

Neutral Citation Number: [2008] EWHC 2451 (Ch)

Case No: HC 93 X 00969

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 October 2008

**Before :**

**MR JUSTICE BLACKBURNE**

-----  
**Between :**

**Petrus Couwenbergh**  
**- and -**  
**Bilyana Angelova Valkova**

**Claimant**

**Defendant**

-----  
**Jonathan Ferris** (instructed by **Cooke Matheson**) for the **Claimant**  
**Dr Bilyana Valkova** (in person) the **Defendant**

Hearing dates: 22, 23, 24, 28, 29, and 30 April 2008, 1, 2, 6, 7, 8, 9, and 22 May 2008

-----  
Judgment

## **Mr Justice Blackburne :**

### Introduction

1. This is the long-delayed retrial of a probate action concerned to determine which of three wills should be admitted to probate in respect of the estate of Alice Adam. The wills are dated 12 September 1978, 19 October 1990 and 24 October 1990. Mrs Adam died on 10 October 1991. I am therefore required to investigate events which took place upwards of seventeen years ago.
2. Inevitably, with the passage of so many years, recollections have faded and some of the participants have either died or are no longer fit enough to come and give evidence. To add to the difficulties the defendant, Dr Bilyani Valkova, has, for reasons I shall explain, appeared in person. Despite many opportunities offered to her and, while she still had legal representation, those who represented her, she appears to have done little to prepare for this hearing. My task has not been made any easier by the state of the documentation: no chronological bundle of documents has been prepared. Instead, the relevant papers are scattered among several lever-arch files. Nor are the files themselves in chronological sequence. I do not blame the claimant and his advisers for this: they have done the best they can given the problems they have had to face. I have also allowed Dr Valkova considerable latitude over the sudden and late production by her of sheaves of additional documents, most of them in a disordered state and none of them paginated.
3. The circumstances in which these matters have come about are, to say the least, highly unusual.
4. Mrs Adam was born in Poland on 11 August 1900. Alice was the anglicised form of her first name. Her only brother, Eugen Rapke, was born three years later. The family was of German origin. Mrs Adam came to live in this country in 1947. She had been married and divorced before the Second World War. She worked as a cook for a short period after the war before coming to this country. There were no children of her marriage and she never remarried. Her brother Eugen was required during the war to serve in the German Army and his family moved to Germany. He fought at Stalingrad, was captured and was imprisoned in Russia. He must have been fortunate to have survived all of this. After the war he worked as a translator for the US forces in Germany. His wife, Octavia, whom he had married before the war, died in 1986 and he died in 1993. He and Octavia left three children, twin sons (Hansjorg and Harry) born in 1935 and a daughter, Barbara (to give the name its anglicised form) born in 1943. Barbara was formerly married to the claimant Petrus (or Piet) Couwenbergh. They separated in 1984 and divorced three years later. They have two children, Eugene and Claudia. They lived in the Netherlands. Barbara later remarried. She and her second husband, who is also Dutch, live in the Netherlands.
5. Until the very last years of her long life, Mrs Adam remained in frequent contact with her brother Eugen and his family. From time to time one or more of them came over to this country to visit Mrs Adam. From time to time until 1970 or so Mrs Adam would visit them on the continent. I will deal with this in more detail later. In 1954 she purchased 11 Dunster Gardens, London NW6 with the aid of a £300 payment from Eugen. This property remained her home for the remainder of her life. At her death it

was the principal asset of her estate. I was told that it is now worth around £900,000 but with an uncertain property market it may be rather less.

6. On 12 September 1978 Mrs Adam executed a will (“the 1978 Will”) under which she appointed Mr Couwenbergh her executor and, after a £500 legacy to Eugen, left the remainder of her estate in equal shares to Eugen’s two sons, his daughter Barbara (ie to her two nephews and niece) and to Mr Couwenbergh. There is, as I understand it, no issue concerning the validity of that will, the original of which has gone missing.
7. The question raised by these proceedings is whether the 1978 Will was revoked by one or other of the two wills executed in October 1990 (“the 1990 Wills”). By the first of those wills, dated 19 October 1990, Mrs Adam gave the whole of her estate to Dr Valkova whom she appointed to be her executrix. The gift was conditional on Dr Valkova surviving Mrs Adam by 28 days, failing which she gave the whole of her estate to Dr Valkova’s younger sister, Dr Valentina Coffey, whom, in that event, she appointed to be her executrix. That will was witnessed by a Mr and Mrs Doyle. Mr Doyle did not sign his name on the page containing the terms of the will, let alone in the place provided for attestation by the two witnesses, but on a separate page which is otherwise blank. Since that will was subsequently destroyed and only a photocopy of it exists, it is difficult to say where, in relation to the written terms of the will, the sheet containing Mr Doyle’s signature is to be found: it could be on the back of the page containing the will or it could be on another sheet. The position of Mr Doyle’s signature troubled the solicitor, Mr Paul Browne of Milnes & Milnes, who drew up the will. I heard evidence from Mr Browne: it is likely that Mr Doyle signed his name on the reverse side of the page containing the will. At all events a fresh engrossment of it, in identical terms, was prepared for execution. This later will is dated 24 October 1990. It bears the signatures of two Italian brothers, Orazio Di Gregorio and Lorenzo Di Gregorio, as attesting witnesses. Material to these events is that Mr Browne was not present at the time of the execution of either will; indeed, and surprisingly, he never saw Mrs Adam but took her instructions (if they were her instructions) and provided the engrossed copies of the two wills entirely through Dr Valkova. These are matters, including the circumstances in which execution of the 1990 Wills occurred, to which I shall return later. For convenience I refer to the earlier of those two wills as “the Doyle Will” and to the later will as “the Gregorio Will”.
8. Mr Couwenbergh, as the sole executor named in the 1978 Will, entered a caveat on 21 October 1991 in Mrs Adam’s estate and on 4 December 1991 entered an appearance to Dr Valkova’s warning dated 26 November 1991. This was very shortly after he and Barbara (and her family) were told of the existence of the 1990 Wills. Prior to Mrs Adam’s death, they had no inkling that she had made any wills the previous year. On 4 February 1993 Mr Couwenbergh issued the writ in the action endorsed with a statement of claim putting Dr Valkova to proof that the 1990 Wills were duly executed. In the alternative he alleged that at the time the 1990 Wills were executed Mrs Adam lacked testamentary capacity and did not know and approve of their contents. By her defence, Dr Valkova denied these allegations. She counterclaimed for probate in solemn form for one or other of the 1990 Wills.
9. The dispute came on for trial before Carnwath J in July 1998. After a five-day hearing judgment was delivered on 31 July 1998. In the event the due execution of the 1990 Wills was effectively conceded and the trial concentrated on Mrs Adam’s testamentary capacity and the allegation of want of knowledge and approval. Carnwath J found in Dr

Valkova's favour on these issues and he pronounced for the Gregorio Will. Two months later Mr Couwenbergh applied for an extension of time within which to appeal against Carnwath J's order. The application, which came before Gibson LJ and Hale J in the Court of Appeal on 29 March 1999, was refused. They described the appeal as "hopeless". Mr Couwenbergh was left to pay the costs of his unsuccessful application to the Court of Appeal and of the action below. Armed with Carnwath J's order Dr Valkova obtained a grant of probate in her favour on 29 November 2001.

10. There the matter might have rested but for the fact that, at the prompting of Mr Couwenbergh and Barbara (his ex-wife) and her family (whom I will refer to as the Rapke family), the police conducted an investigation into the circumstances of Mrs Adam's death. This led in turn to the tracing of the two Gregorios from whom statements were taken. These statements came to Mr Couwenbergh's and the Rapke family's notice in the course of proceedings concerned with the costs of the litigation. The statements threw considerable doubt on whether the Gregorio Will had been duly executed.
11. On discovering these matters Mr Couwenbergh renewed his application for permission to appeal against Carnwath J's order. By now it was 2004. The application, which came before Ward, Waller and Hale LJJ on 27 May 2004, was successful. The substantive appeal came before Ward, Dyson and Jacob LJJ on 7 February 2005. It too was successful. The Court of Appeal set aside Carnwath J's order of 31 July 1998, including his order that Mr Couwenbergh pay Dr Valkova her costs of the action, and remitted the action for a retrial. They directed that the costs of the action before Carnwath J be reserved to be dealt with at the retrial and ordered Dr Valkova to pay the costs of the appeal, including the costs of the successful application for permission to appeal which had been made the previous May.
12. Although the appeal had been prompted by the discovery of evidence questioning the due execution of the Gregorio Will and, incidentally, had called into question the validity of the earlier Doyle Will, the matter was remitted for retrial without limiting the extent of the retrial. By now, February 2005, it was over 13 years since Mrs Adam's death.
13. But Mr Couwenbergh and the Rapke family were to face further obstacles before the retrial could take place.

#### The attempts to delay the retrial

14. In view of the attempts, on health and public funding grounds, that Dr Valkova has since made to defer the retrial, renewed most recently on the first day of this hearing, and the fact that, at the retrial, Dr Valkova has appeared in person, it is desirable that I chronicle - as concisely as I can - those attempts, the extent to which, initially, she was successful in those attempts (and the basis on which the deferments were granted) and why I was unwilling to accede to Dr Valkova's further application to adjourn the hearing at the start of this retrial.
15. As was her right, Dr Valkova petitioned the House of Lords for permission to appeal against the decision of the Court of Appeal to order a retrial. Although the petition was presented in June 2005 it was not until January 2006 that the matter was dealt with when the petition was refused. Not surprisingly this held up matters: a case management

conference fixed to give directions for the retrial was adjourned pending a decision on the petition.

16. Once the possibility of a further appeal was disposed of and steps were taken to restore the case management conference, the solicitors then acting for Dr Valkova sought to adjourn the matter on the grounds of her ill health. A letter from the solicitors dated 27 March 2006 asserted that Dr Valkova was suffering from pneumonia. A brief medical certificate - from a Dr Clare Highton of the Lower Clapton Group practice - stated that Dr Valkova was unwell with a chest infection and would not be fit to attend court or instruct a solicitor. By April 2006, Dr Valkova's solicitors were writing to say that she was suffering from "lowering blood pressure contributed to by the effect of this litigation". A further doctor's report was promised. On 12 May 2006 Dr Highton furnished another medical certificate. This stated that Dr Valkova had been unwell since March and that:

"She has had chest infections and is now being investigated for possible angina. She is not fit to attend Court or instruct her solicitors. It is unclear how long her illness will last as this depends on the outcome of investigations. However, these are likely to last for some weeks or possibly up to three months."

The result was a further delay in fixing a hearing of the adjourned case management conference.

17. On 31 May 2006 Dr Highton wrote to say that Dr Valkova was awaiting a thallium scan which was scheduled for July. The scan, it was said, would give information about whether Dr Valkova's chest pain was cardiac ischaemic or not. In the meantime, the letter continued, it was "very important that she avoids stress". Dr Highton stated that Dr Valkova was "therefore currently not fit to think about legal matters or instruct solicitors".
18. Dr Highton's further medical report led to another attempt to delay the case management conference, now fixed for 4 July 2006. In the event the hearing took place on that date when the Master declined to order a preliminary issue (sought by Mr Couwenbergh's side) concerned with the due execution of the Gregorio Will. The remainder of the case management conference was adjourned pending a possible appeal from that decision. There was no appeal and the matter came back before the Master on 25 September 2006 when detailed further directions were given. In the meantime Dr Highton provided yet another letter - this one dated 25 July 2006 - to the effect that Dr Valkova was continuing to suffer chest pain brought on by stress and that she had been seen by the Rapid Access Chest Pain Clinic at the Homerton Hospital which in turn had referred her for a thallium scan. Dr Highton stated that until Dr Valkova had had the scan, which was scheduled for late July, it was unclear whether her pain was cardiac in origin and that "she is currently not fit to think about legal matters, to instruct solicitors or attend court."
19. In fact, Dr Valkova did not submit herself to a thallium scan and Dr Highton's letter of 25 July 2006 was the last that was heard of possible cardiac problems until reference was made to the possibility nineteen months later.

20. The adjourned case management conference took place on 25 September 2006. Both sides were represented by counsel. The directions given included provision for amendments to the pleadings, for supplemental disclosure and for exchange of witness statements and expert reports. The time table for these matters envisaged that they would be completed by early February 2007. A direction was also made for the trial to take place in the Michaelmas term of 2007 with a time estimate of ten days.
21. The Legal Services Commission was also represented by counsel at that hearing. This was because, by then, there was a challenge by Mr Couwenbergh to the continued receipt by Dr Valkova of public funding from the Legal Services Commission. In fact, as will appear, Dr Valkova continued to be in receipt of public funding for her representation in the proceedings until shortly before the date fixed for the retrial and long enough to enable all the required steps to be taken to prepare for the trial in accordance with the Master's directions.
22. Although Mr Couwenbergh had been ordered by Carnwath J to pay Dr Valkova's costs of the action culminating in the trial in July 1998 and also the costs of his unsuccessful application to the Court of Appeal in March 1999, in fact he took no steps to pay them. Dr Valkova, in the meantime, had been legally aided throughout. In 2001 an application was made for a stay of the costs orders against Mr Couwenbergh. The application was successful. In the event those costs orders were set aside, as I have mentioned.
23. Following Mr Couwenbergh's successful further outing to the Court of Appeal in February 2005 which had resulted in the order setting aside Carnwath J's original order, directing a retrial and, more particularly, awarding Mr Couwenbergh the costs of that outing, an issue arose as to whether Dr Valkova should pay some or all of those costs - eventually agreed, subject to liability, in the sum of £17,250 - and, if not, whether the Legal Services Commission should pay some or all of them. The matter came on for determination by the costs judge, Master Rogers, in late July 2007. Mr Couwenbergh and Dr Valkova were each represented by counsel. So also was the Legal Services Commission which contended that Dr Valkova could, on the evidence, well afford to pay the £17,250. The oddity of the hearing was that Dr Valkova continued to have the benefit of public funding, granted by the Legal Services Commission, to fight that contention. In the event, the costs judge, in a judgment handed down on 10 September 2007, found that Dr Valkova had failed in earlier statements by her, including an affidavit sworn in September 1998, to disclose certain assets which she owned in Bulgaria which was her country of origin. He made adverse comments on the evidence which she had given, finding it to be "evasive and unreliable". He found that Dr Valkova should pay the costs in issue, failing which the Legal Services Commission should do so.
24. This ruling, together with the findings which led to it, were followed in late September by the Legal Services Commission suspending Dr Valkova's public funding certificate, save for representation by counsel and solicitors at a hearing which came before Lewison J on 24 September 2007. At that hearing further directions were made including a direction that the pre-trial review be fixed for the week beginning 29 October 2007. By then, the trial with its ten-day estimated length of hearing had been fixed to start on Monday 26 November 2007.

25. In fact, the pre-trial review took place on 7 November 2007. It was I who conducted the review. Two days earlier, on 5 November, the Legal Services Commission had discharged Dr Valkova's public funding certificate. Formal notification of that discharge was given a few days later.
26. At the pre-trial review Dr Valkova continued to have the benefit of representation by solicitors and counsel (on a pro bono basis in view of the discharge two days earlier of the public funding certificate). Counsel applied on Dr Valkova's behalf for the trial to be vacated. This was to enable Dr Valkova to challenge the discharge of her public funding certificate. I refused the request and gave further directions for the forthcoming trial. Towards the end of the hearing Dr Valkova's counsel informed me on instructions (Dr Valkova being present) that his client was concerned about her health and, as it was put, that she felt "prejudiced in her ability to represent herself by the medication she is on". This was the first mention on that occasion of any medical problem suffered by Dr Valkova. The matter was left on the basis that, if she wished the court to revisit whether the imminent trial should proceed, Dr Valkova would have to make an application supported by evidence.
27. A few days later Dr Valkova did just that: she applied to have the trial delayed on the ground foreshadowed before me, namely her health. The application, which was made without notice, came before Briggs J on Thursday 21 November in the applications court. Dr Valkova produced two letters from Dr Highton. The first, dated 9 November (two days after the hearing before me) was as follows:
- "My patient has been unwell for some time. She is currently suffering from vertigo due to inner ear dysfunction. This means that she feels dizzy most of the time and at times nauseated. This is partly controlled by Cyclizine but this in turn makes her feel sleepy.
- She has also had a stressful time recently as her mother has been recently diagnosed as having a serious condition which required an operation. She is undergoing ongoing treatment. Under the circumstances Dr Valkova is not fit to return to Court now and is not likely to be for some time."
28. The second, dated 16 November, read as follows:
- "My patient has had a recurrence of her long-standing labyrinthitis. This leads to severe vertigo. She feels extremely dizzy and nauseated. She is unable to keep her balance and is on Cyclizine to try and control her nausea. She also has to take antihistamines if Cyclizine is not enough. This leads to sedation. She is unfit to attend a trial. It is likely her condition will remit within the next three months."
29. Briggs J declined to deal with the matter without giving the other side a chance to be heard. Instead, he directed that Dr Valkova give notice to Mr Couwenbergh and renew her application that afternoon. This she did, but there was insufficient time to deal with the matter that day and the application was adjourned to the trial judge who, in the event, was David Richards J.

30. I take up the story in the words of David Richards J in a short judgment which he delivered on 3 December 2007:

“18. The trial was listed to start before me at 2.00 pm on 26<sup>th</sup> November. Dr Valkova was not in court at that time but her sister, Dr Coffey, who is herself a medical practitioner, was in court to report that Dr Valkova had collapsed as she was leaving home at lunchtime to come to court, that an ambulance had been called and that she had been taken to hospital. Counsel for the claimant submitted that I should proceed immediately with the trial. I declined to do so and adjourned the trial and the application for an adjournment to Thursday 29<sup>th</sup> November. I stated that it would be highly unlikely that a renewed application would succeed unless Dr Valkova agreed in the meantime to an examination by a doctor nominated by the claimant.

19. On the morning of 27<sup>th</sup> November, the claimant’s solicitors located Dr Valkova at St Mary’s Hospital in London and instructed Dr Andrew Norman to examine her, which he did in hospital on the morning of Wednesday 28<sup>th</sup> November.

20. On Thursday 29<sup>th</sup> November, Dr Valkova was still in hospital and was not therefore of course in court. On that morning but before the hearing I had received a further letter from Dr Highton addressed to me in the following terms. It is dated 27<sup>th</sup> November.

“My patient was admitted to St Mary’s Hospital yesterday following a collapse. She has been diagnosed as suffering from orthostatic hypertension. So far tests have not revealed a myocardial infarction but she has been referred on for further tests for Meniere’s disease and will probably require further investigation for chest pain. In 2006 she was referred for chest pain. An exercise tolerance test was alright, but she was referred for a stress ECHO. This has not been undertaken.

Dr Valkova has been extremely stressed recently. She is the main carer for her mother, Maria Valkova, who is also my patient.”

There then followed details of Maria Valkova’s condition and the treatment she had received ... It is accepted that Dr Valkova’s mother is very seriously ill. Dr Highton continues:

“Combined stress with her mother’s serious illness, operation and complications plus physiological pressure means that Dr Valkova’s mental state is currently extremely fragile. She is tearful, stressed, depressed and finding it extremely hard to cope.

She is clearly in no position to undertake any legal matters at present as she is a hospital in-patient. I do hope you are able to defer Court proceedings on humanitarian and medical grounds.””

31. By the Thursday the court had the report of Dr Norman who was the doctor nominated by Cooke Matheson, Mr Couwenbergh’s solicitors. After commenting that, at an earlier stage, Dr Valkova had undergone a cardiograph stress test which, however, showed normal but had declined a stress echocardiograph or thallium scan, Dr Norman noted that Dr Valkova had also claimed to be suffering from osteoporosis but had declined to take any treatment for it. He then referred to her Cyclizine and other medication and stated that, so far as he could ascertain, with one exception none of it had been prescribed by her GP and all, save one, could be bought over the counter. He summarised the position thus:

“...Dr Valkova is not able to attend Court on Thursday 29<sup>th</sup> November. Her current admission to hospital was for different symptoms from those described by Dr Highton in her report - namely chest pain and ‘collapse’ before she was due to attend Court. She has had the symptoms of chest pain before, ascribes them to angina, but has demurred from having them properly investigated in past. No serious cause such as heart disease has currently been found in hospital to account for her symptoms. Prior to her hospitalisation she had reduced her fluid and calorie intake and in effect made herself ill.

She awaits some further tests in hospital but I can see no reason why she should not attend Court next Monday, if necessary in a wheelchair.”

32. David Richards J concluded nevertheless that Dr Valkova was not in a fit state to conduct a proper defence of the proceedings. He observed that her lack of public funding made it imperative that she be in a fit state to conduct proceedings. He appreciated Dr Norman’s views but felt unable to reject what Dr Highton had said. In the circumstances, he adjourned the trial for three months and directed that it be re-listed as a matter of expedition for a hearing not before 1 March 2008. He added:

“...Dr Valkova has to understand that at some point there has to be a resolution to these proceedings and if, when the matter comes back to the court in the early part of next year, there is a further application for an adjournment, she must understand that very different considerations will apply on that second application for an adjournment, the trial having been vacated as a result of her present application. As I say, the court in the end must see that justice is done between both parties and must bring proceedings to a conclusion.”

Dr Valkova was in court assisted by her sister, Dr Coffey, when David Richards J gave judgment. He made an order that unless Dr Valkova by 4.00 pm on Friday 29 February 2008 served further witness statements, served a further report by Dr Walton her medical expert, served a report by a handwriting expert and give further disclosure

by serving a supplemental list of documents alternatively copies of new documents as yet not disclosed she should not be permitted to rely upon any such further evidence, or such new expert evidence, or such further disclosure. He also enjoined her from dealing with the property at Dunster Gardens.

33. Two days later, on 18 December 2007, the new trial date was fixed to start during a five day window beginning on Monday 21 April 2008.
34. The adjournment of the trial during the period fixed for it meant of course that witnesses who had turned up to give evidence from abroad had made their journeys in vain.
35. On 13 February 2008 Dr Valkova was informed that her appeal against the withdrawal of her public funding had failed. She was nevertheless granted limited public funding to make a further application to vacate the impending trial and obtain an extension of time for compliance with the directions made by David Richards J on 3 December. Her application was issued a few days later and served on Mr Couwenbergh's solicitors on 26 February. It came before Mann J on 28 February.
36. Three grounds were advanced: (1) a wish by Dr Valkova to challenge the discharge of her public funding certificate by way of judicial review, (2) continuing ill health and (3) the need to look after her elderly mother (aged 92) who was very frail and suffering from breast cancer. Mann J refused to vacate the trial date. He observed that Dr Valkova's counsel was unable to indicate what the basis was of the intended application for judicial review which, therefore, was to be regarded as entirely speculative. He noted that the further medical certificate, this time by a Dr Woolfson, stated that Dr Valkova was under his psychiatric care, was suffering from a "reactive depressive illness", was "in a state of depression" and "apathetic, concentrates poorly, indecisive, pessimistic, and menology [sic]", that he had prescribed anti-depressants and a tranquiliser and that "in her current medical state I do not think it appropriate for her to give evidence in court". Mann J observed that the medical evidence did not state that Dr Valkova would be incapable of conducting a trial and that, in any event, an adjournment could not occur every time Dr Valkova was unfit to conduct a trial. "There comes a point" he said "when a Claimant is entitled to have the trial of the action which he has commenced". He concluded that that point had arrived and that Mr Couwenbergh should have his trial at the time that had been fixed for it. He also observed that, although it was in everybody's interest that a party should if possible be legally represented, it did not follow that there must always be an adjournment as long as there is a prospect, however speculative, that representation will be forthcoming. He regarded Dr Valkova's prospects of representation as speculative.
37. Mann J then went on to consider Dr Valkova's application to extend the time for compliance with the case management directions which David Richards J had made in December. With "some reluctance" (as he put it) he extended the time for compliance to 10.30 am on 25 March 2008. That was effectively an extension of three and a half weeks. He noted that, apparently, nothing had been done since David Richards J had made his order to comply with it. In granting the extension he recorded "that this is, as far as I am concerned, a final time limit". He recorded that Dr Valkova should understand that this was "almost certainly going to be treated...as a final opportunity".

38. Despite that further indulgence, Dr Valkova failed to serve any further witness statements, or serve a further report by Dr Walton or an expert handwriting report or give further disclosure by the extended time limit. This is a matter I shall return to later.
39. This was not Dr Valkova's last attempt to delay the trial or escape the consequences of her non-compliance with the extended unless order for dealing with the case management directions. By an appellant's notice dated 31 March 2008, ie over four weeks after Mann J's order, Dr Valkova applied for permission to appeal against that order. She sought an extension of time for doing so, a stay of execution, permission to rely on further evidence and variation of the case management directions which Mann J had made by way of extension of the time limits for compliance with the directions made earlier by David Richards J. She had, in the meantime, sought permission to appeal against the decisions made by myself on 7 November 2007 and by Briggs J on 22 November 2007.
40. Her application was dealt with on paper by Rix LJ and resulted in an order dated 18 April 2008. Among the fresh materials placed before the Court of Appeal were two further medical certificates from Dr Highton of the Lower Clapton Group Practice, one dated 7 March 2008 and the other dated 14 April 2008. The later certificate was an expanded version of the earlier one. In them Dr Highton reported that Dr Valkova was suffering from chronic anxiety and depression, poor sleep, vertigo, nausea, dizziness and a dry mouth. She stated - on what basis is not clear - that Dr Valkova was "unable to concentrate to lead [sic] or deal with legal documents", that her psychiatrist had diagnosed her as suffering from a reactive depression and that her medication was only having a modest effect on her symptoms. Dr Highton stated that Dr Valkova's anxiety and stress were "chronic" and that it was hard to say how long this might last except that it was "likely to be a considerable time". She opined that Dr Valkova was "finding it hard to look after herself and is in no position to deal with legal matters". This further medical evidence had all the appearance of a plea for an indefinite adjournment of the trial.
41. Rix LJ refused permission to appeal. In particular, he considered Dr Valkova's application, so far as it turned on her wish to institute judicial review proceedings in respect of the Legal Services Commission's refusal to reinstate her legal aid, to be "totally without merit". He declined, notwithstanding the new medical evidence, to interfere with Mann J's refusal to grant an adjournment of the trial on health grounds. He added that it was "open in theory to Dr Valkova, but I say so without any encouragement, to renew her application to the trial judge". He observed that the outstanding application for permission to appeal against my order of 7 November 2007 and the order of Briggs J of 22 November 2007 raised no separate matters and, in any event, had been superseded by the judgment of Mann J given on 28 February.
42. In theory at least the position was now clear for this long delayed retrial to take place.
43. But Dr Valkova made one final attempt to put off the day of trial when the matter came on before me on the first day of the retrial. She renewed her adjournment application, this time for an adjournment of 20 weeks. She referred to her medical condition, to the opinion that it was "chronic", to her continuing attempt to obtain public funding for her representation (even though no judicial review application had yet been launched) and explained that she felt unequal to the task of representing

herself. She referred to the need to finalise witness statements and other matters concerned with trial preparation. She referred also to her elderly mother's needs.

44. I rejected this further application. It raised no new matters. The need to care for her elderly mother could not possibly justify a further adjournment. As regards the possibility of public funding, Dr Valkova's prospect of securing any had, if anything, diminished even since the application which had come before Rix LJ. This was apparent from an e-mail dated 18 April to Dr Valkova from a Ms Brady of the Central Customer Services Unit of the Legal Services Commission stating that, although it was open to Dr Valkova to make a fresh application for funding, she should be aware that, "unless there has been a material change in the legal merits of your case, funding is unlikely to be granted..." Since Dr Valkova was adducing no fresh evidence beyond what had been before the court at the first trial, it was difficult to see what prospect she could have for making a successful fresh application for funding. The trial therefore commenced.
45. I should add that, after giving that ruling, Dr Valkova has represented herself throughout. I record that at no stage has she given any appearance of being unwell or being other than entirely alert to the course of the proceedings. On the contrary, and rather to my surprise, on the seventh day of the trial I rose early before the luncheon adjournment to enable Dr Valkova, at her own request, to travel back to Dunster Gardens (which is in Kilburn) to collect some documents in time for the afternoon session. She was able to accomplish this journey and be back in court just under two hours later and seemed none the worse for the experience. As to her ability to represent herself, I record that, although her spoken English is heavily accented, Dr Valkova struck me as exceptionally articulate. She appeared to have a full grasp of the factual issues and experienced no evident difficulty in following the course of the evidence. I should also point out that as someone who has co-authored various medical research papers (they were produced for my inspection) and who holds various qualifications, including a doctorate, Dr Valkova has been well equipped, intellectually, to cope with the factual issues which have arisen. Of course, this is the second trial of this matter so that, in any event, Dr Valkova has been no stranger to the issues which arise and to the forensic and other trial processes involved in their elucidation. She was well able to question the various witnesses who gave oral evidence. She addressed me, without evident difficulty, for three and a half hours on the day that I set aside (after a suitable adjournment to enable each side to collect their thoughts) for closing submissions.
46. Conscious that as a litigant in person Dr Valkova, despite her intellectual skills and knowledge of the background facts, was at a disadvantage as against the claimant's side who had the benefit of full legal representation, I allowed her considerable latitude over the questioning of witnesses. For example, I did not stop her from putting leading questions to her own witnesses. I arranged for the claimant's medical expert to return (at some inconvenience to himself) for further questioning by Dr Valkova on a subsequent day to the day which had been set aside for his evidence and directed that Mr Ferris's closing submissions be put in writing and made available to Dr Valkova in good time for her to read and study them before she came to address me. (I note in passing that in one of her written notes sent to me some days after the extended deadline for doing so had expired - see below - Dr Valkova suggested that during the break in his evidence the expert in question, Dr Kelly, had spoken to a

legal representative of Mr Couwenbergh and that when he resumed his evidence Dr Kelly “was very determined to exaggerate everything regarding Mrs Adam”. There was no complaint at the time that this had happened and I had no impression that his evidence had been altered in its emphasis in any respect when he resumed his evidence the next day.) I permitted her to deliver further submissions in writing after the conclusion of all argument and gave her a generous period of time (which she exceeded) within which to do this. She took full advantage of this opportunity by supplying me with many pages of typewritten further closing submissions and continued to supply me with e-mailed further submissions until long after expiry of the extended deadline. I need hardly say that in preparing this judgment I have carefully considered all of Dr Valkova’s written submissions. In so doing it has been necessary to exclude attempts by her, whether deliberate or accidental, to add to the evidence I heard during the trial and focus simply on submissions on that evidence.

### Documents

47. Despite the timetable set initially by the Master and later by David Richards J and later still by Mann J for further disclosure, Dr Valkova produced a number of documents at the trial which had not been disclosed by the deadlines set by the earlier orders. I allowed Dr Valkova to rely on them. I did so notwithstanding that, in at least one case, the disclosure suggested that other related but undisclosed documents existed. On one matter, however, I stood firm on the deadlines set by those orders. This was in refusing Dr Valkova permission to produce and rely on the report of a handwriting expert concerned, as I understood it, with the authenticity of various signatures, mostly, if not exclusively, those of the Gregorio brothers. Not only would it have been unfair on the claimant to have allowed this report to be adduced in evidence so late in the day and long after the expiry of the deadline for its service but it appears that it had been available to Dr Valkova for some months prior to the hearing before me. I nevertheless allowed Dr Valkova to rely on a late witness statement from her mother and another from Mrs Doyle (the surviving witness to the Doyle Will) even though they were only served during the trial itself.
48. Another, quite different, aspect of the documentary evidence available at this trial, which it is convenient to mention at this point, is that a great many documents have come to light, particularly from the Brent Social Services file, that were not before Carnwath J at the 1998 trial. A number of those documents have been of importance in my assessment of Mrs Adam’s testamentary capacity at the time of the making of the 1990 Wills.

### The witnesses

49. With the passage of so many years since the events with which this trial has been concerned it was inevitable that, for reasons of death, absence overseas or physical infirmity, quite a lot of the evidence has been given by written witness statement. The formalities for doing so, in the case of much of the evidence relied on by Dr Valkova, were not observed but I have overlooked that failure. Where appropriate I comment on the weight that I have attached to such evidence which, inevitably, has not been tested by cross-examination.
50. Dr Valkova was in the witness box for almost two days. I did not find her to be a reliable witness. She frequently evaded the questions put to her or responded by

asking a question in reply. Some of her answers I found to be untruthful. Overall, she struck me as calculating and manipulative. She clearly had a strong dislike of Barbara Couwenbergh and to a lesser extent, members of her family. In some of her answers she appeared scornful of their feelings for Mrs Adam and of their concern over her wellbeing and, it would seem, indifferent to the distress that they felt, Mrs Couwenbergh in particular, over the fact that they were not informed of the circumstances of Mrs Adam's death and had no opportunity, because they knew nothing of the arrangements, to be present at Mrs Adam's funeral.

51. Of the other persons who gave evidence in person, I record that I found that all of them did so honestly and in an attempt to assist the court. This includes Mrs Couwenbergh. That said, I have had very much in mind that the events which they were recalling, or endeavouring to recall, occurred very many years ago and that in many cases they were events which at the time they occurred the witnesses would have had no particular reason to regard as significant. It is quite inevitable in such circumstances that recollections become unreliable and that it may be difficult for a witness to differentiate between what truly occurred and what the witness has since convinced himself occurred. For that reason I have attached particular weight to contemporary records where I have good reason to think that the record was compiled very close in time to, if not contemporaneously with or immediately after, the event in question, and where there is no reason to doubt the accuracy of the record's contents.
52. Since there was a very strong challenge by Dr Valkova to some of the evidence given by Mrs Couwenbergh - she being the principal witness of fact from the Rapke family called to give oral evidence - I read the record of Mrs Couwenbergh's cross-examination at the 1998 trial. I did so in fairness to Dr Valkova in case there were points in it which she might have wanted to put to Mrs Couwenbergh but which, for want of experience in such matters, she failed to do. Doing so did not shake my assessment of Mrs Couwenbergh as a witness who, in her evidence, attempted as best she could to give an honest account of events. I should also mention that the only other transcript of evidence given at the 1998 trial which was available was that given by Dr Valkova.

### This judgment

53. I now embark upon the relevant facts as I have found them to be. In what is already a lengthy judgment I make no apology for the detail in which I deal with the facts. I have done so because, given the passage of time since the events in question, the fact that Dr Valkova has represented herself and the fact, as will appear, that I have reached a different conclusion from Carnwath J in 1998, it is right that anyone reading this judgment should know precisely what my conclusions are based upon.

### Contact between Mrs Adam and her family

54. Before coming to the material events leading up to and subsequent to the execution of the 1990 Wills it is convenient that I first set out my findings about the frequency of contact between Mrs Adam and her family (all of them based in mainland Europe) in the years up to her death. I do so because a theme of Dr Valkova was that by the 1980s there was little contact between them, a factor which, when coupled with what was said to be the hostility felt by Mrs Adam towards her brother Eugen, explained,

she said, why Mrs Adam made the 1990 Wills in which, in contrast to the 1978 Will, no provision was made for any members of her family.

55. I find that up to and including 1990 there was frequent, at least annual, visits to Mrs Adam in London by members of the Rapke and Mees families. The Mees family members who had contact with Mrs Adam were Peter Mees and his sister Karin Blum (who were the children of Octavia Rapke's sister) and Karin's two daughters, Daniela and Marijke. Those from the Rapke family itself who visited Mrs Adam included Octavia Rapke, who was Eugen's wife, as well as the claimant, Piet Couwenbergh. Mr Couwenbergh continued to maintain his relationship with Mrs Adam despite his separation from Barbara in 1984 and their divorce three years later. Mr Couwenbergh, who suffered a heart attack in the summer of 1990 and whose continuing health problems since then resulted in his evidence being given by witness statement alone, stated (in a witness statement prepared for the 1997 trial) that when he married Barbara in 1964, Mrs Adam attended the wedding and that she subsequently visited them in Holland, where they made their home, regularly each year in the 1960s. He believed that Mrs Adam stopped visiting them in Holland at about that time or possibly the very early 1970s when, as he recalled it, she was finding it difficult to travel. By 1970 Mrs Adam was 70 years of age. He went on to state that between 1970 and 1980 he and Barbara Couwenbergh visited Mrs Adam in London every two years and that when they did so they always stayed with Mrs Adam at the Dunster Gardens property. It will be recalled that Mrs Adam appointed Mr Couwenbergh to be her executor in the 1978 Will and gave to him a quarter-share of her estate. She obviously got on well with him and reposed confidence in him. In his witness statement, the contents of which I have no reason to doubt, Mr Couwenbergh stated that from 1980 to 1990 he visited Mrs Adam about once a year, again staying with her at Dunster Gardens. He stated that despite his separation from Barbara in 1984 and their divorce in 1987 he continued to visit Mrs Adam on his own. As he put it "I still treated her as one of my family and I was happy to see her". On some of these occasions he would stay with Mrs Adam for between three to four days, sometimes more. His last visits to her were in 1989 (with his younger daughter Claudia) and in January 1990 (again with Claudia). Each of those visits was for only a day or so. He explained that he did not visit her again because he suffered a heart attack in August 1990 and did not feel able for health reasons to come over here to see her before she died the following year.
56. I find that between 1980 and 1990 Barbara Couwenbergh visited Mrs Adam on six occasions, Christmas 1980 (in the company of her niece Gudrun, the daughter of her brother Hansjorg, also known as "Johnny"), in 1981, in 1984, in 1985, in 1987 and twice in 1990, first (and briefly) in May 1990 in the company of her second husband-to-be, Mr Streppel, and again in August 1990, this time in the company of her father, Mrs Adam's brother Eugen.
57. By August 1990 Eugen was 87. He and his sister had not seen each other for some years. There is a dispute over whether Eugen visited Mrs Adam in 1984. Dr Valkova claimed that he did not. Mrs Couwenbergh said that he did. So also, according to her witness statement, did a Frau Else Mitke, an old friend of the Rapke family who lived in Germany but who died in 2006. I prefer the recollection on this issue of Mrs Couwenbergh and Frau Mitke, not least because it is in doubt whether by

1984 Dr Valkova was in full-time residence at Dunster Gardens and therefore in a position to know just who did or did not visit Mrs Adam.

58. Octavia Rapke (that is, Eugen's wife) visited Mrs Adam six times in the 1970s. In 1970 she did so while Mrs Adam was recuperating from an eye operation which left her blind in one eye. The last occasion was in the autumn of 1979 when, in response to a written request from her (the letter was in evidence), Octavia came to stay while Mrs Adam was recovering from a hip fracture for which she had been in hospital intermittently between 9 August and 22 October that year.
59. Other family visitors to Mrs Adam in the 1980s were Gudrun Rapke and Gudrun's father, Hansjorg, in 1989.
60. Although Eugen's visits to his elder sister were very few, possibly only the two after 1980 to which I have referred, he communicated with her by post, mostly at Christmas and on Mrs Adam's birthdays. There is no evidence to indicate whether during the last decade of Mrs Adam's life, they were also in communication by telephone. I have the feeling that they were not. His letters are all in affectionate terms. By the second half of the 1980s, however, Mrs Adam was no longer replying. Whether this was because she was incapable of doing so or, as the Rapke family later suspected but I rather doubt, because the letters were kept from reaching Mrs Adam by Dr Valkova, I do not need to decide. A number of those letters survived. It is not as though they had gone missing in the post or were thrown away on arrival. What seems reasonably clear, and I find, is that neither Eugen nor any other member of the family had given Mrs Adam any cause to be upset or to cease communication. This is not least because the family continued to visit her up to August 1990.
61. In his last letters Eugen pleaded with his sister to hear from her. By Christmas 1985, Octavia (who, as I have mentioned, had nursed Mrs Adam on two occasions in the late 1970s) was gravely ill. Eugen mentioned this to his sister but got no response. By now, Dr Valkova was very much on the scene and, as Eugen's Christmas letter of 1985 shows, he was keen to know, as he put it, who Dr Valkova was and what the nature was of Mrs Adam's relationship with her. "Is she a good person" he asked "or only somebody who is looking after her advantage?" In the same letter he had written that he heard very little of her and that only through others: "...we are very worried about you. Please write to us if you need anything."
62. Ten months later, in October 1986, Eugen wrote to his sister to say that Octavia had died and to convey how devastated and lonely he felt as a result. It is a most poignant letter. He ended it by stating that he was concerned about her (Mrs Adam) and begged her to write. There was no reply.
63. His letter to Mrs Adam at Christmas 1987 asked if she was physically unable to drop him a few lines. "Maybe" he wrote "you are not living in your house anymore as I cannot contact you." He explained how "tortured" he felt by loneliness following Octavia's death. He ended by wishing her all the best and good health. He also mentioned that he had written to thank Dr Valkova and to enquire about her (Mrs Adam). At Christmas 1989 he wrote to his sister to say that he had not heard from her for years. "Please inform me how you are. Mrs Valkova only writes briefly to say that you are keeping fine and that I should not worry." He enquired if she was no longer able to read or write. He sent his love.

64. Eugen's letters to Mrs Adam (and the few that there are from her to him) were all in German. Translations of them were in evidence. There is no reason to doubt the sincerity of the sentiments expressed in them.
65. It appears that from early 1985 onwards Dr Valkova took to writing intermittently to Eugen. Copies were in evidence. The letters are all polite in tone and generally reassuring about Mrs Adam. Thus in a letter of 17 September 1987 Dr Valkova wrote to say that Mrs Adam was well for her age, that "her life is organised quite well and nurses are coming regularly". She stated that Mrs Adam was "very glad to receive your birthday card and she sends a lot of kind regards and best wishes". In December 1989 Dr Valkova sent a Christmas card to Eugen to inform him that Mrs Adam was well and "talks often of you". On 4 March 1990 Dr Valkova wrote to Eugen to say that Mrs Adam often talked of him and Octavia and enjoyed remembering their childhood. She passed on Mrs Adam's best wishes and kind regards.
66. There was no hint of any estrangement in those letters even if they did not, as one might have expected, pass on Mrs Adam's love to her only brother and closest surviving relation. Moreover, it is a puzzle - and when asked about it Dr Valkova had no satisfactory explanation - why it was, if Mrs Adam was in full possession of her faculties (as Dr Valkova maintained) and was capable of writing her name, these letters were written by Dr Valkova. Dr Valkova's response was that Mrs Adam did not want to write them. "I wanted them [Mrs Adam and her brother] to be reconciled" was Dr Valkova's explanation. I do not find that a convincing explanation since I am not persuaded that anything had occurred that called for any reconciliation. She also maintained that Mrs Adam had come to resent her brother. There is some support for this, notably in the evidence of Mr Hallam (to which I shall come), but there is not the slightest reason for it. As will appear, it is doubtful whether by this time Mrs Adam had any consciousness of what was being said to her brother on her behalf by Dr Valkova.
67. Overall the impression that I have, reinforced by a host of family photographs and other communications from days long past, is of a close-knit family of which Mrs Adam was very much a part despite the fact that she lived in London, a long way from them all. As to Mrs Adam herself, she, I sense, was someone who, in earlier days at least, took an interest in family events and in what was happening to family members. I find that this love and family concern were fully reciprocated by the family towards her, evidenced not least by the many and regular visits which she received. This was emphatically not a remote and increasingly infirm elderly aunt whom the family preferred to ignore.

#### Mrs Adam, the person

68. The picture that I have of Mrs Adam is of a person who, despite her German origin and lack of any obvious connection with this country, was happy to make London her home, had no evident wish to return to mainland Europe, and was proud of the house that she owned and occupied in Dunster Gardens. By all accounts, in her earlier days at least, she was a person of lively intellect. In particular, it appears that she took a keen interest in astrology, even to the extent of sending a horoscope to the former Prime Minister, Edward Heath, in November 1975 (to which she received a reply) and was an avid reader.

69. Of small stature, Mrs Adam became physically increasingly infirm as the years passed. She suffered from curvature of the spine and from the late 1970s onwards from a variety of bone fractures. This included the hip fracture in 1979 which led to her sister-in-law, Octavia, coming to stay with her to help get her back on her feet. As I have mentioned, in late 1976 she lost the use of one eye. As the 1980s wore on, she became increasingly immobile physically. By 1987 she was in receipt of a daily meals on wheels service, a daily home help service and daily visits by the district nurse to help with her routine medication.

### 11 Dunster Gardens

70. Mrs Adam had always lived on the ground floor of 11 Dunster Gardens. Until the early 1980s the two upper floors were let out, each floor comprising a separate self-contained flat. The last of her tenants was a Mrs Carter who died in about 1984 and who was in occupation of the first floor. A Miss Horton occupied the second floor. At sometime a Mr Brien was also a tenant. The presence of these tenants provided Mrs Adam with a modest income. In time the upper floors (or one of them) came to be occupied by Dr Valkova and her elderly mother.
71. Mrs Adam's ground floor accommodation was as follows. On entering the house the visitor passed into a narrow hall/passageway from which a staircase gave access to the two upper floors. Immediately to the right on entering was a large front room. Further down the hall/passageway and immediately to the rear of the front room was a much smaller room which Mrs Adam used as her bedroom. Immediately to the rear of that room was a separate lavatory and to the rear of that, moving down the hall/passageway, was a bathroom. At the end of the hall/passageway was a breakfast room, in which Mrs Adam spent much of her time, with a kitchen to the rear. By the late 1980s the front room seems not to have been used.
72. It is far from clear when Dr Valkova first took up residence at the property. She said in her oral evidence that she moved in as Mrs Adam's tenant in around 1984/1985. She used the upper part of the house, I believe the first floor. It is clear that she never paid any rent for the use of the house although she claimed, and I am willing to accept, that she paid or contributed to some of the household bills. That said, the utility bills were in Mrs Adam's name and, curiously, the telephone number remained in her name until long after her death although Dr Valkova made and continued to make use of it. I find that by the late 1980s Mrs Adam did not use the telephone. There was an issue, which I do not need to resolve, over whether by the late 1980s this was because Mrs Adam was being denied access to the telephone by Dr Valkova.
73. Despite having ample opportunity to do so, Dr Valkova has produced no evidence to indicate what bills she paid or what contribution she made to the household outgoings. Indeed, although, having successfully obtained probate of the Gregorio Will as a result of her success at the 1998 trial, Dr Valkova has had full control of Mrs Adam's estate and access to whatever papers were left, including bank statements and the like (Mrs Adam continued to have a bank account up to the time of her death), virtually nothing has been disclosed by Dr Valkova to indicate what the financial arrangements were between herself and Mrs Adam and, not least, what income Mrs Adam received in the last years of her life, much less what became of that income or of Mrs Adam's other possessions. Relevant to this is that, as I shall explain in more detail later, Mrs Adam was induced to sign a general power of attorney in Dr Valkova's favour on 27

December 1986 (“the General Power of Attorney”) which, in turn, had followed the granting by Mrs Adam to Dr Valkova on 15 September 1986 of a home made (although typewritten) power of attorney authorising Dr Valkova to deal with all matters related to Mrs Adam’s ownership of 11 Dunster Gardens including “dealing with the various departments and offices of the London Borough of Brent and the social services and the DHSS”. Not the least of the mysteries is what Dr Valkova’s source of income was at this time since, as she said in evidence and I have no reason to doubt, she was last in receipt of paid employment in around 1984/1985. Dr Valkova, who is now aged 67, was only in her early 40s at that time. Moreover she had several medical qualifications, had co-authored several medical research papers and had worked in the very early 1980s as a lecturer/registrar in experimental pathology and histopathology at the Charing Cross Hospital Medical School. She had also held positions at the Royal Brompton Hospital and St Mary’s Hospital, Paddington.

74. The few bank statements of Dr Valkova that she has produced show her address into late 1990 (the latest of the statements) as 7 Coopersale Road, London E9. That address is where her younger sister, Dr Valentina Coffey, lived with her family. Dr Coffey, it will be recalled, is the beneficiary of Mrs Adam’s estate under the 1990 Wills (and is named as her executrix) in the event that Dr Valkova should not survive Mrs Adam by 28 days. 7 Coopersale Road was also shown as Dr Valkova’s address on the General Power of Attorney which Dr Valkova arranged for a local solicitor, a Mr Bernstein, to prepare. She evidently did not disclose to him that by 1986 she was living, at any rate for a large part of her time, at 11 Dunster Gardens.
75. On 14 October 1985 Brent Council served on Mrs Adam a Housing Act Repairs Notice. It was served because, in the Council’s view, the house was multi-occupied. That can only have been because by then Dr Valkova was in occupation. It is not suggested that there were any other tenants at that time. The bulk of the work which Mrs Adam was required to carry out was to the upper floors which Dr Valkova and, from 1987 onwards, her mother occupied. The mother, Marika Valkova, moved in, it would seem, in 1987. That is what was stated in a witness statement which Dr Valkova produced (and which bears what I was told was her mother’s signature) near to the end of the trial. Dr Valkova accepted that her mother, who is now aged 93, paid no rent to Mrs Adam in return for her occupation of part of the upper floors of the property. Nor was there any evidence that the mother contributed anything towards household outgoings.
76. The works of repair to the property were carried out in 1986. It was not clear quite when they started or quite when they finished. At Dr Valkova’s request certain additional items were included. The overall cost exceeded £10,600 and, in the absence of payment, that cost was charged on the property.
77. To what extent Mrs Adam was aware of and consented to these works is questionable. This was not the least because, according to a note dated 5 September 1986 on the Brent Social Services file, council builders were reported to be doing work in a flat at the property and that “Mrs Adam does not know how it was arranged and is upset about it. Dust and rubble.”
78. In August 1990, Dr Valkova visited the local MP, Ken Livingstone, with a view to his writing, as he did on 21 August 1990, to Brent Council to complain that Mrs Adam

had been required in 1985 to carry out repairs at a time when the property was “an owner occupied single person household”. The letter was written with a view to persuading the Council to waive its charge on the property for the cost of repairs which, by August 1990, had risen in amount (with interest) to £12,000. The information which led to that letter had been supplied, as she accepted, by Dr Valkova. It was plainly false as by October 1985, to Dr Valkova’s knowledge, there were two households at the property, Mrs Adam’s and her own (Dr Valkova’s).

79. The council wrote back on 15 October 1990 to explain that on 18 October 1985 Mrs Adam had applied to it for a special grant towards the cost of the works and had signed a document to say that there were two households. What is more a grant, of a little over £1,000, had been provided. It so happens, however, according to the medical records in evidence, that on 18 October 1985 Mrs Adams was in hospital. She had been admitted on 6 October 1985 and was discharged three weeks later on 27 October 1985. She was reported on admission to be suffering from short term memory loss.
80. The significance of this episode (on the early stages of which I heard evidence from Mr Philip Mitchell, a Brent Council Officer) is that it shows not only that Dr Valkova was putting forward a case through the local MP which she plainly knew was false but also that she did so with a view to avoiding the financial consequences of a Housing Act Notice, the necessity for which had resulted from her presence at 11 Dunster Gardens. Why, despite her presence from 1985 onwards at 11 Dunster Gardens, Dr Valkova should have continued to use her sister’s address for her bank statements and other documents was never satisfactorily explained. It would seem that Dr Valkova used the 7 Coopersale Road address when it suited her to do so.
81. I now come to the circumstances which culminated in the making of the 1990 Wills and what happened thereafter.

#### Mrs Adam’s mental health

82. Well before 1990 Mrs Adam was being reported as suffering from confusion and short term memory loss. This was in addition to her increasing physical frailty and, as time wore on, her diminishing mobility. Hospital admission notes of 9 August 1979 referred to her as “orientated & chatty but not all there”. A home visit report of 25 October 1984 reported that although alert and orientated in person and place Mrs Adam’s short term memory appeared poor as she constantly repeated questions and demands...”. It stated that although she had hearing problems she “doesn’t seem to register what is said to her”. An occupational therapy report of the same date also stated that Mrs Adam suffered from short term memory problems.
83. The following month, on 20 November 1984, a Social Services report noted that Mrs Adam was unsafe with the gas stove. The report then referred to an incident involving the stove and concluded: “this coupled with her memory problems (short term loss) make her a safety hazard.”
84. Mrs Adam’s great-niece, Gudrun, in her witness statement mentioned that in 1984 during a visit she made to London “it was very difficult to talk to Mrs Adam. She did not answer my questions at that time and repeated details of her childhood...”

85. A meals on wheels assessment reported on 9 January 1985 that Mrs Adam's mental state was "poor". While in hospital in October 1985 a nursing record stated (as I have already mentioned) that Mrs Adam tended "to have short term memory [loss]".
86. In his witness statement Mr Couwenbergh stated that from 1988 Mrs Adam's mind "began to wander, her memory sometimes fades". He noted that at around 1987 stories about her earlier life which she had often repeated "changed, parts disappeared and the sequence changed". He also noted that Mrs Adam began to ask questions such as "do you know Eugen Rapke" (Eugen had been Mr Couwenbergh father-in-law) and "have you ever been to Holland I have not". Mr Couwenbergh, as Mrs Adam had clearly once known, was Dutch.
87. Hospital notes on the occasion of another period of in-patient treatment made on 3 August 1987 when she was admitted after being found by the home help in a collapsed state on the floor of Dunster Gardens referred, in a section marked "clinical details", to "dementia". Notes by a member of the medical staff, probably a registrar or the ward doctor, reported that Mrs Adam had been brought in by ambulance and that she did not know why she was in hospital, as she had denied collapsing. The following was also noted:

"Lodger:- found on floor by home-help

- was OK last night

- suffers senile dementia"

The reference to a lodger would appear to be to Dr Valkova. However, Dr Valkova denied having told the maker of the note (or anyone else) that Mrs Adam suffered from senile dementia. It may just be, given the position on the page of the hospital notes of that reference relative to what appears immediately above, that the note was referring in its mention of senile dementia to some other source of information or, possibly, to the writer's own view. I give Dr Valkova the benefit of the doubt on that issue. The notes referred also, as had previous medical and home visit notes, to problems Mrs Adam had had about keeping herself clean. In a section marked "Management of personal care" a Social Services file entry dated 3 November 1987 reported of Mrs Adam: "dressing - independent but needs prompting; ...bathing - independent but will need prompting..."

88. Mr Couwenbergh stated in his witness statement, with reference to his visits to her in 1989 and 1990, that Mrs Adam "did not recognise me and she would ask me 'do you know Pete Couwenbergh?'" to which, he said, he would reply that he knew him. To Mrs Adam's question how he knew this, Mr Couwenbergh stated that he replied: "I see him every day in the mirror", a response that, according to Mr Couwenbergh, Mrs Adam did not understand. Mr Couwenbergh went on to describe how Mrs Adam was surprised to be told by Mr Couwenbergh that Eugen Rapke was his father-in-law (strictly, by then, his former father-in-law) and how she thought that his daughter Claudia, who was with him on those visits, was his wife. His witness statement described also how Mrs Adam would show him a picture and then, some minutes later, show him the picture again.

89. I bear in mind that Mr Couwenbergh, whom I have not seen, is very much an interested party in this litigation as he is entitled to a one-quarter share of Mrs Adam's estate under the 1978 Will. But I do not feel able simply to disregard all of his evidence. Its general thrust is clear: Mrs Adam was having difficulty in recognising persons who should have been wholly familiar to her and she would repeat herself in the course of the same conversation.
90. The witness statement of Claudia Couwenbergh who accompanied her father on his 1989 and 1990 visits was to similar effect. Claudia, who now lives in Dubai and had gone to the trouble of coming to London to be cross-examined on her very brief witness statement, was only 13 years old at the time of the 1989 visit and had only a very hazy recollection of the two visits. That said, I have no reason to doubt the broad impression which she carried of her great-aunt on those two visits and which she described, namely a person who was repetitive in her conversation.
91. Mrs Adam was again in hospital between 24 August and 21 September 1989 (or thereabouts). She had been found on the floor at Dunster Gardens by the visiting district nurse. The hospital discharge summary prepared by the medical registrar noted that Mrs Adam was "unable to give a history and did not know why she had fallen". The summary described her past medical history of various bone fractures, referred to her dependence on a "friend who lived upstairs who is a doctor" - plainly a reference to Dr Valkova - and described other features of her medical condition (including her "severe kyphoscoliosis" ie spine curvature). It stated that a "CNS [central nervous system] examination showed a mental test score of 2 out of 10". She was allowed home "following discussions with her doctor friend upstairs".

#### The events of May 1990 and onwards

92. On 24 May 1990 Mrs Couwenbergh visited her aunt. It was in the very early evening that she arrived. I find that she was greeted on arrival at Dunster Gardens by Dr Valkova who was on her way out for the evening. I find that she was with Mrs Adam until between 10 and 11 pm that evening. Mrs Couwenbergh did not stay at the house because she and Mr Streppel (who subsequently became her second husband) had booked in to a hotel. Mrs Couwenbergh came unaccompanied to see her aunt at Dunster Gardens.
93. In her witness statement for the original trial ("the 1996 witness statement") Mrs Couwenbergh said this of Mrs Adam on that occasion:

"My Aunt was in bed. I greeted her. I took a chair and sat down next to her. She seemed not to be surprised to see somebody in her room. She did not ask how I entered the house, nor who I was. She did not recognise me, but started to talk and ask me if I knew Eugen Rapke. I answered that Eugen Rapke was my father. I tried to bring other names back to her memory: Octavia, my mother and her sister-in-law, my brothers' names, my name, my ex-husband's name, my children's names, but she only repeated the question many times. She seemed only to remember her brother's name: Eugen. She told me that he lives in Poland. I was shocked about her reactions."

In her evidence before me she confirmed that account of her visit. She added slightly to it in her supplemental witness statement made for the purpose of the present trial (“the 2006 witness statement”) in which she said that when she went in to see her aunt:

“Her reaction was very odd. She did not say hello and how nice to see you when I greeted her and kissed her. She just began asking ‘do you know Eugen Rapke’. I then knew something was definitely wrong. She didn't seem to remember me and I was surprised and shocked. She didn't react when I said that Eugen Rapke was my father. I had to adapt to the situation and told her Eugen was no longer living in Poland but had moved to Bavaria and had been living there for many years. ...She kept on asking ‘tell me do you know Eugen Rapke?’ and we had the same conversation again and again going round and round.”

I accept the broad thrust of those accounts. I do so making every allowance for the passage of time, the resentment towards Dr Valkova felt by Mrs Couwenbergh, and Mrs Couwenbergh's financial interest (like that of Mr Couwenbergh) under the 1978 Will.

94. The upshot of Mrs Couwenbergh's May visit which, I accept, disturbed her greatly was that, as she stated in her 1996 witness statement, she reported to her father after she returned how she had found her aunt and her concern over her aunt's condition. She referred to her father's incredulous reaction and to their decision to visit Mrs Adam on her 90<sup>th</sup> birthday that coming August which was less than three months later.
95. Despite his advanced age (Eugen was then 87) father and daughter did indeed visit Mrs Adam that August. They arrived in this country during the evening of Thursday 9 August. Their arrival had been delayed by a week or so because Mr Couwenbergh (by then Mrs Couwenbergh' ex-husband) had just suffered a heart attack and they were naturally concerned about his condition. In answer to a question from myself Mrs Couwenbergh said that she rang up Dunster Gardens and spoke to Dr Valkova to say that they would be delayed because of Mr Couwenbergh's heart attack.
96. Because I was in doubt whether the visit had been at Dr Valkova's invitation (ie to be present and share with Mrs Adam her 90<sup>th</sup> birthday celebration) or had been on the joint initiative of Mrs Couwenbergh and her father, I asked Mr Ferris about the matter in the course of his closing submissions. He stated that the visit had been at Dr Valkova's invitation. I confess that this response somewhat surprised me as it did not seem to be in accord with the tenor of Mrs Couwenbergh's evidence. But I accepted Mr Ferris's response.
97. After closing submissions, but before I had received Dr Valkova's written supplemental closing submissions, Mr Ferris sent me a note in which he drew attention to what he described as the mistaken nature of his response to my question concerned with the initiative for the August 1990 visit. He said, and I accept, that his response had been made in haste (haste because I had left Mr Ferris very little time on

the day set aside for closing submissions in which to respond to what Dr Valkova had said).

98. In her 1996 witness statement Dr Valkova said that it was at her invitation that they had come. By contrast, the clear import of Mrs Couwenbergh's 1996 and 2006 witness statements was that the initiative for their visit came from their side and that Dr Valkova was "distorting" the announcement of their visit, made by telephone, to make it appear as though she had invited them. I find that Dr Valkova did indeed invite Mrs Couwenbergh and her father to visit Mrs Adam (as will appear, this was a matter which featured in the notes made by a Ms Mannion during the afternoon of 13 August 1990 where Ms Mannion records that "after a lot of discussion [in which Mrs Couwenbergh and her father were involved] Mrs Valkova agreed she had written to the family to invite them over ...". But I also find that it had been the intention of Mrs Couwenbergh and her father that they should come over for Mrs Adam's birthday. I find also that Mrs Couwenbergh had contacted Dr Valkova a few days before their intended arrival to inform her of the date in question but that subsequently she had rung to say that their arrival would be delayed by a few days because of Mr Couwenbergh's heart attack.
99. It is necessary at this stage of the narrative to jog back in time. I have already referred to the fact that in September 1986 Mrs Adam signed an authority in Dr Valkova's favour to enable her to deal with matters concerned with 11 Dunster Gardens, with Brent Council and with other agencies and that in December 1986 she executed what I have referred to as the General Power of Attorney, appointing Dr Valkova to be her attorney. In a witness statement dated 9 July 1996 (prepared on Dr Valkova's behalf for the 1998 trial) Jack Raymond Bernstein, a solicitor who was in practice at 203 Kilburn High Street ("a short walk away", as Mr Bernstein put it, from Dunster Gardens) recorded that in about December 1986 he was instructed by Dr Valkova (not, it is to be noted, by Mrs Adam) to prepare a power of attorney (which became the General Power of Attorney) in the standard form for Mrs Adam in favour of Dr Valkova. "I recall preparing the required document" he stated but "I cannot now remember whether or not I attended at the home of Mrs Adam when the document was signed". If he did attend at 11 Dunster Gardens for the signing he would have seen Dr Coffey (Dr Valkova's sister) as it was she (not Mr Bernstein) who, according to the document, witnessed Mrs Adam's signature, but nowhere in his witness statement does Mr Bernstein refer to Dr Coffey.
100. Neither Mrs Couwenbergh nor any other member of the claimant's side was informed of these documents at the time they were signed or for sometime afterwards. Dr Valkova certainly took no steps to tell them. She said that Mrs Adam did not want her brother to be involved. But this scarcely explains why Mrs Adam should not want Mr Couwenbergh to be told. After all, he was her executor under the 1978 Will and was obviously a person whom she trusted to deal properly with her affairs. The failure to inform Mr Couwenbergh is all the more puzzling since on the Brent Social Services file there is a home visit note dated 17 October 1986 stating that it was "agreed that Dr Valkova would deal with all Mrs Adam's finances... left note with Piet (nephew) re finances". That reference was clearly to Mr Couwenbergh although he was inaccurately described as a "nephew". The note - in fact, it would seem, a letter from John Grey who at the time was a senior member of the Social Services

department - never reached Mr Couwenbergh. The next note on the same file is dated 7 July 1987 and is in the following terms:

“T/C from Dr Valkova re letter left by John Grey at Mrs Adam’s house in October. Clarified that this letter was meant for nephew - not Dr Valkova. Dr Valkova stated over phone that nephew did not visit Mrs Adam but she has authority from him to act for Mrs Adam and that she has ‘Power of Attorney’ set up through Mrs Adam’s solicitors.”

Contrary to that note Mr Couwenbergh (the person obviously intended by the reference to nephew) had given no authority of any kind to Dr Valkova to act for Mrs Adam. Nor was it true that Mr Couwenbergh did not visit Mrs Adam. He had been a regular visitor in the past. Moreover, as his witness statement made clear, he had telephoned Dunster Gardens from time to time and had spoken to and was certainly aware of Dr Valkova. If the note is accurate Dr Valkova’s conduct was quite inexplicable. In cross-examination she said that she never saw the letter from Mr Grey that had supposedly been left at Dunster Gardens.

101. Aware that Mrs Adam’s brother and niece were about to pay a visit, Dr Valkova arranged for Mrs Adam to execute an Enduring Power of Attorney (“the EPA”). In contrast to the General Power of Attorney (which, as I have mentioned, had been entered into after Dr Valkova had sought legal advice from Mr Bernstein at his nearby offices in Kilburn High Road) Dr Valkova went to Barnet Law Centre - a wholly different London Borough from the one in which Dunster Gardens is situated - to obtain a printed form of the power. She drove there. She said that she did not involve Mr Bernstein’s firm (or any solicitors) in order “to save the fees”. The form was completed in Dr Valkova’s handwriting. It named herself and Dr Coffey to act jointly and severally as Mrs Adam’s attorneys. It was expressed to apply, without limitation, to all of Mrs Adam’s property and affairs. As it was enduring in nature it was expressed to continue even if Mrs Adam (as donor) should become mentally incapable. According to the date against her signature it was signed by Mrs Adam on 2 August 1990. Her signature was expressed to have been witnessed by Orazio di Gregorio who wrote his signature and gave his address in the appropriate space. Mr Gregorio confirmed in evidence before me that it was indeed his signature. The signatures of Dr Valkova and Dr Coffey were expressed to have been witnessed by Mrs Doyle who lived next door at 13 Dunster Gardens. Mr Gregorio and Mrs Doyle were to be two of the witnesses to the 1990 Wills executed two months later. The date against the signatures of Dr Valkova and Dr Coffey is 7 August 1990. Dr Valkova said, but I do not accept, that it was pure coincidence that the EPA was signed so shortly before the visit of Mrs Couwenbergh and her father. The two were “unrelated” was how she put it.
102. The existence of this document was not made known to Mrs Couwenbergh or her father when they visited a few days later. Nor was its existence made known to Ms Mary Mannion, at the time a Brent Council senior social worker, who became involved in Mrs Adam’s care during the course of the visit by Mrs Couwenbergh and her father. According to a note made by her when she visited Dunster Gardens on 13 August 1990 Ms Mannion, aware of the existence of a power of attorney and aware also of concern about Mrs Adam’s confused state of mind, specifically asked Dr Valkova whether the power was a “power of attorney” or “an enduring power of

attorney”. Ms Mannion’s note (to which I come in detail later) recorded Dr Valkova as stating that it was a power of attorney. In the context of Ms Mannion’s enquiry that answer was plainly intended to indicate that the power was not enduring in nature, ie that it was an ordinary (or general) power of attorney. When asked about this in cross-examination Dr Valkova did not deny the exchange, merely that she had not lied. “I simply said ‘power of attorney’” she replied. I find that to be a disingenuous answer: she plainly knew and intended how her reply would be understood.

103. Nor it seems was the existence of the EPA made known to some at least of various solicitors whom Dr Valkova was to consult later that year in connection with Mrs Adam’s property and affairs. Instead she referred, when appropriate to do so, to the General Power of Attorney granted in December 1986. Dr Valkova’s explanation for not informing Mrs Couwenbergh and her father of the EPA during their visit was that she believed it was for Mrs Adam to inform them.
104. Another document that was signed by Mrs Adam that August (it is dated simply “August”) and is in Dr Valkova’s handwriting except for Mrs Adam’s signature is a document which reads as follows:

“I Mrs Alice Lydia Adam declare that I want my friend and attorney Dr B Valkova to look after me as until now. I give all my property to Dr B Valkova absolutely and appoint her sole executrix.”

At what point in the course of August this document was prepared and signed is not clear and was not established in the course of the evidence. It could very well have been in response to the visit by Mrs Couwenbergh and her father that month and the concern which they expressed during their visit about Mrs Adam’s physical wellbeing and state of mind.

105. The precise course of events during the visit of Mrs Couwenbergh and her father in August 1990 to see Mrs Adam was a source of considerable dispute between Mrs Couwenbergh and Dr Valkova. It so happens that Ms Mannion, the senior social worker to whom I have referred, prepared a detailed record of her involvement in the events that, so far as material, unfolded during that visit. She also gave evidence before me and was cross-examined by Dr Valkova. Before coming to that record I should say something about Ms Mannion’s professional background.
106. By August 1990 Ms Mannion had been a social worker for six or seven years. She held a social work qualification. It was part of her training to take notes of the kind made by her in respect of Mrs Adam. I am satisfied that the record that Ms Mannion compiled was made by her very shortly after (and at the latest within a very few days) of the events to which they relate. Ms Mannion told me and I accept that the record was based upon the contents of a notebook which she carried with her and which she subsequently wrote up to constitute the record that is in evidence. I have no reason to think that the notes as written up (they are in her handwriting) do not constitute an accurate record of the events to which they relate. Given that they are contemporary with the events described in them I prefer them to the recollections of witnesses (unassisted by any contemporary notes) put together many years later.

107. I also add that I have seen nothing to cast doubt on their accuracy. In this connection I mention that in April 1992 and (in a revised form) in June 1997 Ms Mannion prepared a confidential report on Mrs Adam for the Public Trust Office. It followed an earlier draft made, I think, in late 1990 which, in turn, was based on her handwritten notes. It came to Dr Valkova's attention. Already in September 1993 Dr Valkova was contending that it was inaccurate and biased. She made complaints about it. In particular, before me she challenged the accuracy of several paragraphs in it and pointed to the fact that, in response, alterations of (so far as I can see) a minor nature were made to some of those paragraphs. The fact that there were alterations prompted Dr Valkova to challenge Ms Mannion's reliability and indeed her independence. She believed that Ms Mannion was simply doing Mrs Couwenbergh's bidding. I have no difficulty in rejecting those criticisms. Ms Mannion struck me as honest and independent. I have no reason to doubt that she was acting professionally and independently when she made her notes. I regard the criticisms of her subsequent report as immaterial to the accuracy of the notes.
108. Because the notes present such a vivid account of the events that they describe and provide a most valuable insight into Mrs Adam's then state of mind I can do no better than set them out in full (omitting only a very few passages which I do not consider to be material). I have adopted Ms Mannion's spelling of Mrs Couwenbergh and her references to Mrs Adam as Mrs Adams. I have also added the occasional full stop to break up some of the longer sentences and, where appropriate, added an explanatory comment in square brackets. Most of the notes relate to the two weeks between 10 August and 23 August, roughly coinciding with the duration of the visit to this country by Mrs Couwenbergh and her father.
109. They start on 10 August 1990, the day following the arrival in London of Mrs Couwenbergh and her father.

“10 August 1990. Barbara Cowenbergh came into the office to see me about Mrs Adams

She said that she had visited Mrs Adams in May 1990 and was concerned that she was presenting as quite confused. They were concerned that the telephone was also locked in Dr Valkova's room. I explained there was a worker involved [ie the home help] and I would discuss this with her. If she believed that there was some confusion I could arrange for a duty worker to visit on Wednesday 15.8.90. I asked Mrs Cowenbergh to telephone me later that day. Tried to telephone Dr Valkova. Her mother answered, stating she did not understand English. Discussed with Barbara Smith [a senior social work colleague of Ms Mannion]. She said Mrs Adams was able to say what age she was but while interviewing Dr Valkova often answered for her and it was difficult to get Mrs Adams to answer without Dr Valkova. Decision (1) to assess situation to see if there is confusion (2) to discuss with Dr Valkova ...best possible way of helping Mrs Adams if she is confused (3) to consider full medical examination.”

110. The next notes are for 13 August 1990.

13.8.90. 9 am. Mrs Cowenbergh came into the office very agitated and upset stating that Dr Valkova had threatened to have her and her father thrown out of Mrs Adams' home, she said. Dr Valkova has said Mrs Cowenbergh wanted her aunt to have euthanasia. Mrs Cowenbergh was upset by this because she stated she had never said this. She had asked Dr Valkova whether it would be better for Mrs Adams if the property was sold and she moved into Pt III accommodation. Dr Valkova had become very angry saying she did not care for her aunt. She said she did care and she still had concerns ...”

Ms Mannion then referred to Mrs Couwenbergh's concern over her aunt's living conditions and her concern that her aunt had no idea where her pension was or who dealt with her finances.

“I tried to telephone Dr Valkova to see if I could arrange to meet them both to sort out something. Dr Valkova's mother answered the telephone stating she did not understand English (it was later that pm when I saw Dr Valkova that I ascertained the woman I spoke to on the telephone was Dr Valkova's mother). I told Mrs Cowenbergh I would arrange to visit that pm.

An hour later Dr Valkova came to the office to say that “strange people” had visited and called Mrs Adams aunt. I asked what she meant. No answer was given. She stated the “visitors” had not brought Mrs Adams a present for her birthday. I asked whether they were the brother and niece of Mrs Adams and why they had visited for the birthday. Dr Valkova then stated that she had written to Mrs Adams brother and in fact she had met Barbara the niece before in May when she visited. She stated that they were causing Mrs Adams to become agitated and believed they should go. I said Mrs Adams could tell them to go.

She said that Mrs Cowenbergh had said she wanted her aunt to have euthanasia or sell the property and go into an elderly persons home. I asked about confusion - Dr Valkova said in no way was Mrs Adams confused, she was of sound mind and knew what she wanted. I then said the family were concerned about Mrs Adams' living conditions and although this may be totally unfounded I needed to discuss this, also concerns about confusion as if Dr Valkova had ‘power of attorney’ and if Mrs Adams was confused this did change matters. I asked whether it was Power of Attorney or Enduring Power of Attorney. She stated it was Power of Attorney.”

This was a half truth as by 13 August 1990 Dr Valkova had also arranged for Mrs Adams to execute the Enduring Power of Attorney appointing her and her sister as her attorneys. I have already referred to this.

“I stated that there seemed to be a lot of angry feelings between Dr Valkova and the Cowenberghs and if I came to discuss this with Alice Adams then may be I could ascertain what Mrs Adams wanted as if the family were causing her distress how could we possibly deal with this. Dr Valkova said she did not see a need for me to visit. Mrs Adams wanted her brother and niece to go/leave and there was no more to it. I explained I would be there at 4.30 pm and we could all discuss the problem.

1.30 pm. Telephone call from Ms Coffey a friend of Mrs Adams.”

Ms Mannion had plainly not been told by Dr Coffey that she was Dr Valkova’s sister.

“Ms Coffey stated that she was visiting Mrs Adams and she [Mrs Adams] wanted the relatives to leave. I told her that she [Mrs Adams] should tell them to go. Ms Coffey said that they were agitating and upsetting Mrs Adams and if they would not go then Mrs Adams would call the police or involve the police. I said that would be in rights to do so. I asked if I could talk to Mrs Adams on the telephone as I’d arranged to visit at 4.30 pm. I was told that I could not talk to Mrs Adams it was not possible. The conversation ended.

3.45 pm approx. PC David Powell telephoned the office to say Ms Coffey had telephoned the police saying so-called relatives were visiting Mrs Adams and she now wanted them to leave and they would not and she now wanted them removed from the premises. It was implied that the people at 11 Dunster Gardens were not relatives. I said I would be down as soon as possible.”

Of course, Mrs Couwenbergh and her father were relatives: PC Powell had been misled over their identity.

“4.15 pm approx. I arrived at 11 Dunster Gardens. Reasons for visit: (1) to help police calm situation (2) to see whether these were relatives (3) to see if Mrs Adams wanted her brother (?!) removed (4) to discuss confusion. People present: PC David Powell, Dr Valkova, Jack Bernstien (solicitor), Mrs Cowenbergh, Eugen Rapke (brother?) M Mannion (senior social worker) Ms Coffey (friend). In back room Mrs Adams.

When I arrived the atmosphere was tense in my opinion. Mrs Cowenbergh, Mr Rapke, Ms Coffey, PC Powell, Dr Valkova and Mr Bernstien were all in the front living room. The police wanted to know whether Mrs Adams wanted Mrs Cowenbergh and Mr Rapke there. It was said to them that Ms Coffey had stated these were ‘so-called relatives’. After a lot of discussion

Mrs Valkova agreed she had written to the family to invite them over and she had met Barbara Cowenbergh before.

I then went to talk with the solicitor and Dr Valkova. Ms Coffey came into the downstairs bedroom. I requested that she leave and Mr Bernstien agreed. The bedroom we were in was Mrs Adams'. It was in need of decoration. There was an overpowering smell in the room but I am not sure what this was. The room had a dismal aspect about it. The bedding on the bed seemed old and worn. The bed was opposite the door. Behind the door was a bed made up on the floor.

I explained the relatives were concerned about Mrs Adams' living conditions and her finances and her being confused. Mr Bernstien said Dr Valkova had power of attorney. I said if Mrs Adams was confused then this could possibly have to be changed [sic] to Court of Protection. Mr Bernstien and Dr Valkova believed Mrs Adams was not confused. I said I would go in to talk to her. Dr Valkova agreed. The solicitor agreed. The solicitor sat in with me.

Interview. When we went into the back room kitchen area Mr Rapke was talking to Mrs Adams. I requested he leave and that we [Ms Mannion and Mr Bernstien] wanted to talk to Alice Adams.

I introduced myself and explained I was here as friends believed she was upset. Alice said 'no she wasn't'. I said there had been arguments in the house and this had upset her. She said 'she was not upset'. I said I understood it was her birthday. She said 'it was'. I asked how old she was. She stated '87 years old, she was born in 1900'. I said it had been her birthday a couple of days ago. Mrs Adams said 'oh!'."

Mrs Adam's birthday had been on 11 August 1990, two days previously, when she had celebrated her 90<sup>th</sup> birthday, not her 87<sup>th</sup>.

"I said I understood some people had come to visit her. 'Had they' she replied. I asked if she knew who they were. She said no. I asked who she was talking to just before I came in to the room. She couldn't remember nor could she remember dates or months nor what she had eaten.

I said when I came in she was talking to a man. I told her he had said to me previously his name was Eugen Rapke. She said that was her brother but she could not remember visitors being in the house. I told her someone named Barbara Cowenbergh was here. She said that was her niece but she had not seen her. She did not know any visitors were in the house. I asked whether she asked the police to come and remove the people visiting as her friends said she was upset. Mrs Adams said

that she 'did not ask nor want the police to be in her house. She was not upset but why had she lived this long. It was not worth it. She was old'. She told me the house was hers. Mr Bernstien said Mrs Adams often made comments about 'living too long and what was the point'."

It is noteworthy that in a tape-recording made by Dr Valkova in June 1991 of a series of brief exchanges between herself and Mrs Adam (to which I will refer later), Mrs Adam made the same comments, questioning why she had lived so long, stating that she was old, and pointing out that the house was hers.

"I then asked who collected her pension. She did not know. Who paid the bills. She did not know and could not remember. I said I understood Dr Valkova looked after this. She did not remember but she knew the house belonged to herself (Mrs Adams).

Mrs Adams was in her nightclothes. She asked me about the dress I wore and the ornaments in my hair. She was joking and I said she must have worn some unusual things when she was younger. She said 'yes!' She told me she was Polish and she had gone to school where they spoke different languages. She told me her brother lived in Germany. I told Mr Adams I would come to see her again.

I left the room and discussed the situation with Mr Bernstien and Dr Valkova. I said it was clear Mrs Adams had not wanted nor called the police. When I talked to her she did seem somewhat confused in terms of short term memory and not knowing about her finances. I believed it would be best for a consultant to examine Mrs Adams. Dr Valkova said that she did not see the need. She was a doctor and there was no point. I said if there was something radically wrong with Mrs Adams we'd refer to a doctor for examination, surely the same should apply in terms of mental health and also it made her vulnerable. After a lot of discussion Dr Valkova agreed but she stated she wanted the relatives to go. The solicitor agreed. I said Mrs Adams was not agitated by their presence. When I spoke to her she was calm. She joked. But her short term memory did not appear very good. This could have been for a variety of reasons and she needed to see a specialist. I said Dr Valkova was surely acting on Mrs Adams behalf. Mrs Adams said she was not upset, she enjoyed seeing people. She did not call the police and she would not throw anyone out. (Concern: if Mrs Adams is confused then I do not know how much of what she says can be relied on)

Went in to living area with Mrs Cowenbergh, Mr Rapke, police, Ms Coffey of 7 Coopers Sale Rd E19 (friend) Dr Valkova, Mr B (solicitor). After a discussion it was decided the relatives would stay. Dr Valkova expressed her

unhappiness about this and both Dr Valkova and Mrs Cowenbergh openly argued. It was agreed that the relatives would stay and confine themselves to the living room area. I asked Mr Bernstein ...whether there was a conflict of interests in that Dr Valkova was a tenant. Mr Bernstein stated she was not a tenant she was a carer for Mrs Adams. When asked if Dr Valkova's mother also lived there, Dr Valkova said she just visited a lot."

The notion that Dr Valkova was Mrs Adam's carer is, I have to say, at odds with the detailed medical and social services records which described Dr Valkova variously as a lodger and as a tenant. Nor was it true that Dr Valkova's mother was no more than a visitor. In the witness statement by Dr Valkova's 93 year old mother, which (as I have earlier mentioned) Dr Valkova produced during the course of the trial, her mother gave her address as 11 Dunster Gardens and stated that she began residing at that property in or about 1987. Ms Mannion's notes continued:

"Mr Bernstein had become involved as the Council had stated there were tenants there in the house and it was in need of repairs. The Housing did repairs and this cost Mrs Adams £13,000 approx which she has to pay Housing when the house is sold.

We discussed the concerns. I explained that the family had a right to be concerned. I could understand Dr Valkova's feelings but I was there for the best interests of Mrs Adams and because of the open antagonism between the relatives and Dr Valkova. It was difficult to say who should care for Mrs Adams. The relatives agreed that they could not provide full time care because of living in Germany but believed there should be some control over Mrs Adams finance. I explained if Mrs Adams was confused then the best course of action was for Dr Valkova to discuss this with Mr Bernstein and if the family believed they wanted to oppose this then they must seek separate legal representation. The family requested they come to the office tomorrow for me to give them a name of solicitors. It was agreed I would refer Mrs Adams to a consultant re confusion."

This led to a letter by Ms Mannion to Dr Valkova expressing Ms Mannion's concern that Mrs Adam was "presenting as confused" and that, as a result, "it may mean that legally we should be seeking some other form of legislation other than Power of Attorney". Ms Mannion stated in the letter that she therefore wanted to discuss Mrs Adam with Dr Valkova. She also mentioned that she understood there had been "words" between Dr Valkova and Mrs Couwenbergh. In a postscript she suggested a meeting on the Wednesday morning (15 August) when she would be visiting 11 Dunster Gardens. I refer to this letter because Dr Valkova maintained that it had been written before Ms Mannion had visited the property on 13 August and was indicative of her bias and therefore demonstrated her unreliability. I find that the letter was written after Ms Mannion's return from seeing Mrs Adam that day. The reference to the possible inadequacy of Dr Valkova's existing power of attorney, a

matter which had been raised by Ms Mannion with Dr Valkova and Mr Bernstein during her visit that day, makes it fairly obvious that the letter followed rather than preceded her visit to Dunster Gardens.

111. It so happens that the police constable referred to in Ms Mannion's notes, PC Powell, who was called to the house that afternoon was available to give evidence and was called by Mr Couwenbergh's side. PC Powell, I should say, impressed me as an entirely fair witness. On 20 August 1998 (shortly after the first trial) he had provided a statement based on notes in his pocket book which he had with him when he visited Dunster Gardens on 13 August 1990 and which, although usually destroyed after five years, he happened to retain. The pocket book was in evidence. I have no reason to doubt the accuracy of PC Powell's statement notwithstanding that it was made eight years after the visit to which it referred. In that witness statement, he stated, and confirmed when he gave evidence before me, that he was still able to recall his visit even though it occurred all those years previously. He could recall it, he said, because it was unusual in that there were several persons present including two doctors (Drs Valkova and Coffey), a solicitor (Mr Bernstein) and a social worker (Ms Mannion). In the statement he said that following a call to the police alleging that "persons on the premises were impersonating relatives of an elderly lady occupant" he arrived at 11 Dunster Gardens and spoke to Drs Coffey and Valkova. He stated that Dr Valkova claimed that she had a power of attorney "for an elderly lady who I recalled as Miss Rapke." He understood that the two doctors were represented by Mr Bernstein and recalled that he was told that two persons, whom he identified as Mrs Couwenbergh and Mr Eugen Rapke, were claiming to be relatives of the elderly lady who lived at the premises. "As a result" he stated "the two doctors wanted these people to leave". He then continued:

"I tried to confirm this allegation with the elderly lady, Ms Rapke, but I was unable to do so because she was unable to communicate with me. She did not appear to understand what was going on or the content of the doctors' allegations. Initially I was swayed by the account of the two doctors and their solicitor and I formed the opinion that Mrs Couwenbergh and Mr Rapke were making false claims. However, having spoken to Mrs Couwenbergh she explained that Mr Rapke lived in West Germany and was Ms Rapke's brother. She wanted Mr Rapke, her father, to see his sister was not in good health and Mrs Couwenbergh was worried about her. I began to think that Mrs Couwenbergh and Mr Rapke were indeed Ms Rapke's relatives. I could not communicate with Ms Rapke, the elderly lady, who appeared confused, so I spoke to a social worker, Mary Mannion who had also attended the scene. With the help of Mrs Mannion some communication was established and I was satisfied that Ms Rapke was not in a position to formally require Mrs Couwenbergh and her father to leave as she was not aware that they were there. I recorded in my notes that Ms Rapke 'doesn't want them out and she doesn't know that they are here'. I also recorded that no one could make them leave. Ms Rapke was confused with limited short term memory. I also recorded 'refer to her GP consultant'."

Satisfied that there was no ground for police intervention, PC Powell concluded his statement of August 1998 by stating that he left the situation in the hands of “Social Services and all parties concerned”.

112. In his witness statement for this trial PC Powell repeated his recollection that Mrs Adam (as by then he knew the elderly lady to have been) did not recognise Mrs Couwenbergh or her father, seemed unable to communicate with him (PC Powell) “and gave the impression of being a confused elderly person who did not understand what was going on”. In particular, he stated, Mrs Adam did not understand what was meant by allegations that her relatives were being impersonated and was not even aware that they were her relatives. He also stated - and having heard and seen PC Powell give evidence I accept - that his earlier comment that Mrs Adam was “confused with limited short term memory” (in turn based upon the pocket book which referred in terms to “confusion, limited short term memory”) was the opinion which he reached at that time and was not the result of anything he had been told by others.
113. There was also available a witness statement by Mr Bernstein made for the 1998 trial. Mr Bernstein has since died. His statement dealt with the occasion in 1986 when Dr Valkova sought his advice in connection with the General Power of Attorney (I have already dealt with that) and also with the dispute, referred to above, over the enforcement proceedings by Brent Council arising out of the work carried out to 11 Dunster Gardens by the Council. He dated this as May 1990. He stated that it led to two appointments to see Mrs Adam. He described in glowing terms the care which he saw Dr Valkova bestow on Mrs Adam. He said that he chatted to Mrs Adam on those occasions and that there “was no doubt in my mind that she understood what I was saying and gave me no cause to believe that she was not of full mental capacity”. Regarding his visit to 11 Dunster Gardens on 13 August 1990 Mr Bernstein had this to say:

“I also recall making one further visit to 11 Dunster Gardens at the request of Dr Valkova. I am informed that this was on 13 August 1990. I met a man and woman who told me that they were German and I recall the woman stating that she was related to Mrs Adam. On this occasion I recall seeing Mrs Adam in her back room. I think the German man and woman were (for some of my visit) in the front room discussing matter that they did not wish me to hear.

On this occasion, there was a heated dispute concerning Mrs Adam and I recall that the woman wanted her to go into a home. Dr Valkova, on behalf of Mrs Adam, explained to the visitors that Mrs Adam did not want to go into a home. I became rather worried and called the police from Kilburn Police Station. An Officer duly attended and shortly afterwards I left. Throughout this meeting Mrs Adam remained quite calm although she was irritated by the interlopers and wanted them to leave. I suggested that they went to stay in a hotel. I do not think I discussed much, if anything, with Mrs Adam on this visit.

I had no further dealings with either Mrs Adam or Dr Valkova until I was informed that Mrs Adam died. Throughout my dealings with Mrs Adam she appeared to me to be lucid.”

There was no kind of attendance note to accompany Mr Bernstein’s witness statement and it is to be noted that his brief recollection of the visit is at odds with the recollections of PC Powell, Ms Mannion and, as will later appear, Dr Powell, let alone with that of Mrs Couwenbergh.

114. This brings me to Ms Mannion’s notes for 14 August 1990.

“14.8.90. Telephone GP. Spoke to Dr Powell. He stated Mrs Adams had a hip problem, was a diabetic controlled by diet, also had had breast cancer. I said I believed this lady was confused and wanted her assessed. There was no immediate urgency but I believed in terms of overall health it would be good practice for the GP to visit. Agreed.

Dr Powell also gave evidence. He is no relation of PC Powell. Dr Powell, who has long since retired from general practice, was Mrs Adam’s GP and had been since 1982. He said, and the practice’s contemporary medical notes which remarkably have survived were produced in evidence to back this up, that he and his practice partner, Dr Lalvani, saw Mrs Adam on several occasions prior to her death. One of those occasions was when Dr Powell was called to see her on 14 August 1990. Another was, as I shall mention later, when Dr Lalvani was called to see her the following day. Dr Powell was cross-examined by Dr Valkova about his visit on 14 August. He stated that he remembered “very vividly” (the expression he used) the events of that day. He understood that Mrs Couwenbergh wanted her aunt to go into an old person’s home. In a witness statement he made for use at the 1998 trial he stated, and having heard and seen Dr Powell give evidence I accept, that when he saw Mrs Adam on 14 August:

“She did not recognise or know me. She had asked to see me [as he then understood it] and had known me for several years.”

He added that in his opinion this was “not the reaction of a lucid person and another indication of her mental faculty decline”. His contemporary note on Mrs Adam’s medical record stated “assessment required for her confusion or dementia”. In his witness statement of 1998 Dr Powell stressed that this reflected his own concern about Mrs Adam’s state of mental health. In his witness statement for this trial he stated that he seemed to recall that it was Ms Mannion from Brent Social Services who had called him out (a belief supported by Ms Mannion’s notes - see above). He stated:

“I remember that she [Mrs Adam] did not recognise me even though she had known me for about eight years and I had visited her on several occasions during that period. She seemed confused and surprised that I had been called and worried and frightened. There was another person in the room although I cannot remember who it was. Alice was not in bed. She just seemed a confused elderly lady. I had seen others in

that condition that had dementia but I did not consider it was for me to make that diagnosis. She needed to see someone with the degree of expertise I did not possess.”

115. I take up the story again from Ms Mannion’s notes. It is still 14 August 1990.

Interview at office. M Mannion, Mrs Cowenbergh, Mr Rapke. Relatives came to the office. I gave them the relevant information and how to contact solicitors. Again I said it was for the court to decide. Although they had concerns they had not been directly involved for a long time and it may be best for Dr Valkova to still have control over finances. They said they would accept whatever decision but they just wanted the best for their aunt.”

There was then a reference to certain belongings of Mrs Adam which Mrs Couwenbergh said had gone missing.

“Later Mr Fleischman rang of Bennett & Emmanuel to say he would be acting on behalf of the relatives re Court of Protection.”

116. Mr Fleischman of that firm did indeed act for Mrs Couwenbergh and her family in connection with proceedings before the Court of Protection. Mr Fleischmann gave evidence. He recalled visiting Mrs Adam on one occasion. He did so at the invitation of Mrs Couwenbergh who had requested him to see her aunt. Given the passage of time, Mr Fleischmann’s recollection of the occasion was, not surprisingly, limited (“I can remember very little about the visit” was how he put it in his witness statement for this trial) but he could remember seeing Mrs Adam in her bedroom on the ground floor. He also recalled visiting Dr Valkova’s room on the first floor. His impression of Mrs Adam was of an old and frail person but stated that his visit was only brief (not more than 30 minutes) and he was unable to make any assessment of Mrs Adam’s mental state. Ms Mannion’s notes continued:

“...pm. Dr Valkova rang saying she wasn’t satisfied with what I’d said. She felt Mrs Adams should not be medically examined by a consultant. Again a long conversation to explain why this had happened.”

117. This brings me to Ms Mannion’s notes for 15 August 1990.

15.8.90. 11.30 am. Ms Coffey telephoned (here not been able to complete write-up in my notepad. Will finish on my return to work on 20.8.90).”

Dr Valkova drew attention to this comment by Ms Mannion and suggested that what followed did not represent what Ms Mannion had witnessed since she was not at work to see it. But it is plain, as Ms Mannion confirmed, that the notes that followed were what she herself had witnessed. Her reference to writing up her note when she returned to work on 20 August referred to the notes which, as she explained, she made in the notepad that she carried with her. It did not mean that the notes in that pad did

not represent her contemporary record of what passed. It is simply that the write-up of those notes, from which I am quoting, did not take place until she had returned to work on Monday 20 August 1990, a weekend having intervened between her involvement on 17 August (to which I am about to come) and the resumption of her involvement on 20 August.

“[15.8.90] Ms Coffey stated that Mrs Adams was agitated by her visitors and Ms Coffey was requesting that Social Services remove the relatives on behalf of Mrs Adams. I explained what had happened previously and Mrs Adams did not want the relatives removed. Ms Coffey said I was accusing Ms Valkova of not handling Mrs Adams’ finances properly. I explained this was not the concern and that this issue was a matter for discussion between Dr Valkova, Mrs Adams, the solicitors and myself. Ms Coffey then stated: if anything happened to Mrs Adams it would be my fault and she would tell the newspapers and TV etc. I asked what was wrong with Mrs Adams. Ms Coffey stated that she (Mrs Adams) ‘wanted to kill herself’. I asked if she had contacted the GP but she said ‘no!’ It was nothing to do with the GP but me because of the situation I had caused. Ms Coffey was very agitated and I said I would visit Mrs Adams and contact the GP. Ms Coffey stated that was not the solution but we had to move the relatives and make them leave and also not bother Dr Valkova and not let Mrs Adams have a consultant to examine her. I explained that any action I took was in the interest of Mrs Adams. Ms Coffey put the telephone down at this point.

Concerns: I am concerned by Ms Coffey’s reaction and she seemed upset by (1) Mrs Adams having a consultant to examine her (2) she believed we were ‘bothering’ Dr Valkova (3) she did not want me to visit Mrs Adams again or the GP.

Decision: (1) contact the GP and request a visit (2) visit Mrs Adams also to assess the present situation.

12.30 pm. Visited Mrs Adams at her home. I arrived late. GP had examined Mrs Adams. Mrs Adams was in good humour. The GP had asked her some questions. I met the GP after the assessment and discussed the situation and whether Mrs Adams could be referred for psychogeriatric assessment and an overall assessment if this would be helpful to determine what the state of dementia was and whether she had insight into her decisions. The GP agreed to this. I stated I would contact her again.”

The GP who was present on that occasion was, as I have mentioned, Dr Lalvani, a colleague (since retired) of Dr Powell from the GP practice with which Mrs Adam was registered.

118. On 15 June 1992 Dr Lalvani signed a brief report marked “To whom it may concern” in which she commented on her visit to Mrs Adam that day. The report stated that:

“I visited [Mrs Adam] on 15/8/90 at her home address at the request of her niece, who was visiting from abroad, because she thought her aunt was having trouble with her breathing. On examination I did not find Mrs Adam to be breathless. She did not recognise her niece or her elderly brother who had also come to visit her from abroad but she answered my questions put to her about her physical condition in a lucid manner to my satisfaction. However, as I learned that on the previous day a request had been made to the surgery by Social Services Dept. for an assessment of any confusion or dementia, I arranged for this to be done. This assessment was not carried out because the patient did not agree to it.”

The GP practice notes (to which I referred earlier) supported this brief account of Dr Lalvani’s visit. The practice notes also indicated that, on that occasion, it was not just her brother Eugen and her niece Barbara that Mrs Adam did not recognise but Dr Lalvani also. Dr Valkova pointed to the fact that that last observation was “squeezed” in between other notes and had been added later. If this was intended to criticise the accuracy of the observation or suggest it was a subsequent invention I do not accept that there is force in the comment; Dr Lalvani struck me as wholly honest and conscientious. Ms Mannion’s notes continued:

“Went to see Mrs Adams. She seemed in good humour. She remembered she had seen me before. I asked her whether she was upset. She said ‘no!’ She said she had lived a long life and no wish to live longer. She started to talk of Poland. I said Ms Coffey was worried she would ‘take her life’. She said she had lived a long life and was no use. I asked the question again and she said no. I asked whether Barbara and Mr Rapke had upset her by staying. She said no. I believe although Mrs Adams states she has had a long life and it is ‘no use’, in my opinion she did not appear to want to commit suicide and the GP agreed with this.

15.8.90. pm. Dr Valkova rang to express her concerns and say she was not happy that the GP had visited Mrs Adams. I explained what Ms Coffey had said. Dr Valkova said she was not happy about the whole situation and requested to see me. I arranged for her to come at 4 pm on 17.8.90 at the office.”

119. On 15 August 1990 Dr Powell contacted the Central Middlesex Hospital with a view to Mrs Adam being assessed by a psychogeriatrician. The GP practice notes refer to a call from that hospital two days later in connection with arrangements to be made for a domiciliary visit to see Mrs Adam by one of the hospital’s specialists. Dr Valkova was to be contacted about the visit.
120. This brings me to Ms Mannion’s notes for 17 and 20 August 1990.

“17.8.90. Dr Valkova did not arrive. At 5.30 pm when I was leaving the office Dr Valkova said she had tried to get into Social Services but had not been able to and requested another visit. I gave her an appointment for 20.8.90 at 9 am.

20.8.90. Office interview. Present: Dr Valkova and myself. Reason for interview: Dr Valkova wants to discuss present situation. Dr Valkova said Mrs Adams' relatives had now gone home. Dr Valkova asked how I knew that Mrs Cowenbergh and Mr Rapke were the relatives. I asked her the same question. She (Dr V) had told me she had invited them both for Mrs Adams' birthday and in fact she was not suspicious until she had had an argument with Barbara Cowenbergh and it seems there was then a question in her mind about who they were. I asked her to recall the interview of the 13.8.90 when we were all discussing the events and Barbara Cowenbergh showed us all the letters Dr Valkova had sent. They had also shown passports etc. Dr Valkova said she was not happy about the GP visiting on 15.8.90. I explained: Ms Coffey, a friend of herself and Mrs Adams, had telephoned and after a long conversation stated that Mrs Adams wanted to kill herself. That was why I contacted the doctor. I asked if she had known Ms Coffey a long time. She said yes. I asked whether she was a friend or a relative. Dr Valkova said 'why are you asking me all these questions like the police'. I said in assessing a situation to help me know about Mrs Adams her friends etc I ask questions to help me find out what support, networks, contacts etc and asking whether Ms Coffey was a friend or relative was a question that I would ask in relation to an assessment so I could know if there were contacts between people involved. I explained from the happenings of the past few days I had concerns as there seemed to be a lot going on in terms of anger between her and the relatives. Dr Valkova said she was not happy about a consultant visiting Mrs Adams and she believed this should not happen. Again I explained when I visited Mrs Adams I believed she had some confusion and I was not sure she had insight in relation to making decisions but she would have to be assessed fully by a consultant. Dr Valkova said there was no need and was I trying to say she had not taken care of the finances satisfactorily. I said I was sure she looked after the finances adequately and Mrs Adams made her 'power of attorney'. She must have believed she could adequately care for her situation. I went over why I had been asked to visit and everyone was in agreement. I also said my main concern was Mrs Adams and her mental health seemed to have deteriorated and because of this I had requested a consultant to assess. I explained that it may be that she would still take care of the finances if it was believed a Court of Protection was needed. Again Dr Valkova stated she did not see why she should be examined. I said if something was

wrong with Mrs Adams physically then a doctor would be asked to examine her and it was the same for a patient's mental health. I also stated if Mrs Adams had no mental health problems then the relatives could be informed and if she did then it was for her and Mrs Adams' protection to go for a Court of Protection Order. I said I had explained this to the family and they stated they wanted to care for their aunt's finances. I advised them to go and see a solicitor.

NB. Dr Valkova again stated she did not see the necessity for S. Services to have Mrs Adams examined and the home-help who came to Dunster Gardens said she had a client worse than Mrs Adams [the name is supplied] and did she have to be medically examined. As far as she was concerned this didn't happen to [the other person]. I said this was confidential and I was certainly not going to discuss other clients with Dr Valkova and I was concerned by her attitude. She surely knew of confidentiality and each client is assessed on an individual basis. I said I believed the conversation was going around in circles as Dr Valkova did not want Mrs Adams to be medically examined and I found this concerning as it was in her and Mrs Adams' best interests for this to happen. The interview then ended."

121. Ms Mannion's notes now move to 23 August 1990.

"23.8.90. Telephoned Dr Powell's surgery. They had put a referral in to Dr Arnold at Central Middlesex and started to contact me for a joint visit.

Future plans: (1) await contact from consultant for joint visit; (2) solicitors for relatives and Dr Valkova will carry out necessary arrangements for Court of Protection; (3) visit Mrs Adams end of September."

Dr Arnold of the Central Middlesex was, I understand, a psychogeriatrician.

122. This marked the end of Ms Mannion's involvement until the middle of September 1990. From her notes it appears that there was some confusion over the referral to a consultant at the Central Middlesex Hospital in that Mrs Adam was not in Dr Arnold's catchment area. It resulted in steps to refer her to some other consultant. Following a telephone call from Mrs Couwenbergh, Ms Mannion updated Mrs Couwenbergh on the position a few days later.

123. Ms Mannion's next direct involvement with Mrs Adam was on 2 October. The following is Ms Mannion's note of what happened on that occasion:

"2.10.90. Morning visit to Mrs Adams. Reason for visit: to re-establish contact to see if Mrs Adams was well after last incidents ... to discuss future involvement and if necessary future action/support. Present: Mrs Adams, Dr Valkova,

home-help, M. Mannion. Mrs Adams seemed well and was eating her breakfast. She did not remember me. Nor did she remember what happened on her birthday. I asked if she remembered the police coming. She said 'no'. I asked if she remembered seeing Barbara, her brother or Ms Coffey on that day. She said 'no'. She said she could not remember these things. She talked about her brother and said he used to travel a lot. Dr Valkova and the home-help were there throughout the interview. Dr Valkova again said she was not happy about Mrs Adams being medically examined."

124. To strengthen resistance to an examination Dr Valkova enlisted legal assistance. On 5 October, just three days after Ms Mannion's visit, she consulted Messrs David Howard & Co, a firm based at 358 Kilburn High Road which is a short distance from Dunster Gardens. She saw Mr Michael Hallam who was a partner in that firm. Mr Hallam gave evidence. He provided Dr Valkova with a witness statement dated 12 March 1996 which had been before the court at the 1998 trial.
125. It appears that when Dr Valkova called see him, she produced a power of attorney. He did not recall whether it was a general or an enduring power of attorney. Dr Valkova also left with Mr Hallam two letters signed by Mrs Adam, each of which was in Dr Valkova's handwriting. The first, which is dated 20 August 1990, carried the signature of Mrs Doyle (the neighbour from 13 Dunster Gardens who was later to be a witness to the Doyle Will) as witness to Mrs Adam's signature. It was addressed to the Brent Social Services Manager and was in the following terms:

"Dear Sir,

I am a senior citizen and enjoy a quiet living in my home.

Recently I was disturbed by relatives visiting from abroad. They have involved a social officer without any prior consultation with myself. Their aim has been to remove me from my home in which I am happy and able to handle my daily affairs.

This is a serious breach of my personal privacy and right to a quiet life. The social services have been involved in this matter to the extent that they wish me to undergo a medical examination which I do not need; nor do I wish to be examined in this way.

Should there be any further harassment of my life I will place the matter with solicitor, as I have been advised to do, and seek injunction to prevent any further unwanted violations of my privacy. Please ensure that the social worker concerned is advised on this state of affairs. This matter has been forced upon me against my wish without any discussion or consultation.

I am happy and content in my home as I am.

I have given authority long ago to a friend who has been dealing with my matters to my likening.”

I would merely observe that if Mrs Adam was in command of her faculties, it is curious that she should have felt it necessary to have her signature witnessed by a third party and, if she could write her signature, puzzling why she should find it necessary to have Dr Valkova write out the letter for her.

126. The second, which was dated 28 September and was also witnessed by Mrs Doyle and to which the same observation can be made, was simply addressed “Dear Sir”. It was probably intended for the solicitor (unnamed in the letter) whom Dr Valkova was later to consult and who turned out, as I have mentioned, to be Mr Hallam of David Howard & Co. This letter was as follows:

“This is to confirm that I Mrs Alice L Adam definitely do not want any imposed medical examinations and any visits by social workers or any interference by the same in my private life and matters.”

127. Perhaps not surprisingly, Mr Hallam, knowing nothing of Mrs Adam’s circumstances, took this and Dr Valkova’s concern, as Mrs Adam’s attorney and a doctor in her own right, at face value. In accordance with Dr Valkova’s instructions Mr Hallam wrote that same day, 5 October 1990, to Brent Social Services to request that they cease their visits to Mrs Adam. He enclosed the two above mentioned letters signed by Mrs Adam. He commented that the letter of 20 August had not hitherto been sent. I see no reason to doubt the accuracy of that last comment. Quite why, Mrs Adam having signed the letter of 20 August, it was not sent until it went as an enclosure with Mr Hallam’s letter of 5 October was not satisfactorily explained. Dr Valkova was very vague about the matter. She denied that she had drafted the letter for Mrs Adam to sign following (and in response to) Ms Mannion’s visit to Mrs Adam on 2 October at which (as Ms Mannion’s contemporary note showed) Dr Valkova had voiced her unhappiness about Mrs Adam being medically examined. Dr Valkova seemed to think, although I do not accept, that she had gone personally to Ms Mannion to convey to her letter the contents of the letter. This makes little sense. Moreover, if she had, this would almost certainly have featured in Ms Mannion’s notes. There is no mention of such a visit in those notes. The probabilities are that the letter was written in response to Ms Mannion’s 2 October visit but backdated to 20 August to coincide with the end of the visit to Mrs Adam of her brother and Mrs Couwenbergh. I am reinforced in this view by the fact, as appears from Mr Hallam’s witness statement, Dr Valkova gave him some highly misleading information about Mrs Couwenbergh and her father. This is what Mr Hallam’s statement said (I remind myself that Mr Hallam was a witness called by Dr Valkova both at the 1998 trial and at the trial before me):

“It was clear from the letters [the two letters enclosed with Mr Hallam’s letter to Brent Social Service] that Mrs Adam’s interests and wishes were antagonistic to her relatives’ interest and that she was firmly standing up for her independence from them. Dr Valkova explained to me [at her appointment with him on 5 October 1990] that the relatives were Mrs Adam’s brother and her niece who normally lived abroad. Mrs Adam

had not seen them for several years (about 30 years in the case of her brother and 10 years in the case of the niece) and she (Dr Valkova) had invited the brother over as a reconciliation attempt on the occasion of Mrs Adam's birthday. The reconciliation was suggested to Mrs Adam by Dr Valkova in the light of derogatory comments made by Mrs Adam about her brother and niece ever since Dr Valkova started living at Mrs Adam's house. However, the invitation to the relatives had all turned out to be a terrible mistake as the relatives behaved very badly when they arrived, declaring that Mrs Adam's house was theirs and making plain their intention to try and put Mrs Adam into an old peoples' home, irrespective of her wishes. As part of this plan they had sought to enlist the services of a Social Worker (who had not previously been involved in any way with Mrs Adam) from the Social Services Department of the London Borough of Brent."

I have seen no evidence beyond what Dr Valkova has asserted to indicate that Mrs Couwenbergh and her father behaved badly on their visit that August. I do not accept that they stated that Mrs Adam's house was theirs. Nor do I accept that they intended, much less made plain, that Mrs Adam should be put into an old persons home irrespective of her wishes. Nor, of course, was it true that Mrs Adam had not seen her brother for 30 years or Mrs Couwenbergh for 10 years.

128. According to its terms the letter of 20 August was a protest against Mrs Adam being subjected to any kind of medical examination. For it is clear, and I find, that during their visit to Mrs Adam Mrs Couwenbergh and her father had made it clear that they considered that Mrs Adam was no longer mentally capable of managing her affairs and that she should be medically assessed and a decision made about her future care. That view had been supported by the senior social worker, Ms Mannion, and also by Dr Powell of Mrs Adam's GP practice. As has been seen from Ms Mannion's notes, the proposal that Mrs Adam should be medically examined had been stoutly resisted by Dr Valkova and her sister. I find that the wish of Mrs Couwenbergh and her father that Mrs Adam should be medically assessed sprang from a genuine concern about Mrs Adam's state of mental health. That likewise was the concern of Dr Powell and Ms Mannion. If Dr Valkova believed that Mrs Adam was mentally quite capable and that with her assistance she could continue to live in her own home at Dunster Gardens then what was there to fear from such an examination? Why was Dr Valkova so resistant to such a step?
129. There is a note on Ms Mannion's file dealing with Brent's reaction to Mr Hallam's letter of 5 October. The note is as follows:

"8.10.90. Letter received from David Howard solicitor requesting Social Services not to visit. Discussed situation with Ian Steptoe solicitor [of Brent Council]. He stated that power of attorney was valid until proven otherwise and at this present time we would have to follow what Mrs Adams stated via Dr Valkova. He thought it best to no longer be involved at this present time especially if solicitors were pressing Court of Protection. I asked if someone expressed concerns then would

we still be entitled to visit and assess. After discussions it was decided that I would no longer be involved. Telephoned Mr Flashmann [an incorrect reference to Mr Fleischman]. Explained present situation. He is applying for Court of Protection on behalf of the relatives. Informed H/Care organiser. Decision: in view of the solicitors letter I will not be involved. Although at no point has residential care been offered to Mrs Adams, as social services believe it is better to maintain a client in the community. This has been stated to Dr Valkova and the relatives. Peter Clarke, Service Manager, also agreed closure. Home Care service will monitor.”

130. What Mr Hallam did not know when Dr Valkova visited him as Mrs Adam’s attorney on 5 October, because she did not tell him, was that by that date she had already consulted two other firms of solicitors.
131. It appears that sometime towards the end of September 1990, not long after the events of August of that year, Dr Valkova had approached a firm of solicitors called Suriya & Co of Whitechapel Road, London E1. This was with a view to the transfer to herself at no consideration of 11 Dunster Gardens. Whitechapel Road is a very long way from Dunster Gardens. Dr Valkova saw a Mr Michael Twyble, a conveyancing solicitor with the firm. Suriya & Co’s file on the matter has long since gone missing although one or two letters have survived from other sources. It is possible to be fairly precise about the date of Dr Valkova’s approach to Suriya & Co because there is a note in Ms Mannion’s handwriting on the Social Services file to the effect that on 26 September 1990 Mr Twyble telephoned to say that Dr Valkova had visited him.
132. I take up the story in the words of Mahindra Wijesuriya, at the time the principal of Suriya & Co and to whose witness statement dated 9 May 1997 there has been no challenge (and was no challenge at the original trial):

“...Mr Twyble after taking instructions felt suspicious and brought her [Dr Valkova] to my room and asked me to look into the matter and advise him. The value of the property was over £100,000. I remember seeing a Power of Attorney executed by a [Mrs] Adams appointing Mrs Valkova as her attorney. I remember asking Mrs Valkova why Mrs Adams could not execute the transfers. Her replies were not satisfactory.

I asked her [to] obtain a letter from Mrs Adam’s doctor ... that Mrs Adams was of sound mind memory and understanding and further I asked [her] to produce evidence of Mrs Adam’s identity and of her signature and further to produce evidence of Mrs Valkova’s identity. She said that she could produce them and went away. I remember telling Mr Twyble that we should refer this matter to the CID. A few days later, Mrs Valkova came with another man and said all that I asked was unnecessary and if we were unable to attend to it she would go to another Solicitor. I refused to hand back the Deeds but would only forward [them] to her new Solicitor.

I asked Mr Twyble to seek advice from the Law Society and we were advised to hand them to her new Solicitors...”

133. So the deeds were not returned. It would seem that Dr Valkova then consulted other solicitors, this time the firm of Ronald Fletcher & Co of 243 Elgin Avenue, London W9. That Dr Valkova had consulted that firm at all emerged only by chance when, in the course of the present trial, she produced a clip of correspondence of which a letter from Suriya & Co to Ronald Fletcher & Co happened to be a part. That letter, which is dated 11 October 1990, thanked Ronald Fletcher & Co for their letter of 2 October, apologised for the delay in replying and explained that Dr Valkova had contacted Suriya & Co regarding “the granting of a Power of Attorney to ourselves from Mrs Adam in respect of her affairs”. The letter continued:

“We were relatively unconcerned about this possibility, but when Dr Valkova later approached regarding transfer of the property into her name, for no consideration, we were naturally concerned. We contacted the Law Society who suggested that we should contact the relevant department of the Local Authority and also the Court of Protection regarding this matter.

On contacting the Local Authority, we were informed by Mrs Manion [sic] of the Elderly Persons Department that she was aware of the situation as to Ms Adams affairs that they were currently trying to get a medical referral in order that her affairs could be taken over by the Court of Protection. It was her opinion that Ms Adams was very confused and was not in a situation to run her own affairs or to understand what she was doing in signing over a property.

In these circumstances ... we intend to retain the Land Certificate until some more satisfactory state of affairs exist...”

The reference to “property” in that letter is to 11 Dunster Gardens. Although it seems likely that Dr Valkova would have had a copy of the letter of 2 October (and possibly others) and although I asked her to search for that letter (and any other correspondence) Dr Valkova stated that she was unable to find it or any other letters.

134. The probability is, as she agreed in cross-examination, that Dr Valkova had instructed Ronald Fletcher & Co with a view to recovering from Suriya the Land Certificate of 11 Dunster Gardens but, given Suriya & Co’s intention to retain the deeds “until some more satisfactory state of affairs exist[s]”, had dropped her attempt to recover them through that firm. As will appear, she later turned to Mr Hallam of David Howard & Co for further help in the matter.
135. Having sought to persuade solicitors to act for her in respect of a gift to herself of 11 Dunster Gardens, it appears that Dr Valkova then pursued another course. This was to approach yet another firm of solicitors, the fourth since the August visit of Mrs Couwenbergh and her father, namely Milnes & Milnes of Wood Street, Barnet. She instructed a partner in that firm, Mr Paul Browne. She had gone to him on the recommendation of a friend of hers, a Mrs Lawrie who was then living in Barnet.

Mrs Lawrie, in a very brief witness statement, confirmed that she was the contact and that she had been asked by Dr Valkova to recommend a solicitor. She said that she had mentioned Mr Browne as being reliable and whose fees were very reasonable.

136. According to his evidence (Mr Browne supplied a very full witness statement and gave oral evidence before me), he had a meeting with Dr Valkova in his Barnet office on 2 October 1990. He said that Dr Valkova had contacted his office a day or two before the meeting as his receptionist had left him a note to put an appointment in his diary for 4 pm that day to see Dr Valkova. Once again, Dr Valkova had consulted a firm some distance from Dunster Gardens. There is no good reason why Dr Valkova should have gone so far from Dunster Gardens to find a solicitor (even on the recommendation of her friend Mrs Lawrie) instead of using the services of a firm in nearby Kilburn High Road. One of those firms (Mr Bernstein's practice) had been consulted by Dr Valkova over the General Power of Attorney and, in the person of Mr Bernstein himself, had become involved in the events at Dunster Gardens only a few weeks earlier. The other, David Howard & Co, was to be consulted by Dr Valkova three days later.
137. Mr Browne's file on the matter was in evidence. In particular he produced his handwritten notes of the meeting with Dr Valkova on 2 October. The note, after setting out Dr Valkova's name and address, referred to a power of attorney "since 1986" of Mrs Adam. The note stated Mrs Adam's age, correctly, as 90 and referred to her as a widow. It referred to Mrs Adam wanting to make a will and that "all" should go to Dr Valkova who was to be sole executrix. The note then stated:

"Mr Adam - brother (87) in Germany - terminal cancer (think he has children). No other bro/sis."

The note also recorded:

"Send recorded/registered post since post has been mislaid."

138. There is no reason to doubt the accuracy of this contemporary note. Given its contents, it is apparent that Mr Browne was being given incorrect information by Dr Valkova: there was never any suggestion that Mr Adam's brother was suffering terminal cancer. The notion that Dr Valkova "thinks" - for the information could only have come from her - that Mrs Adam's brother had children was clearly misleading. Dr Valkova knew full well, and she could not have forgotten, that Eugen Rapke had children since members of his family had visited Mrs Adam over the years and his daughter, Barbara, had been to 11 Dunster Gardens twice that year, the second occasion being only weeks earlier.
139. Why should Dr Valkova have misled Mr Browne in this way? It was obviously to suggest to him that, although Mrs Adam had relatives, they were remote from her (and, in the case of her brother, near to death) so as to lessen the chance of any questioning over why Mrs Adam should be wanting to give her property to her (Dr Valkova) rather than to members of her own family. And why should Dr Valkova choose a firm of solicitors in Barnet, some distance from Dunster Gardens, when there were others much nearer to home?

140. Three days after her initial meeting with Mr Browne, Dr Valkova instructed a local firm, David Howard in connection with the desire, ultimately successful, to prevent Brent Social Service from continuing their efforts to have Mrs Adam examined by a consultant geriatrician. David Howard's offices were just round the corner from Dunster Gardens. Indeed, it was that firm that had drawn up the 1978 Will.
141. As I have mentioned Mr Browne's attendance note referred to Dr Valkova holding a power of attorney from Mrs Adam since 1986. Mr Browne stated in evidence, and I accept, that Dr Valkova showed him a general power of attorney and that it was the General Power of Attorney which Mrs Adam had granted on 27 December 1986 in Dr Valkova's favour. He was definite in believing, and gave reasons for his belief, that he was not shown any enduring power of attorney. He also stated, and I accept, that if he had been told of the EPA he would not have continued to act in the matter without seeing Mrs Adam in person as the existence of the EPA would have led him to inquire as to Mrs Adam's mental capacity. I am of the opinion that Dr Valkova was careful to produce the General Power of Attorney - and not the EPA - to avoid this very possibility.
142. The following day, 3 October, Dr Valkova rang Mr Browne's office requesting that he give her a call. Later that day Mr Browne rang back and was instructed by Dr Valkova that the will should include what Mr Browne's note of the conversation described as a "proviso" in favour of Dr Coffey. The note described Dr Coffey as a "very good friend". What Dr Valkova did not inform Mr Browne and what, as he confirmed, he did not at the time know was that Dr Coffey was Dr Valkova's younger sister. I find that the concealment of this fact by Dr Valkova was deliberate. It was to avoid arousing Mr Browne's suspicions.
143. On 12 October, Mr Browne's secretary took a call from Dr Valkova enquiring about progress in the matter. By then Dr Valkova had instructed Mr Hallam of David Howard & Co who had written his letter of 5 October to Brent Social Services telling them to cease their visits to Mrs Adam and enclosing the letters signed by Mrs Adam stating that she had no wish to be medically examined. Mr Hallam was no more aware that Dr Valkova had instructed Mr Browne to make a will for Mrs Adam than Mr Browne was aware that Mr Hallam was writing to Brent Social Services to urge Mrs Adam's resistance to a medical examination. Neither firm was aware, because Dr Valkova did not tell them, that she had earlier consulted Suriya & Co with a view to a transfer of 11 Dunster Gardens to herself for no consideration and that, faced with Suriya & Co's suspicions, she had then gone to Ronald Fletcher & Co in order to recover the Land Certificate which Suriya & Co were refusing to return. It is obvious, although Dr Valkova denied that this was so, that she deliberately kept the solicitors she instructed in the dark about the involvement of others in Mrs Adam's affairs and did so to avoid arousing suspicions and to ensure, in the case of Mr Browne, that he should act on her instructions and draw up a will in the terms which she had requested without involving those others. That same day, 12 October, Mr Browne sent a letter, addressed to Mrs Adam, enclosing a draft of the will. The draft, so far as material, was in the same terms as the two October Wills which were to be executed a few days later. The letter mentioned that Dr Valkova had called to see Mr Browne in connection with the will and that, although Dr Valkova had a power of attorney to act, he would "normally expect instructions direct from a client". The letter rehearsed what Mr Browne understood to be Mrs Adam's testamentary

intentions, referred to the draft will which he enclosed, and stated that she, Mrs Adam, should tell him if she wanted any alteration to it. He then stated that:

“As I have not met you and these instructions are via a third party, I would be grateful if you could confirm in writing rather than [on] the telephone.”

144. Three days later, on 15 October, Mr Browne received a handwritten letter, not in Mrs Adam's handwriting but bearing her signature, stating that she was satisfied with the draft and instructing him to go ahead with its finalisation. Two days later, on 17 October, Mr Browne sent off the engrossed will together with instructions for its execution. The letter asked for the final will to be returned so that he could take a copy. It also asked for instructions concerned with the subsequent custody of the will itself.
145. A few days later, Mr Browne received back the Doyle Will. It was dated 19 October 1990. As Mr Doyle's signature, as an attesting witness, was not in the space set aside for the attesting witness to sign but on another sheet (the will, although since destroyed, was, I accept from Mr Browne, on a folded piece of engrossment paper so that there was plenty of blank space on the unused sides) and he had a concern as to whether the will might not be accepted as validly executed, he arranged for a further engrossment, in identical terms, to be sent to Mrs Adam for execution. This engrossment was returned on 26 October signed by Mrs Adam and dated 24 October. It was the Gregorio Will, bearing the signatures as attesting witnesses of Orazio Di Gregorio and his brother Lorenzo. Mr Browne immediately wrote on 26 October to Mrs Adam to acknowledge receipt of the signed will. His letter noted that the original was to be kept by Mrs Adam. He sent a note of his firm's charges which were £28.75. That modest fee was paid, according to the receipt, the same day. I infer that Dr Valkova had called in person to collect the engrossed Gregorio Will and pay Mr Browne's charges.
146. It needs hardly to be stated that, particularly given Mrs Adam's very advanced age, Mr Browne should not have taken instructions for Mrs Adam's will from the very person who was to be the beneficiary of her entire estate under it and have dealt in the matter entirely through that person without seeing Mrs Adam herself, without hearing from her directly what her testamentary wishes were, without establishing what her estate comprised and the identities of those whom she might be expected to benefit and without exercising the greatest care in ensuring that she was fully aware of and approved the will's contents at the time of execution, either by ensuring that her signature of the will was witnessed by a professional person (such as himself), if not by her doctor or some other medically qualified person, so as to avoid any risk of challenge at a later date. But this case is not about Mr Browne's professionalism and I say no more about that aspect of the matter.
147. That was the end of Mr Browne's involvement until shortly after Mrs Adam's death the following October. On 18 November 1991 Dr Valkova visited Mr Browne. His brief attendance note indicated that Dr Valkova brought with her a copy of Mrs Adam's death certificate, that she had instructed others in the administration of Mrs Adam's estate and that “a niece who hadn't been in touch with Mrs Adam before had been in touch earlier this year [ie 1991] causing problems”. I have no reason to doubt that Mr Browne's note accurately set out what he was told by Dr Valkova. The assertion that the niece - it

could only be Mrs Couwenbergh who was Mrs Adam's only niece - had not been in touch with Mrs Adam prior to that year was a palpable untruth. The question is why Dr Valkova should have made such a statement.

148. It is an interesting coincidence, and it may be no more than a coincidence, that on the very day that the Gregorio Will was executed (24 October 1990) Dr Valkova had occasion to consult Mr Hallam of David Howard & Co on a new matter so far as that firm was concerned, namely the continuing dispute with Suriya & Co over that firm's refusal to return the land certificate of 11 Dunster Gardens. I find that it was in order to ensure that Mr Browne was not aware of this further dispute (since its existence would have caused him to question Mrs Adam's capacity to make a will and Dr Valkova's motives in the matter) that Dr Valkova turned again to Mr Hallam for assistance. Mr Hallam decided to visit Dunster Gardens in connection with this further instruction and also in connection with Brent Social Services' attempt to involve themselves with Mrs Adam. His visit took place on 30 October 1990. He made an attendance note of his visit which lasted 30 minutes. This is a significant document because it is the nearest independent account of Mrs Adam's state of mind to the signing of the two wills, to the circumstances which I shall shortly come:

“Attending Mrs Adam at her home, Dunster Gardens, Kilburn NW6 from 2 pm until 2.30 pm. I discussed with Mrs Adam the matter of her title documents which were in the possession of Suriya & Co. She said that she was quite happy for Dr Valkova to give whatever instructions were necessary concerning the property or the deeds relating to it. If the deeds were required back and Suriya & Co were refusing to give them, then I should write to them on her behalf and demand that they be returned to us.

We then discussed the matter of her relatives and the Social Services department of London Boro of Brent. Mrs Adam was adamant that she wanted to have nothing to do with her relatives. She was particularly virulent in her comments about the male relative who had recently come to visit her and who I assumed to be her brother. She referred to him as a “bandit” although it was unclear whether this description arose from incidents that had taken place on their recent visit or whether it is something more longstanding. I got the impression that it was something more longstanding.

We then discussed certain visits she had been receiving from Brent Social Services. She was adamant that she did not wish to receive any visits other than the routine home helps. She explicitly did not want to undergo or partake in any medical examinations.

Mr Adam had a tendency to flit from one subject to another. However, she seemed perfectly to understand any question I put to her and was quite specific in her answers and preferences.

I left her my visiting card and said that she should feel free to telephone me at any time she wished on any matter. I said I would implement her instructions to seek retrieval of her deeds which I would then hold on her behalf. I also confirmed to her that I had already written to Brent Social Services to request that they desist from invading her privacy in accordance with instructions previously given by her attorney, Dr Valkova.

Dr Valkova was present for part of the interview and it was quite clear that she regarded her as [a] close and trusted friend in whom she had complete confidence.”

149. In his witness statement of 12 March 1996 Mr Hallam stated that he had a clear recollection of Mrs Adam on that occasion. He described her as “a small and rather frail looking elderly lady wearing spectacles and surrounded by books and newspapers and a radio to which she was listening. She was fully alert and responded to my questions throughout my meeting with her”. His witness statement continued:

“She was very clear on what she wanted concerning the matters pertaining to my visit. She made it clear several times that she wanted nothing to do with her brother who had recently been to see her and she described him several times as a “bandit”. This expression is a little unusual and has stuck in my memory for that reason. As regards Mrs Adam’s relationship with Dr Valkova, I obtained a clear impression that she regarded her as a close and trusted friend.”

150. In cross-examination Mr Hallam made clear, as his attendance notes indicated, that Mrs Adam did not in terms refer to the “male relative” as her brother or name him but that he inferred (probably as a result of what Dr Valkova had mentioned about the relative at her consultation with him on 5 October) that Mrs Adam was referring to her brother. He recalled that Mrs Adam referred to him several time as a “bandit” although she did not explain why. He recalled that he was quite surprised by this. He said that he had “no doubt” (his words) that Mrs Adam could make decisions although he recalled, even though this did not appear in his attendance note, that she suffered short term memory impairment.
151. At about this time, Dr Valkova contacted the GP surgery with an instruction that the proposed visit by a psychogeriatrician specialist be cancelled. According to Dr Powell’s statement, Dr Valkova said that she held a power of attorney and therefore had a legal right to determine whether or not the appointment went ahead. Dr Powell said that he accepted what she told him as true. The appointment was therefore cancelled. Dr Powell was asked about this by Dr Valkova. He said, and I accept, that he was very angry about her action in insisting that the visit and assessment be cancelled. He was firm in his recollection that it was at Dr Valkova’s insistence, as Mrs Adam’s attorney, that this happened. I accept that evidence.
152. Mrs Couwenbergh, however, was determined not to let matters rest. In October she arranged for Mr Fleischmann to write to the Court of Protection on her behalf to express her concern about her aunt and Dr Valkova’s actions including those made and insisted upon by Dr Valkova in reliance on the power of attorney. The letter

invited the Court to take such steps as were necessary to protect Mrs Adam's position, including attendance upon her by one of the Lord Chancellor's Visitors.

153. On 28 November 1990 Mr Fleischmann wrote to David Howard & Co whom he understood were acting on Mrs Adam's behalf. He wrote to say that on behalf of Mrs Couwenbergh his firm had sought the Court of Protection's intervention. He stated his belief that Dr Valkova's authority was not that of an enduring power of attorney (so indicating that, even then, the existence of the EPA had not been disclosed to Mrs Couwenbergh and her family) and sought confirmation that there would be no objection to a doctor attending Mrs Adam and reporting on her. He also sought confirmation that in the meantime there would be no dealing with Mrs Adam's property. By then Mrs Couwenbergh had become aware, through Ms Mannion (who in turn had been contacted by Mr Twyble of Suriya & Co) that Dr Valkova had sought to have ownership of 11 Dunster Gardens transferred to her.

154. Mr Fleischmann's letter went unanswered. So also did a chasing letter sent on 17 December. By now, December 1990 Dr Lalvani had occasion to visit Mrs Adam once more. The visit took place on 12 December. As her report of 15 June 1992 (see paragraph 118 above) made clear, this was to be the last occasion that Dr Lalvani would see her. This is what Dr Lalvani stated:

“She did not recognise me on this occasion also but I was able to have a normal conversation with her. I asked her if she would allow me to arrange for a specialist to come and see her. She flatly refused and said ‘no, this is my house and I do not want anyone coming here’. This is the last time I saw and spoke to Mrs Adam.”

In her evidence to the court Dr Lalvani stated that Mrs Adam's remark about the house being hers and how she did not want anyone to visit “stuck in my memory” because Mrs Adam expressed herself “so forcefully”.

155. Mr Fleischmann wrote again on 11 January 1991 for a reply to his earlier letter. In the meantime, Mr Hallam of David Howard & Co had written to Mrs Adam to inform her of the correspondence he was receiving from Mr Fleischmann and Suriya & Co (concerning their retention of the deeds to 11 Dunster Gardens) and sought her instructions. He suggested five courses of action: (1) do nothing, (2) sue Mrs Couwenbergh in defamation, (3) sue Suriya & Co over their retention of the deeds, (4) “arrange to obtain your own medical report and assuming the same to be satisfactory send a copy of this to WR Bennett Emanuel & Co” (Mr Fleischmann's firm) and (5) produce to Mr Fleischmann's firm a copy of the EPA “with appropriate instructions to them and to Suriya & Co for the return of the documents...”.

156. It is evident that there was a delay in obtaining instructions in response to this letter because on 17 January 1991 Mr Hallam was writing to Mr Fleischmann acknowledging his chasing letter of 11 January and saying that his firm was awaiting instructions from the client.

157. By this time, the Court of Protection had instructed Dr Alexander Fullerton, one of the Lord Chancellor's Medical Visitors to see Mrs Adam, examine her and report back to the Court.

158. Dr Fullerton, who has since died, provided a statement to the police on 29 September 1999. Among other medical qualifications he held a fellowship of the Royal College of Psychiatrists. He retired in 1995 after 45 years in practice. He had frequently worked for the Court of Protection, seeing on average 20 patients a year. He would be provided with a dossier on the patient he was to visit in which there would be background information about the patient and a Court Warrant. In the case of Mrs Adam, Dr Fullerton was given to understand that Dr Powell was her doctor. He arranged to visit Mrs Adam on 18 January 1991. Before doing so he contacted Dr Powell out of professional courtesy. He also contacted Brent Social Services. He spoke to Ms Mannion who forwarded to him a copy of the report she had prepared on Mrs Adam for the Court of Protection some weeks earlier. (This is the report, or an earlier version of it, the accuracy of which Dr Valkova was later to challenge.) His purpose in visiting Mrs Adam was to examine her with a view to establishing if she was fit to manage her affairs and property and was fit to arrange and sign a power of attorney. I take up the story of Dr Fullerton's visit to Dunster Gardens in his own words:

"I attended Alice's address of [sic] 11 Dunster Gardens, Kilburn at about 11.00 am and I was met by a woman who informed me she was called Dr Valkova. She was aware I was visiting Alice as my office had previously received a letter from Alice Adams stating that she was alright and didn't need a visit from me."

The letter was in evidence. As with other letters from Mrs Adam it was in Dr Valkova's handwriting and Mrs Adam's signature was witnessed, on this occasion by M Newton of 13 Dunster Gardens (later identified as Margaret Newton). The letter, which was addressed to Dr Fullerton and was dated 15 January 1991, was as follows:

"Dear Dr Fullerton,

Thank you for your letter of 11 Jan. I would like to let you know that I do not need you to visit me. I have given legal authority to a close friend to look after me and I am happy with my arrangements. I am really not interested in any such visits."

Dr Fullerton's statement went on to say that he could tell that the letter was not written by Mrs Adam. He continued:

"When I arrived Dr Valkova was very amicable and ushered me to the front room after I explained who I was and why I was there. Dr Valkova informed me that she was Alice's companion and had the power of attorney which she stressed to me a great deal. She informed that she was medically qualified and received a PhD in Vienna. I asked several questions about her and Alice and she would always answer the question with a question.

I have dealt with hundreds of people in my career and I got the impression she was giving me the run-around. When I asked

to see Alice she stated I couldn't as she had to leave as she was a scientist and had an appointment. I again reiterated to her that I wanted to see Alice and I got to my feet and I was about to climb the stairs to see Alice. At this point Dr Valkova's attitude totally changed and she shouted at me several times for me to leave. I showed her my warrant from the Court to see Alice and especially the section which explains the 'obstruction' of my duties. I informed her that she was committing an offence for not allowing me to see Alice and could receive a six month prison sentence or a fine. She took no notice of that and continued to shout at me to get out and pulled my arm and then proceeded to run out of the house screaming for the police. When she became physical with me I decided I had had enough and I left with the view of returning with the police.

I went to the police station which I believe was Kilburn Police Station. I showed them my identification and warrant from the Court and asked for their assistance. I returned to 11 Dunster Gardens within an hour with a white male police officer and we knocked on the door. Eventually a frail woman who I assumed was Alice Adam was shuffling to the door and I could see the bottom half of her through the letterbox. I explained who I was and why I was there and she attempted to open the door but couldn't. I noticed there were two locks on the door but I am unable to say how she was unable to unlock the door. I had a limited view through the letterbox and I cannot say if she was on walking sticks or a Zimmer frame but she took a long time to get to the door. The police officer asked if he should kick the door in and I told him not to. At this stage a next door neighbour at number 9, I think a female, told me the home help had a key and lived up the road. We went to see the home help but she wasn't in. I can't remember her address or name."

He returned to his home and later contacted both Brent Social Services and the Deputy Master of the Court of Protection about what had occurred. Ms Mannion's note on the Social Services file - it is dated 4 February 1991 - of what she was told by Dr Fullerton of his unsuccessful attempt to gain access to Mrs Adam corroborates Dr Fullerton's own subsequent statement of what happened.

159. By then, it seems, the Deputy Master had received a letter from Dr Valkova stating that Dr Fullerton had been aggressive and drunk at the time of his visit and that she had therefore refused to allow him to see Mrs Adam. In his statement Dr Fullerton was dismissive of this suggestion by Dr Valkova. He commented: "... how could I be drunk when I went back to see Alice with a policeman...". He explained that the Deputy Master advised him that it would not be a good idea to try and call back to see Mrs Adam and that arrangements would be made for a psychogeriatrician to see her.
160. This ended Dr Fullerton's involvement. He commented that in all his years as a doctor he had never received a complaint.

161. Dr Fullerton's statement was put to Dr Valkova in cross-examination. She insisted that the letter of 15 January 1991 accorded with Mrs Adam's wish not to be examined. She insisted that Dr Fullerton had smelt of alcohol. She said that she prepared a letter to the GMC - to complain about Dr Fullerton - but, in the event, did not send it. The letter stated that she had reported the matter to the police and others but there is no evidence that she had. She suggested that Dr Fullerton was in league with Mrs Couwenbergh. I reject Dr Valkova's criticisms of Dr Fullerton. I am also sceptical as to the genuineness of Mrs Adam's wish not to be examined by Dr Fullerton as indicated in the letter of 15 January.
162. The reason for such scepticism is because, without informing either Dr Powell or Dr Lalvani as Mrs Adam's general practitioners, much less Dr Fullerton when he visited on 18 January (or for that matter the Court of Protection), Dr Valkova arranged for Mrs Adam to be seen by a specialist of Dr Valkova's own choosing, namely Dr Ivan Walton. Dr Walton was to be Dr Valkova's medical expert at the 1998 trial. He was also called by Dr Valkova at the trial before me.
163. Dr Walton is, and was at the time of his involvement in this matter, a consultant physician (and a Fellow of the Royal College of Physicians) in the Department of Geriatric Medicine at Charing Cross Hospital. He has specialised in geriatrics.
164. He gave evidence at some length before me. I say straightaway that I found Dr Walton to be an entirely honest and indeed a very fair witness. At this stage I deal simply with the circumstances of his two visits to see Mrs Adam the first of which took place on 24 January, a mere six days after Dr Fullerton's abortive attempt as the Lord Chancellor's Medical Visitor to see Mrs Adam at the direction of the Court of Protection.
165. Dr Walton confirmed that his first visit, on 24 January, was at Dr Valkova's request and that it was she who paid his fee. He did not report to or contact Mrs Adam's GP either before or after his visit. He said that he made some notes during his visit but that they were no longer available. That may not matter because, as I shall explain, he wrote a letter following his visit. He thought that it was Dr Valkova who supplied him with information concerning Mrs Adam's past medical history. At the time, he was wholly unaware of the abortive visit a few days earlier by Dr Fullerton or of any of the background events of the previous August except that he was told that Mrs Adam's brother had visited her the previous summer and there had been a concern over whether Mrs Adam could any longer manage by herself in the house at Dunster Gardens. He was unaware of any involvement by the Court of Protection. He was also unaware of the fact that only three months previously Mrs Adam had executed the 1990 Wills giving the whole of her estate to Dr Valkova. Indeed, as he stated when interviewed by the police in September 1999 he had no knowledge of or dealings with Mrs Adam or Dr Valkova prior to his first home visit to see Mrs Adam. He said that he regarded Dr Valkova's request that he come and see Mrs Adam as "rather unusual", not least because Dunster Gardens was not in his area and, in any event, he did very little private work. He said that Dr Valkova's approach to him to see Mrs Adam had come "out of the blue". He nevertheless attended at Dunster Gardens to see Mrs Adam. He accepted that, in retrospect, it would have been better to have approached Mrs Adam's GP about his visit.

166. So far from his visit being to make an assessment of Mrs Adam's mental state, the purpose, as he understood it, was to assess her ability to continue to live on her own at home with the support that she had. This was evident from the letter he wrote following the visit. It was only some weeks later that he was given to understand that Mrs Adam's ability to manage her affairs was in question. At no stage was he asked to assess her with a view to reaching an opinion on her testamentary capacity. (After her death he was asked to express an opinion on her testamentary capacity.) He did not know, for example, that Mrs Adam was suffering from any short term memory problems. He was unaware of any of the other matters affecting Mrs Adam's mental health that an examination of her past medical history, as set out in the various medical notes, would have revealed. Instead, he took as true what he was told by Dr Valkova and, so far as she also did so, by Mrs Adam herself. When cross-examined by Mr Ferris, he accepted that, if he had known of the 1990 Wills and of the change in provision in those wills when contrasted with the provisions in the 1978 Will "the whole thing would have been different".
167. His visit lasted, he said, about three quarters of an hour. Later that day he wrote a report. It was not addressed to anyone in particular but was marked "To whom it may concern". I set it out in full:

"I was asked to see Mrs Adam privately at her home by her friend and lodger, Dr Valkova. I understand that Mrs Adam was born in Poland, but has lived in England for very many years. She speaks five languages, Polish, Russian, German, French and English. She lives in her own house, which she owns.

She has two very good friends, including Dr Valkova, and Dr Valkova lives in the same house. Dr Valkova has been concerned because, as I understand it, Mrs Adam's brother, who usually lives in Germany and is some ten years younger than she, came to visit her during the summer and appeared to threaten her that she could no longer manage in the house by herself.

I found Mrs Adam to be a very independent and cheerful old lady, who carried on a spirited conversation from her chair. She tends to be short of breath but is able to walk with the help of a frame from her living room to her bedroom. She gets herself up in the morning and goes to bed at night. She is very well supported by Home Help seven days a week, Meals on Wheels seven days a week, and a District Nurse every day to encourage her to bath and to give her medication ... She has had carcinoma of the breast for three or four years and has been under the care of the Royal Free Hospital. Dr Valkova also helps to supervise Mrs Adam's care and I understand that she holds Power of Attorney.

Mrs Adam was unwilling to have a complete medical examination but I noted that she tended to repeat herself, but was orientated in place and time. She has evidence of an old

cataract operation on the left and moderate dorsal kyphosis, presumably secondary to osteoporosis. Otherwise, she looked well, was cheerful and the room in which she was living was warm. She seemed to have a good appetite and ate a good tea.

I am sure that Mrs Adam, given the support that she has, is well able to live by herself. As Dr Valkova holds Enduring Power of Attorney, there is no question of Court of Protection being required. I see no reason why she should move from her present accommodation. Although somewhat forgetful, she is well able to decide for herself what she wishes to do and how she should live.”

168. Four weeks later, Dr Walton sent the following letter, dated 20 February 1991, to the Public Trust Office:

“Further to my previous letter of January 24<sup>th</sup> 1991 about [Mrs Adam], a copy of which I, believe, is in your possession, I should like to make the additional observation:

1. I have been shown documents by Dr B Valkova, the first of which is a ‘continuous attorney’ taken out in favour of Dr Valkova by Mrs Adam on September 15<sup>th</sup> 1986, and the second an enduring power of attorney taken out by Mrs a on August 7<sup>th</sup> 1990 in favour of Dr B. Valkova and Dr V. Coffey.

2. From my conversation with Mrs Adam during my visit to her I am of the opinion that she is still capable of understanding her own affairs. In particular, she understands that she owns her own house and that she wishes to remain living there independently as far as her physical health allows. Secondly, she understands the implications of the power of attorney which she has taken out, viz. that Dr Valkova and Dr Coffey will handle the details of her financial affairs on her behalf.”

Dr Walton was not certain at whose request this letter was written. It was clear, as he confirmed, that following his visit on 24 January Dr Valkova had supplied him with the documents to which he referred in the first of the two numbered paragraphs. He was not aware that Dr Coffey to whom he had referred as one of the “good friends” in his 24 January letter was Dr Valkova’s sister. When he wrote it he was no more aware of the past history concerning Mrs Adam than he had been when he wrote his 24 January letter. He had not made contact with Mrs Adam’s GP. Moreover, it was clear, as he accepted when asked about this by Mr Ferris, that he was being asked to express an opinion in relation to Mrs Adam for a purpose (namely whether she was capable of understanding her own affairs) different from what had prompted his 24 January visit and subsequent letter, namely to assess whether she could continue physically to live at 11 Dunster Gardens.

169. It was precisely because of a concern that in writing his letter of 20 February Dr Walton may not have fully appreciated what it was that he was being asked to consider that the Court of Protection wrote to Dr Walton on 28 February 1991. It did so to explain what the matters were on which his opinion was being sought. The letter stated that the fact that Mrs Adam understood that she owned her own house (a matter referred to in Dr Walton's 20 February letter) was not of itself sufficient reason in the Assistant Master's opinion for concluding that she was capable of understanding (but not necessarily capable of managing and administering) her affairs. The questions on which the Assistant Master sought Dr Walton's opinion were (1) whether Mrs Adam was incapable of managing and administering her property and affairs by reason of mental disorder as defined in the Mental Health Act 1983 and (2) whether she had the capacity to understand the meaning and effect of an enduring power of attorney and whether it was likely that she had that capacity of 7 August 1990. The letter then went on to ask specific questions concerned with Mrs Adam's understanding.
170. This letter prompted a further visit by Dr Walton to Dunster Gardens to see Mrs Adam. This was because, as he explained in his evidence to me, Dr Walton did not feel able on the basis of his January visit to Mrs Adam to answer the further questions which the Court of Protection was putting to him. Following this further visit (for which Dr Walton's notes are also no longer available) he wrote to the Public Trust Office on 14 March 1991 with his answers to the points raised in the letter of 28 February. Dr Walton's reply was as follows:

“Thank you for your letter of February 28<sup>th</sup> 1991. I found your letter very helpful, as it clarified a number of points. After I received your letter, I arranged to go and see Mrs Adam again, which I did on March 9<sup>th</sup>. Dr B Valkova was also present.

To the best of my ability, I consider that the answers to your questions to your letter of February 28<sup>th</sup> 1991 are as follows:

1. Mrs Adam is incapable of managing and administering her property and effects. This is by reason of mental disorder, which in her case is poor short-term memory. She is also a very elderly lady, who is physically quite frail, although very determined to maintain her independence for as long as possible.
2. I found that it was not possible to enable Mrs Adam to concentrate and attend sufficiently to precisely answer the four parts (a-d) of question two. On introducing the subject that one day she may be totally mentally incapable, she answered by saying that she intended to be independent for as long as possible! Nevertheless, I am convinced that Mrs Adam understands the general meaning of and effect of an Enduring Power of Attorney. Perhaps the best thing would be to quote to you some of the things she said, viz: “I trust her” (this is of Dr Valkova). “When I become forgetful ... I trust her” (again of Dr Valkova). Also she is very emphatic about her brother, viz: “I have nothing to do with my

brother... My brother has no right to do things against me...". Also she is very sure about her house: "This is my house". Dr Valkova keeps separate purses for Mrs Adam's money and her own. She showed me receipts of money she had spent on Mrs Adam's behalf. She also showed me a chequebook and paying in book of Mrs Adam. A few days before my visit, a gas bill had arrived, and in my presence Dr Valkova explained the bill to Mrs Adam, and Mrs Adam signed a cheque from her chequebook for Dr Valkova to pay the bill on her behalf.

I think that it is impossible for me to obtain a more precise impression of Mrs Adam's state of mind. I think that it is likely that she was less forgetful and able to concentrate better in August 1990 than she is now. In order to obtain more information about her state of mind then, I think you should consult with the solicitors who helped to draw up the Enduring Power of Attorney at that time.

I have no doubt in my mind that Dr Valkova is a conscientious and well-meaning person, and I would be very surprised indeed, if she is deliberately mishandling or manipulating Mrs Adam's affairs to her own advantage.

I hope that this will be useful to the Public Trust Office and the Assistant Master..."

The comments in the penultimate paragraph to Dr Valkova being conscientious and well-meaning and to how Dr Walton would have been surprised if Dr Valkova had been deliberately mishandling or manipulating Mrs Adam's affairs which would not appear to relate to any of the points on which the Public Trust Office was seeking Dr Walton's opinion, were taken up in cross-examination of Dr Walton. He fairly accepted that it was reasonable to think that when writing that letter he had been influenced by what he regarded as the "trusting relationship" between Mrs Adam and Dr Valkova that he witnessed on that occasion. He also accepted that although by March 1991, when he wrote his letter, Mrs Adam did not have an understanding of the meaning and effect of an enduring power of attorney as explained in the letter to him of 28 February 1991 by reason of her mental disorder he had no reliable means of saying quite what Mrs Adam's mental state was in August 1990 when the EPA was apparently entered into.

171. As with his earlier visit Dr Walton had not, prior to visiting Mrs Adam on 9 March or before writing his letter of 14 March, consulted Mrs Adam's GP or undertaken any research into her past medical history beyond what he was told by Dr Valkova and was able to elicit from Mrs Adam.
172. In early April 1991 Mrs Couwenbergh was again in London. She wished to see her aunt again. A note dated 5 April 1991 on the Brent Social Services' file, this time by Edna Edwards who was the Home Care Organiser for the Kilburn area, reported that Mrs Couwenbergh came to the Social Services office to discuss a challenge to the EPA (of which by then she was aware) and that she had been unable to gain entry to

11 Dunster Gardens with the key that she normally used. According to the note Ms Edwards explained that the front door had a Chubb lock and that she should contact her solicitor to see if a visit to Mrs Adam could be arranged.

173. Ms Edwards, as she then was, (she is now Edna Porter), gave evidence. She had provided a statement to the police in July 2001. She was an honest witness. She confirmed the accuracy of her police statement. Newly appointed to Brent Social Services in early October 1990, she had become involved in Mrs Adam's home care shortly afterwards when complaints were made by Dr Valkova about the conduct of one of the home helps, a Mrs McSweeney. This rumbled on for several months. The complaints had nothing to do with Mrs Couwenbergh or her family and the details do not matter. As regards entry to Dunster Gardens, by the spring of 1991 there was, as Mrs Porter confirmed to me, a somewhat complicated system in place to enable the Home Helps and Meals on Wheels to gain access. It was not suggested that Mrs Couwenbergh's inability to gain access on that occasion was the consequence of anything deliberately directed at her. It was simply that a new system was in place.
174. Mrs Couwenbergh took up the advice she had received from Mrs Porter and immediately contacted Mr Fleischmann. That same day, 5 April, Mr Fleischmann enquired on Mrs Couwenbergh's behalf whether she could visit her aunt. David Howard & Co replied to say that Mrs Adam did not wish to see her niece. So her attempt to see her aunt again was unsuccessful.
175. By then, indeed at least since Dr Walton had reported to the Public Trust Office the previous month that in his opinion Mrs Adam was no longer capable of managing her affairs, Dr Valkova and her sister were concerned to register the EPA. Their application was dated 12 April 1991. The same letter from David Howard & Co to Mr Fleischmann confirming that Mrs Adam did not wish to see her niece also announced the application to the Court of Protection. On 23 April, Mr Fleischmann wrote to the Court of Protection outlining grounds of objection to the application. They were that at the date of the power of attorney, 2 August 1990, Mrs Adam was incapable of understanding its nature and effect and that, in any event, Drs Valkova and Coffey, as the named attorneys, were unsuitable and would not act in Mrs Adam's best interests. A month later, on 22 May 1991, a formal notice of objection to the application was lodged on behalf of Mrs Couwenbergh and her father setting out those matters as the grounds of objection.
176. Two weeks later, on 4 June 1991, Dr Valkova tape-recorded a series of brief exchanges between herself and Mrs Adam. Dr Valkova relied heavily on that recording as demonstrating Mrs Adam's continuing mental capacity. Because it is short I will set it out in full. What follows is taken from the transcript of those exchanges.

“Dr V        It is a new radio, do you want this radio instead of  
                  the other?  
Mrs A        No I don't.  
Dr V        You prefer the old one?  
Mrs A        Yes  
Dr V        How do you feel [in Polish]?  
Mrs A        Everybody knows that I don't feel extra. I don't

like it anymore. People are strange.

Dr V Alice, are you warm enough? It is very cold for June and you have to have the central heating.

Mrs A It is hot here.

Dr V Alice, dear, you are getting older and in the case you become very forgetful and simply being unable to deal with all your affairs, do you trust me to continue to do this as you gave me authority many years ago and last year as well?

Mrs A Did I, alright.

Dr V Do you trust me to continue to do this?

Mrs A Yes, why not.

Dr V You know your brother and his daughter took a solicitor and they started a process to be in control of your affairs. They are presenting you as mentally incapable [Mrs Adam says, Oh God] and they want to put you in an old peoples home either here or in Holland or in Germany. Would you agree with this?

Mrs A Rubbish. I am here. That's my own house. I have done it. I have repaid it in a few days and they liked it and they said I wish I had more like her, you know in the country around. I wish I had more like her, she is intelligent, she is honest and the girls love her.

Dr V Would you ever agree for your brother or his daughter to look after you?

Mrs A I do not. They don't behave like they should.

Dr V Alice, let me ask something else. I believe it should be pleasant and entertaining for you if you get a small TV set. Do you want to have a small TV or don't you?

Mrs A No, I don't care. I don't care.

Dr V Would you agree to give some money to buy a small TV?

Mrs A No. I do not care about it. It is my house, my people, my friends. I do not want, no. No.

Dr V Alice, I forgot to ask you. Do you want to be visited by your relatives, your brother and his daughter?

Mrs A No, I do not.

Dr V The second thing. Do you want to be visited and examined again and again by a geriatrician?

Mrs A I do not want. Let them go. I am too old to go through all that. Do you know how old I am?

Dr V Do you remember when you were born?

Mrs A 11 August 1900. That's what I know.

Dr V Very good indeed, thank you."

177. On 17 June 1991, Mr Fleischmann wrote to the Public Trust Office to enquire whether, given Mrs Couwenbergh's earlier unsuccessful attempt to visit her aunt, the Court of Protection could give a direction to enable Mrs Couwenbergh to see her aunt in August when her aunt would be celebrating her 91<sup>st</sup> birthday. The Public Trust Office replied to say that the court had no power to grant any such direction.
178. In the early evening of 3 August, Mrs Adam was admitted to hospital having been found in a collapsed state at Dunster Gardens. On admission she had no recollection of the event or, according to the hospital admission notes, of any earlier admissions. According to those notes, she was found to be clean and with no signs of neglect or distress. A mini mental test score recorded 3 out of 10. She was described as suffering from, among other matters, "severe cognitive impairment". She remained in hospital for two days.
179. In the meantime, the opposed application to register the EPA was proceeding. It led to a hearing on 3 September when directions were given with a view to a substantive determination at a future date. A few days before the hearing, Mrs Couwenbergh wrote to the court. She did so on behalf of herself and her father. Her letter had been prompted by the discovery that Mrs Adam had suffered this further fall and that it was some time before access could be gained to Dunster Gardens to enable Mrs Adam to be moved to hospital. She wrote to say that:

"Our sole desire is that my aunt should spend the 'eventide' of her life in a secure and untroubled environment. We will spare no costs or effort to ensure that this wish is fulfilled..."

180. At the hearing, at which she and her father were represented by Mr Fleischmann, a request was again made that Mrs Couwenbergh should be allowed access to her aunt. The Master stated that the court had no jurisdiction to make such a direction but nevertheless suggested that Mrs Adam's family be allowed to visit her if necessary in the presence of an independent person.
181. This suggestion was followed up by Mr Fleischmann who on 5 September wrote to Dr Valkova direct (he was under the impression that she no longer had solicitors acting for her) inviting her to take up the Master's suggestion. The following day David Howard & Co replied on Dr Valkova's behalf to say that:

"Mrs Adam has given a clear instruction to Mr Hallam, the writer of this letter, that she wishes to have nothing to do with your clients. She has given this instruction directly and not through the medium of Dr Valkova or her co-attorney..."

From the evidence of Mr Hallam it appears that the "clear instruction" given to him "directly" to which he referred was the one that he had received on his visit to Dunster Gardens the previous October. It has not been suggested that he sought further instructions from Mrs Adam following the Master's suggestion. It is to my mind extraordinary that, although Mrs Adam was by then very frail, access to her by her family should have been so swiftly denied.

182. In fact, at about this time, Mrs Adam was admitted to the Princess Louise Hospital. According to the Hospital notes, this was for five weeks of respite. Mrs Adam was

due to stay in the hospital until the end of the first week of October. Mrs Couwenbergh and her family were made aware that this period of respite had been arranged.

183. The hospital admission notes stated that Mrs Adam was “demented and hard of hearing”. It also reported that on 9 September Edna Edwards, from Brent Home Care, rang to find out why Mrs Adam had been admitted. The note stated that Ms Edwards was to be informed of her discharge “at least a week ahead”. Notwithstanding this clear instruction, it appears that at 8 pm that same day, Mrs Adam was removed from the hospital. According to the hospital record: “Emergency discharge home at 8 pm. Carers transported patient.” The person who collected her was Dr Coffey.
184. Mrs Porter (ie Ms Edwards) later rang the hospital to enquire about Mrs Adam and was told that she had already been discharged.
185. In fact, Mrs Adam was not taken back to her home at 11 Dunster Gardens but to Dr Coffey’s home at 7 Coopersale Road. This caused Brent Social Services great concern, not least because they were initially not told where Mrs Adam had been taken. The Home Care Service Manager, Peter Clarke, wrote to Dr Valkova on 7 October to say so. “It is impossible” he stated “for us to provide a service to Mrs Adam if we are not informed of her movements and current whereabouts”. He added: “I view this situation so seriously that I am actively contemplating further action...” Dr Valkova replied three days later claiming that the Home Help and Meals on Wheels services had been told on the telephone about Mrs Adam. She went on to say that in view of the problems consideration was being given to an alternative to her existing home help arrangements.
186. There was no time to do this, however, because that very day, 10 October 1991, in the late afternoon, Mrs Adam died. According to the handwritten note of the senior house officer in the casualty department at Homerton Hospital to which she was taken, Mrs Adam “died at home”. The note stated that her death had been witnessed by her great niece. She was described as having been “bedridden for years”. Her death certificate reported the causes of death as bronchopneumonia, congestive cardiac failure and aortic stenosis. A subsequent internal examination reported that Mrs Adam’s brain was “reduced in size and the cerebral convolutions were thinned and separated and the ventricles were dilated”. It also reported that “the cerebral arteries showed patchy atherosclerosis.”
187. It was untrue that Mrs Adam had died at home. It was also untrue that she had died in the presence of her great niece. It was likewise untrue that she had been bedridden for years.
188. It appears that on 16 September 1991, a little over three weeks before she died, Mrs Adam was again visited by Mr Hallam of David Howard & Co. It was, as Mr Hallam stated in his witness statement, a very brief visit. The purpose of the visit was to obtain Mrs Adam’s signature on a legal aid form in connection with the Court of Protection proceedings. “Whilst I did not spend much time with her” he said in the witness statement “there appeared to be no change in her appearance or condition”. That was intended to relate to any change in her appearance or condition since Mr

Hallam had last seen Mrs Adam the previous October. It was not apparent from his evidence where his further brief visit to see Mrs Adam took place.

189. Although Mrs Couwenbergh and her family were informed of Mrs Adam's death on the following day - the news was conveyed to them by Dr Lalvani - they were not told what the arrangements were for Mrs Adam's funeral. Mrs Couwenbergh was greatly disturbed by the discovery that her aunt had died away from her home and away from any hospital. As she told me in evidence:

“I wanted this clarified. We were the next-of-kin and we wanted to know what had happened to our aunt .... We were told that she was in respite care until 9 October. We later heard that she was not at Dunster Gardens.”

Mrs Couwenbergh went on to tell me that on the following Monday (13 October) she telephoned the coroner whose number she had been given by Dr Lalvani. She explained to him that she and her family wanted a family burial for Mrs Adam but was told that Drs Valkova and Coffey had power of attorney and that he was unable to interfere. Mrs Couwenbergh subsequently discovered that Dr Valkova and her sister arranged for the funeral. It took place on 17 October 1991. At the time neither she nor any other member of her family knew of the date or venue.

190. It was only after Mrs Adam's death that Mrs Couwenbergh and her family were informed of the 1990 Wills. As I mentioned towards the start of this judgment Mr Couwenbergh (in his capacity as sole executor named in the 1978 Will) entered a caveat on 21 October 1991 and on 4 December entered an appearance to Dr Valkova's warning dated 26 November 1991. The writ in the action followed 15 months later on 4 February 1993.

#### Dr Valkova's evidence

191. In her witness statement for the 1998 trial Dr Valkova described Mrs Adam as “very determined and independent” and as having “a clear understanding of her condition, her wishes, other people (present or absent), her relatives, her house, financial problems and current affairs”. She said that these qualities were evidenced by the tape-recorded conversation of June 1991. She described Mrs Adam as “brilliant, independent and intelligent” and as a linguist who spoke five languages, four of them fluently, and an avid reader of newspapers. She accepted that Mrs Adam suffered from physical problems and mentioned that her eyesight was “not good” as a result of a cataract in one eye and blindness in the other so that she needed glasses both to read and to see at a distance. She also said that as a result of osteoporosis and multiple fractures Mrs Adam had difficulty in walking.
192. Dr Valkova went on to say that following a hip fracture which led to Mrs Adam being a patient at St Mary's Hospital where she then worked she went to live at Dunster Gardens in 1984 at Mrs Adam's invitation. She described how at the end of 1985 or early 1986 she began to do Mrs Adam's shopping and to give her assistance with her financial affairs. She stated that in September 1986 Mrs Adam signed an authority to enable her deal with Brent Council over the repairs that the Council required Mrs Adam to carry out to Dunster Gardens and to deal with Brent Social Services and other agencies. (This was, of course, a reference to the document described at

paragraph 73 above.) She described how in December of that year Mrs Adam executed the General Power of Attorney following advice from Mr Bernstein and that this was followed in 1990 by the EPA after advice from Barnet Law Centre.

193. She recalled Mr Couwenbergh's visit with his daughter Claudia in 1989 or early 1990 and how Mrs Adam was always glad to see him. She said that Mrs Adam became saddened and distressed by what she understood to be Mrs Couwenbergh's action in leaving Mr Couwenbergh and their children and that this influenced Mrs Adam's poor opinion of her niece. She understood that Mrs Adam had had no contact with her brother for many years "due to a lot of disagreements and to his working in the German Army in the Second World War". She said that it was her idea to invite Eugen Rapke to visit his sister on her 90<sup>th</sup> birthday as she wanted to reconcile brother and sister who, she understood, had not seen each other since 1952 or 1954. She recalled that Mrs Adam was sceptical about this prospect and not at all keen on the visit taking place. She stated that Mr Rapke and Mrs Couwenbergh, when they visited in August 1990, "appeared to be upset that Mrs Adam was still alive", that they tried to organise putting her into an old people's home "by force if necessary" and that they "had violent arguments with Mrs Adam about her house, claiming that it belonged to them". She said that to help achieve the removal of Mrs Adam from her home Mrs Couwenbergh "embarked upon a strategy of inventing an idea that Mrs Adam was confused". She claimed that Mrs Couwenbergh enlisted the help of Ms Mannion to achieve her purpose. She claimed to recall that Mrs Couwenbergh and her father left without saying goodbye, taking some of Mrs Adam's belongings, and that Mrs Adam was "extremely anxious in case they might return".
194. She also stated that "a number of times Mrs Adam suggested that she would like to make a Will, or to 'sign over' the house to me, but I purposely delayed dealing with this wish to allow Mrs Adam a long time to think this over". She added that after Mrs Adam had made her 1978 Will her relatives did not show much kindness, care and consideration. During the visit in August 1990 they interfered strongly with her independence and she [Mrs Adam] refused to recognise Barbara and Mr Rapke as her relatives in view of the actions they had been taking against her."
195. Dr Valkova touched briefly on consulting a solicitor in connection with the transfer to her of Dunster Gardens and how the solicitor "appeared to mislay the Land Certificate (which I had kept since 1987/88) instead of having it copied as instructed". She described briefly how she then instructed Mr Hallam who eventually "recovered the wrongly retained documents". She referred very briefly to the execution of the 1990 Wills and how they had been prepared by Mr Browne of Milnes & Milnes whom she had consulted on the recommendation of a friend as being "a good solicitor who charged reasonable fees".
196. She said that it was at Mr Hallam's suggestion that a medical report from a specialist was obtained leading to the visit by Dr Walton. She briefly referred to Dr Walton's two visits and stated that "before Dr Walton's second visit in March 1991, Mrs Adam told me that she did not want any further visits from a geriatrician and from my observations of her during the second visit of Dr Walton I could see that she was deliberately not cooperating with him". She implied that any want of understanding or ability to concentrate on that occasion was wilful on Mrs Adam's part.

197. She referred to Mrs Adam being “well able to produce her memoirs throughout the time that I was living with her”, how the memoirs had been typed by Mrs Adam herself and how Mrs Adam “was working on the manuscript throughout the time I was with her until approximately a few months before her death”.
198. She denied that Mrs Adam was a vulnerable elderly lady living in isolation. She stated that Mrs Adam was visited by friends and neighbours and that about eight to ten different people visited Mrs Adam every week.
199. It is plain that Dr Valkova’s description of Mrs Adam as possessing a clear understanding of her condition, wishes, her financial position and what was going on around her, and conscious of who her relatives were and of others, whether present or absent, if intended to portray Mrs Adam as she was from August 1990 onwards, was almost completely at odds with the contemporary description of her given by almost everyone else, even leaving out of account the evidence of Mrs Couwenbergh. I also regard Dr Valkova’s description of Mrs Adam’s feelings towards her brother and niece when they came to visit her in August 1990 as unfairly distorted. I do not accept Dr Valkova’s portrayal of Mrs Adam as someone who, by then, was estranged from her brother, disenchanted with her niece, and detached from and largely indifferent towards her other relatives. I do not accept Dr Valkova’s portrayal of Mrs Couwenbergh and her father as, in effect, heartless, interfering, self-seeking and scheming in their dealings with Mrs Adam during their August 1990 stay. Nor do I accept that Mrs Adam had on a number of occasions volunteered - if that is what Dr Valkova intended to convey - to ‘sign over’ her house to her and to make a will in her favour but that she delayed dealing with this “to allow Mrs Adam a long time to think it over”. By 1990 at least, a recurrent theme of Mrs Adam’s conduct was the emphasis she gave to 11 Dunster Gardens being her property. It is most difficult to reconcile that with a willingness to give it away - in her lifetime - to Dr Valkova. The reference in the passage set out above to Mrs Adam’s 1978 Will suggests that Dr Valkova was aware of its existence long before she approached Mr Browne in October 1990 to arrange for a new will to be made. Yet she made no effort to draw it to Mr Browne’s attention, much less approach the solicitors, Mr Hallam’s firm as it happens, who had acted on the earlier occasion (as was evident from the 1978 Will) with a view to instructing them in connection with a fresh will. The notion that Mrs Adam feigned an inability to understand what was being put to her and pretended not to be able to concentrate when she was seen by Dr Walton in early 1991 is not one I can accept. Dr Walton, when asked about this, was clear that Mrs Adam did not understand the four points which he put to her (which the letter for the Public Trust Office had raised) because, mentally, she was unable to understand them; it was not a case, he said, of her not wanting to answer them. Nor do I accept that Mrs Adam was writing her memoirs until a few months before her death. If she was it renders inexplicable why so many “letters” from Mrs Adam at this time were in Dr Valkova’s handwriting.
200. On 30 January 2003 Dr Valkova signed a lengthy 170-paragraph witness statement. It is largely concerned with her attempt to appeal against an order made on 14 November 2002 which had had the effect of staying execution of a costs certificate in her favour following the 1998 trial and subsequent appeal (in which she had been given her costs). The stay which had been ordered was pending the further appeal which subsequently resulted in Mr Couwenbergh’s success in persuading the Court of

Appeal in February 2005 to set aside the orders made by Carnwath J following the first trial in July 1998. The statement sheds no further light on the events surrounding the 1990 Wills. It is concerned almost entirely with challenges to the correctness of the order which she was seeking to appeal. I only mention the statement because Dr Valkova placed reliance on it as part of her evidence before me.

201. She also referred me to two statements by her, both dated 29 April 2008, which she also wished me to take into account as part of her evidence. One statement was factual in nature and was concerned with the circumstances in which the Gregorio Will was executed and how it was that the Gregorio brothers came to be the witnesses. The other was largely a critique of the Gregorios' various statements: the reliability of that evidence and the circumstances in which the two brothers provided statements to the police. Insofar as it is appropriate to refer to these further two statements by Dr Valkova, I will do so when I come to consider Mr Couwenbergh's challenge to the due execution of the 1990 Wills.

#### Other evidence on which Dr Valkova relied

202. Aside from the evidence of Dr Walton, to which I have already referred and to which I will return when I discuss the issue of Mrs Adam's testamentary capacity, and the evidence of Mr Bernstein, Mr Hallam, Mrs Lawrie and Dr Valkova's mother, which I have mentioned in my recital of the background events at the points at which those persons became involved, Dr Valkova relied on the witness statements of five others. None of those five was called.
203. The evidence of Mrs Philomena Doyle was concerned mostly with the circumstances in which she and her late husband, James, witnessed the Doyle Will. I will review that evidence when I come to discuss the issue of due execution of the 1990 Wills. I shall do likewise in the case of the witness statement of Miss Margaret Newton. Her evidence was relevant to Mrs Adam's state of mind in 1990. The very short witness statement of Jem Trehern, a Minister of the FIEC Church, dealt with Mrs Adam's funeral on 17 October 1991. He stated, and I have no reason to doubt, that the only persons present at the funeral, apart from himself and the representatives of the funeral directors, were Dr Valkova and her mother. In his even shorter statement, Kamal Patel said that he ran a corner shop near to Dunster Gardens and recalled Dr Valkova as a regular customer who for many years bought newspapers for a disabled friend. It did not seem to me that this evidence carried matters much further. In his witness statement, Frank Whelan who lived at 36B Dunster Gardens said that his late wife worked as a home help for Mrs Adam for four or five years. He does not say which five years. He speaks highly of Dr Valkova's attention to Mrs Adam and, when his wife became terminally ill and died in 1993, to his late wife and to himself. His evidence did not, however, shed any light on Mrs Adam.
204. With the exception of Mrs Doyle, who made several statements between 1996 and 2007, and Dr Valkova's mother, whose statement was furnished during this retrial, the statements of all of the other witnesses pre-dated the first trial.

#### Dr Coffey

205. A curiosity is that Dr Coffey was not called by Dr Valkova to give evidence. There is no reason to think that she was unavailable. Dr Coffey, who is Dr Valkova's sister,

was said to have known Mrs Adam from the early 80s. She was, with Dr Valkova, one of the attorneys appointed by Mrs Adam by the EPA in early August 1990. She featured prominently in the events of the afternoon of 13 August during the visit to Dunster Gardens by Mrs Couwenbergh and her father. She was named as beneficiary of Mrs Adam's entire estate by the 1990 Wills, and as her sole executrix, in the event that Dr Valkova should not survive Mrs Adam by 28 days. She was identified as one of the two "very good friends" referred to in Dr Walton's "To whom it may concern" letter of 24 January 1991. It was she who collected Mrs Adam from the interrupted respite care on 9 September 1991. It was Dr Coffey's home at 7 Coopersale Road to which Mrs Adam was taken and where she died a month later. It would have been of great value to have heard from Dr Coffey.

### The issues

206. In contentious probate cases, a challenge is often made to the formal validity of the will: was it duly executed in accordance with the requirements of the Wills Act 1837? In others there may be an issue over the capacity of the testator to make the will: did he have testamentary capacity at the time the will was made? In yet others, there may be no question over the due execution of the will or over the testamentary capacity of the testator but there is an issue as to whether, when executing the will, the testator knew that that was what he was doing or approved of its contents.
207. In this case, Mr Couwenbergh makes challenges under each of those headings: he puts Dr Valkova to proof that the 1990 Wills were duly executed; he alleges that at the time they were made, Mrs Adam lacked testamentary capacity; he also alleges that she did not know and did not approve of the will's contents. I deal first with the issue of due execution.

### Due execution

208. Where a will is regular on its face and apparently duly executed, a presumption arises that the will was indeed duly executed. In particular, where the will contains a standard attestation clause - as the 1990 Wills do - and the signatures of the two witnesses have been placed in the space provided for them to sign - as was undoubtedly so in the case of the Gregorio Will - the court will presume that the witnesses would not have appended their signatures to the statement in the attestation clause (to the effect that the will was duly executed by the testator) unless it were true.
209. But it is a rebuttable presumption. The question is whether on the facts the presumption has been rebutted. That in turn raises the question as to the quality of the evidence needed to do so. In this regard I can do no better than cite what was said on the topic by Peter Gibson LJ giving the judgment of the Court of Appeal in Sherrington v Sherrington [2005] EWCA Civ 326 (at [42]):

"It is not in dispute that if the witnesses are dead, the presumption of due execution will prevail. Evidence that the witnesses have no recollection of having witnessed the deceased sign will not be enough to rebut the presumption. Positive evidence that the witness did not see the testator sign may not be enough to rebut the presumption unless the court is satisfied that it has 'the strongest evidence', in Lord Penzance's

words. The same approach should, in our judgment, be adopted towards evidence that the witness did not intend to attest that he saw the deceased sign when the will contains the signatures of the deceased and the witness and an attestation clause. That is because of the same policy reason, that otherwise the greatest uncertainty would arise in the proving of the will. In general, if a witness has the capacity to understand, he should be taken to have done what the attestation clause and the signatures of the testator and the witness indicated, viz. that the testator has signed in their presence and they have signed in his presence. In the absence of the strongest evidence, the intention of the witness to attest is inferred from the presence of the testator's signature on the will (particularly where, as in the present case, it is expressly stated that in witness of the will, the testator has signed), the attestation clause and, underneath that clause, the signature of the witness."

#### (1) the Doyle Will

210. With that statement of the legal position in mind I turn to the evidence. I consider first the Doyle Will. It is dated 19 October 1990. It carries as attesting witnesses the signatures of Philomena and James Doyle who, at the time, lived next door to Mrs Adam at 13 Dunster Gardens.
211. Mr Doyle's signature was placed on what, from the photocopy in evidence, appears to be a separate piece of paper. But having heard the evidence of Mr Browne, who drew up and arranged for the engrossment of the will, and having seen the original of the Gregorio Will (also prepared by Mr Browne) which appears on one side of a folded piece of paper, it seems overwhelmingly likely that because there was no space for him to sign below Mrs Doyle's signature and address, Mr Doyle placed his signature on the first available space at the top of the next page. I therefore have no difficulty in concluding that, on the face of it, the presumption of due execution applies to the Doyle Will. This brings me to the evidence which was before the court dealing with the circumstances in which Mr and Mrs Doyle came to place their signatures on that will.
212. The Doyles, it seems, came from the Irish Republic and were living in London at the material time. They moved back to live in Ireland in late October 1990 a matter of days after witnessing the Doyle Will. Mr Doyle died in May 1995. Mrs Doyle, who is now in her 80s, continues to live there. Owing, I understand, to her poor health, Mrs Doyle was unable or unwilling to attend to give evidence in person. Instead, I had the benefit of no less than five statements by her: a statement dated 26 March 1996, another dated 23 November 1999 resulting from a police interview, yet another dated 15 August 2001, again resulting from a police interview, a statement dated 6 February 2007 and, finally, a statement dated 20 July 2007 to which the two police statements were attached.
213. In her statement of 26 March 1996 Mrs Doyle described a friendly acquaintance with Mrs Adam who, according to the statement, lived contentedly at 11 Dunster Gardens and relied on and appreciated the help given to her by Dr Valkova. The statement

mentioned that Mrs Adam was visited in August 1990 “by two of her relatives, living abroad” and that this caused her “great distress”. It continued: “she spoke openly in bad terms about the way they wanted to rule her life and to interfere with her personal wishes and arrangements.” It spoke of Mrs Adam feeling harassed by the relatives’ activities and said that she did not want to be visited by her relatives or be subject to any “imposed medical examination”. The statement painted a picture of a determined and independent lady who, although physically disabled, was “always alert and in charge of her faculties”, was of “strong character, very determined in her wishes” and who “organised her home life very well”. In particular, it described how between August and October 1990 she (Mrs Doyle) was “glad to witness a number of letters and documents relating to Mrs Adam, or by her, including her Will...”. As to the will, she said this:

“On 19 October 1990 I witnessed Mrs Adam’s will with my late husband. We were in the sitting room, had coffee, and talking as usual but Mrs Adam did not comment on the contents of the will.”

214. This statement was available at the time of the trial in 1998.

215. In her statement to the police on 23 November 1999 - by now, almost a year and a half had passed since the 1998 trial - Mrs Doyle painted a very different picture. According to this statement, she only met Mrs Adam on two occasions, each of which was at 11 Dunster Gardens and was at the invitation of Dr Valkova. On each of those two occasions “we signed numerous documents which I never read...and just signed...” So far from being chatty and friendly (as described in the earlier statement) Mrs Adam was “fragile and very rarely spoke in my presence”. As to the signing of the will in October 1990, Mrs Doyle said this:

“I can’t remember the exact date but it was in the summer of ...90. Valkova came around to our flat and asked us next door for a cup of tea. James and I went next door to number 11 and we went into the front room where I saw Alice sat in her wheelchair. I said Hello to Alice who smiled at me and asked me how I was. When I spoke to Alice she would cup her hand to her ear which gave me the impression she had a hearing difficulty. Alice very rarely spoke and just sat there in her wheelchair. Valkova told me that Miss Adams was handing her home and belongings over to her. She then handed us a piece of paper to sign which we did but I cannot remember what was written on this piece of paper. I have been shown a photocopy of a Will and Testament of Alice Lydia Adams ... I can confirm my signature and address are on the bottom of this form. Valkova told us to sign it and we did this but we didn’t have a chance to read it and I don’t recall seeing the writing on the top which states This Is The Last Will and Testament. I did not see Alice sign this form in fact I didn’t see Alice sign any letters or forms.”

A little later in the statement, Mrs Doyle said this:

“I trusted Valkova. If I know someone, I automatically trust them. James did mention to me should we be signing these forms but we did this as we were very busy and we would sign forms and quickly get out of the house. We were busy packing as we were moving back to Ireland so we had a lot on our minds. Valkova knew that we were moving and she also knew that we were not returning to England which I told her...”

216. Mrs Doyle referred in that statement to a typewritten letter dated 19 June 1991 and signed by herself which discussed, among other matters, how “glad” she was “to witness the authenticity of some of Mrs Adam’s letters and signature ...” It contained the same disparaging comment - in almost word for word the same terms - about the visit to Mrs Adam of “two of her relatives” as later appeared in her witness statement of 26 March 1996. Mrs Doyle commented on that letter in her statement to the police that: “I did not write or even type this letter although I have signed this letter.” She then referred to passages in it and disagreed with its contents. She did the same about other letters which bear her signature. As to her statement of 26 March 1996, Mrs Doyle said this in her police interview: “I have not seen this document before and I am certain the signature at the bottom is not mine.” She then proceeded to explain why.
217. In her further witness statement to the police dated 15 August 2001, Mrs Doyle was referred to her earlier police statement. She then corrected what that statement said about the number of occasions that she went into 11 Dunster Gardens. According to the later police statement she only went inside once but “met Mrs Adams outside on a number of occasions”. She dated her departure from England as the last week of October 1990. As to the circumstances in which she and her late husband came to witness the Doyle Will she said this:

“We came to witness this when my husband was approached by Dr Valkova when he was coming home one night. She asked him if he would witness some documents. He spoke to me about this and we agreed to do this. I didn’t want to disappoint the lady. My husband and I then went to the house in the evening. Dr Valkova took us to the upstairs part of the house and gave us tea. On reflection it must have been the ground floor. Mrs Adam was also present and we all had tea and chatted. Within a few minutes Dr Valkova produced a document which she told me was a Will of Mrs Adam. She gave it to me and my husband to sign and then gave it to Mrs Adam to sign. There was no discussion with Mrs Adam about the will. Although Mrs Adam was very frail, she spoke to us. We talked to her about moving to Ireland but she appeared to be quite deaf because her conversation was about something different. I think she was talking about the weather. We didn’t discuss the Will or the documents at all with Mrs Adam. There was just the four of us in the room. I was never asked to sign Mrs Adam’s Will again.”

218. She went on to deny having witnessed any documents prior to October 1990. This included the EPA dated 7 August 1990 in which Mrs Doyle's signature appears as a witness to the signatures of Dr Valkova and Dr Coffey. She disclaimed having ever seen Dr Coffey. She proceeded to make a number of small corrections to her earlier police statement. She dealt also at some length with her witness statement of 26 March 1996, and questioned the accuracy of practically every sentence in it.
219. In her statement of 6 February 2007 - it is extremely short - Mrs Doyle, who was now in her eightieth year, stated that she and her husband witnessed the Doyle Will. Of her original witness statement of 26 March 1996 she stated: "I confirm that my statement was true to the best of my knowledge, information and belief..." and that "for the avoidance of any doubt, I confirm that I fully approve the contents" of it.
220. Five months later, on 20 July 2007, Mrs Doyle signed her most recent witness statement. It read simply as follows:
- "I attach to this statement copies of two statements I gave to the police on 23 November 1999 and 15 August 2001. I have reread these statements and confirm that, together, they are a true record of what happened."
221. In view of the contradictory nature of these statements, it is quite impossible to have any confidence about what Mrs Doyle's evidence is on the matters to which her statements relate. On the critical question concerning the circumstances in which she and her late husband came to witness the Doyle Will, Mrs Doyle's evidence falls far short, in my judgment, of the "strongest evidence" referred to by the Court of Appeal in Sherrington v Sherrington which is needed to rebut the presumption of its due execution arising from the apparent regularity of the will and the assertion of its due execution by the signed attestation clause.

## (2) the Gregorio Will

222. I come next to the Gregorio Will dated 24 October 1990, apparently witnessed by Orazio and Lorenzo Di Gregorio, who are brothers. Orazio Di Gregorio, to whom I will refer simply as Orazio, has provided three statements in writing concerned with his involvement. The first, which is in the form of a very brief typed letter, is dated 20 January 1993. It is headed "To whom it may concern" and gives an address in Preston Road, Harrow. It states simply:
- "I am writing to confirm that on 24 October 1990 I Orazio Digregorio was one of the witnesses to Mrs Adam's signature of her Will. Mrs Adam signed in the presence of us both and we signed immediately after her.
- Mrs Adam was cheerful and we had an enjoyable conversation."
223. The second statement was the result of an interview by the police and was provided on 19 June 2001. It was given in Italian and translated into English. In a witness statement dated 20 March 2003 Orazio confirmed the truth of the contents of that statement and, for good measure, stated that he had read the English version of it

made by a qualified interpreter. It was this statement which was before the Court of Appeal in February 2005 and which, as I read the judgment given on that occasion, led in large part to the setting aside of the order made by Carnwath J in 1998 and to the direction for this retrial. In this statement, Orazio explained that he came to live in this country in 1974 and that in 1980 he began living at the address in Preston Road, Harrow. He stated that in the early 1980s he became a member of the Seventh Day Adventist Church and that it was through that organisation that he met and got to know Dr Valkova who was also a member. He became, he said, an occasional visitor to 11 Dunster Gardens. He explained how one day Dr Valkova, whom he refers to by her first name, “asked me for a favour, she asked me to sign a document which would have enabled her to look after the old lady [a reference to Mrs Adam] medically and physically as well as administer/take care of her personal matters ie finances ...”. He continued:

“When she asked me for this favour, [Dr Valkova] told me that she required two signatures on this document. [Dr Valkova] asked me if I had a close friend or relative that could sign this document with me. I therefore suggested my brother Lorenzo, after I asked him...”

Then, after explaining how Lorenzo could neither speak nor write nor read English but that he (Orazio) could speak English although he could not then write or read it, he continued:

“One late evening my brother and I went at [Dr Valkova’s] address to sign this document. On entering the house she got us to wait in the hallway, she went to get the document, my brother and I signed it and wrote our address on it, I cannot actually remember if we signed one or more documents.”

He then referred to the will and continued:

“I can confirm that the signature on the document is mine, and that the writing of my name and address is mine. The document is dated 24<sup>th</sup> October 1990, I do not recall if the date was already written on the document when I signed it and I do not remember the date when I signed it. The document shows another signature, I do not recall it to be there and I do not recognise it.”

I take that to be a reference to Mrs Adam’s signature. Then, he continued:

“I did not read this document, I accepted in good faith the explanation given to me by [Dr Valkova]. I didn't know that this document was a will, had I known I would not have signed it. When [Dr Valkova] gave me the document she indicated where to sign, and I signed it whilst at the same time she was commenting about the health of the old lady. That evening was the only time that I signed any document for [Dr Valkova]. I should also like to add that the light was very poor in the hall where we were signing the document, we were also in an

uncomfortable position when we were signing this document and we signed in a hurry. [Dr Valkova] then invited us to meet the lady, she showed us in a bedroom on that same floor. [Dr Valkova] introduced myself and my brother by name to the old lady, but I do not remember the name of the old lady. The old lady was sitting up in bed propped up by pillows. During the time that we were there she showed signs that she was taking care of the old lady. [Dr Valkova] told the lady that we were the people who had signed the document, without specifying. Whilst she was talking to the old lady, the old lady did not seem to have heard or understood what she was saying. Whilst we were there she didn't show any document to the old lady and the old lady did not sign anything in front of us. I do not know what she did with the document as I did not see it again. Apart from the usual pleasantries, I did not speak to the old lady nor did my brother. [Dr Valkova] was the person who spoke the whole of the time, the old lady just agreed or nodded to what she was saying. In my view she was not fully aware of what was going on. We left the old lady after five ten [sic] minutes, and we were shown into another room where she offered us a drink. Her mother and sister were there too. Then after having spent a little time together self and my brother left. It was during this occasion that I met the old lady, I had never seen her before and never saw her again. Although I had occasion of being in the house before and I was aware that [Dr Valkova] was looking after an elderly lady, I had not had the opportunity of meeting her before or after. The evening that I signed the document was the last time that I went into that house after having been invited by her. I do not remember if [Dr Valkova] phoned me during the last few remaining months that I stayed in England. At the end of 1991 I returned to live in Italy..."

224. The interview went on to deal with the letter of 20 January 1993 set out above. Orazio had this to say about the letter:

"The contents of this letter is [sic] incorrect. On the 20<sup>th</sup> January 1993 I was already living in Italy. I have never seen this document previously and I have never signed it. I was not in the UK during January 1993. I did come to London with my wife in April 1993 to visit my family. During this time I did not see or speak to [Dr Valkova]."

He then referred to the EPA, stated that he did not dispute his signature but added that he did not remember having signed the document.

225. In his most recent witness statement, which is dated 9 July 2007, Orazio stated "categorically" that he did not sign the letter of 20 January 1993. He accepted, however, that the signature looked like his. He speculated that during his visit to 11 Dunster Gardens when the Gregorio Will was witnessed he was asked to sign documents the contents of which he did not understand "and it may be that I signed a

blank piece of paper over which the 'to whom it may concern' letter has been added'. He then gave as reasons for that view that the contents of the letter were inaccurate, that he was certain that he never received a copy of the letter in Italy and, if he had, would have remembered it, and that after he married in May 1992 he did not return to the Preston Road address until March 1995 but sub-let the premises in the meantime.

226. He then went on to describe in more detail the circumstances in which he came to place his signature on the Gregorio Will. He prefaced this by saying that he witnessed the EPA, although he was unable to recall when this was, and continued:

“5. Dr Valkova then subsequently contacted me to say that she needed two signatures to a document and asked me to bring someone with me to provide them. I asked my brother, Lorenzo, to come. She did not at any stage explain to me that we would be signing a Will. My understanding was that we would be signing a document similar to the one I had signed dated 2<sup>nd</sup> August authorising Dr Valkova to look after the old lady. She had given me the impression that she needed two signatures to the document rather than one. I had no idea that I was witnessing a Will. My brother, Lorenzo, at that time did not understand, speak or read English and relied on me for his understanding of what was happening.

6. Lorenzo and I arrived at the house in Kilburn at about 10.00 pm on 24<sup>th</sup> October 1990. All this happened a long time ago and, as I have said, I had visited Dr Valkova on previous occasions at that house so I am conscious that the different visits made may affect my recollection. However, to the best of my recollection, we were shown in through the front door of the house, which at least in the hall and landing was poorly lit. There were some stairs leading up to the first floor. I cannot at this stage recall whether Dr Valkova offered us tea before or after we signed the document. My recollection is that she showed us up to the first floor where there was a short corridor or landing about two or three metres long and a metre wide. She produced a piece of paper and asked me to sign it in this corridor. There was a little table or something to lean on and my recollection is that Dr Valkova kept hold of the document and did not physically hand it over to me when I signed it.

7. As I have said, I did not know that what I was signing was a Will and indeed I did not appreciate that what I was signing was an important document at all. I was simply doing Dr Valkova a favour enabling her to look after the old lady.

8. After I had signed the document Dr Valkova took us in to see Mrs Adams, who was in her bedroom, in bed. I had not met her before. When we entered Mrs Adams' bedroom I saw an elderly lady in bed. It was my impression that she did not have the brightness and lucidity to understand or follow reasoning. She did not talk much. She was, most of the time,

kind of accepting and allowing things. Dr Valkova was guiding the conversation throughout, saying nice things about Mrs Adams. Mrs Adams was passive and any activity was generated by Dr Valkova.

9. Dr Valkova introduced my brother and I to Mrs Adams. I think she did so by explaining that I was Orazio of whom she had spoken previously and this was his brother. I did not know what Dr Valkova had told Mrs Adams. When she introduced us she said 'these are the gentlemen who have signed'. She did not say what we had signed, nor did she show Mrs Adams the document we had signed. I can remember that we did not discuss in front of Mrs Adams the reason for the signatures. As I have said, I presumed that Mrs Adams was elderly and needed someone to care for her and to deal with her prescriptions and medicines."

He concluded by saying that he could state "categorically" that he did not see Mrs Adams sign the will "either before I signed it or afterwards" adding "I cannot now recall whether her signature was already on the document before I signed it".

227. Lorenzo Di Gregorio ("Lorenzo") has also provided several statements in writing. Exhibited to a witness statement dated 17 February 2003 are the records, each signed by him, of three separate police interviews in connection with his involvement in witnessing the Gregorio Will. In each case the interview was conducted in Italian. The interview record was then translated into English. In his witness statement he confirmed that the contents of the statements were true to the best of his knowledge and belief.
228. As with his brother Orazio, there is a typewritten "To whom it may concern" letter which appears to carry his signature. In his case, the letter is dated 16 January 1993 and gives an address in Linden Avenue, Wembley. It stated:
- "On 24 October 1990 I Digregorio Lorenzo and Orazio Digregorio witnessed Mrs Adam's signature on her Will at 11 Dunster Gardens NW6. We stayed together with Mrs Adam. Mrs Adam signed first. We signed immediately after her.
- Mrs Adam appreciated and enjoyed our visit and we had a friendly conversation."
229. In his witness statement of 17 February 2003 Lorenzo stated that he went with his brother to the house in Kilburn but "did not see the old lady sign anything". He also stated that he did not write the letter dated 16 January 1993.
230. The first of the police interviews took place on 31 March 2000. In it Lorenzo stated that he had lived in England since 1982, that when he first arrived in this country his English was very poor but that by 1990 it had "got better although I could not write or read much". He stated that his brother could read and write English "more than I could". He described his visit to Kilburn which he undertook at his brother's request

“to do a favour” for a woman who belonged to the same church as his brother did. That was clearly a reference to Dr Valkova. The interview record continued:

“I therefore went to a house in Kilburn with my brother where I met this woman in this house. I also met an elderly woman who was sitting on a chair. The house was one of those Victorian houses with high ceilings. We were shown into the living room. The furniture in the room was normal, nothing exceptional.

The room was clean and the things around were old. I was introduced to the woman and the old woman. I gave my hand to the old woman who smiled at me. She tried to talk but did not seem to be able to say the words. After the introduction the foreign woman asked me where I worked, where I came from and general things. Everything was being said through my brother as I could not speak or understand English much at the time. I could understand the odd words but not the whole sentence. I was told the name of the elderly woman but I now cannot remember it any more. The foreign woman said that the old woman was too old to look after herself and that therefore she was there to look after her. I was then told that this woman wanted a piece of paper signed to the effect that she was the person who looked after the old woman and who took care of her. During the conversation the woman was sitting there but didn't say anything. I remember someone point out/saying that the old woman was deaf. At one stage the foreign woman helped the older woman to the bathroom holding her by the arm, the old woman was fragile. Then the foreign woman went to get a piece of paper and she handed it to my brother. He signed the paper and then passed it to me. I signed it and wrote my address. The foreign woman took back the piece of paper. I don't remember seeing the old woman signing the paper. We were in the house for about half an hour altogether...”

231. He was then referred to the Gregorio Will, stated that he recognised his signature, address and job description on it and said this:

“At the time I could not read this paper and even if I could I wouldn't have known its significance/meaning. The signature A L Adam I don't remember it being on the paper when I signed it and I don't remember the old woman signing it... I didn't know that what I was signing was a Will and no one told me that it was a Will. It is to be mentioned that at the time I wouldn't have known the meaning of the word ‘Will’.”

232. In the interview Lorenzo then described how he was subsequently telephoned by a solicitor to enquire about the circumstances in which he had signed his name on what he was given to understand was a will and how he was later telephoned on a number of occasions by Dr Valkova who pressed him to recall the circumstances in which he

had signed his name. According to the interview record, Lorenzo stated that he became irritated by these calls and ultimately said to the caller, whose voice he recognised but whose name the caller did not supply: “look why should I say something that I do not remember happened and don’t be so insistent, don’t push me to remember something that I do not remember”. It appears that the caller, presumably Dr Valkova, had pressed him to recall that he had seen “the old lady sign the paper”.

233. In his second police interview, which took place on 17 January 2001, Lorenzo commented further on the letter dated 16 January 1993. He stated that he could not recall ever seeing that letter and that by January 1993 he had not lived at the Linden Avenue address at the head of the letter for over a year. He concluded by stating that “I did not sign this document as what has been written is not correct”. He also stated that, after signing the document which was later identified to him as the Gregorio Will, he did not return to 11 Dunster Gardens or ever again meet “the Bulgarian woman”.
234. In his third police interview, which took place seven months later on 17 August 2001, he was referred to his two earlier police statements and was recorded as saying that he had recently discussed with Orazio their joint visit to 11 Dunster Gardens (by then almost eleven years earlier). He then stated:

“The conversation with my brother refreshed my memory and I have remembered other things and I would now like to clarify and change things that I have said in my earlier statements. On the day we went to the house in Kilburn the document that I signed was not signed in the room where the old lady was. When we arrived at the address the Bulgarian lady opened the door and invited us into the hallway. We waited there, my brother had introduced me to the lady, I did not understand much of what was being said, my brother was explaining it to me. The Bulgarian lady then gave us something to sign. I cannot remember if it was one or more documents. We signed where the lady pointed to, I could not read what I was signing... I did not know I was signing a will. I had been asked if the will had already been signed by anybody but I cannot remember. After signing the document we went into the living room to see the old lady and once in that room I did not sign any other document. Our visit lasted no more than half an hour.”

He next proceeded to correct what he had said in his second police interview (to the effect that, following the visit he and his brother made to 11 Dunster Gardens, he had not again visited that address or seen Dr Valkova):

“I have also remembered that I visited the Bulgarian lady once again, she telephoned me at home and invited my wife and I to her house. We went to the house in Kilburn, my wife Paola and I, and we had something to drink with the Bulgarian lady. I cannot remember exactly when this was but it was before my brother went back to Italy ...”

235. In his witness statement dated 13 July 2005, Lorenzo stated that neither of the two signatures on the 16 January 1993 letter (in fact, a signature followed by his name in full) was his. He stated that he was mystified by the address at the head of that letter as he had moved from there in about 1989/90 and by January 1993 was living at an address in Essex Road. He accepted that he sometimes collected mail from the Linden Avenue address and that this continued for about a year after leaving it. But, he said, he never received the letter of 16 January 1993 “and I accordingly never signed it or returned to Dr Valkova”. He stated that he could not remember if Mrs Adam’s signature was on the will when he signed it and could not remember the time of day when Orazio and he visited 11 Dunster Gardens on 24 October 1990 but thought it was at about 10 pm. He then continued:

“My recollection of events is not particularly clear. I can remember coming into the house and seeing the old lady. My recollection is that she was sitting up in a chair and I thought it was the sitting room but it may have been her bedroom. I do not remember seeing Mrs Adam sign any document but I cannot recall with certainty where I signed it; I do not think I signed it in Mrs Adam’s room - I either signed it when my brother did in the corridor outside before going in, or downstairs in the hallway after we had met Mrs Adam. When we met Mrs Adam I gained the impression that she was not really aware of anything we were talking about. She was smiling and seeing the people who were around her but she did not talk much. Dr Valkova did much of the talking with my brother but because I could not understand much English I cannot be sure what they were talking about, except some of it was about the Church they attended.”

236. Orazio and Lorenzo both gave evidence before me. The following points emerged from Orazio’s evidence. He stuck to his recollection that when on 24 October 1990 he (and Lorenzo) signed what he much later discovered was Mrs Adam’s will, he was not in the presence of Mrs Adam but only in the presence of his brother and Dr Valkova and that it was only after he had signed the document that he met the elderly lady whom he understood to be Mrs Adam. He had no recollection of seeing Mrs Adam’s signature on the document when he signed it himself but accepted that it might have been. “I was not concerned about it” was how he put the matter. If Mrs Adam’s signature was already on the document he had no recollection of Mrs Adam doing or saying anything to acknowledge her signature. He said that, given his standard of English at the time, he did not when signing the document understand what the attestation clause meant. He had no idea at the time that the document to which he was putting his signature was a will.

237. He was initially firm in his denial that he had written the letter of 20 January 1993. He explained that he was repeatedly telephoned by Dr Valkova to get him to confirm, among other matters, that Mrs Adam had signed the will in their presence but he refused to do so. He was not clear precisely when it was that Dr Valkova telephoned him except that it was before January 1993. He recalled telling her that he had not understood at the time that the document which she had asked him to sign was Mrs Adam’s will but understood that it was to do with Mrs Adam’s medicines. Later in

his evidence, however, he accepted that the signature on the 20 January 1993 letter looked like his and later still he accepted that the signature on it was indeed his. The original of that letter was in court and Orazio was able to examine it.

238. He recalled signing the EPA but had no recollection of Mrs Adam having signed it even though his signature is expressed to be as a witness to hers. He was vague about when he signed the EPA, thought it was in the corridor of 11 Dunster Gardens but accepted that he might have been confusing that occasion with the occasion when he and his brother had signed the will.
239. The consistent thrust of Orazio's evidence, ignoring the presumption raised by his signature under the attestation clause and his confirmation of what he did by his signature on the 20 January 1993 letter (since I find that he did indeed sign that letter), was that even if Mrs Adam had already signed the will when he and his brother placed their signatures on it (1) she did not sign or acknowledge her signature in their presence, (2) they did not sign (or acknowledge their signatures) in her presence (because they were in the corridor and not in her bedroom) and (3) their action in signing the will could not have been with the intention of attesting Mrs Adam's signature on it since they had no recollection of seeing Mrs Adam's signature when they did so.
240. When he came to give evidence, Lorenzo had the greatest difficulty in recalling what happened when he and Orazio went to 11 Dunster Gardens to sign the will. He recalled that, at the time, his English was very poor. He recalled going to the house but was unable to recall where he was in the house when he signed the will. He had no recollection of seeing Mrs Adam sign, had no understanding that the document to which he was putting his signature was a will and appeared to recall that when he did sign he was not in the presence of Mrs Adam. He accepted that the signature on the 16 January 1993 letter was "probably mine" but could not recall the circumstances in which, if it was, he came to sign that letter.
241. I am in little doubt that if the issue of due execution of the Gregorio Will turned on Lorenzo's written and oral recollections alone, his evidence would fall far short of what must be shown to rebut the presumption of due execution raised by the appearance of his and his brother's signatures under the attestation clause on the will and reinforced by their signatures on the two January 1993 letters. It is no criticism of Lorenzo that his recollection in 2008 of what happened in the course of his short visit almost 18 years earlier to a house he had never seen before was exceedingly unclear. Given the passage of time and the number of occasions on which the events of that day have been the subject of interview and statement it would be exceedingly surprising if he were able to recall reliably what happened all those years ago.
242. That brings me back to Orazio's evidence. The question at the end of the day is whether I should accept his evidence that he and his brother were in the corridor/hallway outside where Mrs Adam was when they signed their names on her will and that, in any event, he never saw Mrs Adam's signature on the will so that the formalities required by the Wills Act 1837 cannot be said to have been fulfilled.
243. I have come to the conclusion that, taken as a whole, the evidence of the two Gregorios, even when coupled with the other evidence of documents carrying Mrs Adam's signature at or around this time, does not constitute the "strongest evidence"

to which the Court of Appeal referred in Sherrington v Sherrington. I do so for the following reasons. First, the lapse of time since the events in question and the inevitable uncertainties in the evidence of Orazio and, to a greater extent Lorenzo, make it very difficult to have great confidence about what exactly happened when they turned up to witness the will all those years ago. In his written closing submissions Mr Ferris realistically accepted that their evidence was “not of the highest quality” and that (quite understandably) they “struggled ...with their recollections of an event which took minutes of their time 18 years ago”. Second, Mr Browne had explained how the will should be executed: see his letter to Mrs Adam dated 17 October 1990; Mrs Adam was evidently capable of signing a document in the presence of others, not least because she was to do so in January 1991 in the presence of Dr Walton and, according to his evidence, did so again when Mr Hallam made his brief call in September 1991. Having gone to the trouble of getting Mr Browne to prepare and engross the 1990 Wills, and having been asked by him to arrange for Mrs Adam to re-execute her will in view of his doubt about the due execution of the Doyle Will only a few days earlier, it is certainly possible but, it may be thought, not likely that Dr Valkova, who is a highly intelligent and capable person, would have slipped up over the proper execution of the Gregorio Will. Third, I find that despite their initial refusal to accept that this had happened, the January 1993 letters, in effect reinforcing the presumption of due execution, were signed by the two Gregorio brothers. Even if they were pressed by Dr Valkova to sign those letters, there was no compulsion on them to do so. It is difficult to see how their poor English can justify their actions in having signed them. On their face they are supportive of due execution. I should add that Dr Valkova submitted that, given the police involvement following the 1998 trial, it was only to be expected that the two brothers would seek to minimise their role in the matter and distance themselves in any way from a document (a will) that they feared might embroil them in a serious criminal matter and that this explains their reluctance to accept that they had signed those letters. I see some force in this point. Fourth (and for good measure), Dr Valkova was firm in her evidence that Mrs Adam had signed her will in the presence of the Gregorio brothers, herself and her mother and that they in turn had signed the will as witnesses in Mrs Adam’s presence.

244. This is not to say that I do not entertain doubts about the issue of due execution. But at the end of the day, I have to ask myself whether, viewing the matter overall, there is the strong evidence required to rebut the presumption of due execution. In my judgment, there is not. I therefore conclude the issue of due execution in Dr Valkova’s favour.

#### Testamentary capacity

245. The long established statement of what is required if someone is to be mentally capable of making a will is to be found in the following, celebrated passage from the judgment of Cockburn CJ in Banks v Goodfellow (1870) LR5 QB 549 at 576:

“It is essential...that a testator shall understand the nature of his act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect, and, with a view to the latter object, that no disorder of mind shall poison his affections, pervert his sense of right, or prevent the

exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if his mind had been sound, would not have been made.”

246. In his charge to the jury in Boughton v Knight (1873) LR 3 P&D 64 at 65 Sir James Hannen referred to the testator's need to have a memory sufficiently sound “to recall the several persons who ought to be considered as his possible beneficiaries” and that “his understanding must be sound so that he may comprehend their various ties with him by blood or friendship, and their claims on these or other grounds upon his testamentary bounty”. In other words, the testator must be able to recall those (whether related or not) who might be expected to be named in his will.
247. As has been said, however, the law does not call for a perfectly balanced mind, nor is a will to be pronounced against merely because the testator was moved by capricious, frivolous, mean or even bad motives. See Williams, Mortimer and Sunnucks on Executors, Administrators and Probate, 2008 Edition, at paragraph 13-03. Where, as here, the will is rational on its face (and duly executed) the court will pronounce for it, presuming that the testator was mentally competent so that the burden rests on those alleging it to adduce evidence of the testator's unsoundness of mind. But once there is evidence before the court which credibly calls into question the testator's capacity to make a will at the time the will was made, the burden shifts to those who seek to propound the will to prove affirmatively, on all of the evidence, that the testator had the required mental capacity to make it.
248. In this case there is ample evidence to call into question Mrs Adam's capacity in October 1990 to make a will. This means that the burden of establishing on a balance of probabilities that Mrs Adam had the necessary capacity lies with Dr Valkova. The question is whether she has discharged that burden. She did so to the satisfaction of the court at the 1998 trial and the Court of Appeal was of the clear view that a challenge to that conclusion was hopeless.
249. The central contention which Mr Couwenbergh has made in the instant case is that by October 1990 Mrs Adam was suffering from dementia - that is, impairment of memory and cognitive function - to such a degree that she lacked the necessary capacity to make a will. In particular, he points to Mrs Adam's failure by August 1990 to recognise even her brother, her nearest living relative, or his daughter when they visited her and also to the apparently irrational description by Mrs Adam of her brother as a “bandit” when interviewed by Mr Hallam on 30 October 1990, coupled with the repeated references to the impairment of her short-term memory. He points to these matters as the clearest possible evidence of Mrs Adam's demented state by the time she came to sign the 1990 Wills. He contends that the evidence is overwhelming in this respect and that protestations to the contrary by Dr Valkova, assisted to the extent that the recollection of other witnesses in this regard is to be given weight, are to be disregarded. He relies also on the expert evidence of Dr Cornelius Kelly and, when he had been taken through the long medical history and the events leading up to his involvement in early 1991, on the evidence also of Dr Walton, called by Dr Valkova as her expert on the issue.
250. It is to those matters that I now turn, starting with the expert medical evidence.

(a) Dr Kelly

251. Dr Kelly, who was called by Mr Couwenbergh, is a Fellow of the Royal College of Psychiatrists and has worked since 1993 as a consultant psycho-geriatrician, initially at St Bartholomew's and Homerton Hospitals and latterly with the Central & North West London Foundation NHS Trust where he is the lead consultant for older adults. For over 13 years he has worked solely with patients aged 65 years and above; just over half of his work is the assessment, treatment and care of people with dementia. Since 1997 he has run a memory clinic specialising in the early diagnosis and treatment of dementia. He has published papers on dementia assessment, treatment and care.
252. Before expressing an opinion on Mrs Adam's testamentary capacity at the time of the October Wills Dr Kelly reviewed Mrs Adam's GP and the hospital records stretching back to 1979. He also read statements from Drs Powell, Lalvani and Walton, PC Powell, reports by Ms Mannion and a variety of other background papers, including a transcript of the tape-recorded conversation between Mrs Adam and Dr Valkova made on 4 June 1991.
253. In his report to the court, Dr Kelly referred to the definition of dementia established by the International Classification of Diseases, 10<sup>th</sup> Edition, (produced under the aegis of the World Health Organisation) as "a syndrome due to disease of the brain, usually of a chronic or progressive nature, in which there is disturbance of multiple higher cortical functions, including memory, thinking, orientation, comprehension, calculation, learning capacity, language and judgement". He described how the syndrome can arise from a variety of causes of which the most frequent is Alzheimer's disease.
254. From the reports and documents examined by him Dr Kelly had little doubt that Mrs Adam showed evidence of progressive cognitive deterioration from as far back as 1979 but more clearly (with memory problems) from 1984, and more noticeably still from 1987 onwards. He commented that the history of repeated serious falls leading to hospitalisation for which she had no recollection supported the diagnosis of cognitive problems. He considered that by 1987 she suffered a "moderate" level of dementia and that by August 1990 there was evidence of more gross confusion with short-term memory loss and failure to recognise people and remember/acknowledge events from her distant past. He stated that such a pattern of progressive deterioration was typical of dementia and that this was supported by the post-mortem examination of Mrs Adam's brain which, in his view, showed "typical gross pathological changes of advanced dementia, most probably Alzheimer's disease".
255. After setting out the test of testamentary capacity taken from the judgment in Banks v Goodfellow (referred to earlier), Dr Kelly was of the opinion that, although in October 1990 she may have understood the nature of a will and possibly the effect of making a will, Mrs Adam would not have been able spontaneously to generate, understand and retain the information required to understand the extent of her property and appreciate the claims to which she should give effect. "By this time" he stated "it seems to me that both her short and long-term memory, as well as her judgment, were too compromised to be relied upon to make a fully informed and balanced decision of such importance." He therefore concluded that, if tested appropriately in October 1990, Mrs Adam would not have satisfied a medical

practitioner experienced in the assessment of older people that she retained testamentary capacity.

256. Before giving evidence, Dr Kelly had not seen Ms Mannion's notes, merely the two reports referred to earlier (the one being a revised version of the other) based upon them. On being taken to passages from those notes, Dr Kelly considered that they reinforced his opinion. In particular, the notes contained instances of long as well as short-term memory loss and some evidence of loss of orientation as to time. He pointed to instances of her suggestibility which he described as a symptom of a late stage of dementia. He accepted that Mrs Adam remained orientated as to person (ie, she knew who she was) which, as he explained, is usually one of the last things to fail in the process of mental decline as a result of dementia.
257. On hearing the recording of Dr Valkova's brief conversation with Mrs Adam on 4 June 1991 Dr Kelly considered that Mrs Adam was incoherent in one at least of her answers to the questions put to her and that she had not obviously comprehended at least one of the others. He remarked on the sparseness of Mrs Adam's language and on the closed nature of the questions which Dr Valkova put to her, that is, questions which allowed of few answers. He said that of much greater value would have been if Dr Valkova had asked Mrs Adam to repeat what she had been asked and what she had answered in order to test her power of understanding and retention.
258. He assessed Mrs Adam's mental state by October 1990 to lie between moderate and severe dementia. He accepted that there could be mental deterioration from vascular damage and that such damage could result in sudden and acute loss of cognitive function. He said, however, that there was no evidence of any such damage. On the contrary, he was of the opinion that all of the evidence pointed to a gradual and progressive deterioration in Mrs Adam which was much more typical of Alzheimer's disease.
259. In the result, he adhered to his firm opinion that in October 1990 Mrs Adam lacked testamentary capacity.
260. Dr Valkova criticised Dr Kelly's report. She submitted that, although impressively qualified, Dr Kelly suffered from not knowing Mrs Adam (which is, of course, true, as he accepted), that he was too highly and narrowly specialised (resulting in what she described as a one-sided and unbalanced report which overlooked or underestimated Mrs Adam's physical condition and specific health problems) and that he failed to note that, although a hospital in-patient on a number of occasions, Mrs Adam was never examined while in hospital by a psychogeriatrician because, as Dr Valkova put it, Mrs Adam did not need any such examination. She submitted that Dr Kelly's opinion paid no regard to the fact that her medical notes contained no references to symptoms commonly associated with Alzheimer's disease, namely aphasia (loss or impairment of language caused by brain dysfunction), apraxia (inability to execute learnt movement on command), agnosia (inability to understand the significance of sensory stimuli), acalculia (inability to perform arithmetical calculations), agraphia (inability to write) and alexia (inability to read). She referred to Mrs Adam's facility for languages, especially her ability to converse in both English and German, her ability to maintain her daily routine and her ability to write and read, all of which, she said, contradicted Dr Kelly's diagnosis. She made a more general point that the medical and other notes did not question Mrs Adam's ability, so far as her

deteriorating physical mobility allowed, to carry out complex actions, such as getting dressed. She pointed out that this was a matter remarked upon by Dr Walton in his “To whom it may concern” letter of 24 January 1991, (although Dr Walton could only have discovered this during his short visit from either Dr Valkova herself or from Mrs Adam) and submitted that this was evidence of the absence of apraxia. She also pointed out that confusion and short-term memory loss, when detected in Mrs Adam, were invariably associated with admittance to hospital as a result of a fall and were closely linked to the stress, pain and medication that the episode involved. The discharge reports, she said, did not refer to confusion in Mrs Adam.

261. She submitted that the post mortem examination of Mrs Adam’s brain was more supportive of what she referred to as age-related change than of Alzheimer's disease or other forms of dementia. She was strongly critical of Dr Kelly’s opinion that Mrs Adam’s falls were a symptom of her dementia. This overlooked, he said, that with her advanced osteoporosis Mrs Adam’s mobility deteriorated progressively over the years. She also pointed out that, at any rate in the early years of her acquaintance with Mrs Adam, Mrs Adams’ falls were often accompanied by a drinking habit from which she then suffered. She referred in this context to a hospital note of January 1985.

(b) Dr Walton

262. In contrast to Dr Kelly, who was asked to express an opinion on a person whom he had not seen but whose medical history, so far as available from the GP and hospital records, he had carefully considered, Dr Walton had seen Mrs Adam but had expressed his views without having seen any of Mrs Adam’s past medical history. Indeed, as Dr Walton confirmed when cross-examined, his first visit to Mrs Adam (in January 2001) was not with a view to assessing her testamentary capacity at all but merely to give a general opinion on whether she was living at home safely without undue risk to her life or health.

263. I have already referred in some detail to Dr Walton’s two visits to see Mrs Adam and to the letters which Dr Walton wrote following those visits. On 2 February 1993, some 15 months after Mrs Adam’s death, Dr Walton wrote another “To whom it may concern” letter in which he stated his opinion that Mrs Adam “would have fully understood the effect and implications of the Will she made on 24<sup>th</sup> October 1990”. That letter was written at Dr Valkova’s prompting. By then Mr Couwenbergh and the Rapke family were challenging the validity of the Gregorio Will. But Dr Walton had no more seen any of the GP and hospital notes about Mrs Adam when he wrote that letter than he had when writing his letters in early 2001.

264. On 3 May 1996 the solicitor then acting for Dr Valkova wrote to Dr Walton to seek his opinion on five matters, four of which were relevant to Mrs Adam’s testamentary capacity. They supplied him with a quantity of background documents (such as the pleadings in the action, copies of the powers of attorney, the report dated 18 April 1992 by Ms Mannion, and assorted correspondence) but none of the GP or hospital notes. The only medical document was the short report dated 15 June 1992 by Dr Lalvani set out (and commented upon) at paragraph 118 above.

265. In his reply to the solicitor’s letter Dr Walton was at pains to point out that on neither of his two home visits to Mrs Adam was he asked to express any view on her

testamentary capacity. He stated that he adhered to the opinion he gave in his “To whom it may concern” letter of 2 February 1993 that Mrs Adam would have fully understood the effect and implications of the will she made on 24 October 1990 (ie the Gregorio Will). He emphasised that the “mental disorder” to which he had referred in his letter of 14 March 1991 (set out at paragraph 170 above) was “principally the loss of short-term memory”. In answer to the first of the five questions put to him by the solicitor’s letter, which was whether on 24 October 1990 Mrs Adam understood the nature of her will and its effects, he thought that she did. In answer to the second question, which was whether Mrs Adam understood the extent of the property of which she was disposing, he thought that she would have done. In answer to the third question, which was whether Mrs Adam comprehended and appreciated the claims to which she ought to give effect (ie her relatives and other persons who might have claims to her property), Dr Walton wrote:

“In answer to your third question, Mrs Adam was very emphatic about her brother in her conversation with me on March 9<sup>th</sup> 1991, if I may repeat my previous letter of March 14<sup>th</sup> 1991, she said to me ‘I have nothing to do with my brother...My brother has no right to do things against me...’ The second part of this quotation seems to refer to the acrimonious meeting in August 1990 when it appears that Mrs Adam’s brother and niece tried to have her removed from her house against her will, on the grounds that she was confused and therefore it was unsafe for her to live there.”

The “second part” to which this citation refers makes an assumption about what had happened in August 1990 which I have found to be mistaken: Mrs Couwenbergh and her father did not try to have Mrs Adam removed from her house against her will but, that aside, the answer given did not in any event really deal with the question posed. Dr Walton felt unable to comment on the fourth question put to him which was whether Mrs Adam knew and approved the contents of her will. In answer to the fifth question, which was whether she suffered from any “disorder of the mind” which “poisoned her affections” or “perverted her sense of right or prevent[ed] the exercise of her natural faculties” or from any “insane delusion influencing her will in disposing of her property and bring[ing] about a disposal of it which, had her mind been sound, would not have been made” (all of them quotations from Banks v Goodfellow), Dr Walton wrote that, although Mrs Adam’s principal mental disorder was loss of short-term memory leading to poor concentration on details, there was no evidence of any of those symptoms. Dr Walton then went on in his letter to state that from the evidence he had quoted in his letter and from “other evidence in the documents you have sent me” (it is not clear and Dr Walton could not now recall precisely what that evidence was) Mrs Adam “strongly resented what she perceived as her brother’s attempts to interfere with her independence”. He went on to say that Mrs Adam valued her independence and that “it would not be out of character for her to have refused to recognise in her will persons whom she perceived as threatening that independence”. He concluded by stating that Mrs Adam’s poor eyesight did not affect the conclusions which he had expressed.

266. In a witness statement made for use at the 1998 trial, Dr Walton set out, in statement form, what he had written in his reply to the solicitor’s letter of 3 May 1996.

267. In his judgment following the 1998 trial Carnwath J stated (at [95]) that of the medical witnesses who gave evidence before him (Dr Powell for Mr Couwenbergh and Dr Walton and one other for Dr Valkova) he attached most weight to the evidence of Dr Walton. He referred to the fact that Dr Walton had examined Mrs Adam twice within a few months of the date she made her will “and who on the second occasion did so specifically for the purpose of assessing her mental capacity for the Public Trust Office”. The weight which Carnwath J attached to Dr Walton’s evidence was a matter to which the Court of Appeal drew attention when refusing Mr Couwenbergh leave to appeal out of time on 29 March 1999.
268. When cross-examined and taken in some detail through Mrs Adam’s hospital notes and to Ms Mannion’s detailed notes and some of the other background material, Dr Walton was far less positive about Mrs Adam’s mental condition than he had been in his letters of 2 February 1993 and May 1996. He noted the frequent mention of Mrs Adam’s short-term memory loss over quite a number of years prior to 1990. Even allowing for the possibility that short-term memory loss or confusion may occur as factors associated with a particular short-term event, such as a fall requiring hospitalisation and that it may have dissipated by the time of discharge, he acknowledged that the repeated references over so many years to her short-term memory loss pointed to another cause. He did not disagree with the diagnosis that she suffered from dementia. He acknowledged too that dementia tended to be a progressive condition. He referred to it as the stripping away of a person’s ability to reason. He stressed that he did not know, and had no means of knowing, what the rate of progression was of Mrs Adam’s condition. He expressed the view that by March 1991 Mrs Adam would have had difficulty in understanding the details of her 1978 Will because of the impossibility experienced by him on his March visit of getting Mrs Adam to concentrate on the questions raised by the letter from the Court of Protection. He adhered to his opinion that, although consistent with Alzheimer’s disease, the post mortem report (of brain shrinkage) did not exclude other causes. He accepted nevertheless that there was no evidence from the post mortem (or otherwise) of any cerebrovascular disease to account for Mrs Adam’s mental decline and that the most likely cause of her dementia was Alzheimer’s disease. The difficult question, he said, was to assess the extent of her mental decline by October 1990. Ultimately, albeit somewhat tentatively, he accepted that if Mrs Adam’s mental decline was one of steady progression, rather than a series of ups and downs, it was more likely than not that by October 1990 she lacked testamentary capacity.
269. After listening to the taped conversation of June 1991, Dr Walton noted (as Dr Kelly had done) that the questions which Dr Valkova had put to Mrs Adam were closed in nature, indeed loaded. Thus, for example, Dr Valkova’s question:

“You know your brother and his daughter took a solicitor and they started a process to be in control of your affairs. They are presenting you as mentally incapable...and they want to put you in an old peoples home either here or in Holland or in Germany. Would you agree with this?”

and a little later in the interview,

“Do you want to be visited and examined again and again by a geriatrician?”

Dr Walton found it difficult to follow the sense of some of Mrs Adam's answers. As he put it: "She's losing her faculties". He stated, however, that the recording did not indicate what he described as a "complete breakdown" of her intellect. He noted also that Mrs Adam was still able to recall early memories. When examined by Dr Valkova about the interview, Dr Walton pointed out that persons suffering from dementia can readily respond to things which are immediately present since there is no need to exercise the faculty of memory. Thus, the notion of a brother and his daughter, presented to her as wanting to take her away from her home, was something to which, he said, she was easily able to react. He pointed out that although Mrs Adam was capable of expressing herself forcefully about certain matters, for example her determination to remain in her home, the difficulty which he had experienced was in assessing the extent to which she understood the matters about which she was being so firm.

270. Dr Walton regretted that when he saw Mrs Adam on the two visits in early 1991 he did not take more trouble to assess her ability to make decisions. He adhered to the view, from what he saw of her, that she was capable of understanding that the house in which she lived was her property and that she wanted nothing to do with her brother and wanted to make a gift to Dr Valkova and her sister. Nevertheless, as he put it, "I can say nothing over and above those matters". He also agreed that "I'm not entirely sure she understood all the negative implications".
271. I have dealt at some length with the evidence of Dr Walton in view of the weight attached to his views, as then expressed, at the 1998 trial. It needs to be pointed out, however, that all of Ms Mannion's contemporary notes and most of the hospital material available at this trial was not considered by him when he expressed his views on that earlier occasion and in the letters he wrote in 1991, 1993 and 1996.
272. It was evident that, in the light of this considerable extra material, Dr Walton's views of Mrs Adam's mental state had altered somewhat. He was now disposed to agree that if Mrs Adam's underlying dementia caused her to suffer a steady mental decline it was more likely than not that she lacked testamentary capacity by October 1990. It is fair to say that this was a tentative and qualified opinion and that Dr Walton was reluctant to depart from his earlier view that, although incapable by March 1991 of managing and administering her property and affairs by reason of mental disorder, she would have been able to understand the effects and implications of her October wills.
273. Dr Valkova submitted that Dr Walton's earlier conclusion concerning Mrs Adam's mental capacity - expressed much closer in time to when he had seen her - should be preferred to the views expressed in evidence before me many years later. She submitted that, under cross-examination, Dr Walton had allowed himself to say things that were not to be reconciled with his earlier opinions.
274. Alongside her own evidence of Mrs Adam's state of mental health, Dr Valkova pointed to the statements of Mr Bernstein, Mr Hallam and Miss Newton. I have already referred to Mr Bernstein's and Mr Hallam's evidence. In her witness statement, Margaret Newton who, I was given to understand, has since died, said that she came to live next door at 13 Dunster Gardens in 1986. She stated that she called to see Mrs Adam in the early mornings when Dr Valkova was not around and used to spend a fair amount of time with her. She claimed to recall that during July and August 1990 she visited Mrs Adam at least twice a day, once in the morning and

again in the afternoon as Dr Valkova was away on holiday at that time. She described Mrs Adam as “always alert with a strong character and very determined in her wishes” and as having her wits about her and that she invariably found Mrs Adam reading papers and listening to the radio. She described how on one of the occasions in August 1990 that she went to see Mrs Adam, which was when Dr Valkova had returned from her holiday, there was a visitor “who was a tall man whom I understood to be her brother”. Miss Newton then went on to say that “at various times subsequent to this” she heard Mrs Adam complaining about her relations. She continued: “The impression I got was that her relatives had neglected her for a long time in the past and she did not want them to come and disturb her life now. She liked her independence and she seemed very happy.” Miss Newton also described how “since August 1990 and in 1991 I remember her being worried about the possibility of moving out into some old peoples’ home and expressing her views that she wanted to stay where she was”. In Miss Newton’s opinion Mrs Adam “remained in charge of her faculties and able to live at home with the assistance of her home help and her friend Dr Valkova” whom she described as always very concerned about Mrs Adam’s welfare.

275. Dr Valkova referred to the evidence of those three persons, inevitably untested in the case of Mr Bernstein and Miss Newton, as strong and conclusive support of Mrs Adam’s sound mind and testamentary capacity and material tending to exclude any suspicion regarding the preparation of the October Wills and her own involvement as Mrs Adam’s attorney. She also referred to a note made by Mrs Barbara Smith of Brent Social Services on a visit to Dunster Gardens in June 1990 in which she noted that Mrs Adam told her about her brother and niece who lived in Germany and was “thrilled” that Mrs Smith shared the same first name as her niece. This showed, said Dr Valkova, that Mrs Adam’s long-term memory was intact, that she was orientated as to time and that she had an awareness of people and places. (The same note, it should be pointed out, also commented on how Mrs Adam presented as “very repetitive” and how Dr Valkova “kept interrupting her [Mrs Adam], not letting her finish”.)
276. I have come to the view that Mrs Adam did not possess testamentary capacity at the time she made the 1990 Wills. I do so for the following reasons.
277. First, that was the clear opinion of Dr Kelly whom I found to be an impressive and persuasive witness. I allow for the fact that he never had the advantage of examining Mrs Adam.
278. Second, that is a view with which, as I have explained, Dr Walton was prepared to agree if it could be said that Mrs Adam’s mental decline was progressive. On all the evidence that I have seen, Mrs Adam’s dementia, from which I find she was suffering, was indeed progressive. Dr Walton himself accepted that if I were to accept Mrs Couwenbergh’s evidence of her aunt’s inability to recognise her and her father when they visited her in August 1990 that would be evidence of acute cognitive impairment. I accept that evidence; it is supported by Ms Mannion’s notes and, not least, by Dr Lalvani’s note of her visit to Dunster Gardens on 15 August 1990.
279. Third, and in any event, Dr Walton’s opinion that in October 1990 Mrs Adam would have been capable of fully understanding the effect and implications of the will she made falls short of an opinion that she possessed all of the attributes necessary to

demonstrate testamentary capacity. Those elements are not confined to an understanding by the testator that he or she is making a will, that the will is disposing of all of his or her property and that the will gives that property to the person named in it. Another important element, as Boughton v Knight (referred to earlier) makes clear, is an ability “to recall the several persons who ought to be considered as his possible beneficiaries”. If, as I find, Mrs Adam was not able - already by August 1990 - to bring to mind who her nearest relatives were, this essential element of testamentary capacity was absent even if, had she been able to bring them to mind, she might have decided not to benefit them in any way. Among those was Mr Couwenbergh himself. Although a relative only by marriage he had been close to Mrs Adam and sufficiently trusted by her to be named as the executor by the 1978 Will. There has been no suggestion that he had done anything to forfeit consideration as one of her beneficiaries. He last visited Mrs Adam in January 1990. She had not recognised him on his last visit. Dr Valkova herself stated that Mrs Adam had always been glad to see him.

280. Fourth, Mrs Adam had apparently developed a resentment of her brother. Dr Walton noticed this and commented upon it. It was a point made by Dr Valkova in her evidence. It was also a point noted by Mr Hallam when he went to see Mrs Adam on 30 October 1990. I find no rational explanation for this resentment. I have dealt in detail with the close relationship that existed between Mrs Adam and members of her family over the years, not least her brother. I have referred to some of the letters which he wrote to her in the years leading up to 1990. Mrs Adam’s failure to respond in any way to the news of the death in 1986 of her sister-in-law Octavia, Eugen’s wife, after her long illness and to offer any comfort to her grieving brother is not the reaction of a healthy person even if, as Dr Valkova stated but which I do not accept, Mrs Adam had for many years, entertained a dislike for and had therefore developed a distance from Eugen and his family. Octavia had nursed Mrs Adam for some weeks following her accident in the late 1970s. Although aged 87, Eugen took the trouble to travel to this country in August 1990 to see his sister. I find no justification for the view that, during his August visit, he and Mrs Couwenbergh were determined to bring about Mrs Adam’s removal to an old persons home, whatever her own views on the matter. The notes made by Ms Mannion do not remotely support that that was their purpose. Rather they indicate a concern to ensure that Mrs Adam was properly looked after in her final years. The evidence strongly suggests that Mrs Adam had somehow got it into her head that this was her brother’s purpose. That Mrs Adam held this view amounted, in my view, to a “disease of mind” (to adopt the language of Cockburn CJ in Banks v Goodfellow) which operated to “poison” her “affections” towards him. As such, it deprived her of the necessary capacity to make a will. But even if Mrs Adam’s resentment of her brother should not be attributed to some “disease” of her mind, likewise any resentment felt by her towards Mrs Couwenbergh, but is attributable to some quite rational concern as a result of their visit in August 1990, this hardly explains why she should have decided (if she did) to exclude her two nephews and Mr Couwenbergh from benefit under her will.
281. What of the evidence of Mr Bernstein, Mr Hallam and Miss Newton on which Dr Valkova placed considerable reliance?
282. It is difficult to attach much weight to Mr Bernstein’s rather tentative recollection in 1996 of his three visits to see Mrs Adam. He was attempting to recall events which

had occurred six years earlier and was doing so without the benefit of the relevant files which had since been lost. In any event, his very brief comment that throughout his dealings with her Mrs Adam appeared “lucid” does not answer the underlying question: what was the extent of her memory and understanding.

283. What weight should be accorded to Mr Hallam’s view that Mrs Adam appeared fully alert and responsive to his questions and was clear on what she wanted when he saw her during his 30 minute visit on 30 October 1990? First, it is to be noted that Mr Hallam was not concerned on that occasion to assess Mrs Adam’s testamentary capacity and it has not been suggested that he had the skill or experience to do so. Second, so far from his account of that visit throwing no doubt on Mrs Adam’s mental capacity, there is reference in his attendance note to her wanting nothing to do with her relatives, to her description several times of her brother as a “bandit” - a matter which stuck in Mr Hallam’s memory - and to her tendency to “flit from one subject to another”. Even after so many years, Mr Hallam was able to recall that, although appearing coherent and knowing what she wanted, she seemed to suffer from short-term memory loss. Third, the fact that, as he stated in his witness statement, Mr Hallam was unable to detect any alteration in Mrs Adam’s condition when he saw her briefly on 16 September 1991 (a matter of weeks before her death) from what he had noticed when he saw her almost a year earlier rather suggests that Mr Hallam was unable to recognise that Mrs Adam suffered from dementia, let alone from the advanced dementia as, on any view, by September 1991 was the case (see paragraphs [178] and [183] above).
284. That leaves Miss Newton's statement. I am very hesitant about accepting it uncritically. As with Mr Bernstein and Mr Hallam Miss Newton’s belief that Mrs Adam “remained in charge of her faculties”, unless tested by someone medically qualified to express an opinion or challenged by the need to recognise a person or recall a past event, is of little value.
285. As against that evidence - in large part untested because of the unavailability for cross-examination of Mr Bernstein and Miss Newton - is the countervailing evidence of Ms Mannion, Dr Powell, PC Powell and, to a lesser extent, Dr Lalvani, all of whom were able to give evidence before me. Nor should the evidence of the Gregorio brothers be overlooked. Whatever the doubts about the precise circumstances in which the Gregorio Will came to be signed and witnessed, the picture of Mrs Adam painted by their evidence was of a person sitting passively through the events going on around her and with little evident awareness of what was happening.
286. Finally on this topic, I should mention the evidence of Dr Valkova herself. Although she is medically qualified, I did not understand her to possess any expertise in geriatrics or in the diagnosis of mental decline associated with the processes of aging. Her whole case was that Mrs Adam remained in full command of her mental faculties at the time of the 1990 Wills, indeed until long after. I reject that evidence as self-serving and quite contrary to the overwhelming weight of the other evidence which I have heard and read.
287. I therefore find, contrary to the conclusion reached at the 1998 trial, that Mrs Adam lacked testamentary capacity when she made the 1990 Wills.

### Knowledge and approval

288. This was the third of the three pleaded challenges to the 1990 Wills. In view of my conclusion regarding Mrs Adam's testamentary capacity it is not one which I need explore at any length. Nor was it one which, until I raised the matter in correspondence after the end of the hearing, had been dealt with by Mr Ferris in his closing submissions to me, much less by Dr Valkova. I wish nevertheless to say a few words on the topic. I deal firstly, and briefly, with the position in law.
289. It is ordinarily presumed in the case of a will which has been duly executed that the testator, if of testamentary capacity, knows and approves of the contents of his or her will. But circumstances may arise where the person seeking to propound the will has the burden of proving affirmatively that the testator knew and approved of the contents of the will so as to satisfy the court that the will does indeed represent his or her testamentary wishes. The law in this regard was explained by the Court of Appeal in Sherrington v Sherrington. At paragraph 69 Peter Gibson LJ said this:
- “The law relating to want of knowledge and approval is not in dispute. A party who puts forward a document as being the last will of a deceased must establish that the testator knew and approved its contents at the time when he executed it. In ordinary circumstances that is established by proof of testamentary capacity and of due execution, from which it is assumed that the testator did know and approve the contents of the will. However, where the circumstances attending the execution of a will are such as to ‘excite the suspicion of the court’, the court will pronounce against the will unless the suspicion is removed. In other words, where the circumstances in which the will was executed give rise to suspicion, there is an onus on the person propounding the will to establish that its contents had the knowledge and approval of the testator.”
290. Since the allegation of want of knowledge and approval had been pleaded at considerable length in Mr Couwenbergh's re-amended particulars of claim (it takes up the greater part of that pleading) it seemed to me to be appropriate, when preparing this judgment and on re-reading the pleadings, to give to Mr Ferris an opportunity to address the issue in case it had been accidentally overlooked in his earlier oral and written submissions. I therefore invited him to put in writing anything that he wished to submit on the topic. At the same time I notified Dr Valkova of the step I was taking and offered her the opportunity to respond in writing to any submissions by Mr Ferris. Mr Ferris took up the opportunity. So also, by way of reply, did Dr Valkova.
291. The burden of Mr Ferris's further submissions was that, even if Mrs Adam had testamentary capacity and the 1990 Wills (or one of them) had been duly executed, Dr Valkova exercised undue influence on Mrs Adam to an extent that “contradicted [her] ability to know and approve the contents of the wills”. In paragraph 4 of his further submissions, Mr Ferris seemed to suggest that if Mrs Adam did have testamentary capacity and one or other of the two wills had been duly executed, want of knowledge and approval could only realistically be demonstrated by showing that the will had been procured as the result of Dr Valkova's undue influence, ie that she had been coerced into making it. He submitted that, although no express plea of undue

influence was made in the pleadings, it was nevertheless open to Mr Couwenbergh to raise the issue “by way of challenge to [Dr Valkova’s] case that [Mrs Adam] knew and approved of the will”. He referred to observations of Slade J in Re Stott (Deceased) [1980] 1WLR 246 at 253 as providing support for the submission.

292. In my view, it is not open to Mr Couwenbergh, under cover of a plea of want of knowledge and approval, to mount a case of undue influence when that matter has not been specifically raised and pleaded. Nothing in Re Stott is inconsistent with that view and nothing said by Slade J in that case lends any support to Mr Ferris’s submission. That case established no more than that under the then rules of procedure governing contentious probate claims a party was not to be prevented from relying on matters pleaded in support of a plea of want of knowledge and approval merely because those matters would or might also be relevant to a plea of undue influence which had not been raised.
293. Mr Ferris’s further submissions seemed, with respect, to miss the point of the pleaded allegation which did no more than allege a variety of matters which, if established, would cast upon Dr Valkova the positive burden of establishing that Mrs Adam knew and approved the contents of the will which Dr Valkova now seeks to propound. In fairness to Mr Ferris, who was not the author of the re-amended particulars of claim, many of the matters which are pleaded are equally, if not more, relevant to the plea of want of testamentary capacity even though they appear in a paragraph (paragraph 7) the introductory sentence of which alleges a want of knowledge and approval by Mrs Adam of the contents of the 1990 Wills and the last sentence of which (paragraph 7.37) alleges that, in the circumstances, the onus was thrown upon Dr Valkova “to prove the righteousness of the transaction” - which is the old-fashioned way of requiring the propounder of the disputed will to prove that the testator knew and approved of the will’s contents.
294. That said, I feel bound to observe that there are a variety of circumstances surrounding the making of the 1990 Wills and their execution which do indeed “excite the suspicion of the court”. Aside from the fact that, under those wills, Dr Valkova is the sole beneficiary of Mrs Adam’s estate, with everything given to Dr Coffey if Dr Valkova should not survive Mrs Adam by 28 days, there are the following circumstances, among others, which excite suspicion. First, Dr Valkova acted as the sole intermediary between Mrs Adam and the solicitors in the giving of instructions for and preparing and dealing with the engrossment of the wills, with Mr Browne as the solicitor in question having no contact at all with Mrs Adam. Second, Mrs Adam’s family receive nothing under the 1990 Wills even in the event that Dr Valkova should not survive Mrs Adam by the stipulated 28 days with everything passing to Dr Coffey who, so far as the evidence went, had no particular reason to benefit from Mrs Adam’s generosity (and no self-evidently greater claim than members of Mrs Adam’s family). Third, such instructions as Mrs Adam did give to lawyers at the time of the 1990 Wills and subsequently were, with the exception of the two visits by Mr Hallam, by means of letters in Dr Valkova’s handwriting. Yet it was consistently urged by Dr Valkova that until her death (or shortly beforehand) Mrs Adam remained fully in command of her faculties and well able to read and write. Fourth, Mr Browne, selected by Dr Valkova and instructed by her on Mrs Adam’s behalf to draw up the will, was based some distance from Dunster Gardens. Yet his firm was preferred to others situated in the vicinity of Dunster Gardens who were

acquainted with Mrs Adam or who were involved on her behalf in other matters contemporaneously with the instructions given to Mrs Browne. This is especially odd in the case of Mr Hallam's firm which, as was evident from the face of the 1978 Will (of which, as she accepted, Dr Valkova was aware), had acted when the 1978 Will was executed. Likewise odd is that Mr Browne had no awareness that other solicitors had been and were, contemporaneously with his involvement, instructed by Dr Valkova on Mrs Adam's behalf in relation to other matters, one of which concerned the principal asset of her estate, namely 11 Dunster Gardens. Fifth, the evidence of the Gregorio brothers, even if insufficient to rebut the presumption of due execution, suggested at the very least that, at that time of execution of the Gregorio Will, Mrs Adam appeared to have little understanding of what was going on around her. Sixth, at the time that they attested the Doyle Will, the Doyles were on the point of returning to spend their retirement in Ireland and, when that will was to be replaced by the Gregorio Will, the attesting witnesses were young Italians with no evident roots in this country and with, at the time, a very imperfect grasp of English and little if any understanding of the document, the signing of which by Mrs Adam, they were being asked to attest. Both sets of witnesses had been selected by Dr Valkova. Seventh, on any view, Mrs Adam was, at the time of the 1990 Wills, a very elderly person, vulnerable, physically frail and suffering from short term memory loss. Eighth, Dr Valkova was instrumental in cancelling an appointment which Dr Powell had arranged in August 1990 for Mrs Adam to be examined by a specialist psychogeriatrician and later took steps to prevent Dr Fullerton (as the Lord Chancellor's Medical Visitor) from examining Mrs Adam in January 1991.

295. The question is how I should deal with this issue given the absence of any submissions from Mr Couwenbergh's side which focus properly on the plea and given therefore (and not surprisingly) that Dr Valkova's written response was mostly directed to rebutting the suggestion that she had exercised undue influence.
296. In one sense, the matter lies with Dr Valkova in that the consequence of the court's suspicion being aroused is to cast upon her the burden of proving that Mrs Adam did indeed know and approve of the will's contents and thus to dispel the suspicions thus raised. In so saying, however, I must not be taken to be concluding that Dr Valkova could not on the evidence I have heard mount an effective answer. At the end of the day, once one assumes that Mrs Adam did have testamentary capacity and that the 1990 Wills (or one of them) had been duly executed, there is much that can be said in support of the view that Mrs Adam did know and approve of the contents of those wills: she was physically able to read and write; she was found to be alert and responsive when Mr Hallam called in late October 1990 (only days after the two wills had been executed) and when Dr Walton visited her in late January 1991; the terms of the wills are exceedingly simple; she was, of course, present when execution of the wills took place; she may very well have been resentful of the wish of others, however close to her, to have her medically examined.
297. I have come to the conclusion, first, that in view of the absence of submissions focussing on the issue it would not be right simply to decide the matter without further ado but, second, given my finding in relation to Mrs Adam's testamentary capacity and the many years that have elapsed since Mrs Adam's death and the **unfortunate history of this litigation**, I should not delay giving judgment yet further to enable this issue to be properly explored. I propose therefore not to determine the

issue beyond stating that, on the face of the evidence, the suspicion of the court has been excited over the existence and extent of Mrs Adam's knowledge and approval of the 1990 Wills but that, in the circumstances, it would not be right to determine this issue adversely to Dr Valkova.

### Result

298. Mr Couwenbergh succeeds in his challenge to the validity of the 1990 Wills. Although I have dealt at very considerable length with the factual background and circumstances in which the wills came to be executed there should be no misunderstanding about the conclusions which I have reached. On the question of due execution I have not been persuaded that the two wills were not duly executed. I make it clear, however, that this is a conclusion which I have reached with considerable hesitation. Second, I find that Mrs Adam lacked testamentary capacity at the time she signed the 1990 Wills. Third, I made no finding in relation to the issue of want of knowledge and approval.
299. Since there is no challenge to the validity of the 1978 Will I shall pronounce in favour of its force and validity. It will be necessary I think to revoke the grant which Dr Valkova obtained on the strength of Carnwath J's decision at the end of the 1998 trial.