him;
 - (3) The provision can be by way of a lump sum, for example, to buy a house in which the applicant can be housed, thereby relieving him to that degree of income expenditure;

- (4) Whether it should be by way of a lump sum will depend on the circumstances of each case and a review of the section 3 factors;
- (5) The level at which maintenance may be provided for is flexible and falls to be assessed on the facts of each case;
- (6) It is not limited to subsistence level;
- (7) “Maintenance” is, by definition, the provision of income rather than capital. It may however be more appropriate as well as cheaper and more convenient if income is provided by way of a lump sum;
- (8) There is no reason why the provision of housing should not be maintenance;
- (9) It is necessary to remember the statutory power is to provide maintenance, not to confer capital on the claimant; (10) If housing is provided by way of maintenance, it is likely more often to be provided by a life interest rather than by a capital sum. In paragraphs 16 to 25 inclusive, Lord Hughes JSC in *Illott*, reviewed the approach the court should adopt in determining whether the will, or intestacy regime, had made reasonable financial provision for the applicant. I must consider whether looked at objectively the Deceased’s will made reasonable financial provision for Mr Banfield’s maintenance. At paragraph 23, Lord Hughes JSC said it has become conventional to treat the consideration of a claim under the Act as involving a two-stage process asking (1) has there been a failure to make reasonable financial provision and if so (2) what order ought to be made? Section 3(1) of the Act sets out the factors which are to be considered by the court, making them applicable equally to both stages. Later in paragraph 23, Lord Hughes JSC said the two questions will usually become: (1) did the will/intestacy make reasonable financial provision for the claimant and (2) if not, what reasonable financial provision ought now to be made for him? At paragraph 24, Lord Hughes JSC said that in many cases, exactly the same conclusions will both answer the question whether reasonable financial provision has been made for the claimant and identify what that financial provision should be. He said: 24. 25. “the Act plainly requires a broad brush approach from the judge to very variable personal and family circumstances. There can be nothing wrong, in such cases, with the judge simply setting out the facts as he finds them and then addressing both questions arising under the Act without repeating them. 26. *Illott* was a claim by an estranged adult daughter. The principles and guidance provided by Lord Hughes JSC are equally applicable to other classes of applicants whose claim is limited to maintenance. In *Lewis v Warner* [2017] EWCA 2182 (Civ), an application by an unmarried partner under subsections 1(1)(ba) and 1(1A) of the Act, Sir Geoffrey Vos, Chancellor of the High Court, found it useful to recite “some quite lengthy” passages from Lord Hughes’s judgment “because (a) they are directly relevant to what this court has to decide and (b) they provide the legal background without the need to trawl through the pre-existing authorities”. 27. I turn next to the section 3 factors so far as they apply to this claim. The first matter to which I must have regard under section 3(1) is: “(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable

future;” Mr Banfield in his third witness statement dated 18 May 2018 set out his current income sources. They are:- A Partnership Pension of £9,641 per annum shown under the reference JUST on his bank statement currently received at the rate of £803.42 per month An investment bond also with the Partnership generating approximately £6,000 per annum and £500 per month A Prudential investment ISA bond which used to generate £350 per month but which has reduced to £130 per month (£1560 per annum) Two allowances: (i) a Disability Living Allowance reduced to £237.25 per month (as a result of Mr Banfield receiving a state pension at 65) (£2847 per annum) and (ii) a winter fuel allowance of £100 per annum. A state pension of £9,078 per annum at the rate of £756.57 per month. Including the winter fuel allowance, Mr Banfield has net income (income after tax deducted) of £29,226 per annum. His monthly income (without the winter fuel allowance) is £2427.40 per month.

28. Mr Banfield exhibited to his first witness statement a schedule of estimated annual expenditure. This was prepared for him by his solicitors. It totals £18,444.20 for “Self and Household”. It is divided into ten schedules containing breakdowns of the annual totals. The level of estimated annual expenditure was not seriously challenged on behalf of the Defendant. Instead, the point was made that on his figures, Mr Banfield’s income exceeds his estimated annual expenditure by £10,782 per annum or £898 per month. This was accepted as being the position on behalf of Mr Banfield by his counsel Mr Rory Brown. On behalf of the Defendant the further point was made that there is some prospect of Mr Banfield’s expenditure being reduced by a move to a smaller property. There may however be new outgoings such as a service charge depending on the property selected and increased care needs.
29. Mr Banfield’s Prudential investment bond had a capital value of £178,587 as at 3 March 2017. His ISA bond had a capital value of £40,284 at that date. He has premium bonds to the value of £30,000. The prizes go into a Lloyds account with a balance of £1,200. Mr Banfield’s main Lloyds account has a balance of around £27,000. Adding up these amounts, Mr Banfield has or had in March 2017 capital of around £277,071.00. 30. 31. 32. 33. 34. Since this claim was started, Mr Banfield’s income position has improved significantly as a result of the receipt by him of a state pension. It is no longer the case that at present he is dependent on all his capital resources to maintain a surplus of income over expenditure. Mr Banfield’s evidence is that he received £140,000 as his share of his mother’s estate. She died in 2010 aged 94. He says he used his share to purchase the Prudential Partnership bond. Carol Muat says Mr Banfield told her he had received £225,000 from his mother’s estate but I shall proceed on the basis that whatever Mr Banfield inherited that which remains unspent is now represented by the value of his Prudential investment bond. That bond generates an income of around £6,000 per annum. Mr Banfield is not dependent on that income to meet his current outgoings. Without it, his income would still exceed his estimated expenditure by £4,782 per annum (£398.50 per month). Since his mother’s death in 2010, Mr Banfield no longer has alternative accommodation to which he can return, but he does have an investment which he could use in whole or in part towards his housing needs. The principal financial need which Mr Banfield has is for alternative accommodation. It is now recognised

on his part that he does not require to live in a house the size of 3 Westville Road and that it is in some respects, although being in his preferred area, unsuitable for his needs. In his evidence, Mr Banfield identified his housing need to be a maisonette, preferably with two bedrooms, on the ground floor, within a five mile radius of Thames Ditton and having an enclosed private garden. The enclosed garden is required he says as opposed to a communal garden because of his dog Millie a springer spaniel. Through investigations carried out involving estate agents. Mr Banfield estimates the type of accommodation he needs will cost in the region of £450,000. On behalf of the Defendant, James, it is submitted that these are excessive accommodation needs and that Mr Banfield's accommodation needs can be satisfied either by him renting, or by him purchasing an over-55s or over-60s lease or by him purchasing a 1 bedroom apartment within less than a mile of 3 Westville Road in the price range of up to around £220,000. I will return to the central issue of Mr Banfield's accommodation needs after reviewing the additional section 3 factors. Section 3(1)(b) has no application in the present case. There are no other applicants. Section 3(1)(c) requires the court to take into account the financial resources and financial needs which any beneficiary of the estate of the Deceased has or is likely to have in the foreseeable future. For the purpose of section 3(1)(c), James is the only relevant beneficiary. James is aged 35. He lives at Flat 3, 11 Lynette Avenue, Clapham, London SW4 9HE together with his fiancée Miss Octavia Gray. The flat is owned by Octavia's mother, Lady Catherine Gray. James and Octavia have a joint account into which they both pay in £775 per month to cover the rent of £1350 per month and other outgoings. 35. James works at Argent as an Assistant Project Manager. His P60 for the year ended 5 April 2017 shows he earned £49,414.95 before tax deducted of £9974.00. His net 36. income was therefore around £40,000. James's most recent pay slip however showed net pay of only £2775.84 for April 2018. In addition, he is entitled to a share of profits each year. In 2016 he received £3,500. In the past he has received similar amounts, but there is obviously no guarantee a profit will be made each year. James is the 100% beneficial owner of a buy to let or investment property known as 4 Chiltern Works, Southey Road, London N15 5HY. This property is registered in the joint names of James and Octavia but it is recorded in writing that James is the 100% beneficial owner. The property was purchased for £450,000 on 17 June 2016, seven months after the death of the Deceased. It was purchased with the assistance of a mortgage advance of £337,610 from Halifax Bank of Scotland. The balance required was £126,611.00. This went out of James's account to his solicitors Streathers on 18 May 2016. The funds came into that account in two phases. On 10 February 2016 £80,000 was paid in under the reference "Campbell J Kahuna Burger". Campbell J refers to James's uncle, John Campbell. Kahuna Burger is I was told by James a reference to the fictional chain of Hawaiian themed fast food restaurants in a number of Quentin Tarantino films including "Pulp Fiction". The second tranche of £48,330.00 came into the account on 18 February 2016 under the reference "Campbell J Pups. "Pups" is a nickname given to James by his uncle. 37. James said that this money totalling £128,330 came from his uncle John and was a loan which would fall to be repaid. He said his plan had been to repay his uncle when 3 Westville Road was sold. It was put to James by Mr Brown in cross-examination the money was a gift not a loan. It was pointed out that there were no

repayment terms.

38. Mr Brown questioned James about his uncle and put it to James that his uncle was an extremely wealthy man. James's uncle was given a 9 year prison sentence on 18 December 2015. The events giving rise to that conviction and sentence are of no relevance to this claim. The only issue of possible relevance to the section 3 factors is whether the money was a loan or a gift. On 17 May 2018 James sent an email to his uncle via email.prisoner.com asking his uncle to send him a letter confirming the money he had loaned him. A handwritten response dated 17 May 2018 from John Campbell states he has lent "circa £240k" to "my nephew James Campbell for a sizeable deposit on his first house purchase and for his legal fees in defending the court action brought by Andrew Banfield over his late mother's estate." This was produced during the trial. I see no reason to reject this evidence. The loan is plainly a "soft" loan which does not attract interest and whose repayment terms are flexible. Nevertheless, I accept James's evidence that the deposit was provided as a loan not a gift and that his uncle is expecting it to be repaid and that it will be repaid. 39. 40. The property generates a net monthly income of around £1,504. The monthly mortgage payment is £1180. The property is generating a surplus income of around £324 per month (£3,888 per annum). Its capital value has not increased significantly since it was purchased. James told me that he lives month to month and that he lives beyond his means. Since these proceedings started, the main change in his life is that Octavia has agreed to marry him. They became engaged on 1st December 2017 and are planning their wedding to take place on 30 May 2020. James says in his second witness statement that he and Octavia want to set up a home and start a family. He says that he and Octavia are currently renting and would like to have a property of their own. He said they would need a substantial deposit and money to pay for their wedding. James is a man in his mid-thirties, capable of earning reasonably well, who has the support of his 41. 42. 43. 44. 45. girlfriend, her family, and his uncle. He has however had the misfortune of losing his father at an early age and both parents when still relatively young. Section 3(1)(d) requires the court to have regard to "any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased". In considering the obligations and responsibilities owed by the Deceased to the Claimant, Mr Banfield, the starting point is in my view again that the obligation and responsibility is limited by section 1(2) of the Act to "such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance". The court is required to look at all the circumstances. These must include the matters specifically mentioned in paragraphs (a) to (g) of subsection 3(1). The obligations and responsibilities owed by the Deceased to Mr Banfield were in law not those owed between current spouses and civil partners but were limited to making reasonable financial provision for his maintenance. The length of the relationship and Mr Banfield's resources and needs as well as his age are all factors to be taken into account. It is also relevant that 3 Westville Road, the property which forms the main asset of the estate, belonged to and was owned by the Deceased free of mortgage prior to the start of her relationship with Mr Banfield. The Deceased inherited the property under

her husband's will which left his entire estate to her. The mortgage on the property was discharged out of the proceeds of a life policy. The obligations and responsibilities which the Deceased owed to James were those of a parent to a young adult child who had lost his father at an early age. It is clear that the Deceased loved James dearly and that he could in her eyes do no or little wrong. This according to Mrs Mills and Mrs Muat caused some friction at times in her relationship with Mr Banfield. According to Mrs Mills, Mr Banfield was resentful of the attention that the Deceased gave James and would belittle James to the Deceased. The Deceased wrote a handwritten letter of wishes dated October 11 1999 leaving her estate to James to be held on trust for him until his 25th birthday. This document was signed by the Deceased and witnessed by Mrs Gillian Mills but not by a second witness. The Deceased wrote a moving letter to James before making her will "in the event of my death!" saying she had never got around to making a will, but "needless to say it is all yours- with my love". 46. In *Illott* at paragraph 47, Lord Hughes said:- "It was not correct to say of the wishes of the deceased that because Parliament has provided for claims by those qualified under section 1 it follows that that by itself strikes the balance between testamentary wishes and such claims...It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight. They may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all the relevant factors..". 47. Subparagraph 3(1)(e) requires the court to have regard to the size and nature of the net estate of the deceased. The evidence as to the exact size of the net estate is not entirely satisfactory. For inheritance tax purposes, the total chargeable estate was shown as £809,517.00 with tax (excluding any interest) chargeable of £63,806.00. This would leave a figure after IHT of £745,710.40. For probate purposes the value of 3 Westville Road was agreed with HMRC at £700,000. For the purposes of these proceedings, 3 Westville Road was valued on 22 March 2018 by Mr Sohal of Sohal Associates, acting as a single joint expert, at £725,000. An additional £25,000 therefore needs to be added to the IHT figures. This gives a figure of £770,710.40. On these figures, the net estate consists of the property valued at £725,000, chattels valued at £7917 and around £37,773.40 in cash after IHT. Draft administration statements circulated in October 2017 show £823,000.47 being carried to capital account and a total on distribution account of £784,758.47. These statements need to be treated with some caution. They show IHT paid or payable up to 1 May 2018 totalling £32,306.85 but not the total IHT liability of £63,806.00 (excluding interest charged for delay in payment). After deducting the difference of £31,499.95, the amount available for distribution on those statements becomes £753,258.52. Unhappily, separate Part 8 proceedings were brought by James seeking a declaration that Mr Banfield was time-barred from bringing a claim under the Act. These proceedings arose because probate had originally been granted to James on 24 May 2016 albeit that the grant was issued in error after a caveat had been lodged. The caveat was subsequently withdrawn. This led to James seeking a declaration that it was too late for Mr Banfield to apply under the Act. These proceedings were undermined by the subsequent decision of the probate registry on 24 April 2017 to revoke the grant and issue a fresh grant on 27 April 2017. These unnecessary proceedings were compromised on terms that James should be entitled to his costs in that

claim totalling £12,649.25 out of the estate and Mr Banfield his costs totalling £10,000 out of the estate. This gives rise to a liability on the part of the estate to costs totalling £22,649.25. As those costs have, unfortunately, become a liability of the estate, this reduces the available net estate to £730,609.27. This means that in practical terms, the net estate consists almost entirely of 3 Westville Road. It is of course possible that 3 Westville Road will sell for more than £725,000 but I cannot assume that and equally there is the possibility it may fetch less. I proceed on the basis that the net estate is in the region of £725,000 and in practical terms consists almost entirely of the property. Paragraph 3(1)(f) requires the court to take into account “any physical or mental disability of any applicant for an order under the said section 2 or of any beneficiary of the estate of the deceased”. Mr Banfield qualifies for Disability Living Allowance and has a disabled Blue Badge. He walks with the aid of a crutch and finds stairs difficult but not impossible to climb. Mr Banfield had an operation on his left hip in May 2017 which was successful and has increased his mobility. Mr Banfield said in his oral evidence that because he finds stairs difficult he would prefer to live on the ground floor. I do not consider that there is any other physical or mental disability which requires to be taken into account. James has undergone a number of operations, mainly as a result of playing rugby. He accepts he is not under any physical disability and that he is able to do his job. After his mother’s death, James sought counselling. It is not suggested James has any mental disability such as to impair his prospects. Section 3(1)(g) requires the court to take into account “any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant”. On behalf of James, reliance is placed on the fact that since the death of the Deceased, Mr Banfield has continued to live at 3 Westville Road for over two years thereby it is said depriving the estate of rental income in the region of £48,000. The figure for rental income is not the subject of any 48. 49. 50. 51. 52. expert evidence before me. The rental value is not covered by Mr Sohal in his report. I can however take into account that no occupation rent has been paid. 53. Section 3(2A) provides that where an application is made by virtue of section 1(1)(ba) of the Act, the court shall in addition to the matters specifically mentioned in paragraphs (a) to (f) of subsection 3(1) have regard to:- (a)the age of the applicant and the length of the period during which the applicant lived as the husband of the deceased and in the same household as the deceased; (b)the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.”

54. Mr Banfield is now 66. I have already reviewed the evidence concerning the length of time he and the Deceased lived as husband and wife in the same household. I have found that Mr Banfield had moved in to live permanently with the deceased from around 2001 onwards in the context of a relationship that started two or so years after the death of the Deceased’s husband.

55. Mr Banfield and the Deceased at all times kept their finances separate and did not have a joint account. Mr Banfield's evidence was that they halved the household bills adopting a system under which the Deceased told him the amount of the bill and he paid her back half in cash. Mr Banfield said that in addition he gave the Deceased £300 in cash a month which increased to £400 a month after the death of his mother. James exhibited to his second witness statement excerpts from his mother's bank statements showing payments out to British Gas, Thames Water, Churchill Insurance and Direct Line Insurance. These statements do not show any sums being paid in from Mr Banfield. Mrs Muat did recall seeing a statement showing £400 coming in as a direct debit. The evidence relating to the payment of bills is incomplete and unsatisfactory. I proceed on the basis that household bills were discharged in the main by the Deceased and that from time to time Mr Banfield made a cash contribution. I find that after the death of his mother in 2010 the financial contribution made by Mr Banfield increased both towards the household and leisure activities. These included twice yearly holidays to the Canary Islands.
56. Mr Banfield did not act as a father figure towards James. Mr Banfield describes their relationship as being a "civil" one. It was the Deceased who primarily looked after the home and cared for James. Following the death of the Deceased, James to his credit acted in a caring manner towards Mr Banfield recognising that Mr Banfield as well as himself had suffered a sudden loss of a life companion. Mr Banfield acknowledges that James was initially sympathetic to him but says that later on James made it clear he wanted Mr Banfield out of the house. Sadly, the relationship between Mr Banfield and James broke down entirely on receipt of a letter of claim. 57. 58. The circumstances of the present case provide an example of the vulnerable position in which cohabitants find themselves if they unexpectedly survive their partner. Mr Banfield said in evidence he had known about the will but not been troubled by it as "in the natural order" he expected to depart first. In these circumstances, I must decide whether the Deceased's will made reasonable financial provision for Mr Banfield and, if not, what reasonable financial provision ought now to be made for him This requires the court at both stages in the process to have regard to all the relevant section 3 factors. 59. In addition, section 3(5) provides that:- 60. 61. 62. 63. 64. 65. 66. 67. "In considering the matters to which the court is required to have regard under the section, the court shall take into account the facts as known to the court at the date of the hearing." As confirmed by Lord Hughes JSC at paragraph 24 in *Ilott* at both the first and second stages of the process, the court is making what is best described as a value judgement based on the highly individual circumstances of each case. There are two possible approaches in this case, reflected in the arguments put before the court. The first, as advanced on behalf of the Defendant, is to focus quite narrowly on Mr Banfield's financial resources and to argue that his accommodation needs can be met without any assistance from the estate or without assistance beyond around £100,000. The second, as advanced on behalf of Mr Banfield is to focus on the length of the relationship between the Deceased and Mr Banfield and on the importance to Mr Banfield of moving to property of a fairly specific type close to where he lives. In my view, and making a value judgement, I consider that the

length of the relationship between the Deceased and Mr Banfield ought to be recognised as tending to lead towards more generous provision for maintenance. I think that after a relationship lasting over 20 years, to have left Mr Banfield only £5,000 for his maintenance was not such as to make reasonable financial provision. It was argued on behalf of James that Mr Banfield has sufficient income and capital to enable him to rent or to purchase an over 60's one-bedroom property in or around the Thames Ditton area. It was submitted that therefore he does not require provision from the net estate or, alternatively, that he requires only a small capital sum of £100,000 at most. I do not think it reasonable to proceed on the basis that Mr Banfield's accommodation needs will be met through the private rental market. I recognise that for many, especially for younger people, renting is the only or preferred option. Mr Banfield is aged 66 and has significant physical restrictions and disability. I do not think he should be left needing to rent in the private rental market with the possibility of having to relocate at the end of each fixed term tenancy. Mr Banfield has specific housing needs and there is no certainty that they would be capable of being met in the private rental market as and when a tenancy expired. It is suggested in the alternative that Mr Banfield could buy a one-bedroomed flat for the over-55s or over- 60's in the local area for around £200,000 either without any contribution from the estate or with only a limited capital contribution of £100,000 at most. These are retirement properties on over-55s or over-60's leases which last only for the lifetime of the lessee. The fact that Mr Banfield is eligible to purchase a property for the over 60's does not in my view mean that he should be required to do so. The capital employed in purchasing a lease of this type, whether coming from Mr Banfield or from the estate, or from a combination of both, would be lost on Mr Banfield's death. In my view, Mr Banfield should not be required to invest his capital into a lease of this type and I doubt very much whether it is in the estate's interest to do so either. Mr Banfield does not at this stage wish to live in warden-assisted accommodation and would prefer to have a conventional one or two-bedroomed In my view, depending on cost and availability those are reasonable requirements. 68. 69. 70. 71. 72. 73. 74. 75. A considerable amount of evidence was filed by both sides relating to possible properties for Mr Banfield. The evidence filed on behalf of the Defendant consisted of properties in the range of £160,000 to £220,000 being in the main one bedroomed retirement properties. The evidence filed on behalf of Mr Banfield consisted of a range of properties in the price range £300,000 to £475,000. These are mainly two- bedroomed properties available for purchase on conventional terms in local residential areas. Evidence of this type is helpful and necessary in order to guide the court as to the amount likely to be required to buy different types of accommodation. It is of course not the role of the court to select any specific property. It forms part of the background against which the court is called upon to determine what reasonable financial provision ought now to be made. It was submitted by Mr Rory Brown on behalf of Mr Banfield that the court should have regard to the schedule of possible properties for Mr Banfield filed on his behalf and taking into account their likely cost order a lump sum to be paid out of the estate in the region of £350,000 to £450,000. On behalf of the Defendant, it was submitted by Ms Elaine Palser, in detailed and able submissions, that if the court were to conclude (as I have) that the Deceased's will did not make reasonable

financial provision for Mr Banfield, he should be awarded a lump sum from the estate of £100,000 at most, alternatively if further provision was to be ordered any lump sum should not exceed £200,000 and any greater provision should be in the form of a life interest. The court's attention was drawn to the fact that an open offer of £200,000 plus his then costs of £45,000 had been made to Mr Banfield on 15 November 2017 and rejected. I find myself unable to accept either of these approaches in full although accepting each in some measure. In broad terms, I consider that Mr Banfield's housing preferences are reasonable ones. I think it reasonable for him to want to remain in the Thames Ditton area or within a mile or so of it and to look to find a maisonette preferably with at least a small second bedroom and on the ground floor. I am not persuaded that he needs an enclosed garden provided that he is within a short distance of a place for exercising his dog. I do not however, weighing all the section 3 factors, consider that the estate should be required to pay out as a lump sum an amount in the region of £350,000 to £450,000 to purchase such accommodation to be owned outright by Mr Banfield. In my view this is a clear case in which that would go beyond maintenance provision and be excessive capital provision. It would involve Mr Banfield receiving 50% or more of the capital of the net estate. As confirmed in *Ilott*, it is not the purpose of an award of maintenance under the Act to confer capital on the claimant. The relationship between Mr Banfield and the Deceased did not bear any children. There is no reason why the estate should provide Mr Banfield with a property to pass on to his relations. As conferring capital is not the purpose of an award of maintenance under the Act, it was stated by Lord Hughes JSC in *Ilott* that if housing is provided by way of maintenance, "it is likely more often than not" to be provided by way of a life interest rather than by way of a capital sum. 76. 77. 78. 79. 80. 81. 82. There will be cases in which provision by way of a lump sum for housing is appropriate and can be justified as maintenance in the form of relieving the Claimant from a liability to pay rent. Each case will depend on its particular facts and a review of the section 3 factors. It is less likely in my view to be appropriate where, as here, the deceased had a child by an earlier marriage or relationship to whom she wanted and reasonably expected to be able to pass on capital to provide or support a start in life. A particular feature of the present case is that the property forming the main asset of the estate was a pre-owned asset owned and inherited by the Deceased before the start of her relationship with Mr Banfield. A further factor in the present case pointing away from the award of a lump sum to purchase a property outright are that the housing requirements of the Claimant are ones that are relatively expensive to meet on his case. I accept the approach of the Defendant to that extent. I accept that where a lump sum is sought involving 50% or more of the estate it is much more likely to be appropriate to make provision for housing by way of a life interest to avoid conferring capital and to avoid depriving the Defendant of capital which would otherwise pass to him. Taking into account all the section 3 factors, including in particular Mr Banfield's resources and housing needs, the length of his relationship with the Deceased and the size and nature of the net estate, I have concluded that I should order that 3 Westville Road be sold under the direction of the court and that Mr Banfield be granted a life interest in one half of the net proceeds of sale which are to be used in or towards providing alternative accommodation

for him. It will be open to Mr Banfield if he wishes to contribute capital of his own towards the purchase in which case it will need to be agreed and declared in what proportions as between him and the estate or the Defendant the property is owned. The fact that relations between the parties have broken down as a result of this litigation does not persuade me that it is right to make provision in the form of a lump sum. I am aware that such an argument has prevailed in the past but it was soundly rejected by Marcus Smith J in *Martin v Williams* [2017] EWHC 491 (Ch) on the grounds that the arrangements to be put in place were not over-complicated and that once the parties were aware of the outcome of the litigation, and its costs consequences, they could reasonably be expected to work together. The subsequent decision of the Supreme Court in *Ilott* in my view strengthens that approach and favours the making of provision in the form of a life interest in one half of the value of the property. In addition, I will direct that a fund of £20,000 should be kept available within the estate in case the property purchased needs specific adaptation to meet Mr Banfield's needs. I have in mind a capital item such as the installation of a shower or rails. I will hear counsel as to the form of the order and directions for sale. In reaching my conclusions, I am conscious of the substantial costs that have been incurred by both sides in relation to this claim. I cannot however anticipate what costs orders may fall to be made. I will hear the parties on costs in the normal way.

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Prepared on 26 October 2026 · Esheria