



Neutral Citation Number: [2026] EWHC 928 (Ch)

Case No: PT-2024-000665

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (CHD)

IN THE ESTATE OF MR MARK JOHN TALBOT, DECEASED
IN THE MATTER OF THE INHERITANCE (PROVISION FOR FAMILY AND
DEPENDANTS) ACT 1975

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 17 April 2026

Before :

CAROLINE SHEA KC
SITTING AS A JUDGE OF THE HIGH COURT

Between :

EMMA DAWN MCDANIEL

Claimant

- and -

(1) ROSEMARY GERALDINE ANNE TALBOT
(2) JOHN DAVID TREHEARNE
(As Personal Representative of Mr Mark John
Talbot)

Defendants

Mr Aidan O'Brien (instructed by **Curzon Green Solicitors**) for the **Claimant**
Mr George Woodhead and Mr Jake Long (instructed by **Gardner Leader LLP**) for the **First**
Defendant

The **Second Defendant** being neither present nor represented

Hearing dates: 21, 24, 25 November 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Caroline Shea KC :

1. In this judgment I shall identify and refer to the members of the family at the centre of this dispute by their first names, as they were identified and referred to at trial. The Claimant (“**Emma**”) is the daughter of the late Mark John Talbot (“**Mark**”), who died on 4 December 2022. She brings a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (“**the 1975 Act**”) on the basis that the disposition of Mark’s estate pursuant to his will dated 28 May 2014 (“**the Will**”) fails to make reasonable financial provision for her maintenance, and she seeks an order providing for such.
2. Apart from one or two encounters at the house of Mark’s mother (“**Barbara**”), and a single phone call from Emma to Mark when she became pregnant at 16 years old, Emma and Mark were estranged, at Mark’s election, from when she was 8 months old, and Mark and Emma’s mother (“**Sarah**”) separated. Sarah was at that time pregnant with her second child (“**Rhys**”).
3. The First Defendant (“**Rosemary**”) commenced a relationship with Mark around the time he and Sarah separated. Rosemary also had two children from a previous relationship. Mark and Rosemary went on to have two children together (“**Scott**” and “**Amy**”). Mark, a very successful businessman, bequeathed his entire estate to Rosemary. The Second Defendant is one of the executors under the Will and was appointed as administrator pursuant to the grant of probate dated 4 December 2023. He has played no active part in these proceedings.
4. Mark initiated contact with Emma in February 2019. From that time, apart from a short period between November 2019 and February 2020 following an altercation, Emma and Mark remained in contact until his untimely and unexpected death in December 2022. The nature and extent of that relationship will be examined in more detail in due course.
5. Emma is the mother of two boys, one aged 22 (“**Bailey**”) and one 16 years old (“**Ajay**”), both of whom suffer from severe learning and physical disabilities, and both of whom live full time with Emma, and her husband Antony. Emma and Antony each have health challenges of their own. Emma is a special needs advocate by profession, and incorporated her company, Emma Hopkins Consultancy Limited (“**the Company**”) on 22 March 2022. Prior to that she operated the same business as a sole trader.
6. I now turn to set out more fully the facts forming the background to this claim. Few facts are in dispute, but they require to be examined in some detail for the purposes of performing the exercise required under the 1975 Act to determine whether the disposition of Mark’s estate fails to make reasonable provision for Emma’s maintenance, and, if so, what order should be made.

Factual background

7. Emma, born on 19 August 1985, was Mark’s first child. Mark chose to cease contact with her when she was 8 months old, when his relationship with Sarah ended. During Emma’s childhood she used to make regular visits to Mark’s mother, her grandmother, Barbara. On a few occasions Barbara arranged and facilitated contact with Mark at her home, without Sarah’s knowledge, and without telling Mark in advance. As a result, Emma was always aware of her father and of his circumstances, even though they

played no part in each other's lives (although Mark paid child maintenance for Emma until she was 16 years old).

2002 phone call

8. In 2002, when she was 16 years old, Emma became pregnant with Bailey. Emma had a poor relationship with Bailey's father, who was abusive and volatile, and wanted Emma to have a termination. At the same time Emma was in conflict with her mother, who was threatening to eject Emma from the house unless she agreed to give the baby up for adoption. Emma was aware that her father was well off as a result of his business enterprises and decided to approach him to ask whether he would be able to provide any support including a loan to cover a rent deposit on a house for Emma and her unborn baby.
9. Mark said he would consider whether he would provide any support, but only on the understanding that there were no more requests. Emma did not pursue the request. Rosemary's evidence is that Mark told her that when he asked Emma for details of the accommodation that Emma sought to rent, Emma reacted badly and hung up the phone. After their rapprochement many years later Mark explained to Emma that he was suspicious that Emma's approach seeking financial support was orchestrated by Sarah, in an attempt to extract money from him. Rosemary confirms that Mark told her at that time that that was his suspicion. In the event there was no further contact. Bailey was born, and Emma remained in her mother's house until she was 18 at which time she moved into her own rented accommodation with assistance from Barbara.
10. Emma left school at 16 without any qualifications. She had a number of jobs in the NHS and when she was around 19 or 20 she went to college part time (whilst still working) where she completed her GCSEs and obtained a level 3 access diploma. During her final year of further education, aged 22, she met Antony. She became pregnant with Ajay in 2008, and he was born in 2009, when he was diagnosed with Downs Syndrome. Emma continued to study and graduated in 2012 with a BSc Hons in psychology.
11. In 2012 Ajay required heart surgery, and Emma was struck down with sepsis, so she was unable to work or study for a year. She commenced a master's degree in psychology in 2013, which she completed in 2015. Alongside studying she volunteered with a national charity supporting families of disabled children. At that time, and up until 2019, Antony was working full time at Curry's/PC World.
12. Between 2016 and 2019 Ajay had to be home educated due to the complexity of his needs. In 2018 Emma started her business as an independent special needs advocate. This business grew gradually, alongside Emma continuing to home school Ajay. Her business was incorporated in March 2022, at which time she moved to new office premises.

Mark and Rosemary's marriage, and Mark's strokes

13. On 24 May 2014 Mark and Rosemary had married. Mark executed his will on 28 May 2014. Mark left his entire estate to Rosemary, with a further bequest to Scott and Amy if the gift to Rosemary should fail. At clause 8 he made the following non-provision declaration:

“I DECLARE that I have NOT made any provision in my Will for my son Rhys Winstone whom I have never met nor my daughter Emma Winstone who I last saw about twenty years ago. I do not have contact with either of them.”

14. It appears that around that time Mark also transferred many of his assets, including the family home, into Rosemary's name. Mark later told Emma that it was done for tax reasons.
15. A few months later in 2014, Mark suffered from two strokes, and was housebound for the following year. He became dependent on his family for help with everything. This was a difficult time for Rosemary, who cared for him whilst Amy and Scott took on more responsibility for Mark's business. In around 2019 Mark began to make significant progress, and regained some of his interest in life.

2019 phone call

16. In February 2019 Mark decided to make contact with Emma. Rosemary's evidence is that he was prompted to do so by Barbara who had told him of her wish for all her family to be together for her ninetieth birthday. It was following that conversation, Rosemary says, and only in response to his mother's wishes, that Mark got in touch with Emma. Emma disagreed that this was Mark's motivation for establishing contact and fairly said that she could not agree with Rosemary's statement since she was not present at the conversation.
17. Barbara gives evidence contradicting Rosemary's account. She says that her ninetieth birthday was in 2022, and she had given it no thought in 2019, when the alleged conversation took place, assuming then she would not live that long. A hearsay notice dated 18 October 2025 was served pursuant to section 2 of the Civil Evidence Act 1995 and CPR 33.2. This stated that Emma intended to rely on Barbara's witness statement as evidence of the truth of the matters stated, but that Barbara would not be called as a witness due to her age and ill health. The reasons given for Barbara's non-attendance were not challenged. Emma gave unchallenged evidence that she now spends considerable amounts of time caring for Barbara. I accept, and it was not submitted otherwise, that Barbara was too frail due to age and ill health to attend Court to be cross examined.
18. In terms of the factual dispute addressed by Barbara's evidence, I find it surprising that she would be expressing any wishes regarding her ninetieth birthday party a full three years prior to the date itself. There are three further aspects which are puzzling. First, even if the objective was to ensure that the grandchildren all attended a party in three years' time, Barbara did not require Mark's intervention to achieve that. She herself was in close contact with Emma as she had been all through Emma's childhood. Secondly, Mark had previously been fixed in his resolve to have no contact with Emma. It would be surprising if that resolve was dismantled as a result of his mother's desire to have a party in some three years' time, as opposed to originating in an internal change of heart. Thirdly, even if Barbara had expressed this wish, and even if Mark did believe that to achieve what Barbara required he would need to reestablish contact with Emma, there was no need for him to do that so far in advance of the event itself.
19. Barbara's evidence is that a conversation similar to the one Rosemary describes did take place, but not until July 2022, in the period leading up to her ninetieth birthday.

Barbara says that Rosemary suggested the party to Barbara in front of Mark. In response to the suggestion from Barbara that all the people who had attended her eightieth party were now dead, and questioning who would now attend a ninetieth party, Rosemary reminded her about her grandchildren, who had all gathered together at Emma's wedding earlier that year. Her memory of remarks made about attendance at Emma's wedding is inherently plausible, and helps date the conversation as occurring after May 2022.

20. Whilst no single one of these considerations might be conclusive, together they point to a strong likelihood that Barbara's account is accurate, and a low likelihood that Rosemary is accurate, and accordingly I prefer Barbara's evidence on this matter. I find that no conversation took place in 2019 as alleged by Rosemary. It was not put to Rosemary that she was fabricating her evidence, and so I make no finding as to the reason for the mistake, which may simply be due to misremembering the date of the conversation that took place in July 2022, much closer to the actual birthday. Accordingly, I find that Mark contacted Emma in 2019 of his own volition, and not at Barbara's suggestion or behest.
21. Emma and Mark spoke initially a number of times on the telephone, in quite lengthy conversations, before meeting in a hotel a few weeks later, a meeting which lasted about four hours. Emma says that Mark was nervous because he feared Sarah had been feeding Emma misinformation about him. Emma reassured him that she made her own decisions about people and that her relationship with him would be independent of that with her mother, which itself was complicated and challenging. Mark told Emma about his business successes and the wealth he had built. They took photographs of the two of them on their phones. Mark's copy of the photograph taken on that day was the only photograph found on his phone after he died.
22. Mark called Emma the following day expressing happiness at the meeting and saying he would like to meet again. Thereafter they had many long conversations on the phone. Emma came to believe that Mark was intrigued and impressed by her, and proud of her personal and academic achievements. He also responded well to what she described as "calling him out on things", such as sexist remarks.
23. In September 2019, at Mark's suggestion, Emma went on a holiday with him to a family villa in Portugal. On the flight out he raised the subject of Emma's cramped living conditions compared to those he and Rosemary enjoyed, calling Emma's house a "doll's house" and referring to himself and Rosemary rattling around in a very large house. He asked whether there would be any disadvantage to her and her family moving in with him and Rosemary, explaining that he had previously split their house to allow his son Scott to live there for a while. Emma has been told by Barbara that Mark had also spoken to Barbara about this idea before bringing it up with Emma. Emma remained relatively cautious about the proposal, since the relationship was in the early stages and, she says, in the knowledge that Mark could be impulsive.
24. Whilst on holiday in Portugal Emma and Mark had an altercation regarding Rhys, in relation to whom Mark denied paternity. Even now, having reconnected with Emma, Mark showed no interest in Rhys. Emma felt this was unfair, which led to an argument, and a disconnection between Emma and Mark lasting some months.

25. In the Spring of 2020 Mark contacted Emma again, seeking reconciliation, and made arrangements to have a paternity test in respect of Rhys, which confirmed that Mark was his father. This suggests to me that, although the initial disagreement had caused a separation, Emma's point of view had clearly influenced Mark, in that he resumed contact and agreed to her suggestion of a paternity test, rather than maintaining the separation and continuing to deny paternity.
26. Thereafter the two stayed in close touch with many phone conversations, and became increasingly close. They shared interests and personality traits, including a sense of humour and an approach to business. Mark visited Emma at her office, and was enthusiastic about her business and her achievements. Emma also to a degree assisted with his health needs, liaising with his GP and arranging medical appointments. He also thanked Emma for helping to look after Barbara which he clearly trusted her to do. During this period Emma had conversations with Mark about financial assistance from him, both personally and in relation to her business. Emma frankly accepts that although Mark took a keen interest in her business and was keen to support her, those indications were never realised prior to Mark's untimely and unexpected death.
27. These conversations continued over the next months during which Emma expanded her business, employing a PA and a solicitor in addition to her trainee advocate, and moving to new premises in March 2022. Mark went to visit the new office and they continued to have discussions about financial support, including the suggestion that Mark could search for a property he could help Emma to purchase. She sent him some photos of potential premises, but they never got further than discussions. During this time they became very close, seeing each other when possible, and speaking and messaging often.

Emma's wedding

28. Emma and Antony married on 2 June 2022. Emma invited Mark, Rosemary, Scott and Amy to the wedding. Scott was unable to attend due to a pre-planned holiday, but Rosemary and Amy attended. Barbara walked Emma down the aisle. Mark had wanted to attend but he was concerned that he would find the environment overwhelming, about his own mobility issues, and about seeing Sarah, so in the end elected not to go. He gave Amy a card to give to Emma which contained a cheque for £1,000. Rosemary confirmed that the monetary gift was given to Emma because she was Mark's daughter and was given as a family gift. Mark called to speak to Emma within half an hour of the ceremony, and in September 2022 Mark went to Emma's house to watch the wedding video. Emma when giving evidence confirmed that her wedding cost around £30,000 and that she "largely" paid for it herself.
29. Thereafter, the relationship continued as before, until Mark's death on 4 October 2022, some four months later. A month before his death, he posed with Amy, Scott, Emma and Rhys for a family photograph. It was taken in his home, and there seems to be the edge of a helium balloon in the photograph, suggesting perhaps a family birthday. In that period Emma continued to assist him with medical appointments, and was aware that Mark had episodes of breathlessness and extreme fatigue, and had suffered a number of falls. Paramedics attending when the family called an ambulance told Mark he was suffering from panic attacks. A cardiologist had diagnosed atrial fibrillation and he had further consultations with a cardiologist. Emma understood that on the Friday before Mark died he had been given the all-clear, although there is no evidence as to the specific advice received.

Nature of relationship

30. Rosemary characterises the relationship between Mark and Emma as being one of friendship rather than a father and daughter connection, which is how Emma describes it. I reject Rosemary's characterisation, and accept Emma's, for a number of reasons. First, Emma had direct, subjective experience of the quality of the relationship. Rosemary could only observe it, directly insofar as she was present when Mark and Emma were together (of which there is little evidence), but mostly indirectly, through Mark's accounts, insofar as he relayed any information. Secondly, the reason he contacted Emma was because she was his daughter. He did not know her at all prior to that, and had no reason to want to befriend a stranger. In my judgment it is outlandish to suppose that Mark's interest in Emma arose, or could have arisen, separately from his role as her father.
31. Thirdly the conversations Mark had with Emma concerning the possibility of her moving into his home, and of providing her with financial support to purchase business premises, present as those of a caring father who wished to support his daughter. There is no evidence, and it seems inherently unlikely in any event, that Mark was wont to bestow such interest and offers of support on those he may have called friends, as opposed to on Emma as his daughter. And it is inherently unlikely that Mark would have explored the possibility of a recent friend, together with her family including a husband with health issues and two sons with serious complex disabilities, moving in to his marital home. Rather, he related that offer to the situation that had obtained when his son Scott shared the home for a time. That in my judgment ties Mark's suggestion firmly to parental concern and a desire to provide assistance as Emma's father.
32. Fourthly, the wedding gift of £1,000, given as a family present rather than from Mark alone, together with the fact that Mark called Emma so soon after her wedding ceremony, and went to watch the wedding video with her at her home, all add to the impression of a strong fatherly interest in Emma and her personal and professional life. Further, there were signs that Emma was being accepted as Mark's daughter by Rosemary, Amy and Scott. Rosemary and Amy attended Emma's wedding notwithstanding that Mark found the prospect too overwhelming, suggesting a familial connection to Emma. And Rosemary accepted that the £1,000 was a family gift.
33. Lastly, before Mark's death Emma had arranged a holiday with her family at the Portugal villa, again suggesting a degree of family bonding, notwithstanding that she was intending to pay £800 for the visit.
34. To sum up, all the factors point to the relationship between Mark and Emma being predicated on, and developing as, a father-daughter connection, albeit one with an unusual history. It is true that the relationship was short, but both Mark and Emma were conducting themselves in accordance with an expectation that it would continue into the future. I am bound to observe that Rosemary's decision to challenge this, even if she had unconsciously persuaded herself into believing what she says, suggests that her evidence was affected by a conscious or unconscious desire to minimise the relationship for the purpose of undermining Emma's claim in these proceedings.

Health concerns of Emma and her family

35. Bailey is now 22 years old. Emma has no contact with his birth father who makes no contribution to Bailey's life, financially or otherwise. Bailey has been diagnosed as Autistic with ADHD, Developmental Co-ordination Disorder (Dyspraxia), and has a complex mental health profile including Depression, Anxiety, Situational Mutism, Obsessive Compulsive Disorder, Tics and Seasonal Affective Disorder. His care since the age of 18 has been managed by Adult Mental Health Services. He is limited in his ability to leave the house or undertake daily activities independently, so continues to receive a bespoke package of education via an Educational Health and Care Plan. The Department of Work and Pensions has assessed him as unable to work. He receives Personal Independence Payments (PIP), and Universal Credit (UC), for which Emma is his appointee. He is clearly dependent on Emma and Antony for care and support, notwithstanding that he has reached the age of an adult.
36. Ajay is 16 years old. Ajay had Downs Syndrome, Atrial Septal (Heart) Defect, Cerebral Visual Impairment, Bi-lateral Hearing Loss, and is Multisensory Impaired. He also has ADHD, Language Disorder, and Sensory Processing Disorder. Emma says that it will be difficult for him to work and live an independent life, and Emma and Antony intend to support him as much as they can. Ajay has recently started sixth form at his special school. Emma gives evidence that she is now required to contribute around £1,000 a year towards his transport. In a transitional period Emma and Antony have been covering the transport, providing five hours per day of school runs, either themselves or by paying a carer. When those arrangements fail, as they sometimes do, there is no way Ajay can get to school. When that happens, he requires supervision at home, which consequently restricts Emma's ability to do anything else.
37. Ajay will leave school in the near future. Emma's evidence is that he will require adult care throughout the working day, which will have a knock on effect on the ability of Emma and Antony to work. Although Antony plans to confine his working hours to weekends, when Emma can take over care of the children, in view of Antony's current health conditions Emma will be required to provide care to the children during the week as well, to an extent it is difficult to quantify day to day or week to week. When Ajay reaches the age of 18, Child Benefit will no longer be payable. I have no evidence of what benefits Ajay will then receive as an adult unable to work, so I work on the assumption that he will be in a similar position to Bailey, at least as regards receiving Universal Credit.
38. The children's complicated health and educational profiles lead to many medical and education related appointments, and require the management of prescriptions and treatment. Even when Antony is fit to provide the hands on day to day supervision and care required, Emma is still heavily involved in the management of their needs, and requires to be on hand to assist when needed.
39. Antony left full time employment in late 2019 so that he could attend to the care needs of the children. Until late 2023, Antony operated as a self-employed carer/Personal Assistant to Ajay, accompanying him on his daily commute to and from his special school in Winslow, which took an hour each way, twice a day. Since that arrangement was taken over by a transport company, Antony has done some paid work for Emma's business, and now undertakes some security work. He intends to work four to six 10 hour shifts per month, at weekends, to which he is limited at because of the children's care needs.

40. Antony also suffers from back pain, for which he is awaiting surgery. On 17 July 2024 he was taken to hospital with a suspected heart attack which took him several weeks to recover from, during which he was off work. As a result, Emma had to take time out of work to look after the children during the hours that Antony used to cover. He had what Emma described as “two cardiac episodes” since January 2025 and has been scanned to determine the treatment and management plan. His spinal surgery cannot proceed until the heart problems are addressed. The spinal problems significantly limit his mobility and impact his daily activities. He has been prescribed Mounjaro to assist weight loss in the light of his obesity, and is currently on a long list of medication.
41. Counsel for Rosemary drew my attention to the fact that Antony did not give evidence himself and therefore could not be cross examined on any evidence pertaining to him. However, his medical records were exhibited to Emma’s third witness statement, and no inconsistencies between her evidence and those records were suggested. The medical records have not been challenged and they clearly show that Antony has been treated for a number of infirmities and symptoms that have an impact on his daily life, that his heart condition and his back problems are current and remain to be resolved, and that Emma’s ability to rely on him to provide care for Ajay and Bailey is correspondingly reduced.
42. Emma gives further evidence, not challenged, that she is also involved in the care of Barbara. As well as hands on care, Emma deals with social care, the care agency, and medical appointments. Barbara is resisting having live-in carers, and Emma finds herself the fallback solution to any gaps in Barbara’s professional care provision. In the three months up to 15 October 2025, Emma has spent around four weeks in total providing live-in care for Barbara.
43. Emma herself has been dealing with several physical and mental health issues. She has had significant deterioration in her cervical spine since February 2024 which causes her pain, and she is under a pain consultant, spinal surgeon and neurologist, with injections for pain relief being trialled in due course, as an interim measure while other tests are conducted. Further tests have identified carpal tunnel issues in both wrists which will require surgery within 12 months.
44. Emma was diagnosed with ADHD some time before 2019. Rosemary’s position is that Emma’s diagnosis of ADHD does not seem to have had a negative impact on her ability to run a successful business. I accept that submission.
45. More recently Emma has been suffering from what she described as chronic burnout for months. She was assessed by a consultant at John Radcliffe Hospital for chronic fatigue but the conversation turned to consider whether she might have autism and might be suffering from chronic autistic burnout. There is no diagnosis either way, and under cross examination Emma was heavily tested as to whether she had received a diagnosis of any of these conditions at all. The upshot is that there is no current diagnosis, and further investigations and referrals are in progress. Whilst Emma awaits a precise diagnosis, what is clear are the symptoms from which she suffers, and the strains they inevitably place on her ability to meet her professional and personal obligations and duties.

Rosemary and Mark’s life together

46. When Rosemary and Mark met he was setting out in the courier business and they were of very modest means. Mark was responsible for earning income and creating wealth through his business. Rosemary was responsible for running the home and looking after and supporting him. She justifiably regards the wealth created by Mark's business as resulting from their joint endeavours as a couple.
47. Mark worked hard and built a business through his time, effort and what financial resources he then had. Subsequently Mark branched out into warehousing and distribution. In about 1995, Mark sold his business and invested in local property, renovating it and then letting it out. The idea was that these properties would serve as their pension, and Mark did not invest any private pensions then or since. It was around that time that they moved into the family home, Carbrook, where they remained. Carbrook was bought in Rosemary's name and remains in her name.
48. Clearly the family was badly affected by Mark's strokes in 2014 and his subsequent ill health. In the years following the strokes, Mark became more reclusive, and their son Scott took more control of the family businesses. Whilst Rosemary says she was happy to see Mark developing a close relationship with Emma, she states that at no point did he evince any intention to change the fact that Rosemary was to be the sole beneficiary of his estate, and that Emma and Rhys were not to benefit.
49. Since his death Rosemary has suffered from anxiety and depression and frankly and understandably says that Emma's claim has only made her very low mood worse. Rosemary states that Mark had told the family (she does not specify which members) on several occasions that he did not want his assets to pass to his children.

Legal framework

50. The claim is brought by Emma under the 1975 Act, the relevant provisions of which I now set out:

“1.

(1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:—

...

(c) a child of the deceased;

...

that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.”

...

(2) In this Act “reasonable financial provision” —

...

b) in the case of ...[an] application made by virtue of subsection (1)(c) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.”

...

2.— Powers of court to make orders.

(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage [;]

3.— Matters to which court is to have regard in exercising powers under s. 2.

(1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say— “(a) the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;

(b) the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;

(c) 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;

(d) 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;

(e) the size and nature of the net estate of the deceased;

(f) any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;

(g) 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.

...

(5) In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

(6) In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.”

51. The burden is on the claimant to satisfy a court that an order should be made. The 1975 Act contemplates a two-stage process: the court must determine (1) whether there has been a failure to make reasonable financial provision; and if so (2) what order ought to be made. The seven factors identified at section 3 are deployed at both stages of the exercise. In the leading case of *Ilott v The Blue Cross & Ors* [2017] UKSC 17 Lord Hughes confirmed (at [23-24]) that it is acceptable, and often convenient, to take a broad-brush approach in which the two steps are considered together.

52. A number of principles have evolved in relation to the operation of these sections. Perhaps the most significant is one which warns against taking too formulaic an approach: each claim turns on its own facts and merits, and there is “no single essential factor for the success or failure of an application under the [1975] Act”: per Sir John Knox in *Re Hancock (Deceased)* [1998] 2 FLR 346, at 358. The exercise is one of balancing the many factors set out in section 3.

“Some factors may be neutral but many will go in the scales either in favour of or against the proposition that there has been a failure to make reasonable financial provision for the applicant.” per Sir John Knox in *Re Hancock* at 357.

53. In relation to the assessment of what financial provision should be ordered, Lord Hughes in *Ilott* says (at [34])

“the section 3 factors, which are themselves all variables and which are likely often to be in tension one with another, are all to be considered so far as they are relevant, and in the light of them a single assessment of reasonable financial provision is to be made.”

54. In cases other than those of spouses or civil partners, reasonable financial provision is limited to such provisions as it would be reasonable for the applicant to receive for maintenance. Two points require exposition. First, the test is objective:

“It is not simply whether the deceased behaved reasonably or otherwise in leaving the will he did, or in choosing to leave none. Although the reasonableness of his decision may figure in the exercise, that is not the critical test.” (per Lord Hughes in *Ilott* at [2]).

And in *Re Coventry* [1980] Ch. 46, at 488E, Oliver J stated:

“The question is not whether it might have been reasonable for the deceased to assist ... the plaintiff, but whether in all the circumstances, looked at objectively, it is unreasonable that the effective provisions governing the estate did not do so.”

55. Second, the requirement is that there has been a failure to make such provision as it would be reasonable for the applicant to receive for maintenance. That limitation was expanded on by Lord Hughes JSC in *Ilott* (at [13] – [14]):

“13. This limitation to maintenance provision represents a deliberate legislative choice and is important. Historically, when family provision was first introduced by the 1938 Act, all claims, including those of surviving unseparated spouses, were thus limited. That demonstrates the significance attached by English law to testamentary freedom. The change to the test in the case of surviving unseparated spouses was made by the 1975 Act, following a consultation and reports by the Law Commission ... The mischief to which the change was directed was the risk of a surviving spouse finding herself in a worse position than if the marriage had ended by divorce rather than by death. For claims by persons other than spouses the maintenance limitation was to remain, and has done so.

14. The concept of maintenance is no doubt broad, but the distinction made by the differing paragraphs of section 1(2) shows 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.”

56. Lord Hughes then cites the summary of Browne-Wilkinson J in *Re Dennis, dec'd* [1981] 2 All ER 140, 145 – 146:

“The applicant has to show that the will fails to make provision for his maintenance: see *In re Coventry* [1980] Ch 461 . In that case both Oliver J at first instance and Goff LJ in the Court of Appeal disapproved of the decision in *In re Christie* [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. Nor am I suggesting that there may not be cases in which payment of existing debts may not be appropriate as a maintenance payment; for example, to pay the debts of an applicant in order to enable him to continue to carry on a profit-making business or profession may well be for his maintenance.”

57. Lord Hughes then went on (at [18]) to refer to what he identifies as “the right test”:

“It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court's powers under the Act and to fiscal demands, an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases or, if he chooses to do so, to leave that disposition to be regulated by the laws of intestate succession. In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant—and that means, in the case of an applicant other than a spouse, for that applicant's maintenance. It clearly cannot be enough to say that the circumstances are such that if the deceased had made a particular provision for the applicant, that would not have been an unreasonable thing for him to do and therefore it now ought to be done. The court has no carte blanche to reform the deceased's dispositions or those which statute makes of his estate to accord with what the court itself might have thought would be sensible if it had been in the deceased's position.”

58. And he continued in paragraphs 19-20:

“19. Next, all cases which are limited to maintenance, and many others also, will turn largely upon the asserted needs of the claimant. It is important to put the matter of needs in its correct place. For current spouses and civil partners ... need is not the measure of reasonable provision, but if it exists will clearly be very relevant. For all other claimants, need (for maintenance rather than for anything else, and judged not by subsistence levels but by the standard appropriate to the circumstances) is a necessary but not a sufficient condition for an order. Need, plus the relevant relationship to qualify the claimant, is not always enough. In *In re Coventry* the passage cited above was followed almost immediately by another much cited observation of Oliver J, at p 475:

“It cannot be enough to say ‘here is a son of the deceased; he is in necessitous circumstances; there is property of the deceased which could be made available to assist him but which is not available if the deceased's dispositions stand; therefore those dispositions do not make reasonable provision for the applicant.’ There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made.”

20. Oliver J's reference to moral claim must be understood as explained by the Court of Appeal in both *In re Coventry* itself and subsequently in *In re Hancock*, where the judge had held that there was no moral claim on the part of the claimant

daughter. There is no requirement for a moral claim as a sine qua non for all applications under the 1975 Act, and Oliver J did not impose one. He meant no more, but no less, than that in the case of a claimant adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim, and that in the case before him the additional something could only be a moral claim. That will be true of a number of cases. Clearly, the presence or absence of a moral claim will often be at the centre of the decision under the 1975 Act.”

59. The fact that a claimant is an adult child with independent earning capacity is to be taken into account under section 3(6). Where a claimant was capable of earning, and was earning, their living, that would be a factor of major weight against the proposition that there has been a failure to make reasonable financial provision. For the scales to be turned, and for the court to find that there had been a failure to make reasonable provision, a factor of great weight would be needed in the opposite scale: *Re Hancock*, (at page 351 (Butler-Sloss LJ) and page 358 (Sir John Knox)). Typically the weightiest factor in such a case would be the presence of a moral obligation on the deceased to make financial provision for the applicant. However, the Supreme Court in *Ilott* confirmed that, whilst a factor in addition to a blood relationship and necessitous circumstances was required, a specific finding of a moral obligation is not the only way in which that requirement can be met, and hence is not a prerequisite to a successful claim.
60. In relation to the financial resources and needs of the claimant, the resources and needs of dependents are relevant only insofar as they directly affect the claimant’s resources or needs: *Miles v Shearer* [2021] EWHC 100 (Ch) at [87].
61. Importantly, it is not the case that once a claimant has been found to be in need of maintenance, the testator’s wishes cease to be of any weight. The 1975 Act contemplates that such wishes may be overridden, but they “are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors”: *Miles v Shearer* at [47].
62. There is a group of cases which feature claims made by children of the deceased who have been estranged for greater or lesser periods of time. *Ilott* was such a case: the claimant had been estranged from her mother since leaving home aged 17 to live with a boyfriend of whom the mother did not approve. Over the following years there had been three attempts at reconciliation, one lasting several months, the other two much shorter. None had been successful.
63. It is clear from *Ilott* that there is no single inference to be drawn, and no single principle to apply, when the claimant and the deceased have lacked any substantive relationship for long periods of time. The fact of the estrangement, and the reasons for it, are matters to which the Court will have regard when examining the various factors under section 3, but it will not undertake an exercise in apportioning blame as such. Nor, even where blame clearly attaches more to one party than the other, will this by itself make a claim more or less likely to succeed.

Factors under section 3(1)

64. I turn now to consider the factors which I must take into account when determining whether there has been a failure to make reasonable provision for Emma’s maintenance, and if so what order I should make.

(a) – financial resources and needs of the Claimant

(i) Emma’s resources

65. Emma’s evidence as to her resources (and outgoings) emerges from her first witness statement dated 1 August 2024, her second witness statement dated 16 October 2024, and her third witness statement dated 15 October 2025, in which she gives updated figures for both income and outgoings. She comments (at paragraph 35 of her third witness statement), justifiably, that the family finances are very intermingled and it is not easy to separate out her own finances. Her resources comprise a complex web of earnings of herself (£600/month) and Antony (£500/month), and benefits to which she, Antony and Ajay are entitled, including Universal Credit, (“UC”), Personal Independence Payment (“PIP”), Carer’s Allowance, Child Benefit and Disability Living Allowance (“DLA”).
66. Emma acts as Bailey’s official appointee. This means that his PIP and UC payments, totalling some £1,600 per month, are made to her. The sums she receives in this capacity are not hers to spend; she administers those sums on Bailey’s behalf. Of £1,490.05 monthly income, Bailey pays a monthly sum of £245 by way of contribution to the household’s expenses. The remainder is retained for his expenditure.
67. The following table represents her claim as regards resources.

Source	Amount (monthly)
Emma Pay (Business)	£600.00
Antony Pay	£500.00
Universal credit (joint with Antony)	£1896.50
Antony IP	£643.07
Emma Carer’s Allowance	£360.96
Emma Child Benefit (Ajay)	£104.20
Emma Ajay DLA	£441.60
Contribution from Bailey	£245.00
Total	£4791.33

68. Rosemary’s principal challenge is to the evidence of Emma’s earnings from the Company, which is criticised as being incomplete and unsubstantiated. She points to the failure to disclose Company bank accounts; Company accounts; the Company’s lease of the office premises; employment details of the employees; and tax returns. Emma’s evidence is that her business has suffered a significant decline this year, down approximately 77% from the previous year. The decline has been caused by (1) her inability to work as much as she would have liked due to dealing with Antony’s ill health, her grandmother’s ill health and care needs, and the care demands of her children, meaning that her capacity to work is very limited; as a result she has focused on completing existing cases rather than taking on new ones; and (2) her colleague (now

the only other fee earner in the business) being on maternity leave since December 2024, and recently extending that from the original nine months to a full twelve months. She is also considering how to relinquish the Company's lease which she cannot determine until 2027 at the earliest.

69. The only supporting evidence as to the Company's financial status is a bar chart which Emma gave evidence was created by her using Xero, accounting software, which bears the date 14 October 2025 and provides the following data on what is described as "Cash In", which Emma says is "business revenue over the last four years to October 2025".

<u>Year Ending</u>	<u>Cash in (approx..)</u>
October 2022	£130,000
October 2023	£140,000
October 2024	£155,000
October 2025	£80,000

70. I find this bar chart bears no evidential weight. None of the underlying data from which it must have been generated has been provided. It is not possible to determine any precise figure for the "cash in" depicted for each period, since the scale of the graph (the values increasing in tranches of £50,000) is too small. An unexplained anomaly which was not explored at trial but which is plain on the face of the document concerns the figure given for a period ending October 2022. The impression given by the bar chart is that the "Cash In" amounts were depicted for equivalent periods ending in October each year. Emma's evidence (at paragraph 18 of her third witness statement) is that the bar chart shows "business revenue over the last four years to October 2025". But Emma also says that the Company was incorporated on 22 March 2022. It seems anomalous – albeit not impossible - that in its first six or seven months the Company would have had revenue of £130,000, when the following (full twelve month) years' figures were £140,000 and £155,000 respectively. There may be a simple explanation for this anomaly, if anomaly it is, but the fact it is not possible to interpret the figures on the face of the bar chart, nor by reference to any supporting documentation (there being none), leads me to reject it as having any probative value.
71. Rosemary asks the court to draw an inference that Emma has not included more supporting evidence because it would be prejudicial to Emma's case relating to her financial needs. In the alternative it is said that the paucity of documentary evidence regarding the Company means that Emma has simply failed to prove her case, since the Court cannot rely on her evidence as to resources without a fuller picture of the Company. Given the erstwhile success of the Company, and Emma's qualifications and experience, Emma's annual salary of £7,200 is said to be "very low", and the Court is said not to be in a position (again due to the lack of evidence) to determine whether it is "artificially low".
72. I accept that probative evidence as to the Company's financial health and performance *per se* is lacking. But its relevance to Emma's claim is the extent to which she derives income, and is likely in future to derive income, from it. On these questions the following evidence is of assistance. Emma has produced payslips dating from January 2024 to April 2024 showing earnings by her from the Company of £600 per month, and a P60 End of Year Certificate showing income to the year ending 5 April 2024 of

£,6000. These amounts tally with the bank statements she has disclosed. There was, and could be, no suggestion that she has falsified these documents, nor is it suggested that she has received undeclared income from the Company which was not paid into her bank account.

73. I further bear in mind Emma's evidence as to the reasons for the decline of the Company, which is borne out by emails between herself and her accountant as regards the possibility of surrendering the Company lease and exploring for how long Emma will be able to keep the Company solvent; and between herself and a human resources advisor concerning her employee's maternity leave. Both chains of correspondence are consistent with Emma's narrative of a business under pressure. I am also satisfied that some key reasons for the decline in income, in addition to the maternity leave of the other employee, are the increase in Emma's caring responsibilities, including caring for Barbara; Antony's ill health, which reduces the extent to which he is able to care for Bailey and Ajay; and Emma's own ill health.
74. Lastly, I note Emma's evidence (at paragraph 57 of her first witness statement) that if either Antony or she were to earn more from their employment in any given month their Universal Credit payment would be reduced accordingly. Emma and Antony are entitled to organise their finances in the light of the availability of state benefits, and Rosemary quite properly did not seek to suggest otherwise.
75. As to the future, it was submitted on behalf of Rosemary that Emma could dramatically increase her levels of work and therefore her income, whether she worked for the Company or as a sole practitioner. To the suggestion that she could earn £40,000 to £50,000 a year as a special advocate Emma responded that no one she has ever employed has generated such income, and that working full time her colleague earned at most £32,000. Further, I note Emma's evidence that the caring responsibilities for Ajay are likely to increase, when he leaves full time education, and thus it does not seem likely or even possible that she will be in a position in the future to increase her working hours, even if she were in theory qualified to apply for a post, or work as a sole practitioner.
76. Accordingly I reject the submission that there is something suspect about the low level of Emma's earnings. As for the suggestion that I am not in a position to determine whether her earnings are "artificially low", the implicit criticism is in my judgment inapposite in view of the complex set of demands on Emma's time, and the fact that any increase in her earnings would result in a corresponding decrease in Universal Credit. Accordingly, I accept her claim that she has received, and is likely to continue to receive, in the region of £7,200 per annum in respect of her work for her Company. Although the issue was not specifically addressed, I am prepared to find insofar as necessary that the equivalent limitations, and the equivalent likely level of earnings, would obtain if the Company were to be dissolved and Emma recommenced practice as a sole practitioner. Moreover I note Emma's evidence that her income could very well reduce in the light of her business declining, but she is content to pursue her claim on the basis that the income will remain at £600 per month.
77. The second challenge to Emma's account of her income focusses on Bailey's income. It is said that the monthly contribution of £245 is "arbitrary and artificial", and the rival calculations advanced by Rosemary suggest that the entirety of Bailey's payments should be regarded as income available to the household, and therefore to Emma. This

would see monthly income rise to £6,039.88 compared to Emma's calculation of £4,791.33.

78. In cross examination Emma accepted that many of the household outgoings were for Bailey's benefit as well as for the other members of the household. She gave evidence that his contribution to the household income was primarily for food, since he has a very restricted diet, but also comprised a contribution to the utilities expenses. She pointed out that many of the household costs are fixed costs (such as rent and council tax), and are not increased because of Bailey's presence in the family home. He uses his own (remaining) income to cover his personal expenses.
79. Rosemary submits that the amount chosen as Bailey's contribution - £245 - does not represent the reality of the situation. That submission in my judgment mischaracterises the nature of Emma's role as appointee in respect of Bailey's financial affairs. That is a position, as I understand it, of caretaker of his income. It is not for her to choose to spend it on general household expenditure, but only to spend it appropriately on Bailey's behalf. Whilst the £245 has not in the evidence been justified by reference to any calculation, the important principle is that Bailey's income is not available to Emma, or the wider family, to spend as they wish. Indeed it would be quite wrong of Emma to treat Bailey's income as available for general expenditure.
80. It is further said that the monthly sum of £245 is arbitrary, the suggestion being that Emma could choose to charge Bailey more by way of contribution to the household expenses. But Emma explained what the sum covers (special food and some contribution to utilities), and that she does not charge him for expenses which would be incurred regardless of whether he lived in the house or not. It was at one point expressly put to her that it was the availability of Bailey's income which allowed Emma to fund her wedding, take trips to Rome, and similar. This was a loaded suggestion to make, carrying as it does potential accusations of financial mismanagement of Bailey's affairs. But in any event Emma's answer meets the question: those expenses were paid for by way of debt, the size of which has increased over recent years, and not by helping herself to Bailey's income. I accept that evidence.
81. In light of the evidence, save for the £245, I find that Bailey's income should not be included in the assessment of household income. It follows that the income available to Emma to spend on her outgoings is fairly assessed at £4,791.33.
82. Also to be taken into account are Emma's capital assets said to comprise:

Capital Assets	Amount
Business	£11,484.00
Help to Buy ISA	£4517.36
Audi A3	£5,000.00 ?
Total	£21,001.36

83. The business was valued at £11,484 as at 31 March 2023 by means of a micro-entity balance sheet. It is submitted on behalf of Emma that this value is likely to have reduced significantly since then. No further evidence has been produced to elaborate or clarify this statement. Emma owns an Audi A3, purchased using credit, valued at £5,000 in

October 2024. She does not know its present value, although on any view it will have depreciated since then. Whilst they have the use of a second car, financed by means of Ajay's DLA, she and Antony pay for petrol, and own none of the value in the car itself. Emma also she has a Joint Help to Buy ISA, now valued at £4,517.36. Adopting a broad brush approach, I make a deduction of a further £4,000 to represent the reduction in the value of the Company and depreciation in the value of the car. I therefore find that her capital assets are to be valued at £17,001.36. Of those, only the ISA is liquid.

(ii) Emma's needs

84. Emma originally gave evidence of her outgoings in her first witness statement. Those totalled £4,019.05 per month. Her third witness statement was made pursuant to paragraph 9 of an order dated 13 January 2025 to update the Court regarding her circumstances. She is now required to contribute approximately £1,000 a year towards Ajay's transport to and from school. She also provided revised figures for her monthly outgoings, now totalling £5,050.94. However, she has failed to include updated bank statements or any other materials evidencing the increased amounts she claims.
85. When questioned on the lack of documentation Emma said that she did have such materials but had not been asked to produce them, and did not know why. No attempt was subsequently made to disclose additional documents, and there was no application to add such materials to the trial bundle. It was accepted in closing submissions on behalf of Emma that not to include the documentation was an error. I am invited to rely on what Emma states in her third witness statement and in her oral evidence at trial, on the basis that inferences can be drawn (for example, that credit card repayments will have increased because the debt required to be serviced has increased), and asking myself, if Emma was indeed receiving surplus income, where the surplus was going.
86. Such appeals to common sense inferences cannot overcome the deficit caused by the failure to provide documentary evidence supporting Emma's case. Whilst it is an economic truism that the cost of living rises year on year, I cannot apply that general proposition in any principled or coherent way to the numerous items comprising Emma's expenditure. No explanation was offered for the lack of evidence, and no attempt was made to make good the deficiency. In those circumstances I cannot accept Emma's oral and written evidence as to increased monthly outgoings as set out in her third witness statement. I find that Emma has failed to evidence her case so as to establish on the balance of probabilities that her outgoings have increased to the higher level. I do though accept as sufficiently proved (and indeed they were not contested) the monthly outgoings of which she gave evidence, supported by documentary evidence, in her first witness statement (summarised at paragraph 68). Those outgoings total £4,019.08.
87. Turning to capital liabilities, these are said to amount to £49,458.47 including her student loan standing at 5 April 2019 at £29,195. No up to date figure is provided. The student loan is not currently being repaid, although interest is accruing. Emma does not currently repay any of the student loan because she does not earn over the threshold which triggers the liability to repay. I have accepted Emma's evidence that she is unlikely in the future to earn more than £7,200 per annum. By the same token she is unlikely to enjoy sufficient earnings to trigger the liability to repay the student loan. For that reason the student loan should not be included in capital liabilities, which accordingly stand at £20,263.47.

88. No specific issue is taken with the amounts comprising the total. Emma's evidence is that the borrowings reflect at least in part items of significant capital expenditure such as her wedding which cost in the region of £30,000, holidays to Portugal, Santorini and Rome, and gastric sleeve surgery.
89. Lastly in terms Emma's outgoings, she provides an estimate of amounts she will have to expend of a cyclical nature, beyond the monthly living expenses. These are set out in the following table.

Future Needs	Capital	Replace every (years)	Annual
White Goods	£4,000.00	5	£800.00
Main vehicle replacement	£15,000.00	10	£1,500.00
Motability Vehicle	£3,000.00	3	£1,000.00
Home Redecoration	£2,000.00	1	£2,000.00
Home adaptations to meet disability needs	£75 - £100,000.00	20	£5,000.00
Holidays	£5,000.00	1	£5,000.00
Total			£15,300.00

90. These figures are derived from paragraph 38 of Emma's first witness statement. In the helpful table of figures handed up to me by Mr O'Brien, Counsel for Emma, in closing, a second Motability vehicle was set out instead of the main vehicle replacement. This appears to be because it is anticipated that Antony will obtain a second Motability car on his own account, with the associated costs.
91. I note that no supporting evidence has been provided as to the items in question nor the cost of their replacement. I am in effect asked to make a semi-educated, but unevicenced, estimate of the requirement for, and likely costs of, such replacement. I regard the assumption that replacement of white goods will be required every 5 years as putting matters too high. In the absence of any evidence I consider white goods in a typical household to include washing machine; tumble dryer; dishwasher; fridge; freezer; microwave; kettle; toaster; other kitchen implements such as food processors and blenders - those types of item are in my judgment likely to require replacement every 8 – 10 years. So the effective annual figure is around £450.
92. I heard no evidence about the cost of cars, but I take judicial note of the fact that £15,000 is likely to buy a serviceable new car, or a recent low mileage version of a better second hand car. Again this seems reasonable for a family of four. The Motability vehicle requirements are set out in paragraph 38, in which Emma states that the Motability scheme vehicle is replaced every three years, with Emma being required to contribute roughly £3,000 each time, hence the £1,000 year sought. Whilst there is no independent evidence of this, this sum was not challenged in cross examination, and it seems inherently likely.

93. As for holidays, the sum of £5,000 is attributable, Emma said at paragraph 38 of her third witness statement, to the need to rent their own space rather than go to a hotel. Bearing in mind Emma will have to meet the costs of flights abroad or possibly domestic train travel, accommodation, and daily living expenses, and assuming that Bailey will contribute to such a holiday from his own resources, the sum seems to me broadly reasonable for a two week holiday, or two one week holidays, for Emma, Antony and Ajay.
94. The claim in respect of home improvements is unevidenced, both as to detail and as to potential costs. The family lives in what I understand to be a small three bedroom terraced house rented from a housing association. It seems to me that £2,000 spent annually on redecoration is high. In the absence of any evidence on this, and on the working assumption that internal re-decoration is required around every 7 years, I would assess annual redecoration costs at £500.
95. As for the home adaptations, claimed at £75,000 - £100,000 arising every twenty years, there was no evidence as to what was intended, and how much it might cost. No information was given about grants that might be available, or what kind of alterations, adaptations or equipment was envisaged. In the face of a complete dearth of evidence I can make no sound finding on this item.
96. In the light of the above I assess additional monthly outgoings as follows.

Future Needs	Capital	Replace every (years)	Annual
White Goods	£4,000.00	8-10	£450.00
Main vehicle replacement	£15,000.00	10	£1,500.00
OR			OR
Second Motability Vehicle	£3,000.00	3	£1,000.00
Motability Vehicle	£3,000.00	3	£1,000.00
Home Redecoration	£500.00	1	£500.00
Home adaption to meet disability needs	£75 - £100,000.00	20	£0
Holidays	£5,000.00	1	£5,000.00
Total			£8,450.00 OR £7950.00

97. To summarise: I find that Emma's financial needs and resources are as follows:

	Monthly	Annual	Comment
Income	\$4791.33	£57,495.96	

Cyclical Outgoings	£4019.08	£48,228.95	
Additional annual outgoings		£8450.00 OR £7950.00	
Total outgoings		£56,678.96 OR £56,178.96	Depending on whether a new second car is purchased, or Antony obtains a second Motability vehicle
Capital assets		£17,001.36	These include car plus value of business at £12,484
Capital liabilities		£20,263.47	Not including student loan

98. Thus it can be seen that Emma’s income almost precisely matches her outgoings. Whilst her capital assets provide a small cushion, the car (estimated worth £5,000) is in use, and so not available to be converted to cash. There is no evidence of its value should it be sold if Antony obtains a second Motability vehicle. The value of the business is poorly evidenced and there is nothing to suggest that its book value represents what it would fetch if put up for sale, even assuming there is a market for it now; nor that it contains any greater value or opportunity for growth. Moreover, the value of those assets is more than offset by Emma’s capital liabilities at a little over £20,000. To my mind the figures show that Emma can manage just, month to month, but with no leeway to cover any unexpected expenditure, or long term investment in disability adaptations, or possibility of saving.
99. It was suggested that Emma in fact has a considerable cushion financially, as evidenced by her expenditure on “big ticket items”, such as her wedding, various foreign holidays (she gave evidence she had been to Portugal, Rome and Santorini over recent years), and a private medical procedure (the gastric sleeve surgery). Emma’s answer to that was in my judgment well made. Her expenditure on these items could not be funded from income, and that is why she was carrying some £20,000 of debt, and has started to run down her savings in her Help to Buy ISA. Rather than demonstrating that Emma has surplus income, the level of debt, taken together with my analysis of her income and outgoings, suggests to me that Emma has no cushion to fund anything other than life lived at subsistence level. There is no float, no cushion.
100. I bear in mind that it is not the function of the court when making a determination under the 1975 Act, to provide for everything a claimant would like to be able to afford. Whether the claimant is in need in terms of maintenance is a relative concept, measured amongst other things by their prior circumstances and prospects. The court is entitled however to take a realistic view of the finances of the claimant, and to give due weight

to a situation where the resources of the claimant are just sufficient to cover outgoings, but not to give any appreciable leeway for some small additional items of luxury, from time to time, or for unanticipated expenditure.

101. Taking all these matters into account, I am of the view that Emma is in effect a necessitous claimant, who in difficult circumstances, and with considerable self discipline, is just able to make ends meet, but only by dint of either depriving herself and her family of any small luxuries or going into debt to afford them, and with no possibility beyond further debt of meeting any unexpected expenses.

(b) financial resources and needs of beneficiary

102. Rosemary accepts that her defence is not needs base and that she has access to relative wealth. I take due note of the fact that during her marriage to Mark, she forewent any career aspirations of her own and took on the domestic duties of the household, leaving Mark free to develop the business ventures. She has been entirely dependent on him for financial support during his life, albeit that has left her in a position of some financial strength even before she inherits his wealth, as I now turn to explore.

(i) Rosemary's resources

103. The evidence as to income in Rosemary's second witness statement dated 19 September 2024 was confused, with Rosemary asserting at paragraph 34 that her income of £8,200 per month equated to "c. £150,000 per year". In fact the annual income which she then goes on to particularise adds up to about £142,936. I note that her state pension, which she does not refer to in the body of her witness statement, comes to £8,133.60, which would take the annual total to around £150,000. It is likely that that is the explanation for the difference.
104. Rosemary's evidence in her third witness statement dated 17 October 2025 is that she is by now in receipt of monthly income of around £7,800, totalling £94,636 per annum, a significant decrease from the c.£150,000 she declared in her second witness statement. These sums are also particularised. The following table shows the two sets of figures, with commentary on the reasons given by Rosemary for their differences.

Source of income	WS2 Para 34	WS3 Para 4	Comments
Director of Hudson Investments Ltd	£72,736	£72,736	
Director of Talbot Partnership = 60% of Partnership	£39,480	£19,740	R has 30% share. Will inherit M's 30% share but has not yet.
Income to Mark from Talbot and Dyer	£19,980	£0	Will inherit this from Mark but has not yet
Rent for field/horse	£10,740	£2,160	£10,740 was mistaken
Total claimed annual	£142,936	£94,636	

Total claimed monthly	£8,200	£7,800	£8,200 is the amount claimed, but in fact the total of £142,935 makes £11,911/month
Not referred to in either statement			
State Pension	£8133	£8,133	Referred to in R's schedule of monthly outgoings exhibited to her second Witness Statement. Not referred to either witness statement.
Rent from annex of Carbrook	£9,600	£9,600	This income goes to Barbara
Total annual including pension/rent	£160,670	£112,397	
Total monthly including pension/rent	£13,389	£9,364	

105. Rosemary's state pension clearly qualifies as income. It is likely (for reasons I have set out above at paragraph 103) that it was included in the figure of £150,000 which Rosemary in her original evidence said represented her annual income. There is no explanation for why it was not included in the amount she claimed as income in her third witness statement. It clearly should be. In the absence of any further evidence, I have included it at the same rate as it appeared in the schedule of monthly outgoings attached to her second witness statement.
106. In my judgment, the amounts for Mark's 30% share of the Talbot Partnership and his income from Talbot & Dyer were correctly included in the calculation in her second witness statement, and wrongly excluded when that calculation was revised. Rosemary is Mark's sole beneficiary. Income in respect of his shareholdings following his death will accrue to his estate, which will pass to Rosemary. When the estate is distributed and the assets are vested in Rosemary, the income (as well as the underlying assets) will accrue directly to Rosemary. It was not said that the current position has led to any cash flow problems for Rosemary and in any event such difficulties would be short lived pending the vesting of the estate in her. Both sources of income are properly treated as income to her, which will continue in the foreseeable future.
107. The situation is not so straightforward in relation to the £800 income from the garden property. That is currently redirected directly to Barbara. In my judgment it is properly viewed as income to Rosemary, with an equivalent outgoing to Barbara. It is true that

when Barbara's life ends, the income will revert to Rosemary. Barbara is now 93 but I have no evidence as to her life expectancy. Although we know from the hearsay notice dated 18 October 2024 and from Emma's evidence of caring for her that Barbara is frail and in ill health, it would be unsafe to suppose that Rosemary will take the benefit of that rental income in the short or even medium term. Accordingly it is of neutral effect in the calculation of Rosemary's income and outgoings, and I do not include it in the following analysis of incoming and outgoings for that reason.

108. In light of these findings I calculate that Rosemary's income comprises the following:

Source of income	Amount
Director of Houston Investments Ltd	£72,736
Director of Talbot Partnership 30% plus Mark's share at 30% to be inherited	£39,480
Income to Mark from Talbot & Dyer to be inherited	£19,980
Rent for field/horse	£1,920
State Pension	£8,133
Total annual income	£142,229
Total monthly income	£11,852

109. I turn now to consider Rosemary's capital assets and savings. Leaving aside the estate she is due to inherit, her assets fall into two principal categories: properties; and businesses in which she has a share. Starting with the properties, the house at Carbrook, valued in the region of £2.77 million, has always been in Rosemary's name. It is subject to a mortgage of around £450,000. She and Mark jointly owned 1 Hatchgate Close, which is where Barbara lives. Full freehold title is now vested in Rosemary's name alone, by survivorship. Its value is £475,000. Rosemary gave evidence that there was a "second mortgage on it for Portugal" but was hazy on the details since she was "not involved in anything Mark did in his business".
110. She also has a 90% share of Houston Investments Limited, a property company which is the source of her annual director's income of £72,000. She does not know exactly how many properties are owned and rented out by the company, but understands it to be in excess of 10. No evidence is given as to their value. Further, she currently owns a 30% share in the Talbot Partnership, which owns property at 1 London Road at £1.35 million, with an adjusted value of £645,000. Lastly, she has a range of bank accounts holding sums in the region of £35,000. It is not possible in the absence of evidence as to the mortgage on 1 Hatchgate Close or the capital value of her interest in Houston Developments Limited to derive even an approximate value for Rosemary's assets. I accept the submission that the underlying asset value of Houston Investments Limited must be considerable to produce an annual director's salary of £72,000, but more than that it is not possible to say.
111. The accumulation of these assets had always been part of the overall plan of both Mark and Rosemary to operate in lieu of pensions. Rosemary gives evidence that Mark preferred the commercial property/business route since he could retain control over the assets in a way which would not be possible were he to have invested in a pension fund.

It was pressed on me that whilst Rosemary now has the benefit of these assets their future performance cannot be guaranteed, and is subject to the vagaries of the market in a way which I was invited to find rendered them risky in some unspecified way. That of course will be true to a greater or lesser degree of all savings or investment vehicles, and in the absence of evidence of any specific imminent jeopardy to these assets, I will adopt a common sense view that they are broadly likely to retain their value over the medium to long term, if not increase it, and provide Rosemary with sufficient income and freedom to support her lifestyle for the remainder of her life.

112. Whilst no definitive calculation can be performed in the absence of valuation evidence pertaining to Houston Investments Limited, I conclude that Rosemary has assets and savings worth a (conservative) minimum of £3 million, together with 90% of substantial property holdings in Houston Investments Limited, and the equity in 1 Hatchgate Close. This is consonant with Rosemary's acceptance via her counsel in closing submissions that she has access to relative wealth.

(i) Rosemary's needs

113. Rosemary gave evidence in her second witness statement that her monthly expenditure was a little over £8,000, which she points out reasonably is likely to increase with inflation, and possibly as her needs grow as she ages. She evidenced the figures by exhibiting a large number of documents in the nature of bank statements, invoices, and similar. She also said that she would update her evidence on income, together with supporting documentation, in time for the trial. She did that in her third witness statement, claiming an increase to £8,500 per month, which she explained by saying that the mortgages on "both my own home and the rental properties [are] going from fixed to variable rates" leading to an increase in payments of about £500 per month. Contrary to her earlier indication, she provided this update to her evidence about her monthly outgoings without exhibiting any supporting documentation.
114. In the absence of documentary evidence, I do not consider that I can accept the witness evidence of Rosemary as to the claimed increase in outgoings. Accordingly, I find that Rosemary's outgoings are £8,000 per month. In any event, the increase has little bearing on her financial situation. With a monthly income of £11,852, there is a comfortable cushion whether the outgoings are £8,000 or £8,500.

(d) Any obligations and responsibilities Mark had to Emma

115. Mark had no obligations or responsibilities towards Emma at the date of his death. He had paid child maintenance to Sarah until Emma was 16 as he was obliged to do. Following that he made no further contribution. After their reconciliation Mark talked to Emma about making future contributions to her business, including helping her to buy premises. However, no contributions or promises to contribute in the future were made. Neither had Mark undertaken any other form of responsibility, such as spending time with Emma's children, or helping her manage her household or business responsibilities. Whilst evidently proud of, and impressed by, Emma's considerable professional and domestic achievements, there is no sign that he regarded himself as having any present part to play in her professional or personal activities.

(e) Net estate

116. I was considerably assisted by a table handed up by Mr O'Brien, Counsel for Emma, who had taken the trouble to estimate the current net estate taking into account (estimated) rent from Houston Investments and the Talbot Partnership for the year ending 5 April 2025, and the current year, which were missing from the most recent version of the draft estate accounts. That produces a total net estate value of £1,574,579.67, a figure which I believe to be uncontentious.

(f) - physical/mental disability of Emma

117. Emma was diagnosed with ADHD in her early thirties, before she started her business. She accepted that the condition had not stopped her in her tracks, and that she had functioned with it all her life, including when she was studying and running her professional practice. She says she has also been diagnosed with fibromyalgia, and Wernicke's Encephalopathy, a Vitamin B1 deficiency for which she takes high dose supplements and receives injections every 10 weeks. She was at the time of her first witness statement under investigation by a neurologist for ongoing pain and function loss arising from prolapsed discs in her cervical and lumbar spine, a genetic condition she believes she inherited from Mark. By the date of her third witness statement a recent MRI scan showed significant deterioration in her cervical spine since February 2024. This causes considerable pain. She also has carpal tunnel syndrome in both wrists requiring surgery within the year. She is trialling an injection for pain relief while she awaits surgery.
118. Emma gave further evidence that mentally she has been suffering from chronic burnout for months. In combination, those conditions lead to a loss of feeling/sensation, exhaustion, widespread pain and bouts of anxiety which during bad spells means she struggles with daily activities, looking after her children's needs, and running her business.
119. Emma was referred to Dr Sheila Lumley, a resident doctor in infectious diseases, to investigate a possible diagnosis of chronic fatigue syndrome. Dr Lumley noted in a GP letter dated 25 June 2025 that during the course of the consultation it was suggested that Emma may have ASD (Autistic Spectrum Disorder) in addition to ADHD, with an element of autistic burnout. The consultant thought "this could be a possibility" and indicated that seeking a diagnosis for this would allow Emma to access additional mental health support. It was suggested to Emma when she gave evidence that there had been no diagnosis of autistic burnout, the implication being that Emma was overstating her case. But her evidence was not that she had been diagnosed with ASD, merely that, having suffered from "chronic burnout for months", a possible diagnosis of ASD and related burnout had been suggested at her consultation with Dr Lumley, and that her GP had made a referral to further investigate.
120. Emma was cross examined on her claim that she had been diagnosed with fibromyalgia. It was suggested that there was no direct evidence of the original diagnosis. Fibromyalgia appears in a list of conditions and symptoms under "Past medical history" in the 25 June 2025 GP letter. It was recorded that Emma did not feel her symptoms necessarily fitted the fibromyalgia diagnosis. I have no reason to suppose that Dr Lumley was in error in recording fibromyalgia under "past medical history", and her note that Emma may have been doubting the correctness of the diagnosis does not to my mind suggest, much less entail, that there had been no earlier positive diagnosis.

121. Since her father's death Emma has experienced significant emotional distress and continues to have cycles of grief for which she is seeking support. There is no one blueprint for how an individual experiences grief after a significant loss, but it is readily understandable that the grief experienced by Emma is compounded and complicated by the fact she had only in recent years established a relationship with her father after a lifetime of separation, not of her own making.
122. In summary, Emma has a number of health issues, emanating from the problems in her spine, from carpal tunnel syndrome, and a continuing set of symptoms including generalised pain and fatigue which have been diagnosed as fibromyalgia in the past but which are being re-investigated. She has a huge number of demands on her time, and the administrative, medical and physical care required by her two boys is far in excess of what a parent would typically have to provide, much less to provide after the children had reached the age of eighteen. She is ably supported by Antony to a degree although he has his own health problems. In addition she has taken on a great deal of the care required by Barbara, to the point of going to live with her for a total of four weeks over recent months to provide support. I am bound to say it hardly seems surprising in the light of these multiple demands that she has been experiencing chronic burnout, whatever the correct diagnosis proves to be.
123. The stress caused by meeting all of those demands can only be compounded by the grief she is understandably experiencing following the unexpected death of Mark, a death which has deprived her of a relationship which had been denied to her for most of her life since her earliest days. It is a measure of her competence and drive that, against that background, she has managed to achieve so much in professional terms, something explicitly and admirably recognised by Mark during their time together. But even the most able and energetic of humans have limits; and it seems to me that the combination of the demands on her and her own health problems leave Emma in a precarious position in terms of her physical and mental health, a factor which will inevitably impinge on the extent to which she is able to take on any more work whilst also caring for Ajay, Bailey, and to a lesser though not inconsiderable extent, Barbara.

(g) - any other matter

124. There are a number of factors which I take into consideration under this heading. First, the fact that Emma has responsibilities, quite possibly lifelong, and certainly for the foreseeable future, in terms of providing a home and caring for her two sons who each have a range of complex learning and physical disabilities. It is notable that these responsibilities are undertaken willingly and without complaint.
125. Next I note that those responsibilities are not confined to her sons. As Mark was aware before he died, Emma has been providing care to her grandmother, Barbara, who is growing old and frail. Mark himself provided for his mother by means of a home and an income of £800 a month. After coming into relationship with Mark, Emma offered him her assistance in booking medical appointments, she assisted him with spoon feeding where required, and he often said how safe he felt with Emma.
126. I do not overstate the assistance provided to Mark, which was limited both by the shortness of time during which Emma and Mark were able to develop their burgeoning relationship, and by the pandemic, which imposed extensive restrictions on whether and in what circumstances vulnerable people were able to spend time together. In

addition I have already alluded to Emma's commitments both at work and at home. But it is notable that within a short period, and notwithstanding the potentially enduring damage that could have been caused by the dispute concerning Rhys's paternity, Emma became part of the scheme of Mark's family, at least in his eyes, and to a degree in the eyes of the family he and Rosemary had chosen to support and bring up from the beginning. The evidence is that until Emma brought her claim, relations between her and Rosemary were cordial and friendly, and a further holiday in the Portuguese villa was planned. I do not consider that the fact that her stay in the villa was to be paid for by Emma undermines the fact that the arrangement was based on a familial relationship of mutual trust and friendliness.

127. I refer to these caring responsibilities, and Emma's discharge of them, together with the way in which she had become a part of Mark's own perception of his family, not by some sort of totalling up of merit points. Rather, they suggest to me that Emma has been a pivotal figure in the wider family on Mark's side, including his mother, as well as himself, and gave freely of her time and expertise in matters relating to caring and disability. By the time of Mark's death this was a starkly different situation from the one he described in his will, where he explained his failure to bequeath any part of his estate to Emma on the basis that he had no contact with her and had not seen her for twenty years.
128. On this front it was suggested to Emma in cross examination, and repeated in closing submissions, that there was something remiss in her failure to get in touch with Mark in 2014 after she learned that he had suffered from two strokes. In my judgment this criticism was ill founded. The estrangement was caused solely by Mark's decision to cut all contact with Emma when she was eight months old, a decision in which she self-evidently had played no part. In those circumstances, to criticise a child, even a grown child, for not attempting to make contact with a father who has chosen to excise her from his life is not only unrealistic but, I am bound to say, unfair.

Failure to make reasonable provision for her maintenance

129. In considering whether the claimant, on whom the onus lies, has succeeded in establishing that she is entitled to an order, I must pay regard to the objective nature of the test. For ease of reference I repeat here two key formulations of the test to be applied:

“It is not simply whether the deceased behaved reasonably or otherwise in leaving the will he did, or in choosing to leave none. Although the reasonableness of his decision may figure in the exercise, that is not the critical test.” (per Lord Hughes in *Ilott* at [2]).

And:

“The question is not whether it might have been reasonable for the deceased to assist ... the plaintiff, but whether in all the circumstances, looked at objectively, it is unreasonable that the effective provisions governing the estate did not do so.” (per Oliver J, in *Re Coventry* [1980] Ch. 46, at 488E.)

130. I am satisfied that it is unreasonable that the effective provisions governing Mark's estate did not make provision for Emma's maintenance. Emma's financial

circumstances are, if not parlous, then severely restricted to providing little (if any) more than subsistence for herself and her family. Her ability to increase her earnings is heavily circumscribed by the demands on her time for the purposes of caring for her sons, and her grandmother, as well as by the structure of the state benefits she is entitled to receive. Her own health issues can only add to the difficulties she faces in her daily life, albeit she does not (to her credit) claim that they prevent her from working. Taking into account all the factors which I have assessed in the preceding sections of this judgment, I consider that whilst, for the purposes of section 3(6), she has sufficient earning capacity to continue to fund her outgoings at little more than subsistence levels, she is not able, because of her caring responsibilities, the structure of her finances, and her own health issues, to increase her earning capacity so as to exceed that minimal level.

131. So I am satisfied that, as a child of Mark, she has standing; and that she is necessitous. Those two factors are not by themselves sufficient, and to them must be added some special circumstance, which may or may not be in the nature of a moral claim, which tips the balance in her favour, if she is to succeed in her claim. In my judgment, that special circumstance lies in Emma's caring contributions, extending not only to her own children but to Mark and (both before and after the reunion, and since Mark's death) his mother, Barbara. Her generous attitude is first seen in her positive reaction to Mark's initial contact. That response, and his pride in her many achievements, created not merely a rewarding relationship between the two of them, but an open hearted and generous connection that quickly led to Emma becoming a significant part of Mark's life. In my judgment, the strength of the bond that grew so quickly, and which showed every sign of continuing, gives the case a quite different flavour from other so-called estrangement cases, in which the blame for the estrangement could often be laid at the door of both parties, however unequally, and where typically the claimant and the deceased remained in more or less constant conflict, if not positively estranged, up to the time of the testator's death.
132. The evidence shows that Mark and Emma's relationship was founded on mutual regard, respect, fondness, and admiration, and during it Emma displayed the same caring and thoughtful attitude to Mark as she has done to her own sons, and to Barbara. She freely extended her interest and her kindness to Mark, revealing itself in such small things as helping to spoon feed him, as well as taking an interest in his medical appointments and trying to provide help there, however limited that was. She was clearly fully appraised of his health condition because she gives evidence that she was aware of the recent scares, visits to the cardiologist, tests that had been performed, and the last sadly erroneous all clear that Mark was given shortly before his death. It is evident that Emma was taking an active and supportive role in Mark's life, including his health challenges, and restricted though contact was by the epidemic, and her other commitments.
133. I wish to make it clear that in acknowledging Emma's role I do not suggest that Mark was not well cared for by Rosemary: indeed the evidence is to the contrary. Rosemary had borne the brunt of coping with the aftermath of Mark's health problems and mental decline in the years following his strokes in 2014, and there is no evidence that she did so in anything other than a caring, loving, conscientious and supportive manner, notwithstanding the evident challenges and difficulties, both physical and mental, that Mark encountered during the next five years, and which must have made life very difficult for Rosemary herself. But there is positive evidence to show that, alongside

the excellent care provided by Rosemary, Emma also involved herself in the details of Mark's health and provided care and support where she could, with an attitude similar to the one she brings to caring for Barbara.

134. I have taken some time to highlight the basis for what I find was the special circumstance, since the factual basis of that finding is a rare one in this context. I do not go so far as to suggest that Emma's generosity and care towards Mark created a moral obligation as such. But those qualities, and their close father-daughter relationship, do in my judgment elevate the situation as between Mark and Emma to the moral dimension, in which matters of love, duty, affection, care and respect operate. This qualifies as the additional factor, the special circumstance, that is needed for a claim by a child with earning capacity to succeed. In these circumstances, and to adopt the words of Lord Hughes in *Ilott* (at [19]), looked at objectively, Mark's lack of disposition produces an unreasonable result in that it does not make any provision for the applicant's maintenance.
135. As for the non-provision declaration in the Will, I bear in mind that the deceased's testamentary intentions, and the reasons for them, must be taken into account. It is striking that the reasons Mark expressed in 2014 for leaving Emma nothing – namely, the lack of contact for twenty years – had evaporated, to be replaced with the very opposite situation – namely, a productive, warm-hearted, caring father-daughter connection. Whilst there is no evidence that he had changed his mind about leaving her nothing since making the Will, there is incontrovertible evidence that the stated basis for his intention not to leave anything to Emma had been entirely reversed.
136. Rosemary gave evidence that Mark had expressed many times that he did not wish his children to inherit his wealth. No particulars of this statement were given. In response to a question about the interests that Amy and Scott acquired in the family business, Rosemary said they had not been given those shares, but had had to buy them. No further details were provided as to the funding for those purchases, whether by cash, debt, or otherwise. With respect to Rosemary, even if Amy and Scott did purchase their shares in the business, nonetheless the opportunity to do so would have been directly linked to being Mark's children. We also know that Scott worked at least to some degree (no details were given) within the business, since he took over more responsibilities for running the business after Mark's health deteriorated in 2014. It is fanciful in my judgment to suggest that Scott and Amy have not benefitted in material terms as a result of being Mark's children. It is also the case that they will expect to inherit Rosemary's estate, albeit at some point well into the future, which of course will include Mark's assets insofar as they have not in the meantime been dissipated.
137. I also bear in mind that Rosemary is both well provided for by Mark's estate and a woman of considerable wealth in her own right, as a result of the hard work which she and Mark each put into creating their family and business, and the decisions Mark took to ensure that she would be well provided for into her old age, avoiding resorting to pensions products, of which he was suspicious. I consider that it will be possible to make an order favouring Emma without compromising Rosemary's standard of living, and that an award to Emma will not deprive Rosemary of the bulk of the inheritance she stands to receive.

The order

138. Section 2 of the 195 Act provides the Court with broad discretion as to the form of the order to be made.
139. In her skeleton argument, it is said that Emma's primary preference is to be awarded a sum sufficient to purchase alternative property, whilst acknowledging that such an order is rare in practice, albeit permissible in principle. I decline to make such an order. I have no evidence before me as to the price of a house sufficient to meet Emma's family's needs, other than her evidence that the house she currently rents from a housing association is not big enough. But in any event, the purchase of a house would in my judgment be a disproportionate remedy when the costs associated with her housing are currently able to be met albeit on a very tight budget, as described above. The focus of the enquiry and the remedy is on maintenance, and my primary objective is to augment Emma's income to a point where there is some leeway for modest additional expenditure, so as to take her out of the subsistence level of existence I have found her to have.
140. As Emma acknowledges, the Court typically seeks to capitalise a sum which accounts for current debts and recurring expenses of an income nature. Given Emma's overall income of some £57,500, in my judgment providing a cushion amounting to 10% of that sum annually would be a fair approach, to be available for unforeseen expenditure and occasional modest luxuries. Anything less than that risks being so small that makes very little material difference. Anything much more than that would start to stray beyond the need to make reasonable provision for her maintenance. I make it clear that the "occasional modest luxuries" I contemplate are "luxuries" in the relativistic sense of being expenditure that Emma is otherwise unable to afford on what I have determined to be a subsistence level of income. For example, I note that her outgoings do not include any social activities, such as trips to the cinema, or occasional meals out, or day trips to local attractions or areas of local interest. Her clothes budget at £20 per month for her and Ajay, is extremely low and would not permit for example the purchase of clothing for any special occasions. In this sense, the additional sums I envisage are no more than an attempt, necessarily involving a rough and ready calculation, to provide for Emma's maintenance in the sense of the ordinary incidents of everyday living, at a level marginally in excess of the current subsistence level of income to which Emma is confined. I regard this as falling within the meaning of "provision to meet the everyday expenses of living", in the words of Lord Hughes in *Ilott* at ([14]).
141. It was submitted that such an award could be by way of a discretionary trust, to avoid any adverse effect on Emma's claim to various benefits to which she is entitled. I was given no material on this beyond the general proposition, and am not in a position to perform the necessary calculations. This is, regrettably, the same situation as the District Judge was facing at first instance in *Ilott*. The solution he adopted, as endorsed by the Supreme Court when upholding the decision, was to set up a discretionary trust whereby the claimant could exercise an option to draw down such sums as she wished, allowing her to avoid any adverse effect on the benefits to which she was entitled. I propose the same mechanism be adopted in this case. The capital sum required for that would be £103,155.
142. Lastly, I would make an order that a lump sum be paid to Emma for the purpose of paying off her debts (though not her student loan), a sum of £20,263.47. That will be required to reset the dial, as it were, allowing Emma to run her finances within her means, without having to deplete her income to make repayments on her borrowings.

The slate will be clean, and Emma should thereafter have sufficient income to meet her outgoings, and a small cushion for unexpected expenses, modest luxuries, and the possibility of increasing her savings.

143. The total amount, of £123,418.47, represents approximately 8.2% of the net estate. Whilst I did not when making my determination set out to achieve any particular fraction of the estate, it seems to me, in the circumstances of this case, that percentage represents a fair and reasonable outcome. Further, and most importantly, I am satisfied that the sum awarded would not compromise Rosemary's living standards, or place her in any financial difficulties.
144. I shall leave Counsel to devise an order reflecting the outcome, and invite them to collaborate in agreeing a mechanism by which a discretionary trust could be settled and operated.