

Case No: A30BM561

Neutral Citation Number: [2015] EWHC 3469 (Ch)

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 3 December 2015

Before :

HHJ DAVID COOKE

Between :

Ian Robert Henderson Claimant

- and -

June Wilcox (1)

Julian Marcus Wilcox (2) Defendants

Andrew John Robertson (3)

Cynthia Jamieson Duff (4)

Anna Clarke (instructed by **Franklins Solicitors LLP**) for the **Claimant**

The Defendants did not appear and were not represented

Hearing dates: 4 November 2015

Judgment

HHJ David Cooke:

1. The claimant in this case is Ian Henderson ("Ian"). Ian's mother, Mrs Lillian Henderson, died on 2 April 2013 as a result of injuries sustained in a severe assault on her by Ian on the night of 13 March 2013. Ian was convicted of manslaughter at a trial on 15 September 2014, his plea of guilty to that charge and not guilty to murder having been accepted on the basis that he had not intended to kill his mother or cause her really serious injury. He was sentenced (with the agreement of the prosecution) to be detained in hospital under [section 37 Mental Health Act 1983](#), the judge being satisfied that he suffered from a mental disorder such as to make his detention and treatment in hospital appropriate ([section 37](#) (2)), coupled with a restriction order made under section 47 of that Act in order to prevent the public from serious harm if he should be at large.

2. The main effect of the restriction order (there are others) is that his discharge from hospital requires the consent of the Secretary of State, to whom the responsible clinician must make reports at least annually as to his progress. He remains at present detained in what is described as a medium security establishment. The most recent report indicates that it is anticipated that at some point next year he may be transferred to a low security unit, and in due course to some form of supported accommodation in the community, but it is presently considered unlikely that he will ever be fit for discharge to live unsupported.

3. Mrs Henderson's will made in 2006 left her entire estate to Ian if he survived her, but it is accepted that by virtue of his having caused her death by his own criminal act prima facie Ian is excluded from benefitting under the will under the common law rule known as the "forfeiture rule". The court however has power to modify the application of that rule in certain circumstances pursuant to the [Forfeiture Act 1982](#), and Ian brings this claim seeking, principally, an order under that Act that permits him to inherit his mother's estate.

4. There are four defendants named to the claim:

i) Mrs June Wilcox, who is Mrs Henderson's sister-in-law and was named together with Ian as an executor in her will. Mrs Wilcox has obtained a grant of probate, power being reserved to Ian to prove. She filed an

acknowledgement of service stating that she takes a neutral position as executor.

ii) Julian Wilcox, son of Mrs Wilcox and therefore nephew of Mrs Henderson who is named in the will as substitute beneficiary if Ian should predecease his mother. The effect of [s33A Wills Act 1837](#) is that if Ian is precluded from inheriting under the will by virtue of the forfeiture rule, he is to be deemed to have died immediately before the testator, with the result that Julian would inherit in his place. Julian filed an acknowledgement of service stating that he did not wish to be involved in the claim.

iii) Mr Andrew Robertson and Mrs Cynthia Duff, who are solicitors practising with a firm in Scotland, and whom I will refer to as "the Solicitor Trustees" for reasons that appear below. Their position, set out in a letter, is that they do not intend to defend the claim but will take account of the court's decision in the exercise of their powers as trustees.

5. Ms Clarke presents the case on behalf of the claimant, and I am very grateful to her for her careful submissions and guidance to the evidence and relevant authorities. The evidence before me consists of witness statements made by Mrs Henderson's younger sister Suzan Jupp, the claimant's solicitor Ms Taylor and his responsible social worker, Ms Holder. I was in addition provided with a number of witness statements (including one from Mrs Wilcox) psychiatric reports and other material from the crown court trial which are admitted as hearsay, together with a transcript of the criminal trial setting out the circumstances as explained to the judge, the plea and his remarks on sentencing.

6. The estate accounts show that a sum of just over £150,000 has been gathered in. This is mainly from various accounts and investments held by Mrs Henderson, but also includes half of a sum of some £35,000 found in cash in the house that she shared with Ian after her death. The other half of that amount has been treated as Ian's and given to him.

7. The estate does not include that house, or any interest in it, for the following reasons. The house appears to have been at one stage owned jointly by Mrs Henderson and Ian. In or about May 2011 however (there is

some discrepancy in the dates referred to in the documents before me) the house, which is registered land, was transferred into four names, i.e. Mrs Henderson, Ian and the two Solicitor Trustees. At about the same time, Ian and Mrs Henderson each executed settlements referred to as "Family Protection Trusts". Mrs Henderson's trust named herself and the two Solicitor Trustees as trustees, recited that all her estate and interest in the house had been transferred to the trustees to be held on the trusts set out therein, and named herself, Ian and Julian as beneficiaries. The trusts declared were, in summary, that the property was held on trust for Mrs Henderson, subject to powers to apply income or capital at the discretion of the trustees for the benefit of any of the named beneficiaries. Ian's trust was in mirror image terms, save that it also named a personal friend and an animal charity as additional discretionary beneficiaries.

Does the Forfeiture rule affect the Trusts?

8. The claim also seeks relief by way of an order modifying the effect of the forfeiture rule "so that [the Family Protection Trusts] are unaffected by its operation", but Ms Clarke's primary submission was that I should declare that the forfeiture rule did not in any event apply to any interest held or acquired under either of the trusts. I propose to deal with that issue first.

9. Section 1(1) Forfeiture Act 1986 defines the forfeiture rule as "the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing." That seems to me to be a statement by way of identification and not one which purports to codify the rule or set it out in full, for which one must look to the decided cases. There are two aspects of the rule to consider; the first is what crimes or acts are sufficient to engage the rule and the second is what rights or interests are affected by it. It is the second aspect with which I am concerned, since it is accepted that Ian's offence satisfies the first.

10. In *Cleaver v Mutual Fund Life Association* [1892] 1 QB 147 the executors of the deceased sued on a life policy taken out by him with the defendants, which named his wife as the payee. The assurer resisted payment on the basis that the effect of [s11 Married Women's Property Act](#)

[1882](#) was that the executors would hold any proceeds paid to them as trustee for the wife and it would be contrary to public policy for her to take any benefit arising from the death of the husband she had murdered. Fry LJ (p156) said that the principle argued for, that "it is against public policy to allow a criminal to claim any benefit by virtue of his crime" was "in my opinion rightly asserted. It appears to me that no system of jurisprudence can within reason include amongst the rights which it enforces rights directly resulting to the person asserting them from the crime of that person. If no action can arise from fraud, it seems impossible to suppose that it can arise from felony or misdemeanour..."

11. The Court of Appeal unanimously held that the effect of this principle however was not that the assurer was not liable to pay, but that payment was to be made to the executors as representatives of the contracting party (ie the husband) who would hold the proceeds free from the trust in favour of the wife, the wife's interest under that trust being unenforceable. It was, therefore, a case in which the wife's interest under the trust arose prior to the husband's death when the policy was written (and so not by virtue of her crime), but it was her crime which caused the rights under the policy to be converted into money, or at least crystallised the occasion when that occurred.

12. In *Re Crippen* [1911] P 108 Sir Stanley Evans P, relying on *Carver*, said "It is clear that the law is that no person can obtain, or enforce, any rights resulting to him from his own crime; neither can his representative, claiming under him, obtain or enforce any such rights." He accordingly directed that a grant of administration to the estate of Mrs Crippen should not be issued to the personal representative of her husband, Dr Crippen (the mistress for whose sake he had killed his wife). Her entitlement to a grant depended on Dr Crippen being entitled to the wife's estate in intestacy, but once the fact of the murder was accepted as proved, he would have been prevented by the forfeiture rule from inheriting.

13. In *Dunbar v Plant* [1998] Ch 412 the defendant and the deceased had entered into a suicide pact. The deceased killed himself in performance of that act, but the defendant's attempt to do so was unsuccessful. The judge

below held that, unless modified by the Forfeiture Act, the forfeiture rule applied to prevent the defendant obtaining either (a) full ownership by way of survivorship of the house jointly owned by her and the deceased or (b) any benefit arising under two policies on the life of the deceased written for her benefit, one of which was charged to secure a mortgage on the house. It does not appear that the judge's conclusions as to the rights to which the rule applied were challenged on the appeal, which focused on whether the rule applied at all in the circumstances of a suicide pact and whether the judge's exercise of discretion on the question of relief should be upheld.

14. The Court of Appeal cast no doubt on these conclusions. At p418A Mummery LJ said (referring to *Re K* [1985] Ch 85 at p100) that it had been rightly conceded that the effect of the forfeiture rule in the case of the house was to sever the joint tenancy so that the defendant retained a half share as tenant in common (the deceased's share therefore passing with his estate). He also noted that there was no dispute that the policy charged to secure the mortgage should be used to satisfy the mortgage debt, notwithstanding that this benefitted the share of the defendant as well as that of the deceased. If that is right, it shows that the forfeiture rule operates not by extinguishing the rights of the criminal to the policy proceeds (since those rights remained enforceable by the chargee) but only as a personal restriction on her own ability to take a benefit arising on the death. That restriction did not extend to the indirect benefit she would achieve by having the mortgage debt reduced.

15. In *Gray v Barr* [1971] 2 QB 554 the defendant Mr. Barr had killed Mr. Gray with a shotgun and was convicted of manslaughter. He was sued by Mr. Gray's widow and claimed an indemnity against any damages awarded from an insurance company under a policy covering liability for accidental injury. He was held unable to recover under the policy, both as a matter of construction of the policy but also on public policy grounds. An insurance against liability to third parties is a different form of policy from a life assurance, but where the public policy applies to prevent recovery it will be because the event giving rise to liability, and so to the entitlement to indemnity, is the criminal act of the policyholder. There is considerable discussion in the cases as to the nature of the criminal acts that invoke this

policy (distinguishing eg between "motor manslaughter" and deliberate acts see *Tinline v. White Cross Insurance Association Limited* [1921] 3 KB 327, cf *Hardy v. Motor Insurers' Bureau* [1964] 2 Q.B. 745) but that does not impact on the type of right affected.

16. These cases do not discuss in any great detail the nature of the rights and benefits that may be affected by the rule. It seems to me however that the common thread is that they are all ones where the offender's right is caused to come into existence, or to be enforceable, or the benefit to the offender is caused to accrue, directly by the death or the criminal act connected with that death. Thus an interest under a will arises on the death of the testator. The right of survivorship operates on the death of a joint owner, but only in respect of that owner's interest. Any interest already held by the criminal in the same property (as in *Dunbar v Plant*) is unaffected. It would be true to say that the beneficiary under trust of a life policy has a pre-existing beneficial interest in property (ie the policy) which exists prior to the death. But it is the death that causes that interest to be enforceable in the sense that an entitlement to payment arises. In the case of indemnity insurance, the policy exists beforehand but the right to indemnity arises only because of the commission of the criminal act.

17. In contrast, the interests that Ian has or may acquire under the Family Protection Trusts do not arise from (or "result from") the death of Mrs Henderson. Insofar as he is a discretionary beneficiary of Mrs Henderson's trust, he acquired that status on the execution of the trust and his interest is neither created nor enlarged by her death. If the trustees exercise their powers to pay any income or capital to him, he will receive it as a result of the decision of the trustees (albeit one they may make in light of the death) and not by virtue of the death itself. The position is a fortiori in the case of his own trust; the property settled (a joint interest in the house) was his before death and even if he had retained it in his own name he would not have had it removed from him by the forfeiture rule (cf *Ms Plant's* existing share in *Dunbar v Plant*). The effect of each joint owner separately dealing with their own beneficial interest (by declaring the Family Protection Trusts) would be to sever the beneficial joint tenancy. Ian's separate share is now held by the trustees (there is no suggestion that the trust is invalid) and his

present interest in it derives from the terms of the trust and not in any respect from the death of Mrs Henderson.

18. In my judgment then the forfeiture rule has no application to any interest now existing or in future created under either of the trusts. The trustees are not prevented from exercising their discretion under those trusts in favour of Ian by the forfeiture rule if they think fit, and if they do so he will not be prevented by that rule from taking any benefit conferred by the trustees. Accordingly no question of relief under the Forfeiture Act arises in relation to any such interest or benefit.

Property passing under the will

19. I turn then to the question whether the effect of the forfeiture rule in relation to Ian's acquisition of property passing under Mrs Henderson's will should be modified, and if so in what respect. The [Forfeiture Act 1982](#) provides as follows:

“2 Power to modify the rule

(1) Where a court determines that the forfeiture rule has precluded a person (in this section referred to as “the offender”) who has unlawfully killed another from acquiring any interest in property mentioned in subsection (4) below, the court may make an order under this section modifying the effect of that rule.

(2) The court shall not make an order under this section modifying the effect of the forfeiture rule in any case unless it is satisfied that, having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the court to be material, the justice of the case requires the effect of the rule to be so modified in that case.

(3) In any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying the effect of the forfeiture rule

in that case unless proceedings for the purpose are brought before the expiry of the period of three months beginning with his conviction.

(4) The interests in property referred to in subsection (1) above are—

(a) any beneficial interest in property which (apart from the forfeiture rule) the offender would have acquired—

(i) under the deceased's will...

5 Exclusion of murderers

Nothing in this Act or in any order made under [section 2](#) ... shall affect the application of the forfeiture rule in the case of a person who stands convicted of murder."

20. The power to modify the rule therefore applies in respect of property intended to pass by a will. Where a person is convicted of an offence involving unlawful killing, there is a strict three-month time limit to bring a claim running from the date of conviction. The present claim was brought within that time limit because it was delivered to the court in time, even though the date of issue stamped on the papers was after the expiry of the three month period. The court is not prevented from exercising its powers under the act by section 5, since Ian was convicted of manslaughter and found not guilty of murder. The power is discretionary, and the court is required to have regard to the conduct of the offender and the deceased, and any other circumstances which appear to the court to be material. I must be positively satisfied that "the justice of the case requires" not just that the rule be modified, but that it be modified in the particular respect determined by the court. The power may be flexibly exercised; s2(5), which I have not set out above, is somewhat awkwardly worded but its effect is that the court may disapply the rule in respect of part or all of the property affected by it, and, where different interests are created in property, in

respect of all or any of those interests (see per Vinelott J in *Re K*, above at p 100, cited by Phillips LJ in *Dunbar v Plant* at p 436).

21. The Act itself gives no guidance as to the matters to be taken into account other than the conduct of the offender and the deceased. In *Dunbar v Plant* Mummery LJ said at p 427:

“[\[Section 2\(2\)\]](#) requires that the judge should look at the case in the round, pay regard to all the material circumstances, including the conduct of the offender and the deceased, and then ask whether “the justice of the case requires” a modification of the effect of the forfeiture rule... The court is entitled to take into account a whole range of circumstances relevant to the discretion, quite apart from the conduct of the offender and the deceased: the relationship between them; the degree of moral culpability for what has happened; the nature and gravity of the offence; the intentions of the deceased; the size of the estate and the value of the property in dispute; the financial position of the offender; and the moral claims and wishes of those who would be entitled to take the property on the application of the forfeiture rule.”

22. Phillips LJ (with whom Hirst LJ agreed) did not comment specifically in relation to this list of matters, saying only (at p 438)

“The discretion is a broad one, and it is legitimate to have regard to all the consequences of the order, but it is not right to approach the exercise of the discretion as if dealing simply with an inter partes dispute...The first, and paramount consideration, must be whether the culpability attending the beneficiary's criminal conduct was such as to justify the application of the forfeiture rule at all... I have already given my reasons for suggesting that it is likely to be appropriate to relieve the unsuccessful party to a suicide pact of all effect of the forfeiture rule...”

23. Ms Clarke formulated her submissions by reference to Mummery LJ's list as applied to the circumstances of this case, taking the first four items

together as constituting different but interdependent aspects of the circumstances relating to the event itself, to be considered in the round. I consider next the factual background to the offence and the circumstances of the offence itself.

The offence and surrounding circumstances

24. Mrs Henderson was 87 when she died. Ian was about 62, and had lived all his life with his parents, never having a home of his own nor, so far as any of the witnesses were able to say, having had a girlfriend or relationship with any other person. Mrs Henderson told Mrs Wilcox that she believed Ian had been born with a hereditary brain illness that might cause his death at any time, and that on account of this she kept him isolated from other people and ensured that he followed a strict domestic routine. His father died of cancer in 1998, since when Ian and Mrs Henderson lived alone in their house together, apart from various carers who attended over the years.

25. Ian attended mainstream schools, though he left without qualifications in about 1966. He worked for three or four years as a warehouseman, and thereafter as a storeman or porter at Walsall police station for about 13 years. He stopped work however following a mugging in about 1984. The exact circumstances of this are not clear, though it does seem that Ian has embroidered his account of the incident over the years. He appears initially to have said that he was attacked by "a Rastafarian" but later to have told people that there were six or seven Rastafarian attackers, that he was stabbed and that he suffered a stroke, brain injuries and/or epilepsy. Doctors examining him prior to the criminal trial found no evidence of a stab injury. His medical records do not corroborate any stroke or epilepsy.

26. He did not work after the attack. Witnesses described him as having a very close relationship with his mother, who is said to have been somewhat over-protective of him. June Wilcox, who had known both of them for 58 years, said "his mother has always done everything for Ian and doted on him all his life. Lilly has been very protective of Ian and as such his life skills are poor, because Lilly has done everything for him."

27. Shirley Watson was employed as an agency carer for the family from about 1995. At that time, Ian's father was alive, and Mrs Watson describes how Mrs Henderson was the main carer for both Ian and her husband. Mrs Watson used to attend every morning, mainly to provide personal care to Ian including washing him, but also to his father. She did shopping for the family and became friendly with them. After a change in the payment regime in 2009, she was told by Ian that her services were not required, but although she stopped going into give care regularly she did keep in touch with Ian and his mother, observing that the house became untidy and that Ian and Mrs Henderson looked unkempt.

28. In about June 2012 Mrs Henderson called Mrs Watson and asked her to resume providing care, which she did. She found that Mrs Henderson had lost a lot of weight and the house was dirty. She observed that Mrs Henderson would chat to her freely when they were alone, but was silent when Ian was about. She felt that Mrs Henderson was frightened of Ian. She said that Ian had changed, he had no interest in his appearance and would not wash. She observed him being verbally abusive to his mother: "Ian would shout at her and call her dirty and put her down a lot."

29. Mrs Henderson began to disclose to Mrs Watson that Ian had been hitting her. On the first occasion, Mrs Henderson "pulled up her jumper and there was a huge bruise covering most of her abdomen. Lillian said she had tumbled outside... The second time Lillian spoke to me about Ian's behaviour was a little while later, perhaps a few weeks. I noticed bruising on her arms and Lillian said she banged her arm on the door. When I questioned her later she told me that Ian had done it. Again she was scared of Ian, I knew this and it was obvious in the house... [A] month or so later I went into the house and saw Lillian had a huge swelling to the left side of her face and eye. I asked what happened and Lillian said that Ian had punched her to the face... I think it was around October [2012]. I recall Lillian also telling me that Ian had thrown plates at her, breaking them... Ian became worse in his behaviour towards his mom, Ian would shout at her, Lil would never shout back at him. Ian was calling her bone idle, but she honestly couldn't do anything for herself. She now didn't walk anywhere, Lillian would stumble to

the downstairs bathroom, holding onto anything on the way to keep upright."

30. Mrs Watson reported these incidents to her office, and spoke about them to Mrs Wilcox. Mrs Wilcox also became aware that Ian was hitting his mother from her own observations. In her statement to the police she said "my concerns started when Lilly started to have falls. This has happened on a number of occasions over the past three years. I would ask Lilly what happened and she would not say how or where she had fell... I could see the bruises on her arms. To me the bruises were not in places you would bruise if you fell. It was in the back of my mind that Ian may have caused them, however Lilly always denied any knowledge. However Lilly disclosed in October or November [2012] that Ian had hit her. During one of my daily conversations with Lilly on the phone, Lilly stated that Ian had thrown a plate. I told Lilly that she needed to be careful that Ian did not hit her. Lilly replied 'he already has'."

31. Social Services became involved. Mrs Wilcox arranged for Ian to be out of the house so that her social worker could talk to Lilly privately. Lilly told them that Ian had hit her, but that she did not want Ian to know what she had told them. When Mrs Watson reported a further incident to social services they spoke to Ian direct. After this Mrs Wilcox said "later that day... Ian rang me. Ian was upset and he stated that social services have been round to his house and accused him of hitting his mom. Ian said that he had 'shown them the door'... The next day Shirley contacted me and sounded upset. She went on to say that Ian had rung her and had been abusive on the phone. Ian said to Shirley that it was either her or myself who had contacted social services. Shirley told me that she told Ian that she had reported the matter, not me." After this incident, Mrs Henderson rang Mrs Watson and told her that she did not want any further care services from her. She said it was for financial reasons, but Mrs Watson did not believe this was the case. It seems clear from what the other witnesses say that it was Ian who insisted that his mother should stop Mrs Watson coming, and the obvious inference is that he did so because he thought Mrs Watson was responsible for the intervention by social services.

32. The account given by Mrs Watson and Mrs Wilcox is corroborated by the statement made to the police by the responsible social worker, Riba Begum. She was notified on 5 October, 2012 of a report made by Mrs Watson's agency that it was suspected that Ian had hit his mother. A duty officer contacted Mrs Henderson by telephone, who denied that there had been any problems and said that she did not want anyone to visit her home or provide any support. However given the nature of the report arrangements were made with Mrs Wilcox to visit when Ian was out of the house. Mrs Henderson was initially reluctant to let her and her colleague in, but when she did so said that there had been a single incident when Ian had become angry and hit her. Mrs Henderson seemed worried and concerned that Ian might return while the social workers were there. She did not wish to make any formal complaint or have the police involved and again refused to have any support from social workers.

33. Ms Begum said "Lillian believed that Ian suffered from mental health issues and requested support by his GP. It was agreed that a referral was to be made to the Mental Health Team and Lillian gave permission for contact with Ian's GP to consider appropriate support." A further visit was arranged a month later at which it was intended to meet Ian to discuss his welfare and mental health needs. On the day before this intended visit, 7 November, 2012, a further report was made to social services that Mrs Henderson had disclosed Mrs Watson that Ian had hit her and she was frightened of him. Whether this had anything to do with Ian becoming aware of the intended visit is not commented on by the witnesses.

34. When the visit took place on 8 November, Ian told the social worker that his mother had fallen in the early hours the day before and suffered a black eye. Mrs Henderson initially confirmed this account, but later when Ian was out of the room speaking to a psychiatric nurse who had attended to assess his mental health, told the social worker that Ian had punched her in the eye "due to him becoming angry and frustrated". She still did not want the police to be involved or that anyone should speak to Ian. The psychiatric nurses concluded that Ian was stable and did not require medication, and he was subsequently discharged by the Mental Health Team.

35. A follow-up visit was made on 20 November, at which no further incidents were reported and Mrs Henderson said that Ian was calm and had not abused her further. However on 8 December a further report was made by Mrs Watson's agency that Ian had hit Mrs Henderson again. A different social worker visited the home on the same day (a Saturday). Mrs Henderson had further bruising to her face but denied that she had been assaulted and said she had fallen. According to the records "Ian was challenged about the injury to his mother but denied assaulting her. He became agitated and began shouting at the attending social workers demanding that they leave."

36. On the following Monday, 10 December, Ms Begum telephoned Mrs Henderson: "Ian answered the telephone and refused to speak to me. He claimed that I was harassing his family and threatened legal action. During the conversation he passed the handset to Lillian who informed me that they were both 'fine thank you' before terminating the call. A short time later [social services] received a formal letter from solicitors... representing Ian Henderson. The letter advised that social workers were not to communicate directly with Ian or Lillian Henderson and not contact them by way of telephone call, letter or home visit. The letter specifically referred to myself and what was considered to be harassment of the family. Legal action was threatened if further contact was made. I understand that our legal services department responded to Ian's solicitor but as a direct consequence of the letter I had no further contact with Ian or Lillian." A multiagency meeting was convened, at which the police and Mrs Wilcox were present, among others. "It was felt as both Ian and Lillian had mental capacity no further involvement was possible by myself without their consent. However, it was agreed that I continue to liaise with all other agencies who had access to the property."

37. In relation to Ian's mental and physical ability, Ms Begum said "I am aware that Ian was said to have mild learning difficulties. Whilst I have no medical background, he appeared to me to have mental capacity. I would regard him as intelligent and articulate which he demonstrated on 20 November... during this visit he volunteered and explained quite complex financial information that [he had] diverted money into a trust ensuring that

it would not be used by social services in the event that care was required by either he or Lillian. I would like to add that, to me, Ian appeared able-bodied and walked unassisted (with no walking aids) around his home. On at least one occasion, I witnessed him climbing the stairs within the home at a fast pace."

38. After 10 December, 2012 therefore, there was no further attendance at the house by social services. Other support services did attend however, and in particular on 12 March a nurse attended to dress ulcers on Mrs Henderson's leg. It is not suggested that these were caused by anything Ian did. Mrs Henderson was found to be in bed, unkempt but uninjured apart from the ulcers. At about 4 am the following morning a neighbour is reported to have heard a distressed female voice, which must have been Mrs Henderson, screaming for approximately 5 minutes. The Crown's position was that the incident which led to Mrs Henderson's death must have occurred at this time.

39. Shortly after 7 am, so some two or three hours later, Ian phoned the emergency services and requested an ambulance. He said that his mother had just fallen in the toilet and hit her head. Paramedics arrived shortly afterwards and when they gained access to the house found Mrs Henderson lying in the bathroom, naked although covered by a blanket. She had sustained a number of injuries including a marked depression to the left hand side of her skull, blood in her hair, bruising to her chest and abdomen, bruising to her upper arms, her shin and her right thigh. Ian maintained that his mother had been washing, he had heard a bang and went into the toilet to find that she had fallen and banged her head on the floor, and that she had only been there for a short period of time. The paramedics did not believe that and when the police attended shortly thereafter Ian was arrested. Mrs Henderson's bloodstained clothing was found separately in the house; Ms Clarke accepts that the likely reason is that Ian had removed it and attempted to clean it before calling the ambulance.

40. Mrs Henderson was admitted to intensive care and subsequently regained consciousness, but ultimately she did not recover from her injuries and she died on 2 April, 2013, just under three weeks later. Colonel

Mountain, a consultant surgeon who examined Mrs Henderson on the day of her admission made a statement to the police in relation to her injuries including the following:

“Lillian was brought into the QE this morning Wednesday, 13 March, 2013 by helicopter arriving at 08:34 hours... Due to the injuries she sustained she has remained unconscious on ITU and is ventilated and sedated. Her injuries include a periorbital haematoma around the eye, left, blood around her nose, laceration over her right temple, soft tissue swelling at the back of her head. The CT scan revealed no bleed to the brain but did reveal a broken nose, no evidence of skull fracture ... She had multiple bruises and abrasions to the left upper arm and similar marks to her right arm. The CT scan of her chest revealed fractures to her 7th and 8th ribs on the right and on the left fractures on the 6,7,8,9, 10 and 11th ribs. She also had a collapsed right lung. She had bruises to the anterior abdominal wall and the CT scan revealed intra-abdominal pleading. There was no evidence of pelvic fractures. Examination of both legs revealed significant bruises on the upper thigh of both legs and bruises over the outer aspect of her right ankle... the general appearance of [Mrs Henderson] is one of a person who is unkempt and [suffering] a degree of neglect.

In summary her injuries are not consistent with a fall from standing height but reflect [a] mechanism of higher energy. It is unclear how she has sustained such injuries. There is evidence that not all of the bruises have been sustained within the last 24 hours.”

41. Dr Hunt of the Forensic Pathology Service performed a post-mortem examination. His conclusions included the following:

“The deceased ... received serious blood injuries on 13 March, 2013. It is these injuries and their direct consequences that have in my opinion played a major part in causing her death ...

[It] is my opinion that the major injuries in this case are not consistent with a simple fall in the bathroom where she was found. Rather these injuries are more typical of a blunt assault such as by forceful punching to the face, chest and abdomen...

The bruises to her chest are associated with multiple bilateral fractures and clinical evidence of a right-sided pneumothorax (that is to say a building up inside the chest cavity causing the lung to collapse)... the changes seen in the ribs examined would be consistent with [these] having occurred at about the time of the incident in question...

The injuries to her abdomen were associated with internal bleeding which may well have been a major source of blood loss in this case leading to her documented hypotension and requiring blood transfusion... This blood loss would have placed her at significant risk of damage to major organs, particularly the brain, as is the case here.

The damage to the brain takes two main forms, the first the direct result of blunt head injury... and the second the areas of ischaemia consistent with the effects of the other injuries described above. The combined extent of head injuries is clearly very serious and would not only explain her clinical status when found and subsequently but would also have played a major part in her death.

In addition to these injuries I note that the photographs taken in life show a series of bruises to her upper arms which have a round or ovoid shape. Such bruises are typical of forceful gripping...

Taking all these factors into consideration I give as a cause of death:

1a. Multiple injuries (including blunt injuries to the head, chest and abdomen)..."

42. A second post-mortem was conducted by Dr Kolar on the instruction of Ian's solicitors. His conclusions do not appear to differ from those of Dr Hunt in any significant respect. He also expressed his opinion that the major injuries were not consistent with a fall but more likely to have been caused by direct blows, although he thought that the gripping type injuries to her arms might, in a person of Mrs Henderson's age, have been caused by "normal but somewhat imprecise handling". He noted that Mrs Henderson's hypothermia when the paramedics arrived was not realistically consistent with her injuries having occurred as recently as Ian maintained.

43. The Crown Court had before it a number of psychiatric reports in relation to Ian, prepared by Dr Maganty and Dr Natarajan on the instruction of Ian's solicitors and by Dr Puri on the instructions of the prosecution. Ian told Dr Maganty that about three years ago his mother "went senile" and was "forgetful" which he had found "too much". She had bought a new washing machine, that he was unable to operate it. He said that he had got into arguments with his mother: "she would say that she would get the police to get me into prison sometimes". He said that he had struggled to look after her and their dogs, as a result of which, apparently, he had stopped washing himself. He referred to problems with money, which appear to have arisen because his mother had substantial amounts of cash in the house and would give him more money than was required to pay for things, which he found difficult to handle.

44. In relation to the final incident, Dr Maganty recorded what he had told him as follows:

"He described having an argument with his mother and punching her. He described punching her repeatedly. He described 'I could not cope with it, she was leaving all the bills in the wardrobe. She used to sort them all out before but she was not doing it. She was leaving money all over the place and then said I didn't take it'. He described telling her that he could not do the work around the

house and also look after the money. He described her telling him 'she told me to grow up'. He stated 'I lost it at this'. He went on to state 'I hit her with my hand, punched her three or four times'. He described her subsequently falling onto the floor of the bathroom. He stated that he subsequently rang the ambulance. When I asked him why there was such a gap in time between him calling the ambulance and her injuries he stated that 'I thought she was dead and the police would catch me. I was worried about the police. I thought I had murdered her. I was frightened of getting into trouble, frightened of going to prison'.

He repeatedly stated that he did not want to kill his mother, but he had 'snapped when she said grow up'. He described 'things were getting on top of me'. He described low mood, tiredness and early morning awakening. He went on to describe struggling to cope and stated that he was not eating well and had lost weight. He stated that he was 'getting more and more angry'. He stated that he was struggling to take the dogs for a walk and do 'things around the house'. He described his mother complaining about things being dirty but not doing anything and he stated 'she would ask me to do it and I could not'.

He repeatedly expressed regret for his actions. "

45. This interview took place after Mrs Henderson's death. It is not clear how long Ian maintained his initial denial of any involvement in her injuries, but plainly by the time he saw Dr Maganty he was willing to admit such involvement, to the extent described above. Dr Maganty expressed his opinion as follows:

"A combination of moderate depressive episode, mild learning disability and an autistic spectrum disorder are present in Mr Henderson's case. All the above are mental disorders within the meaning of the [Mental Health Act 1983](#) and in combination form a serious mental disorder in his case. He currently has a mental

disorder of a nature and degree that requires urgent treatment in hospital... therefore he is currently detained at St Andrews Healthcare, Northampton...

In my opinion the index offence occurred... due to

(a) Mr Henderson's mental disorder, i.e. a combination of a moderate depressive episode, his learning disability and his autistic spectrum disorder

(b) Deterioration in his mother's physical and mental health, which are becoming increasingly frail and not being able to act as his care. The role reversal occurring resulting in him being required to care for her with which he could not cope .

(c) He lacked the cognitive abilities to make a shift in role. He became increasingly depressed, with increasing irritability, low mood, tiredness and early morning awakening and agitation being driven by his depressive illness.

“... The above medical conditions, individually and in combination, produced an abnormality in his mental functioning and lead to an abnormal mental state, which impaired his judgement and also his impulse control. His mental disorders would have significantly affected his level of functioning and his ability to cope with the stresses of his mother's deteriorating health and lack of care that he suffered ...”

46. Dr Natarajan said in his report of 11 September, 2014

“Mr Henderson at present functions in the range of a mild mental retardation... his full scale IQ most recently was 57 and on cognitive testing... he scored 60 out of 100 (a score below 82 may indicate possible organic pathology or cognitive difficulties). There are previous accounts for mental health professionals that he had

learning difficulties, though information suggests that he attended mainstream schools. It is possible that years of social isolation and anxiety dependent on his mother as well as a lack of stimulation contribute to his assessed functioning in the range of mild mental retardation. However this does not necessarily indicate that Mr Henderson has an intellectual disability as defined by the Royal College of Psychiatrists...

Mr Henderson has symptoms of an autistic spectrum disorder and possibly lies along the autistic spectrum...

Mr Henderson appears to have developed a depressive order in prison and has a history of depressive orders; which is possibly on a background of a recurrent depressive disorder, currently in remission... He is not currently presenting with symptoms of a depressive disorder.

It is my opinion that Mr Henderson would have known what he was doing was legally wrong and would have understood the nature and quality of the act he is alleged to have committed. With this in mind, Mr Henderson would not satisfy the criteria for insanity ... From the information available though there is the possibility that Mr Henderson may have been suffering from an abnormality of mental functioning, arising from his mental disorder, there is insufficient information to indicate that he was suffering from a depressive disorder at the time of the index offence, which would have substantially impaired his ability to understand the nature of his conduct, form a rational judgement or exercise self-control. This would not therefore provide an explanation for his acts or omissions in relation to the alleged index offence ... I note Dr Maganty's opinion that Mr Henderson's responsibility for his actions at the material time would have been substantially diminished."

47. Dr Pile made a report on the instructions of the prosecution dated 11 August 2014. He noted the lack of corroboration in the medical records of the claims that Ian had been stabbed in the mugging incident, or suffered sequelae such as stroke, brain injury or epilepsy, although these claims had been the basis of Ian's not having worked and having been provided with care services for over 20 years. Ian told him that he used to lose his temper with his mother as a result of "anger and frustration", and that because he used to hit his mother social services got involved. He told Dr Pile "some days ... once a week ... something in my mind triggered it off... when I had to help her with different jobs... I had to do the washing for her and peg it outside... it angered me that she wasn't doing it... I wanted her to do some of it... it made me more and more frustrated." Ian said he had been "angry that mom had been telling them [social services] that I had been hitting her" and that afterwards he had felt "bitter" and had said "sorry". He said "I think it was my mental health complaints that made me hit her again."

48. Dr Pile thought it likely that Ian had 'adopted a sick role' and 'learnt the language' of PTSD. He did not consider that Ian satisfied the diagnostic criteria for clinical depression, but rather showed symptoms of anxiety. His recent IQ scores were, in Dr Pile's view, inconsistent with his level of functioning attending mainstream school and generally as reported by others. He did not accept a diagnosis of Global Learning Disability and while he thought it possible Ian may lie on the autistic spectrum, considered there was insufficient evidence for a firm diagnosis of autism.

49. Ultimately all the psychiatric experts agreed that Ian was fit to plead. His plea of not guilty to murder was put forward on the basis of absence of an intention to kill, and not on the basis of diminished responsibility. It was not, therefore, said that he satisfied the criteria for that plea in [section 2 of the Homicide Act 1957](#), which among other things would require that he should have been suffering from an abnormality of mental functioning which substantially impaired his ability to understand the nature of his conduct, or form a rational judgement, or to exercise self-control, and which was a significant contributory factor in causing him to carry out the attack on his mother. It appears that only Dr Maganty would have been prepared to support such a plea.

50. Mrs Wilcox agreed that he was not able to cope with the responsibility of looking after his mother as she became older, when she had looked after him for so long. As noted above she said "since Ian has had to look after his mum in just cannot cope with the responsibility. His mother has always done everything for Ian and doted on him all his life. Lilly has been very protective of Ian and as such his life skills are poor because Lilly has done everything for him."

Other matters

51. I have referred above to the value of the property comprised in the estate. Ms Clarke told me that at the time of his death Ian had savings of about £28,000 in all, in addition to his half share of the money found at the house, which amounted to approximately £17,000. Out of that, however, he has spent about £40,000 on bringing this claim and so has little left. I have no valuation evidence in relation to the house, although Ms Clarke told me that it was valued for probate purposes at approximately £130,000, but since Mrs Henderson's death it has been boarded up and unoccupied and may now be worth as little as £80,000. If it were sold, Ian has an interest in half of the proceeds under his own trust, although that is defeasible depending on the exercise of the trustees' discretion. If the trustees exercised their discretion in his favour however he has a potential interest in the half which is subject to Mrs Henderson's trust. It may well be that the trustees will now be considering whether the property should be sold, in light of the information that it seems unlikely that Ian will be released to be able to live there.

52. Ms Clarke submitted, and I accept, that Mrs Henderson plainly loved Ian and wanted him to benefit under her will when it was made and at the time the trusts were entered in to in 2011. She accepted that it would not necessarily follow that Mrs Henderson would have maintained that view in the circumstances that occurred after that date. Mrs Henderson would, however, she said still have wanted Ian to be looked after. Further, even though Ian had assaulted her on several occasions, that had not caused Mrs Henderson to wish to keep money away from Ian, since she continued to have substantial amounts of it about the house. She plainly did not suspect

that Ian could have had any financial motive for mistreating her. Ian is likely to have a need for money; if he is discharged to a supported placement it may be that some expenses will fall on him, and it is likely to be the case that if he is able to contribute to the costs he will be able to obtain a better placement than if he relied solely on public funds.

53. In relation to the event itself, Ms Clark said that Ian had now accepted his guilt, although he had initially denied it, and expressed genuine regret and remorse, as shown by his interviews with the psychiatrists and in his own witness statement.

Conclusions

54. The offence in this case was of a very serious nature. The final incident involved Ian punching his elderly and frail mother so hard and severely about the face, chest and abdomen that she suffered extensive bruising, several fractured ribs and internal bleeding which in combination led to her death. It is not clear whether her most serious head injuries were directly caused by Ian's blows or indirectly in that the assault caused her to fall and strike her head; either way Ian was responsible for them. The seriousness of the assault is aggravated by the fact that it was the culmination of a series of attacks which had gone on, at the least, for several months.

55. I accept that the degree of Ian's culpability is somewhat lessened by his relatively low IQ, and the difficulties and consequent frustration he faced in having to assume the role of carer for his mother when she became too old to look after him as she had done for most of his life, in circumstances where he did not have the life skills to do so. There is no clear medical view as to the extent to which he suffered from recognised mental disorders such as depression or PTSD or from autism, but to the extent he did, or was on the borderline of such disorders, they may have contributed to his actions and so lessened his culpability.

56. However only one of the medical experts was prepared to attribute any substantial causative role to such disorders. Against those factors, there are others which in my view compel the conclusion that Ian's degree of culpability was nonetheless high.

57. Ian has at all times had the mental capacity to know what he is doing, understand the nature of his acts and to appreciate the difference between right and wrong. None of the medical experts considered him unfit to plead in the criminal case. No case of diminished responsibility was put forward. He had, or must be assumed to have had, capacity to make the settlement in 2011. He had a good understanding of the nature of that settlement, and was able to explain (albeit perhaps unwisely) to the social worker that its purpose was to put assets beyond the reach of the authorities if care had to be paid for. He is considered to have capacity to bring these proceedings, and to manage his financial affairs including any money he receives from the trusts or his mother's estate.

58. It is plain that Ian knew that his actions in assaulting his mother were wrong, and yet he continued. It does not appear to have been said at any time that he wanted to stop but could not or was denied any help he needed to do so. Rather, he consistently acted so as to manipulate matters to keep his actions concealed or to prevent action being taken against him. It is overwhelmingly likely that Mrs Henderson's reluctance to accept help was at least partly due to fear of what Ian would do if outsiders became involved. He shouted at his mother and verbally abused her. He bullied her, effectively, into silence and denial of his actions and took advantage of her weakness to avoid what he must have known would be the adverse consequences of exposure. He took steps to stop Mrs Watson coming to the house. He lied to the social workers who attended and shouted at them to get them to leave. He went to the lengths of instructing solicitors to threaten legal action, on the basis of unfounded allegations of harassment, if they did not stop their enquiries.

59. I do not doubt that Mrs Henderson also sought to protect Ian throughout his life, and that part of her motivation in concealing what was happening to her may have been misguided loyalty to Ian. If so, Ian took advantage of that too. I accept also that Ian would benefit from additional money, though it seems to me that as all his basic needs are met by the state and likely to continue to be so indefinitely, both that and any possible remaining wish on Mrs Henderson's part that he might still benefit from her estate notwithstanding his violence to her are factors of relatively low weight in

this case. I note also that Ian is likely to continue to benefit under his own settlement, and may do so under his mother's, depending on the view the trustees take of his circumstances in exercising their discretion. If he comes to have an urgent need for money, therefore, it may be available from those sources if the trustees are sympathetic.

60. Sympathy for the applicant is not however the guiding factor for the court, as Patten J made clear in *Dalton v Latham* [\[2003\] EWHC 796 \(Ch\)](#). I must be satisfied that justice requires modification of the forfeiture rule. In this case I am not, for the reasons given, and accordingly the claim will be dismissed.