Neutral Citation Number: [2025] EWHC 2054 (Ch)

Claim Nos. PT-2021-LDS-000172 & 000173

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN LEEDS

PROPERTY, TRUSTS AND PROBATE LIST

Date: 1 August 2025

Before:

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

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BETWEEN:

RICHARD GORDON ARMSTRONG

Claimant

-and-

(1) SIMON JAMES ARMSTRONG

(2) GEORGE ROBERT ARMSTRONG

(AS ADMINISTRATORS AND BENEFICIARIES OF ALAN ARMSTRONG DECEASED)

Defendants

- -

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

Hearing date: 14 March 2025
(further written submissions dated 17 and 19 March 2025)
Draft judgment handed down: 21 July 2025

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MR ANDREW SUTCLIFFE KC:

Introduction

1 This is my judgment on remedy following my earlier judgment on liability ([2024] EWHC 2989 (Ch)) in which I found that Richard had proved his proprietary estoppel claim as well as his alternative claim for an entitlement under the 1975 Act. In this judgment, I adopt the definitions and abbreviations used in the liability judgment. References to paragraph numbers in square brackets are to paragraphs in the liability judgment.

2 By a consent order dated 22 November 2024, I directed that the parties had permission to file further evidence for the purposes of the remedy hearing, such evidence to be filed no later than 20 December 2024 and to be limited to the following matters: (1) the value of the land and business carried on at North Cowton and Allerton Grange; and (2) the nature and extent of any liabilities of the businesses carried on at North Cowton and Allerton Grange and/or which are secured on the land at North Cowton and/or Allerton Grange and/or Marton-cum-Grafton and/or upon any other assets.

3 Simon provided additional disclosure on 18 December 2024. He made a witness statement dated 3 February 2025 and disclosed two further documents at that time. He then made a further witness statement dated 27 February 2025 which principally concerned the land at Marton-cum-Grafton ("the Marton land") and exhibited five further documents. Richard disclosed two bank statements on 19 December 2024 and made a witness statement dated 7 March 2025 responding to certain points raised in Simon's evidence to which Simon responded in a further witness statement dated 12 March 2025. Although these witness statements were all served late, the parties proceeded on the basis that I should consider their contents and I summarise this evidence so far as necessary below. I bear in mind that neither Simon nor Richard was cross-examined at the remedy hearing in relation to their further evidence and as a consequence I place greater reliance on those parts of their evidence which are supported by documentary evidence.

Conclusions in the Liability Judgment

4 In my liability judgment, I held (at [233]) that Richard succeeded in his proprietary estoppel claim.

5 I found (at [212]) that Alan and Margaret had made promises and assurances to Richard which caused him to expect that he would inherit North Cowton from before the time he started to work there and that these promises and assurances continued to be repeated over the ensuing decades until the meeting attended by Alan and other members of the family at which the deed of variation was signed on 2 April 2019.

6 I found (at [210]) that at that meeting on 2 April 2019, following a question from Alan's solicitor to Richard (asking him "*what's the matter, don't you trust your father*"), Alan gave Richard a nod or encouraging look which was intended by Alan, and was reasonably understood by Richard, to be an assurance that Alan would stand by the indication he had made at the meeting that Richard would inherit North Cowton on Alan's death. It was an assurance by Alan that, if Richard executed the deed of variation, he would leave North Cowton to him.

7 I found (at [216] to [220]) that Richard relied on the promises and assurances made to him by Alan and Margaret (the latter being made with Alan's knowledge) and then by Alan alone after Margaret's death, that he would inherit North Cowton when his parents died. He did so by choosing not to study engineering at university and instead going to agricultural college with a view to working on the farm at North Cowton once his course was completed, and thereafter continuing to work at North Cowton for a modest income for some 34 years. Richard further relied on the promises made to him by Alan (and Margaret) in 2017 at the time the businesses were split by taking on partnership debts which he would not have taken on if he had not believed as a result of the promises made to him that he would inherit North Cowton. Finally, Richard relied on Alan's promise that North Cowton would be left to him on Alan's death when he surrendered his valuable interest in Margaret's estate by signing the deed of variation.

8 I found (at [221]-[222]) that when he made his new will in January 2020 Alan acted unconscionably, by repudiating the reasonable expectation he had given Richard, through the promises and assurances made over many years that he would inherit North Cowton, including by reneging on the promise he had made to Richard in order to secure Richard's signature to the deed of variation.

9 I found (at [231]-[232]) that Richard had suffered a substantial net detriment as a result of spending all his working life prior to Alan's death at North Cowton in the expectation that he would inherit it and in executing the deed of variation whereby he gave up assets to which he was entitled from Margaret's estate and allowed Alan to inherit them instead.

10 I held (at [235]) that the 1975 Act claim still needed to be considered in case an appellate court should disagree with my decision on the proprietary estoppel claim or if I declined to make an award on that claim which is sufficient to meet Richard's needs. In respect of this claim I found that (1) Richard was financially dependent on Alan (at [240]); (2) having made no provision for Richard in his 2020 will, Alan had failed to make reasonable financial provision for Richard and the court would therefore need to consider what would be reasonable financial provision for Richard (at [241]); and (3) it would not be wise to reach any definitive conclusions on what would be reasonable financial provision for Richard until I had considered the appropriate relief to be given to Richard on his proprietary estoppel claim (at [242]).

Evidence at the Remedy Hearing

11 Simon's evidence is that, even if (as I have held [40-46]) the intention in 2017 was to create two entirely independent businesses, that intention was not followed through and there has never been an effective separation of the businesses at North Cowton on the one hand and Allerton Grange on the other. He says that in November 2017 the obligation to repay the Lloyds Bank loan and overdraft was nominally divided between and allocated to the partnerships operating at North Cowton and Allerton Grange, not to fix each part of the business with a distinct share of the liability but to allow both parts of the business in the short term to service an element of that debt and to operate separately on a day-to-day basis. He says that no consideration was given at that time as to how each of the two farming units would contribute to the repayment of the Lloyds borrowing.

12 I consider that there is force in what Simon says. Richard's agreement in 2017 to assume responsibility for £500,000 of the Lloyds loan and £125,000 of the Lloyds overdraft has to be seen in the context of combined Lloyds borrowing amounting to some £2.7 million at that time, comprised of the following: (i) the Lloyds loan of £1.978 million; (ii) the Lloyds overdraft of £457,675 and (iii) merchant debt (being liability incurred to suppliers of both North Cowton and Allerton Grange) of £274,344. The allocation of £500,000 of the loan liability and £125,000 of the overdraft liability to the North Cowton business left the Allerton Grange business bearing £1.478m of the loan liability, £332,675 of the overdraft liability and the entirety of the merchant debt liability, although the effect of Lloyds' all monies charge was that all debts due to Lloyds remained secured over North Cowton.

13 Simon's evidence is that if the merchant debt is added to the bank debt, the 2017 division of the two farming businesses resulted in the North Cowton unit carrying 23% of the debt and the Allerton Grange unit carrying 77% of the debt. Simon says it is obvious this was not intended to be a permanent allocation of liabilities between the units.

14 Simon then refers to the valuation report of the single joint expert, Mr Rodney Cordingley, which values North Cowton and Allerton Grange at the date of Alan's death (5 October 2020) at, respectively, £2.838 million and £2.245 million, with a valuation of the Marton land at the same date of £602,000. He points out that, if the Allerton Grange and Marton land values are combined, they broadly equate to the North Cowton valuation (a difference in Allerton Grange's favour of only £7,000). Moreover, the expert's valuations at the date of his report (19 January 2024), which assumed no improvements have been made to those properties since Alan's death, are £3.128 million for North Cowton, £2.365 million for Allerton Grange and £663,000 for the Marton land. Again, the total of the Allerton Grange and Marton land values broadly equates to the value of North Cowton (a difference this time in North Cowton's favour of £100,000).

15 Simon points out that the informal split of the businesses agreed in 2017 left North Cowton with 23% of the combined debts, despite (in October 2020, the earliest

available valuation date) North Cowton accounting for 49.92% of the combined value of the land occupied by the two businesses, whereas Allerton Grange was left with 77% of that debt despite Allerton Grange and the Marton land accounting for 50.08% of the combined value of the land occupied by the two businesses.

16 Simon then refers to the combined Lloyds borrowing of the Allerton Grange and North Cowton businesses in December 2024 which was approximately £3.02 million, made up of (i) Allerton Grange bank debt (loan and overdraft facility) of £2.14 million, (ii) merchant debt of £274,344 (the actual figure being £929,429 but the difference being conceded by Simon as only for the benefit of the operation at Allerton Grange) and (iii) North Cowton bank debt (loan and overdraft facility) of £604,628. Using the most recent expert valuations obtained for trial, he calculates that, on the face of the current allocation of debt, North Cowton has 20.02% of the combined value of the debts, despite accounting for 50.81% of the value of the two farms, whereas Allerton Grange has 79.98% of the combined value of the debts, despite Allerton Grange and the Marton land representing 49.19% of the value of the two farms. In addition, Simon expresses the view that North Cowton has the ability to generate more income as a result of its larger area of arable land.

17 In July 2021, Simon and George obtained a loan of £250,000 from Lloyds to fund a new shed at Allerton Grange which is secured by Lloyds' all monies charge over (amongst other assets) North Cowton. The amount outstanding under this loan is now approximately £200,000. Simon and George have further debts: an outstanding unsecured Lloyds bounce back loan of some £15,000, a loan from Oxbury Bank Plc of some £200,000 and liabilities to Barclays in respect of another business known as Susacres totalling some £40,000.

18 Simon refers to the 2023 accounts for the Allerton Grange unit which show a gross pre-tax and pre-drawings profit of £334,253. However, he says that the fall in pig prices over the last 12 months has reduced gross income from pig sales by £237,500, leaving a gross profit of £45,000 for each of the two families who farm at Allerton Grange.

19 It is Simon's evidence that, since its purchase in late 2011, the Marton land has been farmed as part of the Allerton Grange unit and that Richard has never visited it. He has disclosed documents which show that A&M Armstrong & Sons took out a Barclays loan in the sum of £400,000 in order to fund the acquisition of the Marton land for £420,000. He says that although the Marton land was subsequently registered in the names of Alan, Margaret, Richard and Simon in January 2016, this was done to reflect advice given by Grant Thornton some 10 years earlier regarding the need for him and Richard to have an interest in partnership property. The Marton land was charged to Lloyds Bank in January 2016 as part of the security for the Lloyds loan (the remaining security being North Cowton and part of the land at Allerton Grange).

20 Simon says that when Richard was given day-to-day control of North Cowton (which took effect from 1 November 2017), the Marton land remained as an asset in the accounts of the Allerton Grange partnership which continued to be called A&M Armstrong & Sons.

21 Simon also disclosed a document provided to his solicitors by Mr Thomas, the family accountant, after the liability judgment had been handed down. This document contains Mr Thomas's typed notes of (i) a meeting he had with Alan and Margaret on 16 October 2017 and (ii) further discussions he had with Simon and Richard the following morning, 17 October 2017 ("Mr Thomas's October 2017 notes"). I recorded at [170] Mr Thomas' evidence that he did not take contemporaneous notes of conversations he had with the family, instead relying on the farm accounts as recording the outcome of any financial discussions with the family to which he was a party. At least in relation to his discussions with members of the family on 16 and 17 October 2017, Mr Thomas's recollection was plainly mistaken.

22 So far as relevant, Mr Thomas's October 2017 notes state as follows:

"*DT meeting with Alan & Margaret Armstrong-16.10.17*

Meeting re forming a new partnership of Alan, Margaret & Richard, the existing partnership will continue just with Richard retiring from the partnership.
The idea being that Cowton & Allerton are split and Simon & Richard can farm their own ways!
Alan & Margaret will still own most of the land for APR purposes.
The new partnership will be run on a day-to-day basis by Richard and he will have control of a new bank account as from 1.11.17.
Due to the current troubles with the release of monies from the solicitors (2.7M roughly) it is not yet advisable to split the farms on a financial basis due to the debts etc. The idea is that as of 6.4.18 all money should have been received and farm debts all settled, apart from HP etc. This then gives Simon and Richard a clean slate as it were. …
A further meeting will be made later in the year to discuss things further and establish where the client is with regard to the 2.7 M. …

DT
17.10.17

***** NEW NOTE AFTER DISCUSSIONS WITH SIMON & RICHARD *****

Spoke to Simon & Richard this morning (17.10.17) and it runs [sic] out Alan had not told me everything!!!
Simon is owed approx. 1M+ from the golf course monies. Part of his share put in (30 acres of woodland etc) all done re the divorce. Alan will not have much if anymoney leftover after debts cleared and Simon paid his share.

Richard is to take on 500k of the 2M bank loan and will set himself up with a 125k overdraft - he will walk away from the business and take no money from the golf course money to be recd. He will keep various assets, land & buildings (mostly in A&M names), stock, P&M etc – List & values to be agreed at a later date and tfrd across.
The date of the split is to be 1.11.17 NOT 6.4.18 as stated above, Richard might have some tax debt in the old partnership but this will get sorted later. New partnership is to include Richards son Thomas. Kath is to set up the new VAT, we are to set up the new partnership.

DT
17.10.17
…
Land - 180 acres plus buildings at Allerton, 270 acres plus buildings at Cowton"

23 Richard's solicitors disclosed copies of two bank statements showing the indebtedness of the North Cowton business as being £604,628.35 as at 17 December 2024. In his evidence Richard relied on Mr Thomas's October 2017 notes and in particular on Mr Thomas's reference to the split of the two farms in 2017 with Richard taking on £500,000 of debt by way of a loan and an overdraft of £125,000. He says that, as Mr Thomas's October 2017 notes indicate, it was anticipated that the Armstrong share of the proceeds of the golf course ("the golf course monies") (estimated at that time to be worth £2.7 million) would be released within a few months.

24 I refer to the golf course venture at various places in the liability judgment ([24], [25], [50], [67], [77.2], [142.12], [143], [204]). In summary, there is a dispute between the partners to the golf course venture - which comprise members of the Armstrong and Mattocks families - as to how the proceeds of the venture are to be divided. That dispute has been the subject of protracted correspondence and (it appears) litigation. Some of the correspondence was in the trial bundle (for example, a letter dated 31 March 2022 from Brian Mattocks' solicitors, Harrowells, to the solicitors for each of Simon and Richard). However, the details of the dispute are unclear and (it would appear) the dispute has yet to be resolved. If there has been litigation, none of the documents relating to the same have been disclosed. The dispute is not before the court and it is not possible to draw any safe conclusions as to its likely outcome. At least part of the dispute appears to involve claims by Mr Mattocks that Simon and Alan were liable to him for sums alleged to have been dishonestly misappropriated during the golf course venture. I have no means of judging the veracity or otherwise of such claims.

25 There is a further dispute between Simon and Richard concerning the division of the golf course monies ultimately found to be due to the Armstrong side of the partnership. Simon alleges, and Richard denies, that when the North Cowton and Allerton Grange businesses were split in 2017, Richard agreed to relinquish his

entitlement to any of the golf course monies. Again, I have not been asked to resolve that dispute.

26 Richard says that the intention at the time the businesses were split was that the Armstrong share of the proceeds from the golf course venture (then estimated as being £2.7 million) would be used to repay the debts of both farms (being approximately £2 million in 2017) so that, as Mr Thomas says in his note of his meeting with Alan and Margaret on 16 October 2017, they would all have a "clean slate" with both farms free of debt. According to Richard, it was expected that there would be a considerable surplus to be divided up between them. He refers to Mr Thomas's note of conversations with Simon and Richard on 17 October 2017 where it states that £1M+ was to be paid to Simon to compensate him for some woodland and emphasises that this was not said in his presence and he did not agree to it.

27 Richard says that, without his knowledge or agreement, in 2021 Simon and George took out the loan from Lloyds Bank for £250,000 (referred to in paragraph 17 above) which was secured by the Lloyds' all monies charge over (amongst other assets) North Cowton. He also says he is aware that Simon sold a parcel of land near Allerton Grange shortly after the farms were split in 2017 for approximately £2 million and that he (Richard) did not receive any of the proceeds. He thinks £250,000 of the proceeds went to Kathryn and the balance to Simon. Richard also refers to his belief that Simon has sold other parcels of land near Allerton Grange for a road widening scheme although he has no details of this. His belief is that Simon has had every opportunity to reduce or even extinguish the debt that existed over Allerton Grange in 2017 even without the golf course monies. He refers to Simon having built five barns at Allerton Grange at a cost of approximately £200,000 for each barn which he considers indicates that Simon has substantial funds to invest. He expresses his frustration that since 2017 Simon has removed over £100,000 worth of farming equipment from North Cowton that he will not return and has retained the rent received from letting out the cottage at North Cowton, as well as preventing him from receiving farm subsidy payments of some £80,000.

Remedy on the Proprietary Estoppel Claim

The correct approach

28 It is common ground that the correct approach to the determination of the relief to be granted when a proprietary estoppel has been established, as explained by the Supreme Court in Guest v Guest [2024] A.C. 833, is the prevention or undoing of unconscionable conduct, not expectation fulfilment or detriment compensation. In many cases, once the equity is established, the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award (per Lord Briggs at [94]).

29 I have determined that the repudiation of Alan's promise was unconscionable. I therefore start with the assumption, but not presumption, that the simplest way to remedy the unconscionability is to hold Alan's estate to the promise: Guest v Guest at [75]. This in turn involves consideration of the nature of the promises and assurances made by Alan to Richard on which Richard relied to his detriment.

30 If Simon and George, as Alan's executors, are able to show that the specific enforcement of the promise, or monetary equivalent, would be out of all proportion to the cost of the detriment to Richard, the court may limit the extent of the remedy. As Lord Briggs stated in Guest v Guest at [76], it will be a very rare case where the detriment is equivalent in value to the expectation and there is nothing in principle unjust in full enforcement of the promise being worth more than the cost of the detriment. Lord Briggs gives as examples of a remedy being out of all proportion to the detriment (i) a promise by an elderly lady to leave her carer a piece of jewellery if she stayed on at very low wages, which turned out on valuation by her executors to be a Faberge worth millions and (ii) a promise to leave a generous inheritance if the promisee cared for the promisor for the rest of her life, but where she unexpectedly died two months later.

31 There is more scope for departure from full enforcement of the promise if either or both of the promise and the detriment are not precisely defined by the time when the promise is repudiated: Guest v Guest at [77]. In the end, the court needs to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that assessment is whether, if Alan had conferred the proposed remedy upon Richard, he would be acting unconscionably. The remedy should be sufficient only to enable the court to answer that question in the negative: Guest v Guest at [80].

Richard's submissions

32 Richard's primary pleaded case was that he was entitled to half of Alan's estate. Recognising that this case was not consistent with the promises that I found were made to him by Alan (which all concerned Richard's future at North Cowton), Richard submits that the just outcome is for him to receive North Cowton unencumbered by any debt or to receive a lump sum equating to its unencumbered value. His strong preference is to keep North Cowton. He argues that Alan's estate is sufficiently large to produce such a result and how the result is achieved is largely a matter of logistics. He relies on the view I expressed in the liability judgment (at [243]) that it was essential there should be a clean break so that neither brother is in any way dependent on the other.

33 Richard refers to the fact that the Lloyds borrowings are secured against North Cowton, the Marton land and certain land at Allerton Park but not against the main site at Allerton Grange. He takes particular objection to the Lloyds loan taken out by George and Simon in July 2021 for £250,000 in order to build a shed or sheds at Allerton Grange, where there is now some £200,000 outstanding which is

secured against North Cowton and not Allerton Grange. He makes no complaint about the Oxbury loan for £200,000 taken out by Simon and George in November 2024 because he accepts that this is not secured against North Cowton, nor about the Barclays' borrowing which is also not secured against North Cowton.

34 Richard submits that Alan's estate's share of the golf course monies is about £1.9 million which is roughly equivalent to the Lloyds secured debt figure of about £1.92 million. He says that the award of North Cowton to him as an unencumbered farm is a fair result because (i) North Cowton was promised to him, (ii) it was not envisaged by any of the family members that the Lloyds debts would remain secured against North Cowton in perpetuity and (iii) rather, it was envisaged that the golf course monies would be used to discharge the lending on both farms. Richard further submits that it would be grossly unfair to him, in circumstances where it was anticipated that both brothers would ultimately receive their farms debt free, to make an award that he receive North Cowton, worth some £3.1 million, but with all debts (some £1.9 million) secured against it, with Simon receiving the balance of an unencumbered estate worth, according to Richard's calculation (which includes the golf course monies), some £5 million.

35 Richard suggests that Simon is seeking to raise a new argument that, during the November 2017 split, the allocation of debt to each farming business was either not finalised or not supposed to be permanent. He says it is too late for Simon to rely on this evidence because it has not been tested or put to any of the other witnesses.

36 In the alternative, Richard submits that if it is not possible for Simon and George, as personal representatives and beneficiaries of Alan's estate, to achieve a result whereby Richard receives North Cowton unencumbered, they ought to be ordered to pay Richard a monetary sum equivalent to the unencumbered value of North Cowton, namely £3.128 million.

37 So far as logistics are concerned, Richard submits that the simplest order for the court to make is to declare that the entire beneficial interest in North Cowton is held on trust for Richard and to direct that the estate transfers the legal title to North Cowton to Richard "in short order" and that if the estate fails to do so, the legal transfer should be signed by a district judge, expressed as being subject to the existing charge in favour of Lloyds so as not to prejudice Lloyds' security. The estate should then be directed by a later date to either procure the release of the charge (which in turn would require the estate to offer Lloyds satisfactory alternative security) or to pay Richard a lump sum equating to the amount necessary to redeem the charge so that he may do so himself. Richard asks that indemnities be ordered, including an order that Simon and George be restrained from dealing with the estate assets other than to meet the estate's liabilities to Richard under the court's order.

38 In relation to the court's desire that there should be a clean break, Richard submits that there are three impediments to achieving a clean break. First, he says he has a 10% interest in the golf course monies and this point cannot be resolved in the current litigation. Second, he seeks to rely on disclosure in these proceedings which is said to suggest that he owns a 25% beneficial interest in the Marton land and says it is not safe for the court to make any findings on this point and best to leave the parties to litigate the matter if necessary. Third, he is concerned that he should not be called upon to account to his parents' estates upon the dissolution of any alleged partnership with his parents. He asks the court to declare that he is not liable to his parents' estates upon the dissolution of any alleged partnership with his parents and that he may continue to use the business assets at North Cowton.

39 In written submissions filed after the remedy hearing, Richard submitted that in circumstances where the court considered it fair to have regard to the golf course monies but did not know how much would be recovered, it could award him a beneficial interest in the estate's share of the golf course monies but subject to a cap. Richard suggests that the court might direct the transfer of North Cowton to him, impose a liability on him for half of the Lloyds debt at the time of the split in 2017 (being about £600,000) and award him a 50% interest in the golf course monies, subject to a cap. So, for example, if the golf course monies are £2 million, Richard would recover £900,000 (from which to discharge bank debt of £600,000), with the estate receiving £1.1 million. If the golf course monies are £3 million, Richard would still receive the capped amount of £900,000 and the estate would recover £2.1 million. In the event that no golf course monies were received, Richard would be left to bear Lloyds liabilities of £1.5 million and so would the estate.

The defendants' submissions

40 The defendants submit that the primary relief sought by Richard on his proprietary estoppel claim, which is a transfer of 50% of the interest in Alan's estate, should be rejected because the court found that Alan and Margaret's promises were to the effect that he would inherit North Cowton, not that he would inherit half of Alan's estate or half of the estate of the second to die [194] to [215]. Accordingly, the court's starting assumption (but not presumption) is to hold Alan's estate to the promise which related to North Cowton and not 50% of his estate.

41 In order to arrive at the provisional remedy, and the reasonable expectation it has found that promise gave rise to, the defendants submit that it cannot be suggested the promise had the effect of giving rise to a reasonable expectation that Richard would inherit North Cowton free from any debt. This is for two reasons. First, during Alan's lifetime (in 2017), Richard accepted that North Cowton would be burdened with debt of at least £625,000 [206]-[207]. Second, Richard's acceptance that he would be personally liable for this debt is an element of his reliance detriment giving rise to the proprietary estoppel in his favour [219].

42 The defendants say that Richard was aware when the division of the businesses took place in 2017 that the portion of debt notionally allocated to North Cowton was a small proportion of the pre-split liabilities. This is confirmed by his witness statement dated 7 March 2025 where he refers to Mr Thomas's October 2017 notes and to the fact that it was expected at that time that the Armstrong family was due to receive around £2.7 million as golf course monies which was to be used to repay the debts of both farms of around £2 million.

43 The defendants submit that, even if Richard is right that there was a mutual belief that the golf course monies would allow all the bank liabilities to be discharged, that has not come to pass. It cannot have been the case that Richard expected that, come what may, North Cowton would only take such a small proportion of the joint liabilities which (if it happened) would have had the effect of rendering the farming enterprise at Allerton Grange unviable.

44 Accordingly, the defendants submit that the court's starting assumption should be that the fulfilment of Alan's promise to Richard requires North Cowton to be allocated with a reasonable proportion of the debts of the two farms. If that is wrong, and the court considers it should start with the assumption that the fulfilment of the promise to Richard would require North Cowton to be allocated only the level of debt with which it was allocated the time of the 2017 split, then that provisional remedy requires revision when it is looked at in the round against all the relevant circumstances.

45 The circumstances on which the defendants rely are the following:

45.1 It has always been Richard's case that it was expected and understood between Alan, Margaret, Simon and Richard that Richard would inherit North Cowton and Simon would inherit Allerton Grange in order to allow them to farm on their own account after their parents' death. Similarly, the court has found that the context of the deed of variation (by which both Simon and Richard relinquished their share of Margaret's estate) was that Richard would inherit North Cowton and Simon would inherit Allerton Grange.

45.2 The current debt allocation, by which Allerton Grange is allocated with 79.98% of the combined debts despite being less than 50% of the combined value of the two farms, means that Allerton Grange would have liabilities amounting to over 79% of its market value. Not only would that mean the net value of Alan's gift of Allerton Grange to Simon would be only £612,767 (and by contrast the net value of the transfer of North Cowton would be £2.523 million), it would mean that Allerton Grange was not a viable farming unit, with the result that neither Simon nor George would be able to continue farming. That would be grossly unfair to Simon and George and would fail to do justice between the parties.

45.3 Had Alan conferred North Cowton on Richard burdened with a reasonable proportion of the debts of the two farms, that would not have been unconscionable. That is the yardstick of the remedy and is the approach the court should follow.

46 Accordingly, the defendants submit that the appropriate remedy on the proprietary estoppel claim is one which provides for the transfer of North Cowton to Richard with a proportionate share of the debts of the two farms being assumed by Richard. They ask the court to apply the following reasoning:

46.1 North Cowton has been valued at £3.128 million. This represents 50.81% of the combined value of the farms. Richard should therefore assume 50.81% of the combined debts, being approximately £1.534 million. This would mean the net value of the transfer of North Cowton would be approximately £1.594 million. If Richard chooses to resume farming at North Cowton, that would represent a viable prospect.

46.2 Allerton Grange and the Marton land have a combined value of £3.028 million. This represents 49.19% of the combined value of the farms. Simon should therefore assume 49.19% of the combined debts, being approximately £1.485 million. This would mean the net value of the gift of Allerton Grange (including the Marton land) would be approximately £1.543 million, about £51,000 less than the approximate net value of the transfer of North Cowton to Richard.

47 The defendants accept that achieving a clean break between Richard and Simon (so that neither is dependent upon the other) will not be straightforward in view of the fact that Lloyds has an all monies charge over North Cowton. They submit that the court should direct the parties to use their best endeavours to procure from relevant third parties the necessary consents so that the debt can be apportioned in accordance with the above proportions and that, should this not prove possible, the parties should have liberty to apply for further orders on notice to all relevant parties.

48 As regards the written submissions made by Richard following the remedy hearing (see paragraph 39 above), the defendants accept that if the court considers Alan's estate's share of the golf course monies to be potentially relevant to the determination of the remedy on the proprietary estoppel claim, then the uncertainty about when and how much of the nearly £4 million held in the Santander escrow account will be released to Alan's executors places the court in a difficult position.

49 However, the defendants submit that it is not uncommon for the court to be faced with the prospect of having to fashion a remedy in circumstances which were not contemplated at the time that the promises or assurances were made or the detriment was suffered. One such scenario is where the promise is repudiated before it was due to be performed: see Guest v Guest at [64]. Guest v Guest itself

was concerned with that scenario. The Supreme Court's approach left the defendants in that case with the ability to satisfy the claimant's equity for a sum which the court acknowledged (at [104]) was of less financial value to the claimant than had the promise been fulfilled (because a discount had to be given for early receipt of financial compensation by the claimant). That was despite the fact that the defendants had acted unconscionably in seeking to repudiate their promise and no blame was ascribed to the claimant.

50 The defendants submit that, if the court finds it was intended that the golf course monies would be available in short order to discharge all the debts of North Cowton and Allerton Grange, the circumstances in this case are similar to cases in which the promise is repudiated prior to the time of its performance. As in that category of case, the court is required to fashion a remedy against circumstances very different from those which were contemplated when the promises were made and the detriment suffered, namely, that (i) Alan's estate's share of the golf course monies will not be sufficient to discharge the debts of the operations at North Cowton and Allerton Grange and (ii) those monies have now become subject to an intractable dispute with third parties for many years and it is impossible to know when that dispute will be resolved or how much will be received.

51 In response to Richard's suggestion made after the remedy hearing that the court could award Richard a 50% interest in the estate's share of the golf course venture proceeds subject to a cap of the amount of debt above £600,000, the defendants submit that this is an unattractive solution for the following reasons:

51.1 Far from giving the parties the clean break which the liability judgment found to be essential, it would ensure that Simon and Richard are locked together until the indefinite date upon which the dispute regarding the golf course monies is resolved.

51.2 It would increase the prospect of further litigation between Simon and Richard, with the latter already apparently contemplating further litigation in relation to his alleged personal share of the golf course monies as well as an alleged beneficial interest in the Marton land (see paragraph 38 above).

51.3 It would mean that the resolution of the dispute between Alan's estate and Simon on the one hand and the Mattocks on the other in relation to the golf course monies would require the agreement of both Simon and Richard. The defendants refer to the correspondence between Richard and Simon's respective solicitors in relation to the golf course monies (some of which was included in the trial bundle, for example, Richard's solicitors' letters dated 29 June 2021 and 26 April 2022) as an indication of the level of animosity which already exists between the two brothers on this issue.

51.4 The circumstances now existing in relation to the golf course monies are radically different from those which could have been contemplated by the relevant parties (being Alan, Margaret, Simon and Richard) in 2017.

51.5 In any event, this is not a quasi-contractual case. By the time of the split in 2017, the vast majority of the promises and assurances which the court has found in the liability judgment had already been made and the vast majority of the detriment suffered. None of those pre-2017 promises were of a kind which could have led to any reasonable expectation as to the level of debt which Richard will be left with on the business at North Cowton following Alan's death.

51.6 While Richard may not be left with what may have been contemplated in 2017, he will nonetheless be left with an extremely valuable farm and the ability to continue farming it if he chooses to do so. The fact that he has not ended up with what he contemplated in 2017 is like the category of cases where the promise is repudiated before its performance, a consequence of the altered circumstances in which the court is required to fashion a remedy.

51.7 The court is asked not to undervalue the extent of the benefit which the defendants' approach confers upon Richard. It would relieve him of any liability he might have to account to the other partners of (i) the original partnership, including a liability of £130,000 for his overdrawn capital account, and (ii) the North Cowton partnership, including any failure to account for sums received on the sale of livestock and other assets of the partnership. The defendants allege that the accounts Richard has provided indicate he has disposed of capital assets introduced by Alan totalling some £478,000 to pay off trading debts which he incurred in the relatively short time he ran North Cowton after the 2017 split.

Discussion

52 I have determined that Alan's execution of his 2020 will constituted a repudiation of the promises he made to Richard and was unconscionable. I therefore start with the assumption that the simplest way to remedy the unconscionability is to hold Alan's estate to the promises that were made to Richard.

53 The promises made to Richard were that he would inherit North Cowton from his parents. They were not promises that he would inherit North Cowton free of debt or subject to any particular level of debt. Moreover, when the division of the businesses took place in 2017, involving the creation of a separate trading partnership at North Cowton of Alan, Margaret and Richard and the allocation of £625,000 of the Lloyds debt to that trading entity, I do not consider that this apportionment of debt formed part of the promises made by Alan and Margaret to Richard, such that the court has to start with the assumption that the fulfilment of the promise to Richard requires North Cowton to be allocated only the level of

debt with which the North Cowton partnership was allocated at the time of the 2017 split.

54 The context in which the meeting on 19 June 2017 took place is important. I address this at [39-48] and [206-207] of the liability judgment. There was no discussion either at the meeting itself or subsequent to the meeting leading to any agreed division of the bank debt as between the Allerton Grange and North Cowton businesses. David arranged the meeting in circumstances where Alan had told him Richard would have to leave North Cowton because it was losing money and Richard was running the business into the ground. David thought Richard should be given a chance to run the business on his own. Kathryn's notes typed up after the meeting state:

"The following was discussed with Richard:

Richard is to have:
The Farmhouse, Bungalow and Farm Yard
£500K overdraft
Pay rent to mum and dad for the land – (£50/acre??)
Richard is happy to pay a monthly haulage Belford John and wagon

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

55 These were the terms put to Richard at the meeting and he accepted them. There was no negotiation. They were terms which David, Kathryn and Margaret (with Alan's blessing) thought would give Richard a chance to make the business at North Cowton stand on its own two feet. It was never explained in evidence at trial why £500,000 of the bank borrowing (or as Kathryn put it a "£500K overdraft") was being allocated to the North Cowton business. It was certainly never suggested by any of the witnesses that this allocation was intended to be a definitive and permanent division of the Lloyds loan as between the two businesses. Equally, the assumption by the North Cowton business of an overdraft of £125,000 was not done in the context of a considered separation of the overdraft liabilities of the two businesses. It arose as a result of a subsequent telephone conversation between Richard and Alan when Richard proposed that he would need an overdraft of £80,000 and Alan suggested Richard would need a bigger overdraft of £120,000 (which became £125,000) in order to allow himself a six week cushion in which to pay his bills.

56 Mr Thomas's October 2017 notes (which were not available at the liability trial) provide useful insight into the circumstances in which the separation of the businesses took place. His note of his meeting with Alan and Margaret on 16 October 2017 (nearly 4 months after the meeting on 19 June 2017) talks about forming a new partnership of Alan, Margaret and Richard with Richard retiring from the existing partnership. Mr Thomas records that "*[d]ue to the current troubles with the release of monies from the solicitors (2.7M roughly) it is not yet*

advisable to split the farms on a financial basis due to the debts etc" (emphasis supplied). It was envisaged that the golf course monies would be received by 6 April 2018 and the farm debts settled, giving Simon and Richard "*a clean slate*". For that reason, Mr Thomas noted that a further meeting would happen later in the year "*to discuss things further and establish where the client is with regard to the 2.7M*". This demonstrates beyond doubt that no agreement was reached in 2017 as to the basis on which the bank borrowing would be split between the respective farm businesses. There were "troubles" with the release of the golf course monies which it was anticipated would be resolved within six months. In fact, nearly 8 years later, these "troubles" have still not been resolved.

57 Mr Thomas's note of his discussions the next day with Simon and Richard shows that the position regarding the golf course monies was not as straightforward as Alan had caused him to believe. Simon told him he was owed approximately £1M+ of the golf course monies. The note then states: "*Richard is to take on 500k of the 2M bank loan and will set himself up with a 125k overdraft - he will walk away from the business and take no money from the golf course money to be recd*". Although Richard has not been asked questions about this note because it was not available when he gave evidence at trial, I can safely infer that he was aware he had only taken on 25% of the bank borrowing as it stood at that time. It is not clear who told Mr Thomas that Richard was not going to share in the golf course monies. Nor is it clear whether the intention may have been at that time to agree that the liability of the North Cowton business for the bank borrowing should remain at 25% in return for Richard foregoing any claim to a share in the golf course monies. That has never been suggested by either party. In any event, what is now clear from submissions made on Richard's behalf at the remedy hearing is that he still maintains a claim to a share of those monies.

58 Although it was anticipated in 2017 that the bank debt would be repaid from the golf course monies, that has not in fact happened and there is no indication as to when those monies will be received or as to their likely amount when they are received. In the circumstances, I do not see how I can sensibly take account of the golf course monies in determining how the bank borrowing is to be divided between the two farms.

59 I have already decided that Alan never promised Richard that he would receive North Cowton unencumbered by debt or only subject to a particular level of debt. Even if I am wrong in my conclusion that I should not start with the assumption that the fulfilment of the promise to Richard would require North Cowton to be allocated only with the level of debt with which it was allocated at the time of the 2017 split, I consider that such provisional remedy would require revision when looked at in the round against all the relevant circumstances.

60 Alan's promises to Richard did not involve making any promise to him about what was to happen to the golf course monies. I therefore do not consider that it is appropriate to take account of what might in the future be Alan's estate's share of

the golf course monies in determining the appropriate remedy in the proprietary estoppel claim. Regrettable though it may be that there should be further litigation between these parties, if Richard considers he has any entitlement to a share of the golf course monies, he will need to pursue that claim separately.

61 In any event, even if (contrary to my finding) it was part of Alan's promise to Richard that the golf course monies would be available to discharge all of the debts of North Cowton and Allerton Grange, the circumstances in which the court is now required to fashion a remedy are very different from those contemplated when any such promise was made and the detriment suffered. This is for two main reasons. First, the golf course monies have become subject to an intractable dispute with third parties for many years and it is impossible to know when that dispute will be resolved. Second, it is far from clear that Alan's estate's share of the golf course monies will be sufficient to discharge the debts of both North Cowton and Allerton Grange.

62 I am not attracted by Richard's suggestion that the court could award Richard a 50% interest in the estate's share of the golf course monies subject to a cap of the amount of debt above £600,000. Quite apart from the fact that this supposed solution would ensure that Simon and Richard are locked together until the indefinite date upon which the dispute regarding the golf course monies is resolved, there is a more fundamental objection which the defendants identified in their responsive written submissions filed after the remedy hearing.

63 I accept the defendants' submission that, by the time of the split in 2017, the vast majority of the promises made to Richard had already been made and the vast majority of the detriment suffered. None of those pre-2017 promises were of a kind which could have led to any reasonable expectation as to the level of debt which Richard would be left with on the business at North Cowton following Alan's death. Nor was any promise made to Richard as to the level of debt which would be allocated to North Cowton when he signed the deed of variation in 2019.

64 I also accept the defendants' submission that, while Richard may not be left with what may have been contemplated in 2017, he will nonetheless be left with a valuable farm and the ability to continue farming it if he chooses to do so. The level of Lloyds debt which I consider below should be allocated to North Cowton will confer countervailing benefits upon Richard. He will be relieved of any liability he might otherwise have to account to the other partners of (i) the original partnership, including a liability of £130,000 for his overdrawn capital account, and (ii) the North Cowton partnership, including any failure to account for sums received on the sale of livestock and other assets of the partnership.

65 I do not consider that the just outcome is for Richard to receive North Cowton unencumbered or to receive a lump sum equating to its unencumbered value. Recognising that Richard's strong preference is to keep North Cowton, I consider that this can be done by requiring Alan's estate to transfer North Cowton to

Richard (or at his direction) on terms that the business at North Cowton should assume responsibility for a fair proportion of the outstanding indebtedness to Lloyds bank.

66 I accept the defendants' submission that the current debt allocation, by which Allerton Grange is allocated with 79.98% of the combined debts despite being less than 50% of the combined value of the two farms, means the net value of Alan's gift of Allerton Grange to Simon would be only £612,767 and by contrast the net value of the transfer of North Cowton to Richard would be £2.523 million. It would mean that Allerton Grange was not a viable farming unit, with the result that neither Simon nor George would be able to continue farming. That would be unfair to Simon and George and would fail to do justice between the parties.

67 Although there was never any agreement as to the proportion in which the bank debt would be divided between the two farms, had Alan chosen to make that division by reference to the comparative values of the farms, that would not have been unconscionable. That is the approach I propose to adopt.

68 North Cowton has been valued at £3.128 million. This represents 50.81% of the combined value of the farms. Subject to one deduction from the combined debt which I consider ought reasonably to be made, it is just and appropriate that Richard should assume responsibility for 50.81% of the combined debts. That deduction should be whatever represents the outstanding balance of the £250,000 loan taken out by George and Simon in July 2021 (without Richard's knowledge or consent) in order to build a shed or sheds at Allerton Grange. I do not think it is fair to require Richard to assume responsibility for any part of this loan where the outstanding balance is now some £200,000.

69 Taking account of that deduction from the combined debt and on the basis of the figures contained in the bank documents disclosed in advance of the remedy hearing (which will need to be updated), this would result in Richard assuming a bank debt of approximately £1.35 million and the net value of the transfer of North Cowton to him being approximately £1.75 million. If Richard chooses to resume farming at North Cowton, that ought to represent a viable prospect.

70 Allerton Grange and the Marton land have a combined value of £3.028 million. This represents 49.19% of the combined value of the farms. In addition to the outstanding balance of the £250,000 loan taken out in July 2021, the defendants should assume 49.19% of the remaining bank debt which would result in them being responsible for bank borrowing of approximately £1.7 million. This would mean the net value of the gift of Allerton Grange (including the Marton land) to Simon and George would be approximately £1.3 million.

71 In fashioning the appropriate remedy, I consider it essential that a declaration is made that the Marton land belongs to the defendants (or to such person or persons as the defendants direct) and that no part of it belongs to Richard. As noted in

paragraph 38 above, Richard asserts a 25% beneficial interest in the Marton land and threatens to pursue that claim in further litigation. I accept Simon's evidence that, since its purchase in late 2011, the Marton land has been farmed as part of the Allerton Grange unit and has never been treated as part of the North Cowton business. I find that Richard never expected to have any legal or beneficial interest in the Marton land and that his threatened claim to such an interest is opportunistic. It came as a surprise to him that the Marton land had been registered in January 2016 in the names of Alan, Margaret, Simon and himself, as the then partners in A & M Armstrong & Sons. I accept that this was done to reflect the advice given by Grant Thornton regarding the need for Simon and Richard to have an interest in partnership property. The Marton land has since its acquisition been shown as an asset in the accounts of the Allerton Grange partnership, both before and since the businesses were split in November 2017.

72 Accordingly, I consider that Richard should be prevented from asserting any claim in respect of the Marton land as part of the means by which an appropriate remedy is arrived at in this case, and in particular as part of the rationale underpinning the fair apportionment of bank indebtedness by reference to the comparative value of the two farms, the Marton land being an essential part of the Allerton Grange unit. I will make this declaration regarding the Marton land in order to do justice between the parties.

73 If a clean break between Richard and Simon is to be achieved (so that neither is dependent upon the other), much will depend on the attitude taken by Lloyds Bank to the future of its all monies charge over North Cowton. Clearly the most sensible course to adopt would be for separate charges to be granted over Allerton Grange and North Cowton in respect of those farming units' respective shares of the bank debt. However, I fully accept this may not be straightforward, especially if there are prior charges over the land at Allerton Grange which cannot be satisfactorily dealt with. Moreover, it is self-evident that Lloyds will wish to have regard to its own commercial interests and should not be required to act in a way which weakens the strength of its existing security.

74 Those are matters which will need to be considered once the ramifications of this judgment are worked through. I agree with the defendants that all the court can do at this stage is to direct parties to use their best endeavours to procure from relevant third parties the necessary consents, with a view to the Lloyds debt being apportioned in accordance with the above proportions and that, should this not prove possible, the parties should have liberty to apply on notice to the relevant parties for further orders.

Remedy on the 1975 Act claim

75 I have set out the applicable legal principles in respect of this claim at [236]-[239] of the liability judgment.

76 I concluded (at [240]) that Richard was financially dependent upon Alan and (at [241]) that Alan's 2020 will failed to make reasonable financial provision for Richard. I concluded (at [242]) that it would be unwise to reach definitive conclusions about what would be reasonable financial provision for Richard until I had considered the question of what should be appropriate relief to be given to Richard on his proprietary estoppel claim. If my decision in respect of that claim is upheld on any appeal, it is not necessary to consider Richard's alternative claim under the 1975 Act because his reasonable financial needs are met by the relief he has obtained in respect of his proprietary estoppel claim. It is only if my decision in respect of Richard's principal claim is overturned on appeal that it is necessary to consider the appropriate relief to be given to him under his 1975 Act claim.

77 I am required by section 3 of the 1975 Act to have regard to the factors set out in [237] of the liability judgment which, for ease, I repeat here:

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

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

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

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

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

78 So far as the financial resources and financial needs of the beneficiaries of Alan's estate (namely, Simon and George) are concerned, I have regard to the fact that Simon and George stand to inherit a valuable estate which I consider will be sufficient to provide for their financial needs for the foreseeable future. That remains the case even if they assume responsibility for the partnership debts.

79 The evidence suggests that Alan's net estate is in the region of £5-6 million. The combined valuation of the two farms and the Marton land as at the date of Alan's death was over £5.5 million and had risen to over £6 million by January 2024. It is necessary to deduct the combined Lloyds borrowing figure which in December 2024 stood at some £3 million.

80 The uncertainty as to the actual value of Alan's net estate concerns the amount of the golf course monies to which the estate may be entitled (there being a credit balance of some £4 million currently held in escrow in a Santander bank account). Notwithstanding that uncertainty as to the likely amount of the golf course monies

which will be received by the estate, I can safely conclude that making a fair award to Richard in respect of his 1975 Act claim will not have an unfair impact upon Simon and George as the other beneficiaries.

81 Simon gave some evidence as to his and George's own personal circumstances (referred to in paragraph 18 above). Richard objects to this on the basis that there was no indication in Simon or George's evidence at the liability trial that they wished to defend the 1975 Act claim with their own needs-based defence. In any event, Richard says that even if the court gave permission for Simon to rely on this evidence, it is not sufficiently supported by documentary evidence and cannot safely be relied upon. I take the view that Simon's evidence is not sufficiently probative to dissuade me from the conclusion I have reached that making a fair award to Richard in respect of his 1975 Act claim will not have an unfair impact on Simon and George as the other beneficiaries.

82 There are three elements to Richard's 1975 Act claim. First, he asks for relief from liabilities he may have in respect of the two farming partnerships in which he was a partner. Second, since he would no longer be entitled to live in the farmhouse at North Cowton, he asks for provision to be made in respect of his housing needs. Third, he asks for provision to be made in respect of his income needs.

Richard's partnership liabilities

83 Richard currently has unquantified liabilities in respect of his involvement in two farming partnerships, namely, the original partnership A&M Armstrong & Sons commenced in the early 1990s and the North Cowton partnership commenced on 1 November 2017. Since the creation of the North Cowton partnership, Richard has had no involvement with the original partnership which is concerned with the farming business at Allerton Grange. Since Alan's death, as a result of Alan's 2020 will, Richard has not been involved with the farming business at North Cowton. The extent of his liability in respect of both these partnerships is uncertain. No attempts have been made to dissolve either partnership or to enforce the debts for which Richard may be said to be responsible. Richard asks that whatever partnership liability he has is taken into account when assessing his 1975 Act claim.

84 The defendants' principal submission is that provision directed towards relieving Richard from his liability for partnership debts is not properly to be regarded as maintenance. They submit the payment of those debts would not constitute maintenance unless it was shown that Richard's bankruptcy would prevent him from earning his living and that this has never been suggested. They therefore submit that an award directed towards relieving Richard of liability for partnership debts would not constitute maintenance and should not be made.

85 I cannot accept the defendants' submission on this point. I consider it is clear enough that if Richard was made liable to pay the partnership debt to the bank, he

would be made bankrupt because he would not have the means to pay it. On the assumption that his proprietary estoppel claim has not been upheld, he will be left in a position where he has no entitlement to the capital value of North Cowton, is not involved in either farming business, has no property in which to live and is likely to have to declare himself bankrupt due to his inability to pay the partnership debt.

86 I prefer the defendants' fallback submission that in order to ensure fairness between Richard on the one hand and Simon and George as the executors and beneficiaries of Alan's estate on the other, Richard should be indemnified for any partnership liabilities that he may have.

87 I consider that the court has power to make such an order under section 2(4) of the 1975 Act which provides that "*an order under [section 2] may contain such consequential and supplemental provisions as the court thinks necessary or expedient … for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another …*". In circumstances where Simon and George would be farming at both Allerton Grange and North Cowton, it is fair that they should be required to indemnify Richard for the liabilities of those businesses to the bank.

Richard's housing needs

88 The authorities indicate that, of all the needs of an applicant under the 1975 Act, the need for somewhere to live is likely to be especially important. Richard submits that although it was suggested by Lady Hale in Ilott v Mitson (at [65]) that an award of a life interest in a property may be considered to be more consistent with an award for an applicant's maintenance, this is not an immutable rule. He relies on the obiter observation of Browne Wilkinson J in Re Dennis decd [1981] 2 All ER 140 at 145-6 that provision can be made by way of a lump sum to buy a house in which the applicant can be housed but, as Lord Hughes stated in Ilott at [15], it is necessary to remember that the statutory power is to provide for maintenance, not to confer capital on the claimant.

89 The defendants submit that, when the maintenance standard applies, the ordinary course is for the housing provision to be made by way of life interest rather than absolute ownership. They say that, given that Richard has never lived in a property held in his own name and has never had any real security of tenure, a life interest would be a significant improvement on the status quo for him. The fact that both Simon and George are younger than Richard (in George's case by nearly 30 years) points in favour of any housing need for Richard being met by way of the provision of a life interest in a suitable property.

90 In my view, there are two significant factors in this case which justify the provision of a lump sum to Richard in such reasonable amount as will enable him to purchase a house in his own name which is necessary to satisfy his housing needs.

91 First, I consider it essential that there should be a clean break between these parties. Although it might in normal circumstances be thought that giving a life interest to Richard would give him sufficient security of tenure, I do not consider that in the circumstances of this case it would do so. Given the history between the parties, it would be most undesirable for Richard and Sarah to be living in a house owned by the defendants. Only by ensuring that Richard is able to buy a property in which the defendants have no interest will the necessary requirement that there is a clean break between these parties be satisfied.

92 Second, the fact that this is a valuable estate is an important factor which justifies more generous provision for Richard. The reason Alan's estate is more valuable than it would otherwise have been is because approximately one quarter of the estate is derived from what would have been Richard's inheritance from Margaret. Richard was persuaded by Alan to sign the deed of variation because he believed that he would be inheriting North Cowton (with the result that at the very least his inheritance from Margaret would be maintained). In my view, this factor increases the weight of Richard's claim under the 1975 Act. I am entitled to take account of Alan's conduct in this regard and the fact that he had moral obligations towards Richard. Margaret and Alan had made mirror wills. This was fully apparent to everyone present at the time of the deed of variation was signed. Alan knew that Margaret would have expected him to make substantial provision for Richard in any updated will. He also knew Margaret would certainly not have expected Richard to receive nothing.

93 If Richard had not executed the deed of variation, Alan's estate would have been worth considerably less and, on taking his inheritance from his mother, Richard would have been considerably richer, instead of being in straitened circumstances. When the possibility of Richard ceasing to farm at North Cowton was discussed by Alan and Margaret (without Richard's knowledge) in 2014 and 2017, it was always in the context that a house should be purchased for him in the village. Simon suggested in evidence that his parents intended to retain ownership of any house purchased for Richard. However, I do not accept that either of them ever expressed such an intention and find it is more likely than not that they intended Richard should be bought a house which he would own.

94 The farmhouse at North Cowton in which Richard and Sarah currently reside is worth about £600,000 and Richard submits this is the capital sum that should be awarded to him in order to allow him to purchase a property in the vicinity. The defendants say this is a flawed approach. They submit that the North Cowton farmhouse has four bedrooms and is too large for Richard and Sarah's reasonable needs, given that they are a couple in their 60s with no minor children. They complain that Richard has failed to provide any particulars of suitable properties in the local area and rely on internet searches said to show that 2-bedroom freehold properties in the vicinity of North Cowton can be purchased for less than £225,000.

95 The defendants ask the court to have regard to the fact that in her evidence Sarah disclosed she had recently inherited £280,000 and submit that this capital sum should be taken into account when considering Richard's housing needs. Indeed, they go so far as to say that, having regard to Sarah's capital position, it would not be reasonable for Richard to be provided with any award referable to his housing needs.

96 I do not think that the 1975 Act permits me, when taking account of Richard's housing needs, to have regard to Sarah's recent inheritance of £280,000. In any event, even if the 1975 Act did enable me to have regard to this inheritance, I do not consider that it would be appropriate to do so. It is not Richard's money and he is not entitled to make use of it. Sarah has Parkinson's disease. It was clear when she and Richard gave evidence that her condition represents a real concern for them both. Sarah's future care needs are a factor which need to be taken into account. Whilst the future in this regard is difficult to predict, it is likely that Sarah's recent inheritance will be needed in whole or in part to meet those needs.

97 So with these considerations in mind, I need to decide what capital sum represents the fairest figure for Richard to be awarded in respect of his housing needs. I agree with the defendants that Richard and Sarah do not need to live in a house of equivalent size to North Cowton farmhouse, now said to be worth some £600,000. I consider that the sum of £350,000 should be sufficient to permit Richard to purchase a house of a sufficient size to meet his reasonable requirements.

Richard's income needs

98 Richard currently earns the net figure of £28,800 per annum as a machine operator but he is now 61 years old, working unsociable shifts and it is unclear for how long he will be able to maintain this employment. It is also not clear that he will be entitled to a full state pension at the age of 67. He has savings totalling some £45,000, an NFU pension worth about £66,000 and a pension from his current employer worth some £12,000. There is a dispute as to whether he is entitled to a share of the golf course monies and (on the assumption that his proprietary estoppel claim is not upheld and he does not therefore forego his claim to the Marton land) a further dispute as to whether he has a 25% beneficial interest in the Marton land.

99 Richard does not currently have a mortgage or pay rent. He produced a schedule which was not challenged at trial in which he estimated that his and his wife's annual expenditure in a new home would be approximately £38,000, having deducted figures totalling £12,000 for pension and savings. He accepted that he may be able to call upon Sarah to contribute to their expenditure but, in light of Sarah's medical condition, it is not clear how long such contribution might continue.

100 Richard has a life expectancy of another 24 or so years. I was referred by Richard's counsel to the latest Duxbury Tables which show that a 60-year-old male in receipt of a full state pension with an income requirement of £40,000, £30,000 and £20,000 requires a lump sum of £537,000, £369,000 and £205,000 respectively.

101 The defendants submit that the income provision which Richard seeks is grossly exaggerated and has not been calculated with reference to Richard's own evidence as to his current and likely future income needs. They submit that the maintenance standard is restricted to provision which is necessary to meet ordinary everyday expenses. They calculate that allowing Richard expenditure of £2,350 per month would still provide him with a monthly surplus of £50 taking account of his current salary. They say that when Sarah's earnings of £2,000 per month and entitlement to a full civil service pension are taken into account, Richard and Sarah's joint monthly income is £4,600 which produces a monthly surplus of £2,250 or £2,700 if the figure allowed for holiday and socialising is reduced by 50%. Accordingly, the defendants say that Richard has not demonstrated a need for any income provision to be made for his maintenance and no award should be made under this heading.

102 I do not accept the defendants' submission that Richard has failed to demonstrate a need for any income provision to be made for his maintenance. Doing the best I can on the basis of the available estimated figures, I consider that, even without having to assume liability for partnership debt, Richard's reasonable expenditure needs will not be matched by his modest income. He has little in savings or pension entitlements to show for his 37 years farming at North Cowton. I do not think that he will be able to look to Sarah for support, whether in terms of her earned income or her inheritance. For the same reasons that I have given in relation to Richard's housing needs, I consider it essential that there is a clean break between the parties and that a lump sum is paid out of Alan's estate in order to meet Richard's reasonable current and future income needs. Taking account of the inheritance to which Richard would have been entitled but for Alan's conduct in relation to the deed of variation, and the scope that this provides to be more generous to Richard than might otherwise have been justified, I consider that such lump sum should be a further £300,000.

Conclusion on the 1975 Act claim

103 I therefore consider that the remedy to which Richard is entitled on his 1975 Act claim is a total sum of £650,000 to be paid from Alan's estate, being a fair amount in all the circumstances designed to meet his reasonable housing and income needs.

Next steps

104 I invite the parties to agree the terms of an order implementing the conclusions reached in my two judgments and, in default of agreement, to provide short written submissions addressing the issues in dispute as well as dealing with any further

matters (such as costs) which need to be determined. If the parties consider that a remote hearing is required to resolve any outstanding matters, no doubt they will let the court know.