



Neutral Citation Number: [2024] EWHC 2277 (Ch)

Case No: BL-2021-MAN-000033

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 06/09/2024

Before :

THE HONOURABLE MR JUSTICE RICHARD SMITH

Between :

- (1) Ben Leeson
(2) William Anthony Leeson

Claimants

- and -

Donald McPherson

Defendant

Lesley Anderson KC, Tom Gosling and Arianna Barnes (instructed by Glaisyers ETL)
for the Claimant

The Defendant did not appear

Hearing dates: 15 April 2024 – 7 May 2024

APPROVED JUDGMENT

Mr Justice Richard Smith:

A. Introduction

1. Paula Leeson (**Paula**) was a much loved mother, daughter and sister. She died tragically on 6 June 2017 while on holiday in Denmark with her husband, Donald McPherson, the Defendant (**Don**). Born on 29 May 1970, Paula had turned 47 just over a week before her death.
2. The Claimants are Paula's son, Ben Leeson (**Ben**), and her father, William Leeson (**Willy**). Paula is also survived by her brother, Neville Leeson (**Neville**), and his partner, Emma Taylor (**Emma**). They have been together since around 2001 and have a young daughter, Charlotte Leeson (**Charlotte**). Paula was also survived by her mother, Elizabeth Leeson (**Betty**), who sadly died on 21 April 2022.
3. The Leesons are a close family. They run a family business together, W. Leeson & Son, providing recycling, skip hire and similar services. Paula worked in the family business on the phones and taking orders. As well as being a conscientious worker, she was also a loving and caring mother for Ben. Ben has always lived with Willy and Betty at their home at 48 Ashlands, Sale, Cheshire (**Ashlands**). Paula also lived at Ashlands until she married Don on 28 June 2014. They then moved into their marital home at 47 Whitefield Road, Sale, Cheshire (**Whitefield**), having bought this jointly on 6 August 2013.
4. There is no dispute that Paula died as a result of drowning in the swimming pool at the holiday cottage at Sondervang 61, Reward, 6830 Norre-Nebel, Denmark, where she and Don were staying at the time. The main issue at trial was how Paula came to enter, and to be unable to extricate herself from, that pool. Ben and Willy say that Don is a habitually dishonest man and fraudster who unlawfully killed Paula by drowning her. Don was charged by Greater Manchester Police (**GMP**) with Paula's murder and prosecuted for that offence but he was acquitted by the jury upon the direction of the trial judge following Don's successful submission of no case to answer. Although he directed that a jury could not be sure of Don's guilt, Ben and Willy say that, based on the extensive evidence adduced at the trial before me, this Court can be satisfied to the civil standard of proof that Don unlawfully killed Paula.

5. As such, Ben and Willy say that Don has forfeited any entitlement which might otherwise have arisen on Paula's death (i) to jointly held assets by right of survivorship (ii) by reason of her intestacy or under her will or (iii) under certain joint insurance policies written on his and Paula's joint lives, affording £2,988,900 in cover (**Forfeiture Claim**). In addition, Ben and Willy invite me to declare invalid for want of due execution Paula's last will dated 21 June 2014 (**2014 Will**) and that she died intestate and to order that Letters of Administration of Paula's estate be granted to Ben (**Probate Claim**). The Court is also requested to order Don's removal as sole trustee of certain trusts over LV (**LV**) and Scottish Widows (**SW**) insurance policies written on Paula's life (**Trusts Claim**).
6. Don says that Paula's death was a tragic accident. Although he was the only other person in the cottage at the time of Paula's death, he says that he does not know how it occurred because he was not with her at the time and, by the time he came to discover her body lying in the pool, it was too late. Neither he nor the paramedics who subsequently attended the scene were able to resuscitate her. Don denies that he unlawfully killed Paula.
7. To that end, he submitted an amended Defence dated 19 August 2022 (verified by a statement of truth) (**Defence**) responding to the amended Particulars of Claim (**PoC**) and the schedule thereto which sets out in considerable detail (running to 315 paragraphs) various factual allegations relied on in support of the plea of unlawful killing. In addition, the parties have since agreed a detailed statement of agreed facts (running to 820 paragraphs) (**Agreed Facts**) encompassing many of the pleaded factual allegations and in respect of which they agree that there is no need for any party to prove those facts by documentary or witness evidence.
8. Despite confirming through his Counsel at the pre-trial review before me on 19 March 2024 that he would be present, Don did not attend, nor was he represented at, trial. The ostensible reason advanced for this change of position was that he had been unable to secure legal representation for suggested funding reasons. He did not apply for an adjournment. Nevertheless, the first matter I addressed at the outset of the trial was whether it should proceed in his absence. For the reasons given in my ruling dated 15 April 2024 ([2024] EWHC 889 (Ch)), I decided that it should.

B. Witnesses/ evidence

9. I heard from the following witnesses at trial (in the following order):-

No.	Fact Witness	Role
1.	Ben Leeson	Paula's son
2.	Willy Leeson	Paula's father
3.	Neville Leeson	Paula's brother
4.	Karen Mairs	Paula and Don's former cleaner, Willy's current cleaner
5.	Lynn Dale	Close friend of Paula and witness to Paula's 2014 will
6.	Simon Howe	Former GMP Detective Constable
7.	Christopher Lees	Digital forensics investigator in GMP's digital investigations unit
8.	John Kehoe	Former investigative support officer with the major incidents team of GMP, since 2021 a (civilian) accredited financial investigator working for GMP
9.	Kevan Daly	Office administrator at W. Leeson & Son
10.	Mark Dickens	Don's former friend and best man at his wedding to Paula
11.	Joseph Ennis-Cole	Don's former flight instructor and friend
12.	Jack Richardson	Don's former personal trainer
13.	Michele O'Brien (née Todd)	Probate solicitor with Bannister Preston solicitors until 2019
14.	Martin McSherry	Director and financial adviser at One and All Wealth Management Limited
15.	Thomas Rooney	Director and financial adviser at One and All Wealth Management Limited (also known as "Jay" Rooney)
16.	Palle Hansen	Paramedic at Ambulance Syd and attending paramedic at the scene of Paula's drowning
17.	Dr Mette Schou	Forensic pathologist in the Department of Forensic Pathology of South Denmark who undertook Paula's autopsy under the supervision of Prof Peter Leth
18.	Prof Peter Leth	Professor and Head of Department in the Department of Forensic Pathology of South Denmark and state forensic pathologist

10. In addition, Ben and Willy relied on various written statements of other witnesses admitted under hearsay notice, many of them made to the police during the GMP criminal investigation. I also issued a witness summons directing the attendance at trial of Brian McAuley to give evidence. Mr McAuley is a joiner, former

acquaintance of Don and a purported witness to Paula's 2014 Will, albeit he denied in interview with GMP that the relevant signature on her will was his. Although served with the witness summons, Mr McAuley did not attend trial on suggested health grounds. The Claimants did not press for an arrest warrant, having already served a hearsay notice in respect of his GMP statement, the evidence of Lynn Dale and expert handwriting evidence also said to be more than sufficient to make good the point about his non-witnessing of the 2014 Will.

11. I also heard evidence from four expert witnesses in the following disciplines:-

No.	Expert witness	Expert discipline
1.	Emily Weatherill	Mobile device analysis
2.	Ellen Radley	Handwriting analysis
3.	Dr Matthew Sorell	Fitbit sensor, measurement and statistical analysis
4.	Dr Ashley Fegan-Earl	Pathology

12. Don also submitted a short witness statement dated 29 October 2023 containing his brief explanation of the events leading up to Paula's tragic death. As explained in my further ruling dated 23 April 2024 ([2024] EWHC 976 (Ch)), since Don did not attend trial, the effect of CPR, Part 32.2(1)(a) was that his statement could not stand as proof of the facts to which it refers. His oral evidence at trial was required for that purpose but this was not forthcoming. Nevertheless, Ben and Willy do rely on the suggested falsity of Don's various accounts as to the circumstances surrounding Paula's death, including this statement. In analysing the evidence, I have therefore had regard to this as appropriate as well as the other accounts he has given.
13. During the course of the trial, a further evidential issue arose as to whether, in circumstances in which Don was absent from, and not otherwise represented at, trial, he should be permitted to 'call' his own expert pathology witness, Dr Richard Shepherd, to give oral evidence. In his correspondence with the Court very shortly before trial, Don had intimated that he might still wish to do so, his own absence from trial notwithstanding. For the reasons given in the same further ruling from 23 April 2024, I decided that such oral evidence should not be permitted without the attendance at trial of Don or a legal representative on his behalf, if only for the limited phase of the expert pathology evidence. Nevertheless, I was satisfied that Dr Shepherd's written report was already

properly in evidence and that I would, therefore, have regard to it. I should say, however, that, although the expert pathology evidence is important, and the experts' original reports suggested certain differences between them, the joint expert report dated 9 February 2024 indicated that there was, in fact, significant common ground.

14. Finally, given Don's absence from trial, and consistent with a claimant's duty of fair presentation, in addition to my own questions of the witnesses, I permitted Claimants' counsel to put to their witnesses in chief those points which might have been canvassed by Don had he attended at trial. However, given the extensive facts that had been agreed prior to trial, there was already significant common ground on the various matters relied on by Ben and Willy to support their case. As indicated in my further ruling dated 23 April 2024, I was satisfied that the Claimants understood and had, to that point at least, discharged their duty. I remained so satisfied throughout the trial. Indeed, the Claimants were understandably concerned to ensure that, Don's absence notwithstanding, the Court was properly and fairly equipped to make findings, including as to the central issue of Paula's alleged unlawful killing, on the merits, based on the evidence and not by way of default. That is the approach I have adopted, including a close and critical analysis of the evidence and the support it may (or may not) offer for the Claimants' case.
15. As to that case, the Claimants approached matters by reference to five themes, for which they say there was a clear and cogent, albeit largely circumstantial, evidential basis, enabling the Court to be confident on the balance of probabilities that Don unlawfully killed Paula, comprising evidence as to:-
 - (i) Don's alleged dishonesty;
 - (ii) The insurance policies and Don's finances;
 - (iii) The pathology evidence and Fitbit data;
 - (iv) The deletion of electronic data; and
 - (v) Don's post-death conduct.

C. Background

16. Before considering these aspects in more detail, I set out some of the non-contentious facts as to the position prior to, and events leading up to and

including, Paula's death since these help anchor much of the analysis later in this judgment. A focus of these facts relied on heavily by the Claimants, and therefore set out in some detail here, is Paula and Don's financial position, said to be relevant to Don's suggested motive.

Paula's financial position before meeting Don

17. In late 1989 or early 1990, Paula instructed Michelle Todd (as she was then known) of Bannister Preston, solicitors (**BP**) to prepare a will. On 11 January 1990, Paula made a will (**1990 Will**), appointing Willy and Betty (and, in default, Neville) as executors and Ben's guardians. The 1990 Will left Paula's entire estate on trust for the benefit of Ben.
18. On 1 March 1994, Paula became a member of the NHS Pension Scheme. At the time, she was working as a part-time administrator at Withington Hospital.
19. In December 2001, Paula submitted two policy applications to Countrywide Assured Plc (**Countrywide**) in contemplation of the purchase of a buy-to-rent property at 15 Brighton Grove, Sale, Cheshire (**Brighton Grove**). On 26 February 2002, two Countrywide policies commenced in Paula's name, those policies comprising:-
 - (i) a mortgage protection plan for a value of £55,195 (decreasing) to protect the Brighton Grove mortgage for a term of 25 years, at an initial cost of £19.70 per month, paid from Paula's Lloyd's bank account; and
 - (ii) a personal protection plan with a death benefit of £14,750 for a term of 34 years, at a cost of £12.67 per month, also paid from Paula's Lloyd's account.
20. On 8 March 2002, Paula purchased Brighton Grove for £59,950 with a mortgage from NatWest Bank.
21. On 3 August 2004, Paula left NHS employment. Paula's benefits under her NHS pension were deferred for payment at her normal retirement age (60). Paula then worked as a secretary and account manager in the Leeson family business.
22. On 22 September 2004, an application for an individual pension plan in Paula's name was submitted to SW. The application nominated Ben as sole beneficiary. The SW pension commenced on 23 September 2004, with the initial premium of

- £25 per month, paid from Paula's Lloyd's account.
23. From 22 September 2004, Paula's NHS pension was also nominated for Ben's benefit.
 24. On 4 May 2010, Paula called Countrywide to discuss her two policies, checking that her son would receive the death benefit. Paula asked Countrywide to put Ben's name down on the policies.
 25. To summarise Paula's financial position before she met Don in 2012, she earned an income from her employment in the family business. Her assets comprised principally the Brighton Grove rental property, the two Countrywide policies and modest (NHS and SW) pensions.
 26. It was common ground that Paula's 1990 Will was revoked either by her 2014 Will or, if her 2014 Will was invalid (as the Claimants say), by operation of section 18(1) of the Wills Act 1837 upon her marriage to Don on 28 June 2014.

Don's background

27. Don was born on 27 June 1973 in Takapuna, Auckland, New Zealand (**NZ**). His birth name was Alexander James Lang. He grew up in Auckland with his parents, Lawrence and Pamela Lang and his two older sisters, Pandora and Sharon Lang. Don left home around 1992, aged about 19.
28. Don attended the University of Auckland.
29. In 1995, Don moved to the UK.
30. In 1997, Don commenced a relationship with Ira Kulppi (**Ira**), a Swedish national. Don had a daughter with Ira. Natalie was born on 7 January 2002. On or about 24 July 2006, Ira and Natalie died in a house fire in Cairns, Australia.
31. On 29 September 2005, Don was extradited from Australia to Germany in connection with the Commerzbank fraud discussed later.

Don's different names

32. Don has changed his name a number of times or has been known under different names, including:-

No.	Date	Name
1.	1973 (birth name)	Alexander James Lang

2.	1993	Alexander James Long
3.	1994	Alan Douglas Atkins
4.	1994	Alex Douglas Long
5.	1996	Donald Somers
6.	2008, 2013	Donald McPherson
7.	2011	Donald Anderson
8.	From at least October 2016	Rob Jones

33. The Agreed Facts set out Don's various acts of change of name and related passport applications in relation to the first seven names above. Don also accepts that he has used the alias, Rob Jones, and the e-mail address robjones2018a@gmail.com, albeit he says that the use of this e-mail was not exclusive to him.
34. Don has identified his employment or work history as being (i) a consultant/ IT consultant for South Pacific Oil & Gas, NZ (2008-2011) (ii) a labourer/ IT manager for the same company (2009-2012) (iii) a self-employed joiner trading as McPherson Joinery (1999-2013) (iv) a builder (2014) (v) a property developer (2014) (vi) a computer programmer (2014-2015) and (vii) an electrician (2016).
35. The Agreed Facts also indicate Don's taxable income and capital gains between the tax years 2012-13 and 2015-16 (inclusive), comprising his (i) self-employment income (ii) rental income from his UK buy-to-let property portfolio from time to time and (iii) net gains from disposals of certain properties within that portfolio.

Don's previous convictions – 1993-2008

36. The Claimants also rely on the evidence of Don's criminal past, comprising convictions for 31 dishonesty offences in 3 countries between 1993 and 2008, most notably his 2006 conviction in connection with a conspiracy to steal and launder US\$15,583,124 from Commerzbank in August 2000.
37. On 30 April 1993, Don was convicted by the North Shore District Court, NZ, of one offence of taking, obtaining or using documents for pecuniary advantage/ obtaining property by deception on 11 June 1992. Don was sentenced to a fine of \$NZ100.
38. On 28 November 1994, Don was convicted by the Otahuhu District Court, NZ, of one offence of theft on 24 November 1994. Don was sentenced to a three-

month curfew order.

39. On 2 June 1995, Don was convicted by the North Shore District Court, NZ, of 25 offences of taking, obtaining or using documents for pecuniary advantage/ obtaining property by deception concerning forged cheques between 30 January 1995 and 29 March 1995. Don was sentenced to one year's supervision.
40. On 7 June 1996, Don was convicted in his name of Alan Douglas Atkins by Clerkenwell Magistrates Court of three offences of obtaining property by deception on 30 November and 14 and 27 December 1995. The offences concerned the fraudulent use over the telephone of credit card(s) to procure airline tickets and the presentation and use of a fraudulent accommodation voucher. Don was sentenced to four months' imprisonment for each offence, two concurrent, one running consecutively.
41. On 4 April 2006, Don was convicted on his own plea in the name of Donald Somers by the Frankfurt AM Main District Court, Germany, of one offence of obtaining property by deception in August 2000. Whilst employed at Commerzbank AG in Frankfurt, Don conspired with others to unlawfully transfer a total of US\$15,583,124 (£11,829,152) to accounts in the Netherlands, subsequently distributed by a large number of further transfers to others in the Caribbean, Switzerland, Austria and Australia. Don was sentenced to three years and three months' imprisonment.
42. On 12 September 2008, Don was convicted by the Invercargill District Court, NZ, in the name of Alex James Lang of obtaining property by deception/ making false representation to make a gain for self or another on 6 September 2008. The offence related to Don obtaining electrical goods to the value of NZ\$6,009.92 by fraud. Don was sentenced to a community order for 150 hours.

Paula and Don's meeting - 2012

43. Paula and Don met in 2012. At the time, Don's name was Donald Anderson.

Paula and Don's financial position at the end of 2012

44. At the end of 2012, Paula still owned her Brighton Grove buy-to-let property purchased in 2002. Don owned eight UK properties, purchased for a total price of £920,000, with an estimated initial mortgage of £771,184 (all or mainly interest

only and buy-to-let). At that stage, they had no jointly owned properties.

45. Paula had three policies, comprising the Countrywide mortgage protection and personal protection plans and her SW pension, the former two providing initial cover of £69,945, with the initial monthly premiums for all three amounting to £57.37, paid from Paula's Lloyd's account. Don had no policies of his own. They had no joint policies.

Paula and Don's banking arrangements – July 2013 onwards

46. Paula and Don opened a joint account with Lloyd's Bank on 4 July 2013. This was run by Paula.
47. Paula had her own Lloyd's bank accounts (four) and Santander bank account (one) as well as her NatWest mortgage account for Brighton Grove. From August 2013 to June 2017, Paula's accounts were never overdrawn. At all times, her accounts were funded.
48. Don has his own Lloyd's bank account (one), credit card and loan account. He also had his own HSBC bank accounts (four), credit card and loan accounts, RBS bank account (one), Aqua credit card and Argos store card. In August 2013, Don held four bank accounts with a balance of £38,588.18, including certain re-mortgage and sale proceeds from two of his properties (101 Fairywell Road and 10 Marsland Close).
49. Paula and Don jointly bought Whitefield for £285,000 in August 2013 with an interest only buy-to-let mortgage of £206,649 (Birmingham Midshires Building Society), replaced with a residential repayment mortgage of £278,900 on 4 February 2016 (Coventry Building Society), with some of the re-mortgage funds being used to finance their joint purchase in 2016 of a further property at 62 St Mary's Road, Sale (**St Mary's Road**) discussed later. The Whitefield mortgage was initially paid from the Lloyd's joint account.
50. Between 2013 to 2015, Don borrowed additional funds against two of his buy-to-let properties, he sold a number of those properties and he bought two further properties on 23 July 2014 (45 Whitefield Road) and 9 September 2015 (12 Truro Drive).
51. Between August 2013 and March 2018, the Lloyd's joint account showed

significant variations, partly due to certain credits in relation to the re-mortgage and sale of properties.

New joint life insurance arrangements/ financial position - 2013

52. In Autumn 2013, five joint life insurance policies were inceptioned for Paula and Don, providing total cover of £2.5m, namely:-
- (i) Pru (later, Vitality) first death life insurance policy (inception date 20 September 2013), providing £500,000 life cover (index-linked) for a 15 year term, with the monthly premium of £80.21 paid from Don's HSBC account;
 - (ii) Scottish Provident first death life insurance policy (inception date 20 August 2013), providing £500,000 life cover for a 15 year term, with the monthly premium of £71.26 paid from Don's HSBC account;
 - (iii) Aviva first death life insurance policy (inception date 20 August 2013), providing £500,000 life cover for a 15 year term, with the monthly premium of £66 paid from Don's HSBC account;
 - (iv) Ageas (later AIG) first death life insurance policy (inception date 1 September 2013), providing £500,000 life cover for a 10 year term, with the monthly premium of £66.48 paid from Don's HSBC account; and
 - (v) Zurich first death life insurance policy (inception date 1 November 2013), providing £500,000 life cover for a 10 year term, with the monthly premium of £65.62 paid from Don's HSBC account.
53. By the end of 2013, Paula still owned her Brighton Grove property purchased in 2002. Don owned seven buy-to-let properties, purchased for a total price of £825,000, with an estimated initial mortgage of £714,218. Paula and Don jointly owned the Whitefield property. All these properties were subject to mortgage.
54. Paula had three policies of her own, comprising the Countrywide mortgage protection and personal protection plans and her SW pension, the former providing initial cover of £69,945, with the initial monthly premiums for all three amounting to £57.37, paid from her Lloyd's bank account. Don had no policies of his own. There were also now five joint insurance policies providing £2.5m cover, with a monthly premium of £349.57, paid from Don's HSBC bank account.

55. Paula had a bank balance of £13,631.97, with no money owed on credit cards or loans. The Lloyd's joint account had a balance of £3,204.92, with no money owed on credit cards or loans. Don had a bank balance of -£328.47, with £4,129.31 owed on credit cards and £12,594.09 owed on loans, resulting in an overall (negative) balance of -£17,051.87.

Paula's 2014 Will

56. In or around June 2014, Paula instructed Michelle Todd of BP to prepare her 2014 Will in contemplation of her forthcoming marriage to Don. On 16 June 2014, BP sent Paula the draft 2014 Will which:-

- (i) sought to revoke all former wills and testamentary dispositions, being the 1990 Will (clause 1);
- (ii) was made in contemplation of Paula's intended marriage to Don (clause 2);
- (iii) sought to appoint Willy and Betty (in default, Neville and Ben) as executors (clause 3);
- (iv) declared that the intended Whitefield matrimonial home was believed to be owned by Paula and Don as beneficial joint tenants and would pass to Don upon her death but, in any event, made a gift of Paula's beneficial interest therein to Don (clause 4); and
- (v) sought to leave Paula's entire net estate to Ben (clause 5).

57. The 2014 Will was signed by Paula, most likely on 21 June 2014. Paula's signature was witnessed by her friend, Lynn Dale. The will also bears the name, details and purported signature of a second witness, Brian McCauley. Don did know a Brian McAuley who worked for him (but did not know the spelling of his surname). Don did not ask Brian McAuley to witness the 2014 Will.

Paula and Don's marriage – June 2014

58. Paula and Don married on 28 June 2014 at Peckforton Castle in Tarporley, Cheshire. Mark Dickens, a self-employed builder Don had met in Egypt in around 2010, was his best man. Don's financial advisor, Thomas Rooney, also attended the wedding.

Changes in Don's asset position – 2014-2015

59. In October 2014, single life cover was sought from Pru (later Vitality Life) on Don's life, initially for £500,000, the annual premium of £466.20 paid from Don's HSBC bank account, the policy to include cover for Don's flying activities - Don had a private pilot's licence. In November 2015, the cover was increased to £1m, with the revised annual premium of £929.16 paid from Don's HSBC bank account. The policy later lapsed in November 2016 due to Don's non-payment of premium.
60. By the end of 2014, Don's buy-to-let property portfolio was reduced to two properties, originally purchased for £315,000, with an estimated initial mortgage of £268,484, reduced to one property by the end of 2015 following two further sales and a purchase (12 Truro Drive) for £215,000, with an initial mortgage of £152,640. His position with the banks (taking into account bank balances, credit cards and loans) was a (positive) overall balance of £32,097.59 at the end of 2014 and £59,152.01 at the end of 2015.

Don's enquiries of the joint life policy insurers

61. On 3 August 2015, Don called Vitality about the joint Vitality policy to update his address. He then enquired as to the manner of payment of the policy proceeds in the event of his death, Vitality confirming that it would be paid into his estate unless put into trust.
62. On the same day (3 August 2015), Don also called Aviva about the joint Aviva policy, saying that he wanted to change the joint policy he had with them, also enquiring as to the manner of payment of proceeds in the event of his death, Aviva confirming that these would be paid to Paula (and to Don if Paula died).
63. On 24 September 2015, Don called Zurich about the joint Zurich policy to update his address. He also enquired as to the manner of payment of proceeds in the event of his death, Zurich confirming that these would be paid to Paula.

Further property purchase/ life cover (2016)

64. Paula and Don jointly purchased St. Mary's Road on 29 March 2016, with an interest only buy-to-let mortgage of £204,375 (Precise Mortgages). The St. Mary's Road mortgage payments were initially paid from Don's HSBC account,

later the Lloyd's joint account.

65. In 2016, Paula and Don's joint life cover was increased by £488,900 (from £2.5m) with a further two joint life insurance policies, namely:-
- (i) Royal London first death life insurance policy (inception date 1 April 2016), providing £278,900 life cover for a 24 year term, with the monthly premium of £64.15 paid from Don's HSBC account; and
 - (ii) Aegon (formerly Scottish Equitable) first death life insurance policy (inception date 6 April 2016), providing £210,000 life cover for a 4 year term, with the monthly premium of £50.75 also paid from Don's HSBC account.
66. On 11 April 2016, Don called Aegon. His enquiries included the nature of the policy and manner of payment if something happened to either of them. On 4 May 2016, Don called Aegon again, enquiring as to how the policy proceeds would be paid in the event of his death. Aegon confirmed that the proceeds would be paid automatically to the survivor.
67. In addition, applications were made in April 2016 for single life cover on Paula's life, namely for:-
- (i) LV life cover for a set death benefit of £400,000, with Ben nominated as beneficiary, with the monthly premium of £36.48 paid from Paula's Lloyd's account; and
 - (ii) SW life cover for a set death benefit of £400,000, with Ben nominated as beneficiary, with the monthly premium of £36.87 also paid from Paula's Lloyd's account.
68. On 26 September 2016, Don telephoned Zurich about the joint Zurich policy to enquire as to (i) how the policy proceeds would be paid in the event of his or Paula's death and (ii) the possibility of increasing the joint life cover by £270,000 on account of a new mortgage that he and Paula had taken out. Zurich confirmed that (i) the policy proceeds would pass directly to the surviving spouse and (ii) the policy could be increased by a maximum of £150,000.

69. Finally, on 17 October 2016, Paula instructed Lloyd's to cancel two direct debits from the joint account relating to the Whitefield and St. Mary's Road mortgages, Paula having arranged for their payment to be made from one of her Lloyd's accounts in her sole name.

Paula and Don's financial position at the end of 2016

70. By the end of 2016, Paula still owed Brighton Grove. Paula and Don jointly owned two properties, Whitefield Road and St Mary's Road. Don still owned one property (12 Truro Drive). All these properties were subject to mortgage.
71. Paula had five policies of her own, with initial cover of £869,945, and initial monthly premiums in the sum of £130.72, paid from Paula's Lloyd's account.
72. Paula and Don had seven joint insurance policies, with initial cover of £2,988,900, and initial monthly premiums in the sum of £464.47, paid from Don's HSBC account.
73. Paula had a bank balance of £22,848.02, with no money owed on credit cards or loans.
74. The Lloyd's joint account balance was £687.87, with no money owed on credit cards or loans.
75. Don had a bank balance of -£9,222.12, with £22,362.72 owed on credit cards and £40,393.88 owed on loans, making an overall balance of (negative) -£71,978.72.
76. On 12 November 2016, Paula called Lloyd's to query a potential charge on the joint account that might have been incurred by Don using the (£500) overdraft by mistake. Paula stated that Don did not usually use the joint account.
77. On 14 November 2016, online access for Aviva life insurance was set up using Don's e-mail address (frozenislandtrader@hotmail.com).
78. On 24 November 2016, Paula called Lloyd's Bank to move the overdraft from the joint bank account, stating that "[w]e don't want it on it cos he'll probably start using it and we don't want it".

Events prior to Paula and Don's Denmark holiday

79. The date is now unknown but, a few months prior to her death, Paula gave Ben a copy of a list of financial details identifying various assets and the location of

some of the related paperwork, including her bank accounts, 2014 Will (with BP), Brighton Grove, NHS pension and LV and SW life insurance policies.

80. On 7 February 2017, Don telephoned AIG, updating his and Paula's address for the joint life policy and enquiring as to the level of cover (£500,000). Don also enquired as to how the policy proceeds would be paid in the event of his death. AIG confirmed that the proceeds would pass into his estate but that this could be avoided by placing the policy in trust. AIG sent out trust forms but these were not returned to AIG. Don also enquired as to increasing cover on account of a new mortgage. AIG confirmed that further cover of £75,000 could be added to the policy with proof of the mortgage offer.
81. On the same day (7 February 2017), Don also telephoned Zurich to check the address on his policy (shown as Whitefield). He also enquired as to the payment of the policy proceeds in the event of his death, Zurich confirming that these would be paid to Paula.
82. Don phoned Scottish Provident the same day (7 February 2017), the related notes confirming that he would provide written confirmation of his change of address.
83. On 15 and 16 February 2017, Don called Vitality. In the latter call, Don again enquired as to how the policy proceeds would be paid in the event of his death, Vitality confirming that these would be paid to Paula in that event.
84. From 21 February 2017, the £349.49 monthly direct debit for the Motonovo vehicle finance was moved to the joint account, Don no longer paying this from his own HSBC account.
85. On 13 March 2017, Paula attended for emergency dental treatment and was prescribed antibiotics, receiving no further treatment. Later that month, she attended her dental practice complaining of discomfort, the dentist not detecting an issue with a particular tooth, the symptoms suggesting it was a gum problem.
86. On 6 April 2017, Don called Royal London for information about the joint policy.
87. On the same day (6 April 2017), Don called Aegon Life to query changing the bank account from which direct debits were paid for the joint life policy. He also enquired how the policy proceeds would be paid in the event of his death, Aegon Life confirming that these would be paid to Paula (and vice versa).

88. On the same day (6 April 2017), Don called Vitality to query changing the bank account from which direct debits were paid. He also went on to query the policy details and beneficiary, enquiring as to how the policy proceeds would be paid in the event of his death, Vitality confirming that they would be paid to Paula.

The LV/ SW Flexible Trusts – April 2017

89. On 11 April 2017, Don contacted BP with a view to the potential appointment of Don and BP as trustees of Paula’s LV and SW life insurance policies which, he explained, “*Paula had arranged to assist her son Ben in the event of her death*”.
90. On 18 April 2017, Paula signed flexible trust forms for the LV and SW policies written on her own life by which she, as settlor, declared that the policies were held in trust for the benefit of the persons listed. Don was nominated in and signed the forms as an additional trustee. No beneficiary details were given. The signatures of Paula and Don purport to have been made in the presence of L Dale but it is common ground that Lynn Dale was not asked by either of them to witness their signatures and that she did not do so.
91. It is also common ground that, in the event of her death, the effect of the flexible trusts was to afford Don full control of Paula’s LV and SW life policies, including the ability to exercise his powers as trustee to benefit himself as potential beneficiary. Although the trust forms did not take effect as deeds, Paula’s signature was sufficient for both trusts to be properly constituted.
92. On 24 April 2017, Paula spoke to LV following LV’s earlier message to ring back. During the call, Paula confirmed that she wanted Ben to benefit from the policy. LV confirmed that Ben would be beneficiary and trustee. On 27 April 2017, LV returned the flexible trust form with Ben added as default beneficiary.

Don’s visit to Spire Hospital – April 2017

93. On 19 April 2017, Don presented to the day care ward at the Spire Hospital, having had a grommet insertion. Don claimed that, upon return from theatre, he had gone to the toilet where he felt dizzy, fell and banged his head and shoulder. Don complained of pain to the right shoulder which got worse when he tried to lift his arm. He was advised to stay overnight for an x-ray to be done in the

morning. This revealed no evidence of fracture or dislocation. Don was discharged and given Voltarol gel and pain relief.

Lead up to the holiday in Denmark

94. On 20 May 2017, accommodation was booked on the website www.turistonline at Holiday Home 30547, Søndervang 61, 6830 Nørre Nebel, Houstrup, Denmark. The cottage was in a remote area, approximately 327km from Copenhagen.
95. The accommodation comprised a four bedroomed holiday home, sleeping up to eight people, with a swimming pool and sauna. It had a driveway, grass lawns and a patio area. There was a kitchen and living/ dining area. There was a bathroom (with toilet) at the front of the cottage and another in the swimming pool area at the rear.
96. The internal swimming pool had a water depth of 1.19m, with total depth of 1.37m from its bottom to the floor surface of the cottage. The pool was 3.17m in width at its widest point, with an approximate length of 8m at its longest. From the interior of the cottage, the pool was only accessible from one side from the direction of the living/ dining area. That side comprised a non-slip tile surface, being 2.1m wide at the point of entry to the pool from the living/ dining room. The side had no fall, slip or trip hazards adjacent to the water.
97. The accommodation was booked for one week, arriving Saturday, 3 June 2017, departing Saturday, 10 June 2017. The cost was €604. The booking was made in Don's name. Don specifically enquired about whether they needed to bring towels as they wished to use the sauna and pool. Don selected a package with bed sheets and towels for an extra €12 each.
98. On 20 May 2017, EasyJet flights were booked from Manchester Airport to Copenhagen, the outbound flight departing from Manchester on the morning of Saturday, 3 June 2017, returning from Copenhagen on the evening of Tuesday, 6 June. Payment for the flights (£216.56) was made using Don's Aqua credit card.
99. On 22 May 2017, Paula contacted her dental practice, complaining of pain. She could not obtain an appointment there but she attended an (alternative) emergency dentist later that evening who recorded a diagnosis of irreversible pulpitis associated with a cracked tooth. There were no signs of significant infection and

no abscess was noted. Paula declined treatment, preferring to refer back to her usual dentist. No antibiotics were prescribed due to the absence of any infection or abscess.

100. On 24 May 2017, Don called HSBC to set up a single trip travel insurance policy. No medical conditions were declared apart from Don's tendonitis and inflammation in relation to his right shoulder. Don paid the £32.05 premium on his HSBC credit card. The insurer was Aviva. Don declined an annual trip policy.
101. On 24 May 2017, Don contacted Aqua Credit Card in response to a text he had received about exceeding his credit limit (on account of payment for the EasyJet flights). Don reduced the balance by using his debit card, also switching the direct debit for the minimum payment to the Lloyd's joint account, indicating that he would clear the balances as soon as a house sale went through.
102. On 26 and 27 May 2017, Don had e-mail exchanges concerning the payment for the Danish accommodation. Payment was made on 30 May 2017 by bank transfer from the Lloyd's joint account.
103. On 30 May 2017, Don set up an Aviva annual multi-trip travel insurance policy in his and Paula's names. The premium of £56.60 was paid using Don's Aqua credit card.
104. On 2 June 2017, Don booked a rental car with Europcar at a cost of £189.30, payable on collection, secured by Don's HSBC credit card.
105. On 2 June 2017, Don upgraded his Lloyd's bank account through online banking with a fee of £17 per month. Benefits included AXA Worldwide travel insurance for the account holder and spouse.

Paula and Don's financial position by June 2017

106. As at 2 June 2017, Paula still owned Brighton Grove. Paula and Don jointly owned two properties, Whitefield Road and St Mary's Road. Both properties were still subject to mortgage. By this point, Don owned no properties of his own, having sold 12 Truro Drive on 17 February 2017.
107. Paula had five policies, with initial cover of £869,945, and initial monthly premiums of £130.72, paid from Paula's Lloyd's account.

108. Paula and Don had 7 joint insurance policies, with initial cover of £2,988,900, and initial monthly premiums in the sum of £464.47, paid from Don's Lloyd's account.
109. Paula had a bank balance of £26,146.40, with no money owed on credit cards or loans.
110. The Lloyd's joint account balance was £75,957.32 (including what remained of the net sale proceeds of 12 Truro Drive (£115,739.32)), with no money owed on credit cards or loans.
111. Don had a bank balance of -£7,423.32, with £21,085.41 owed on credit cards and £37,146.98 owed on loans, an overall (negative) balance of -£65,655.71.

Paula and Don's Denmark trip - 3-6 June 2017

112. It is common ground that Paula took her Apple iPhone7 and iPad on holiday with her. Don took his Apple iPhone 7 with him as well.
113. Paula did not own a swimming costume or take one with her.
114. On the morning of their departure to Denmark (3 June 2017), Paula phoned or texted the Ashlands landline, Betty, Willy, Ben and Neville while she was still within the UK.
115. Paula and Don travelled on EasyJet Flight EZY1985, scheduled to depart from Manchester Airport Terminal 1 at 07:25 to Copenhagen.
116. Upon arrival in Denmark, Paula called or messaged the Ashlands landline, Willy and Ben.
117. Paula and Don picked up their hire car at 11:15 local time (now used throughout). The drive from Copenhagen to Søndervang 61, Nørre Nebel by car using the fastest route with usual traffic was approximately 327 km, with an estimated travel time of 3 hours 37 minutes via the E20 roadway.
118. It is common ground that, between the afternoon of 3 June and the evening of 5 June 2017, Paula and Don travelled in the rental car for a number of hours each day, visiting sites and eating food, that Paula took a number of photographs and that she was in regular telephone and message contact with Betty, Willy, Ben, Neville and Emma.

119. So, for example, in the early to mid-afternoon of 3 June 2017, Paula made, sent or received a number of calls and messages, including to or from the Ashlands landline, Betty and Neville. Paula also took photographs on the journey to the cottage. Paula and Don arrived at the cottage by 17:27 where she took more photographs. She also made further calls to the Ashlands landline and to Ben.
120. During the course of 4 June 2017, Paula made, sent or received a number of calls or messages, including to or from the Ashlands landline, Betty, Ben, Neville, Emma, Charlotte and Lloyd's Bank. A number of photographs were also taken on her phone, including one of Don in the cottage pool, taken from the living/dining room.
121. During the course of 5 June 2017, Paula made, sent or received messages or phone calls, including to the Ashlands landline, Willy, Ben, Neville, Emma and Lloyd's Bank. At 12:55, Paula searched the internet for "*chemist near me open.*" At 13:23, she also searched the internet for "*benaday 10mg*". Benaday is an antihistamine used for the relief of indoor and outdoor allergy symptoms.

The events on the day of Paula's death – 6 June 2017

122. On 6 June 2017, the weather in Nørre Nebel was warm and sunny.
123. At 8:15, Paula called Willy, their call lasting five minutes, 22 seconds.
124. At 8:21, Paula called Neville, their call lasting four minutes, 30 seconds.
125. At 8:26, Paula called the Ashlands landline, the call lasting seven minutes, four seconds.
126. At 8:44, Paula searched the internet for "*Find property for sale in M33*" and the Rightmove website was visited (her browsing lasting seven minutes).
127. At 8:55, Paula searched the internet for "*128approx.128er evening news*" and viewed various Manchester Evening News articles (her browsing lasting eight and a half minutes).
128. At 9:05, Paula searched the internet for "*bbc weather*" and viewed the weather for Altrincham and Copenhagen airport (her browsing lasting two minutes).
129. At 9:07, Paula searched the internet for "*messenger newspapers*" and viewed various Messenger News articles (her browsing lasting nearly three minutes).

130. Between 10:15 and 10:21, Paula travelled 11 steps (8.91metres) and a further eight steps (5.36 metres) between 10:22 and 10:28.
131. At 10:22, Paula called Neville, the call lasting six minutes, 10 seconds.
132. At 10:30, Paula called the Ashlands landline, the call lasting 10 minutes, 11 seconds.
133. At 11:23, Paula searched the internet for “*Brasserie Abode – Manchester Bookatable*”.
134. At 11:24, Paula called the Ashlands landline. The call last four and a half minutes.
135. At 11:29, Paula texted Ben, stating “*Hi b just texting can’t get through*”.
136. At 11:31, Paula called Willy, the call lasting four minutes 35 seconds.
137. At 12:14, Paula called the Ashlands landline, the call lasting just over four minutes.
138. Between 12:22 and 12:28, Paula walked 11 steps (7.14 metres).
139. At 12:23, Paula searched the internet for “*hairdresser in nr nebal*” (her browsing lasting between five and six minutes).
140. At 12:29, Paula searched the internet for “*salon 9700*” (her browsing lasting just under three minutes).
141. At 12:35, Paula called Salon 9700 (a Danish hair salon). The call lasted six seconds.
142. At 12:36, Paula searched the internet for “*Public holidays in Denmark*” (her browsing lasting less than 30 seconds).
143. Between 12:54 and 13:03, Don walked 83 steps (57.56 metres) and a further two steps between 13:03 and 13:09 (0.86 metres).
144. Between 12:58 and 13:08, Paula walked 133 steps (87.53 metres).
145. Between 13:06 and 13:07, a series of images or live photographs were taken outside the holiday cottage on Paula’s iPhone. In one short photo video (two seconds), Paula and Don are recorded together as saying:-

Paula: “*See the grey in my hair?*”

Don: “*Yeah.*”

Paula: “*Oh! You said yeah!*”

146. At 13:09, Paula called Charlotte, the call lasting three seconds.
147. Between 13:08 and 13:13 (the last time recorded on Paula’s health app on her iPhone prior to her death), Paula walked 91 steps.
148. The next time recorded on Don’s health app on his iPhone was 13:39. Between 13:39 and 13:48, Don travelled 113 steps (76.45 metres).
149. At 13:45, a mobile data session started on Don’s iPhone, lasting 13 minutes 44 seconds.
150. At some time before 13:46, Paula drowned in the swimming pool.
151. At 13:46, Don called 95 112 (emergency services), the call lasting 11 minutes 36 seconds. During the call, Don stated that he believed Paula had a heartbeat, he thought Paula might be breathing at points and Paula’s skin temperature was warm as normal.
152. At 13:48, Palle Hansen, a member of the Danish ambulance service, received a call to go to Søndervang 61, Nørre Nebel.
153. Between 13:48 and 13:58, Don travelled 18 steps (12.24 metres).
154. At 13:58, ambulance staff arrived at the holiday cottage. When they found Paula, she was lying with her upper body on the edge of the pool and the rest of her body in the water. Don was administering CPR but his efforts were limited and ineffective. Don had failed to apply sufficient pressure in chest compressions to expel a significant quantity of water from Paula’s lungs and mouth.
155. Paula did not regain any heartbeat and it was not possible to revive her.
156. At 14:26, the automatic CPR device used by the ambulance crew was stopped and Dr Mads Rasmussen declared Paula dead.
157. At 14:35, Paula’s phone received a message from Julie at Trading Places concerning a viewing of a property.
158. At 15:16, Danish police arrived at the cottage and spoke to the paramedic, Palle Hansen.
159. Between 15:20 and 15:40, Don spoke to the Danish police at the cottage.

160. At 15:39, the control centre was asked to obtain a hearse on-site.
161. At 15:50, the ambulance and doctor left the cottage.
162. At 16:59, the Ashlands landline called Paula's phone. The call was not answered.
163. At 17:08, the hearse reached the cottage. At 17:30, it left, transporting Paula's body to the chapel at Southwest Jutland Hospital in 6700 Esbjerg.
164. Don and the Danish police officers left the cottage together at an unspecified time, travelling to Spangsbjerg emergency ward, Esbjerg, arriving at 18:47, the officers leaving at 19:01.
165. At 18:47, Betty sent a message to Paula's phone (read on 20 June 2017).
166. At 18:49, the Ashlands landline called Paula's phone. The call was not answered.
167. At 19:31, Willy called Paula's phone. The call was not answered.
168. At 19:36, Don called Neville. The call lasted two minutes and 31 seconds.
169. At 19:42, Neville called Don. The call lasted two minutes and 54 seconds.
170. At 19:53, Neville called Don. The call lasted one minute and 7 seconds.
171. At 20:31, Don called Neville. The call lasted three minutes and 24 seconds.
172. At 20:37, Don called the emergency helpline number for Aviva Travel Insurance, the call lasting 11 minutes and 6 seconds. When asked during the call about his accommodation that evening, Don stated that he would find a "random hotel". Aviva e-mailed Don confirming that the matter had been referred to a specialist team who would be in contact with him in due course.
173. The message sent by Julie from Trading Places to Paula's phone earlier that day (14:35) was read at 21:36.
174. Don travelled from Esbjerg, where Paula's body was, to the Scandic Kolding Hotel, Kolding, Denmark, 70.8 km (around 46 minutes by car) where Don stayed that evening (6 June 2017).

D. Proof

Burden of proof

175. Before looking at the matters relied upon by the Claimants to support their

contention of Paula's unlawful killing at the hands of Don, it is helpful first to consider the proper approach to the evidence. As to this, the Claimants fully accept that the *burden* of proof lies with them. As noted, they embrace that burden and seek a finding on the merits.

Standard of proof

176. As to the *standard* of proof in the context of serious allegations (as such are advanced in this case), the (then) Chancellor, Sir Geoffrey Vos, summarised the position in *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408 (at [44]) in the following terms:-

“43. The judge received some submissions on standard of proof, and he mentioned in his judgment the well-known cases of *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 (“*Re H*”) and *Re B (Children)* [2009] AC 11 (“*Re B*”).

44. It does not seem to me that the law is now much in doubt. It is encapsulated in the following passages from Lady Hale's judgment in *Re B*, which, though stated to be applicable to care proceedings are, I think, of more general application in civil proceedings:-

“64. Lord Nicholls's nuanced explanation [in *Re H*] left room for the nostrum, “the more serious the allegation, the more cogent the evidence needed to prove it”, to take hold and be repeated time and time again in fact-finding hearings in care proceedings” ...

“70. My Lords, for that reason I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. ...”

“72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum. Consider the famous example of the animal seen in Regent's Park. If it is seen outside the zoo on a stretch of greensward regularly used for walking dogs, then of course it is more likely to be a dog than a lion. If it is seen in the zoo next to

the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog.”

Proof by inference

177. Phipson on Evidence (19th ed) explains (at [1-13]) that direct evidence involves proof of the existence of a given thing or fact by its actual production or by the testimony of someone who has perceived it. Indirect or presumptive evidence, by contrast, involves proof of other facts from which the existence of the given fact may be logically inferred. Both forms of evidence are equally admissible. Although direct evidence has fallibility of assertion and perception as sources of error, indirect evidence has, additionally, fallibility of inference. More specifically:-

- (i) There can be no inference unless there are proved objective facts from which to infer the other facts sought to be established. If there are no such positive proved facts from which the inference can be made, the method of inference fails, leaving mere speculation or conjecture (*Caswell v Powell Duffryn Associated Collieries Ltd* [1940] AC 152 at [169]-[170]).
- (ii) As to the other primary facts from which that inference can be made, Flaux J held in a dishonesty context that the claimant does not have to plead primary facts which are only consistent with dishonesty. The correct test is whether or not, on the basis of the primary facts pleaded, an inference of dishonesty is more likely than one of innocence or negligence. As Lord Millett put it in *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1 (at [186]), there must be some fact which tilts the balance and justifies an inference of dishonesty (*JSC BM Bank v Kekhman* [2015] EWHC 3073 (Comm) 791 at [20]).
- (iii) Care has to be taken before drawing an inference where, due to the nature of the case, there are facts which cannot be known and may have a bearing on the safety of the inference (*Easteye Ltd v Malhotra Property Investments Ltd* [2020] EWHC 2606 (Ch) at [140]-[143]).
- (iv) In the context of a case concerning which spouse had died first, the Court asked itself the question whether a reasonable tribunal was warranted in coming to a definite conclusion that the testator survived the wife. This

required something more than the survival of the testator being a reasonable explanation of the circumstances or, on the whole, the more reasonable conclusion. A conclusion of fact must be capable of being reached on grounds which so far outweigh any grounds for a contrary conclusion that the latter can be ignored (*Re Bate* [1947] 2 All ER 418 per Jenkins J at [421]).

Proof by circumstantial evidence

178. In *Lakatamia Shipping Co Ltd v Su and others* [2021] EWHC 1907 (Comm), Bryan J noted (at [63]-[64]) Teare J's observations in *JSC BTA Bank v Ablyazov* [2013] EWHC 510 (Comm) about circumstantial evidence, Teare J himself referring (at [198]) to what Rix LJ said in *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411 (at [52]):-

“It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: *R v Hillier* (2007) 233 ALR 63 (HCA), cited in *Archbold* 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in *R v Kilbourne* [1973] AC 729 [1973] AC 729 758, ‘Circumstantial evidence ... works by cumulatively, in geometrical progression, eliminating other possibilities’.”

179. As Bryan J went on to explain in *Lakatamia* (at [64]-[66]) concerning the operation of these principles in a civil context:-

“64. Rix LJ's observations are of general application (see, for example, *Kazakhstan Kagazy Plc v. Zhunus* [2017] EWHC 3374 (Comm) at [159] per Picken J). Of course, what Rix LJ stated in *Ablyazov* (including as to “a net from which there was no escape”) was stated in the context of contempt where the standard of proof is to the criminal standard namely “beyond reasonable doubt”/ “satisfied so that you are sure” (in terms of a direction to a jury) where the “net” metaphor is particularly apt. However, care needs to be taken in utilising a similar metaphor where the standard is that of balance of probabilities. Something can be proved on balance of probabilities even if all other possibilities have not been excluded, which is why Lord Millett in *Three Rivers* referred to *some* fact which tilts the balance and justifies (for example) an inference of dishonesty in a particular case. Nevertheless, the points that are made that it is the essence of a successful circumstantial case that the whole is stronger than the individual parts, and that circumstantial evidence works cumulatively, are equally apt in a context such as the present, and allegations of unlawful means conspiracy against various individuals and entities.

65. In this regard, and consistently with Rix LJ's observations, in evaluating

the evidence it is best to avoid compartmentalising particular points relied upon, or treating points in “silos”, or adopting a piecemeal approach to evidence relied upon; rather it is appropriate to take account of “*previous findings in considering the likelihood of the later facts having occurred*” or, in other words, to “*stand ... back and consider ... the effects of the implications of the facts ... found in the round*” (see *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWHC Civ 408; [2020 4 WLR 55 at [70] per Sir Geoffrey Vos C).

66. Equally, in deciding whether a serious allegation is established on the balance of probabilities, regard may be had to the fact that a party has lied or otherwise engaged in misconduct in other respects - see *Fiona Trust & Holding Corp v. Privalov*, supra at [1440]-[1446] per Andrew Smith J; *Otkritie International Investment Management Ltd v Uromov* [2014] EWHC 191 (Comm) at [89] per Eder J; *Kazakhstan Kagazy Plc v. Zhunus*, supra at [158] per Picken J; and as I addressed in *Bank of Moscow v. Kekhman*, supra, at [57]-[66].”

Proof in this case

180. With the exception of the pathology and Fitbit data evidence, the Claimants rely in this case largely on circumstantial and indirect evidence. They say that the process of deduction and the preponderance of the objective evidence, as the relevant primary facts are set out in the Schedule to the Amended PoC, point overwhelmingly in favour of a finding that Paula was unlawfully killed by Don. She was an otherwise healthy and well individual, found dead next to a shallow pool. Don was the only person present. He is a long-term fraudster who had dishonestly and deceptively procured significant life insurance policies on Paula’s life. The number and amount of those policies means that, rather than being inherently improbable, it was probable that Don did unlawfully kill her.

E. Don’s alleged dishonesty - introduction

181. I have already mentioned Don’s prior convictions between 1993 and 2008. I should say at the outset that it does not follow from these proven dishonesty offences that Don has a propensity to lie. Nor, even if such a propensity were established, does it mean that he has lied on this occasion about what took place on 6 June 2017 at the Danish holiday cottage. It is one thing for Don to have previously deployed fraud, deceit and/ or false representation to obtain property belonging to another, even to the extent he did in connection with the Commerzbank fraud; it is another to say that, as a result, he must have lied about the circumstances of Paula’s death some ten years or more later, let alone that he

was responsible for her unlawful killing.

182. In this case, however, the Claimants rely on multiple further and related facets of Don's suggested complex relationship with the truth and money which, they say, extend well beyond "youthful misadventure", Don's lies having commenced early in his life but continuing well beyond Paula's tragic death, and even into his Defence of these proceedings. Moreover, those lies are said to be deliberate and purposive, pervading every aspect of this case, demonstrating specific acquisitive intent, accompanied by deceptive methods, including forgery.

Don's SOCA statement and other statements to the authorities

183. I agree that Don's admissions from his own statement to the Serious Organised Crime Agency (**SOCA**) made in August 2008 following his earlier conviction and sentence for the Commerzbank fraud are instructive in this regard, particularly when set against the position originally adopted by him in his Defence (and his related further information). So, for example, Don positively denies in his Defence:-

- (i) Attending Westlake Boys High School or living with his parents and sister at the address stated in the PoC between 1987 and 1990;
- (ii) Attending Rosmini College in 1991 and 1992;
- (iii) Being in the family home and leaving it in 1992-1993 at around 19;
- (iv) Attending Auckland University in 1992 to study for a Bachelor of Business degree before failing half his study units and quitting his degree course;
- (v) Lying about his qualifications, experience and absence of criminal convictions in CVs to secure various jobs in the banking industry or setting up three shelf companies to avoid paying tax;
- (vi) Submitting false timesheets or convincing Mr Forchel of Commerzbank to do so for him;
- (vii) Having access to forged passports, whether to enable him to open false bank accounts or otherwise; and
- (viii) Not being honest or of assistance to the Australian and German

authorities.

184. Although Don's biographical details are perhaps of little consequence in themselves, I agree that his positive denial of those matters in his Defence (and the further information) is troubling. Don asserted all the above matters in his SOCA statement, made under risk of prosecution and confirmed on oath in the Crown Court. Either Don was lying to SOCA when he made the SOCA statement or he was lying to this Court when he signed the statement of truth to his Defence. Indeed, Don has since admitted most of those biographical details in the Agreed Facts, albeit without explanation for his change of position (or amendment to his Defence).
185. Those biographical details apart, it is particularly notable that Don also positively asserted in his SOCA statement that he made "*limited and deceptive admissions*" to the Australian authorities upon arrest for the Commerzbank fraud, supposedly to minimise his involvement and to protect Ira, and that he did not tell the whole truth to the German authorities to avoid incrimination. That is also consistent with his evidence to the Crown Court in *R v Austin and others* in which he testified "*I mean, look, even look at my sentence, I got away with, with nothing, you know, for doing what I did.*" Based on what Paula had told her, Lynn Dale testified to Paula's knowledge of Don's involvement in the Commerzbank fraud. That testimony was to the effect that Don had also downplayed to Paula his involvement in the fraud as a "*little player who took all the blame for it all*". I accept her evidence. Again, that was in marked contrast to what Don had told SOCA, namely that he had got off lightly by minimising his role.
186. I also agree that Don's admissions as to his deliberate falsification of his CVs and timesheets, as well as having access to forged passports to open false bank accounts, highlight Don's resourcefulness in his deception of others.

Don's identity

187. A further indicia of Don's resourcefulness is his multiple changes of name. Doing so seven times is highly unusual to say the least. This must have entailed significant personal inconvenience, disruption and not inconsiderable personal expense to change passports, bank accounts and bills. Such actions would also be consistent, for example, with the attempted concealment of prior convictions,

unlawful financial acquisition or avoidance of debt, permitting re-invention free of such ‘baggage’, minimising detection of similar behaviour in the future and/ or potentially affording multiple aliases.

188. So, for example, Brian McAuley told the GMP that he and his colleagues working with Don only found out about Don’s fraud conviction when they happened across his wallet in the fridge (where he kept his personal papers) and found three different driving licences under three different names. Googling one of these names, Donald Somers, led one of them to information about the Commerzbank fraud. I accept his evidence.
189. In this regard, the SOCA statement is again unusually candid, Don having admitted:-
- (i) changing his name in 1993 due to domestic disagreements with his family and to leave behind credit card and other bad debts;
 - (ii) changing his name in 1994, again to distance himself from his debts; and
 - (iii) leaving NZ owing student debt of approximately \$40,000 in the name of Alexander Lang.
190. Despite admitting these matters, Don denied them in his Defence, positively asserting that he did not have any debts to avoid. As such, he again deliberately lied, either to SOCA or to this Court.
191. In this context, it is also notable that a person named Brian McCaulley is shown as witness to the deed dated 15 May 2013 purporting to change Don’s name from Anderson to McPherson. Given the closeness of the surname, I accept that the intention was for the document to appear as if witnessed by Don’s actual acquaintance, Brian McAuley. However, I also accept Mr McAuley’s GMP statement from 20 December 2018 that he did not witness this. Indeed, the misspelling of his surname and the use of an incorrect address for Mr McAuley (albeit one associated with Don) are both obvious giveaways that his signature was forged by Don, enabling Don not only to drop his legal name and formally replace it with that he was using to Paula and with which he would marry her the following year, but to do so without anyone close to him knowing about it.

Don’s Rob Jones persona

192. Another notable aspect of Don's identity and lifestyle is his use of the alias "Rob Jones" from at least 27 October 2016. Initially, Don did not admit in these proceedings his use of that name (or of the e-mail address robjones2018a@gmail.com) even though the relevant e-mails had been provided to Don during the criminal proceedings. In his further information, Don admitted these matters, albeit qualifying them to suggest that the e-mail address was used by others on the internet. Don admitted the same in the Agreed Facts as well as the content of various e-mails sent from the e-mail address.
193. For a number of reasons, I agree with the Claimants that Don's initial non-admission and subsequent qualification were obfuscatory and that the e-mail address was, in fact, used exclusively by him:-
- (i) During his GMP interview on 26 April 2018, Don admitted that the e-mail address was his, without mention of its use by anyone else;
 - (ii) The GMP investigation timeline records the relevant e-mails being sent from Don's iPhone. That timeline was agreed to contain an accurate summary of events. No reason has been provided for such agreement in the criminal case but not in these proceedings;
 - (iii) Don's frozenislandtrader@hotmail.com e-mail address is also associated with the name Rob Jones;
 - (iv) The Rob Jones e-mail address and password appear on Don's own handwritten notes;
 - (v) Joseph Ennis-Cole's evidence was that Don used the name, including when they went Go-Karting together, because he wanted anonymity. I accept his evidence;
 - (vi) Don says in further information that he has no recollection of attending a meet up in Poole on 15 September 2017 under the name Rob Jones with his online sailing advice friends, Carl and Jenny. I agree that this lack of recollection is wholly implausible: Don accepts that he sent e-mails to carlandjennysailing@gmail.com from his iPhone (in the name of Rob) on the day of the meet up; Don is shown (named as Rob) in the related YouTube video of the event giving flowers and a book of world cruising

routes to Carl and Jenny for their 25th wedding anniversary; and Don expressed concern in his e-mails about being filmed (hence, his pixelation in the video). Don would have remembered all these matters as well as travelling the long distance from Manchester to Poole. His related coyness in these proceedings is unconvincing; and

(vii) Finally, the relevant e-mails mention other matters clearly referable to Don, including his wife's death.

194. More generally, the e-mails sent by Don from his Rob Jones account provide insights into his (expensive) lifestyle aspirations, both before and after Paula's death. These included his 'bucket list' item of crossing an ocean or three by yacht, Paula knowing nothing about him watching sailing videos and likely to 'go mad' if she did (with a request not to be sent a t-shirt to avoid being found out), his intention one day to acquire a 'big yacht', his enquiries about flying on a MIG29 plane and doing a HALO jump with Space Affairs, his sitting the Royal Yacht Association online theory course, his plan to circumnavigate the world in a catamaran, his plan to jointly purchase a plane and fly it around the world, his desire to buy a used Fountain Pajot 44 yacht costing between \$300,000 to \$675,000 and his intention to be based and to work in the Middle East, with an offer to pay for others to attend the Dubai Boat Show.

195. Lest it be suggested that the Rob Jones e-mails indicate mere aspiration or pipe dreams on Don's part, they are consistent with his (then current and expensive) hobbies indicated in the other documentary evidence, including flying, power boating and sailing. In this regard, Don denies in his Defence that he was a member of a non-equity share scheme for the use of a private plane, again downplaying his expensive lifestyle enjoyed outside the presence of Paula. However, in his evidence, Joseph Ennis-Cole was in no doubt that Don was a member (including before he obtained his private pilot's licence). I accept that evidence and find that Don again lied to this Court in his Defence.

196. The witnesses too described Don as 'flashy'. Mark Dickens, for example, gave evidence that he did not discuss money with Don but Don seemed to have a lot and would always pay for everyone's drinks or fill up his tank when he drove Don and they stopped for petrol. I accept that evidence. Joseph Ennis-Cole too

described Don as “*an extravagant person who liked to enjoy himself*”, including his flying hobby for which he purchased an excessive amount of expensive equipment, with Don also paying for expensive lunches, handsome tips, ancillary airport costs and lesson cancellation. Mr Ennis-Cole also described how Don paid his wages for building labour using cash retrieved from an envelope in the freezer (consistent with Mr McAuley’s description of Don’s use of a fridge for personal documents) and asked him not to tell Paula how much he was paid. He also testified that Don lied to Paula when he was not working, including even switching on his drill when Paula telephoned him to make it sound as if he was. I accept his evidence. Indeed, this last aspect resonated uncannily with Karen Mairs’ evidence (which I also accept) who described Don making noises when Paula called him as if he was working on a building site when, in fact, as he often was, he was at home playing video games or on his laptop.

197. This pretence of work when not doing any is also consistent with Don’s somewhat scathing views indicated by the evidence as to the Leeson’s work ethic and use of their wealth, with Neville recounting how Emma had told her that Don would ask why the family kept working when they did not need to and saying that they should go on holidays because they were ‘loaded’. This is also consistent with Joseph Ennis-Cole’s further evidence that Don discussed the family business with him, expressing his annoyance that Willy was always working and never took the time to spend his money and how he should be taking them on holidays. Likewise, Don had told him that Ben should be spending his money rather than working all the time. Again, I accept this evidence.

198. As to the significance of money to Don more generally, he told the German authorities that he had a “*disturbed relationship with money*” and that he had apparently spoken to a psychiatrist about it. It is not clear what he meant by these remarks but the Claimants also rely on further more callous observations about the value of people and money indicated in Don’s evidence to the German authorities about threats supposedly made against Ira and Natalie who both died while Don was in German prison:-

“The one with my daughter was, so to speak, a side loss. I’m not responsible for everything that happens. Had I had the choice of keeping them or keeping the money, I would have kept the money. I had my own financial resources, my own money. The way I’ve seen, no woman is worth

5 million, including my daughter.”

199. The obvious heartlessness of these remarks notwithstanding, it is clear from the report of the Australian Coroner investigating the death of Ira and Natalie that Don’s efforts to persuade the German authorities that they were under threat from his fellow prisoners were treated with considerable circumspection:-

“The Investigating Officer was of the view that Mr Somers had not been truthful to them during the interview in relation to his answers. Police suspected that his story of extortion and threats against his family had been a fabrication in an attempt to get into a witness protection program which would assist in protecting him and attaining anonymity.”

200. The evidence before the Coroner overwhelmingly supported a finding that Ira deliberately ignited a house fire with the intention of killing herself and Natalie, the same report indicating that Don may himself have contributed to Ira’s fragile mental health in his letters to her from his German prison.

Foster care and upbringing

201. Another issue concerning Don’s own identity which pervades the evidence is his various statements that he was fostered, grew up in care or was orphaned, including such statements to Emma, Joseph Ennis-Cole and Mark Dickens (whose related evidence I accept). The documents also show that Don made similar statements to his online sailing friends (Jamie and Liz from Follow the Boat), the German Court, the NHS, GMP and even the Danish emergency services. Ben and Lynn Dale were told the same by Paula and Neville by Betty (from Paula). Don said the same in his pleaded case in these proceedings.

202. The difficulty with all these statements is that they are demonstrably false:-

- (i) The statement from Don’s sister, Sharon, to the Australian Police confirms his true family background, namely a “*fairly normal*” upbringing, with Don described as a gifted child and no recollection of him getting into trouble with the authorities until he was around 19. I accept her evidence;
- (ii) In 2000, Don provided the British High Commission in Canberra with his father’s details and, for his emergency contact details, his parents’ contact details in Auckland, NZ;
- (iii) There is no evidence from Don of ever actually having lived in a foster

home, his disclosure statement merely stating that he “*does not hold any records relating to his foster home or their addresses.*”

- (iv) Even though Don was specifically asked to provide information about his foster care past in these proceedings, he did not do so; and
- (v) In the Agreed Facts, Don confirmed that he had, in fact, grown up in Auckland with his parents, Lawrence and Pamela Lang and his two older sisters, Pandora and Sharon, until around 1992 when he left home aged around 19.

203. I accept the Claimants’ submission that Don’s foster care story was a lie and not a small one at that. It goes to the very question of Don’s familial identity and his reluctance to reveal the related truth to those supposedly most close to him, including even Paula. It is also a very purposeful lie and one he embellished, his NHS records stating, for example, that he “*reported some abuse whilst in care*” (another serious lie), Don even telling the GMP that his own foster care background was one reason he and Paula had considered having children (for Don at least, another lie) and Don even having the presence of mind to repeat the lie to the Danish emergency services when summoning help on 6 June 2017. This lie pervaded his interactions with others. As Mark Dickens explained in his evidence, it also meant that Don did not have to open up about his past life or expose himself to questions at risk of others seeming insensitive and/ or intrusive by asking him about it. I agree.

204. Given this lie, I accept that Don must also have lied to Paula and the Leeson family about his best man having planned to come across from NZ to be present at his and Paula’s wedding but being unable at the last minute to attend because of the death of his child. Don could not risk having someone from NZ that knew him come across for the wedding, his attendance in all likelihood causing Don’s foster care lie to unravel and his former name(s) to be revealed within the first few lines of the best man’s speech. The sheer level of disruption that must have been caused to the wedding arrangements as Mark Dickens was drafted in as so-called ‘stand-in’ again shows the elaborate lengths to which Don was willing to go to maintain the false pretence he had created.

Don’s representations about his finances

205. Another lie likely to have been exposed by anyone Don knew from NZ concerned his personal wealth. The evidence of Emma, Martin McSherry, Joseph Ennis-Cole and Jack Richardson is that Don told them that he owned land or property in NZ, with Don saying to some that he owned a farm with a bunker. Willy, Ben and Neville also understood from Paula or Betty (through Paula) that Don owned property in NZ. Lynn Dale's evidence was that Paula had told her that Don claimed to be worth some £5m. I accept their evidence. It is also corroborated by the written communications sent by Don to Martin McSherry when applying for joint life insurance in which he indicated that he owned six NZ properties.
206. Such statements are also consistent with the other evidence already noted concerning Don's desire to project an image of wealth. However, such statements are inconsistent with the evidence of John Kehoe as to the extensive enquiries undertaken by GMP which confirmed that Don had not owned any NZ properties. Likewise, the Agreed Facts confirm that there is no record of Don owning any property in NZ. I accept that he did not own any and that he therefore lied to multiple persons about this, including again Paula.
207. More specifically in relation to Don's finances, I also accept that he told multiple lies to multiple financial institutions and insurers, including his:-
- (i) incorrect statements to various mortgage companies between 2011 and 2012 about being employed or engaged by South Pacific Oil & Gas in NZ in various capacities when, as I am satisfied on the evidence, and Don not having provided any related information, no such entity exists;
 - (ii) incorrect use of the name Donald McPherson on mortgage applications for three properties (10 Marsland Close, 101 Fairywell Road and 24 Ashfield Road) when his legal name was Donald Anderson;
 - (iii) incorrect statement to Scottish Provident in September 2013 that there were no existing or current applications for insurance and/ or his failure to disclose the Countrywide mortgage and life policies, the joint Vitality policy, the joint Aviva policy, the joint AIG policy and the joint Zurich policy;
 - (iv) incorrect statements of his address on various applications, including using 29 Fairbourne Avenue on a call with Zurich in May 2015, when that

property had been sold in February 2014;

- (v) incorrect statement when opening his Lloyd's bank account (apparently in June 2015) that he was not and had not been known by any other names, when clearly he had;
 - (vi) failure to disclose to Royal London in 2016 the existing Scottish Provident policy (Scottish Provident being owned by Royal London);
 - (vii) failure to disclose to Royal London in 2016 that he was covered by five different policies totalling £2.5m and Paula by eight policies totalling £3.3m;
 - (viii) incorrect statement to Aegon in 2016 that Paula would drink five or six units of alcohol, the evidence of the Leesons and Lynn Dale (which I accept) being that Paula did not drink;
 - (ix) failure to disclose to Aegon in 2016 that he was covered by six different policies totalling more than £2.7m and Paula by nine policies totalling £3.5m;
 - (x) incorrect statement from May 2017 to HSBC that there were no other travel insurance policies when he was about to take out two more;
 - (xi) incorrect statement to Lloyds Bank in June 2017 that he did not play golf when the evidence of Joseph Ennis-Cole (which I accept) is that he did; and
 - (xii) failure to disclose his criminal convictions in his mortgage applications for Whitefield, St Mary's Road, 12 Truro Drive and 45 Whitefield Road.
208. The Claimants also rely on a suggested mismatch between Don's declared taxable income and that indicated by certain mortgage applications. Although the figures are different, these did not seem sufficiently material and/ or well-explained to warrant the conclusion that Don had lied on his mortgage applications. I am, however, satisfied that he did lie to the relevant institutions about the other matters identified above.
209. Indeed, I am satisfied on the evidence that many significant aspects of Don's life, whether concerning his family, finances or lifestyle, his identity and who he was

as a person, were little more than a pretence, built on lies to, and concealment from, others, including those supposedly most close to him.

F. Insurance policies and Don's financial position

210. Turning in more detail to Paula and Don's financial arrangements, the Claimants say that the deteriorating state of Don's finances prior to Paula's death, coupled with seven joint insurance policies affording life cover of £2,988,900 and joint money and property worth some £506,079.72, provide a compelling motive for Paula's unlawful killing. Indeed, the insurance written was grossly in excess of any underlying mortgage liabilities which, including Paula's Brighton Grove property, their jointly owned properties (Whitefield and, later, St. Mary's Road), and Don's buy-to-let portfolio from time to time, never exceeded £1m in aggregate.

211. To recap Paula's financial position at the time Don met Paula in late 2012, she had no life insurance policies. She had NHS and SW pensions and two Countrywide protection plans in connection with her Brighton Grove purchase. However, in the space of less than three years between August 2013 and April 2016, seven joint life insurance policies were incepted with the assistance of Martin McSherry and Thomas Rooney, both of whom appeared as witnesses at trial.

The joint life insurance policies

212. Mr McSherry testified that he had never met Paula or asked to meet her and had only e-mailed Don, not Paula directly. Nor had Paula ever contacted him directly or made any enquiries of him about life insurance, it being common for one partner in a couple to deal with the finances. He did remember direct contact with Paula on one occasion in August 2013. At the time, Mr McSherry was arranging joint life insurance policies to the value of £2.5m and Mr Rooney a mortgage. Mr McSherry confirmed in oral evidence that his discussion with Paula was limited to obtaining basic medical information to help him complete application forms and that "*there were no conversations with Paula in context of what the policies would look like, how much they would be and the value of them, that sort of thing. All those conversations came about [through] Don.*" Likewise, his dealings in relation to the joint life policies written in 2016 were also with Don. In response

to a point that might have been raised had Don been present at trial, Mr McSherry confirmed that he did not speak with Paula, whether individually or together with Don, about the joint life policies. He also confirmed that it was normally the adviser who completed the application forms for life insurance. I accept his evidence.

213. Likewise, although Mr Rooney had her e-mail address and telephone number, his contact with Paula was also limited, having only met her in person twice, the first time at her wedding to Don, the second at their home when Don wanted to discuss the Whitefield re-mortgage. Otherwise, his contact with Paula was limited to the telephone and, only then, when he had to obtain fact finding information for mortgage purposes, including in 2013 about her family employment. Otherwise he dealt with Don. He did not discuss the joint life insurance policies with Paula. I accept his evidence.
214. In light of the evidence from the financial advisers, neither of whom was able to confirm that Paula was aware of the life insurance policies, and the content of Paula's handwritten note given to Ben in around 2017, I am satisfied that the only joint insurance policy of which Paula was aware was that issued by Royal London. The cover it afforded matched the amount of the new Whitefield mortgage taken out jointly from Coventry Building Society in 2016 (£278,900). It is common ground that it was not a requirement of the mortgage for this cover to be obtained. However, it is understandable that she and Don might want joint life cover in respect of the new repayment mortgage on Whitefield so that the survivor could be assured of continuing to live in the joint home if one of them died. That joint policy is shown on Paula's handwritten note to Ben (with "*Whitefield*" written next to it), together with her own LV and SW life policies (for £400,000 each), taken out around the same time (with "*life insurance if I die for Ben*" written next to them).
215. It is evident from the documents in this case, such as her note to Ben and the transcripts of Paula's telephone interactions with her bank, that she was prudent with her money and careful in ensuring financial provision for her potential survivors. As such, I am satisfied that, had she known about all the other joint life policies, she would have listed them in the note to Ben, just as she listed the Royal London policy, its location in a filing cabinet, its policy number and the

contact telephone number for this insurer. However, she did not do so, even for the Aegon joint policy, the apparent pretext of which was their joint purchase of St. Mary's Road. There would also have been records of her speaking to these insurers as she did with other financial institutions to ensure that her affairs were in order. There are none.

216. Moreover, I am also satisfied that, had she known that £2.5m of cover had been written on her and Don's joint lives since 2013, she would not only have been understandably suspicious about why such a large amount of insurance was required, she would have considered the related premiums, including for the further Royal London and Aegon policies from 2016, an unnecessary waste of the more than £5,000 per annum that Don was paying for them from his own HSBC account.

217. I am reinforced in my view by what I consider to be the surreptitious way in which Don went about procuring these policies, obtaining £2.5m in joint cover in 2013 (before he had even married Paula), maximising the coverage obtained and the prospect of pay out by spreading this among multiple insurers, maximising his control of the policies, particularly the identity of the beneficiaries, by placing them in joint names and avoiding the need for medicals and therefore Paula's knowledge of the policies. To achieve these outcomes, Don paid higher premiums and massively overstated the underlying liabilities to which they were (falsely) said to relate. So, for example:-

- (i) Between 14 and 17 August 2013, the life cover requested by Don increased from £1.25m to £1.5m to £2.5m with no apparent explanation for this doubling;
- (ii) Mr McSherry recommended individual (rather than joint) policies to make it easier to adjust in the future for individual lives;
- (iii) As Mr McSherry confirmed in evidence (and I accept), Don would not have been able to deal with Paula's policies or kept their existence from her if issued on an individual basis;
- (iv) In the event, Don took out the joint policies against Mr McSherry's recommendation;

- (v) To avoid medical assessment and related delays, multiple different insurers were selected, resulting in higher premiums. As Mr McSherry said at the time, “*You are aware that this means you are paying higher combined premiums for the cover requested as we reviewed the Assureweb comparison data but you feel this is worthwhile to save you time and convenience at the underwriting stage*”;
 - (vi) Life cover and critical illness cover was recommended but this advice was not followed, Don being “*more concerned with financial consequences in the event of death*”;
 - (vii) On 5 September 2013, Don e-mailed Mr McSherry, stating that he owned eight UK properties, one jointly with Paula and a further six in NZ and that he had a margin loan account of £500,000, indicating a total debt of £2.808m. Mr McSherry did not see evidence of the properties or the debt;
 - (viii) On 9 March 2016, Don requested two new policies, one for Paula for the benefit of Ben, another joint policy ostensibly to cover the new mortgages set up by Mr Rooney (the Whitefield re-mortgage and St Mary’s Road buy-to-let mortgage). Mr McSherry did not know why Don suggested “*two new companies to the current ones*”, other than possibly to avoid medicals;
 - (ix) Don declined critical illness cover for these new policies too, also stating that his debts were roughly the same as before even though he had, in fact, sold nine of his buy-to-let properties between August 2013 and January 2015; and
 - (x) As already noted, it was untrue that Don had six (or any) NZ properties. Indeed, Don’s bank statements do not indicate any payments towards any mortgages or margin loan account or any rental income or sale proceeds receipts in respect of any NZ properties.
218. In light of all these matters, I accept the Claimants’ contention that Don deliberately chose joint life insurance policies to ensure he could exercise control over them, including the identity of the intended beneficiaries, and that he requested multiple insurers to avoid medical assessments which would inevitably have brought the policies to Paula’s attention and raised her suspicion as to why

he was procuring so much life cover far in excess of their liabilities and which, as the parties are agreed, the underlying mortgages did not require to be taken out. Moreover, although insurers would obviously have written to Don and Paula from time to time, and Don began in 2015 to notify insurers that they were now living at Whitefield, Karen Mairs explained that, when she came to clean, Paula was always at work and Don was most often at home. I accept that evidence. As such, I also accept that Don would have had no difficulty in filleting the post for those pieces of correspondence he did not wish Paula to see.

Calls to joint life insurers

219. I have already set out above the agreed position with respect to Don's calls to the joint life insurers, during the course of each of which, Don requested confirmation as to the identity of the beneficiary of the policy proceeds in the event of the death of the first. To recap, those calls took place as follows:-

Date	Insurer	Observations from call transcript
03.08.2015	Vitality	Don requested change of address to Whitefield. Adviser confirms policy proceeds will be paid to deceased's estate but policy can be written in trust.
03.08.2015	Aviva	Don requested change of address to Whitefield. Adviser confirms policy proceeds will be paid to surviving spouse.
24.09.2015	Zurich	Don requested change of address to Whitefield. Adviser confirms policy proceeds will be paid to surviving spouse.
11.04.2016	Aegon	Don enquired as to flying planes. Adviser confirms the policy is a joint life first event policy.
04.05.2016	Aegon	Adviser confirms policy proceeds will be paid to surviving spouse.
26.09.2016	Zurich	Adviser confirms policy proceeds will be paid to surviving spouse. Don requests to increase policy by £270,000 on account of new mortgage. Adviser confirms that a maximum increase of £150,000 is possible.
07.02.2017	AIG/ Aegas	Don asks to check address on record. Address changed to Whitefield. Adviser confirms policy proceeds will

		be paid to deceased's estate but policy can be written in trust. Adviser will send trust forms. Don asks about increasing cover for new mortgage. Adviser confirms that a maximum increase of £75,000 is possible.
07.02.2017	Zurich	Don checks that Zurich hold correct address. Don asks if the policy is index-linked. Adviser confirms the policy is a guaranteed sum (£500,000). Adviser confirms policy proceeds will be paid to surviving spouse.
16.02.2017	Vitality	Don asks for membership number to access the 'Member Zone'. Adviser confirms policy proceeds will be paid to surviving spouse.
06.04.2017	Vitality	Don asks about change of bank account details. Adviser confirms policy proceeds will be paid to surviving spouse. Don will come back with the new bank account details.
06.04.2017	Aegon	Don asks about change of bank account details. Adviser confirms policy proceeds will be paid to surviving spouse. Don asks about policy extension.
06.04.2017	Royal London	Don asked to whom the policy proceeds would be paid. No transcript.

220. Having carefully reviewed the call transcripts (and heard some of the recordings), I agree that they are significant. Although there is a pretext for nearly all the calls, whether a change of address, change of bank details or increase in cover, most were obviously thin. For example, Don enquired of two insurers about changing his bank details but he did not have his new details to hand on either occasion. Don also checked with Zurich that they had his correct address, having previously called to change his address. Moreover, his enquiries about increasing coverage were premised on a new mortgage having been obtained but he had already obtained increased coverage from Royal London and Aegon ostensibly on account of, respectively, the new Whitefield and St. Mary's Road mortgages.

221. In any event, whatever the suggested pretext for these calls, it is clear from his discussions with insurers that Don's real interest lay in knowing how the policy

proceeds would be paid in the event of the death of the first of him or Paula. Although it could be said that he was merely seeking assurance about his and Paula's financial affairs, in my view, telephoning some of the same insurers three times to ask the same question, in some cases not long after the previous call, goes well beyond that. Indeed, it indicates not inconsiderable anxiety on his part as to the destination of the policy proceeds in the event of the death of one of them, his clear preference for these to be paid directly to the surviving spouse without passing through the estate of the deceased spouse.

Paula's LV and SW policies written in trust – April 2017

222. As already noted, in April 2017, Paula signed forms of flexible trust which, it is common ground, afforded Don full control of Paula's LV and SW policies on her own life, including the ability to exercise his powers as trustee to benefit himself as potential beneficiary. However, it is clear from the transcript of the call between Paula and LV on 24 April 2017 (and the recording that I heard) that her only concern remained to ensure that Ben was sole beneficiary. Indeed, Don was not mentioned in the call, whether as beneficiary or trustee. To the contrary, LV confirmed (erroneously as it turned out) that Ben would be trustee as well. Paula did not demur.
223. Based on this call and the other contemporaneous evidence, including the fact that Don dealt with the inception of these policies, Don had received the trust forms in 2016 from Mr McSherry and Don originally approached BP to act as joint trustee with him, I am satisfied that Don was driving the arrangement, that Paula had no real understanding of its implications and that her clear intention remained for Ben alone to benefit from the policy. I am also satisfied that, consistent with her handwritten note to Ben, the same position obtained for Paula's SW policy.
224. Finally, although it ultimately makes no difference to the constitution of the LV and SW trusts, there was some consideration at trial of the witnessing of the flexible trust forms. It was common ground that Lynn Dale did not witness these. In his Defence and further information, Don asserted his belief that Paula forged the trust forms. The Claimants' expert handwriting evidence of Ellen Radley was inconclusive as to the author of the forged signatures. However, given his control of this flexible trust process, his prior conviction for obtaining deception

concerning forged cheques, his admission of having access to forged documents, my finding as to his forging of his change of name deed from May 2013, my findings as to Don's false representations to various financial institutions and my further findings below with respect to the Probate Claim and execution of the 2014 Will and other documents discussed in that context, I am satisfied that Don forged these flexible trust documents, not Paula.

Don's financial position before Denmark

225. Finally, on the subject of matters financial, it is apparent that Don was significantly financially stretched at the time he undertook his trip to Denmark with Paula. For example:-

- (i) Don was paying £464.47 per month from his HSBC account for seven joint life insurance policies with a total value of £2,988,900;
- (ii) That level of cover far exceeded the outstanding mortgage debts on their properties;
- (iii) He was funding these policies even though the balance of his bank account was -£7,432.32 and he owed £21,085.41 on his credit cards and £37,146.98 in loans, his liabilities totalling some £65,655.71;
- (iv) Don had sold his last buy-to-let property (12 Truro Drive sold in February 2017), with the net sale proceeds (£115,739.32) paid into the Lloyd's joint account. By the beginning of June 2017, the balance of that account had reduced to £75,957.32;
- (v) Paula effectively controlled the joint account and was evidently wary of Don using it, removing the overdraft facility on 24 November 2016, expressing concern that "*he'll probably start using it*";
- (vi) Other aspects of the household finances had been re-organised, with Paula now paying the mortgage on Whitefield and St. Mary's Road from her own Lloyd's account rather than the joint account;
- (vii) As noted, from 21 February 2017, Don was also no longer paying the £349.49 monthly direct debit for the Motonovo vehicle finance from his own HSBC account, the payment having been moved to the Lloyd's joint account;

- (viii) As also noted, on 24 May 2017, after exceeding his credit card limit, Don telephoned Aqua, changing the account from which his minimum payment was paid to the Lloyd's joint account, also indicating that he was waiting to clear the whole balance as soon as he got a house sale going through. The only houses he owned were jointly owned with Paula (Whitefield and St. Mary's Road);
- (ix) On the same day, Don also made enquiries (under his Rob Jones alias) of Space Affairs about flying a MIG29 plane, asking about the Russian visa process and doing a HALO jump; and
- (x) Joseph Ennis-Cole's evidence (which I accept) is that the St. Mary's Road refurbishment (on which he worked) was going slowly. Prior to Mr Ennis-Cole leaving for Poland in June 2017, Don had told him that he had run out of funds but would be back on his feet once he retrieved money from a Cayman Islands bank account. In the meantime, Paula was being understanding and had given Don the use of her credit card for building materials, fuel for his van and daily sustenance.

226. In light of these matters, I agree that Don's finances had deteriorated significantly by the time of the Denmark trip in terms of his asset, cashflow and debt position. Despite Don's reduced circumstances, including cancelling the direct debits for his own Vitality life insurance policy in around November 2016 (thereby allowing it to lapse), and the evident tightening of the household finance reins, Don continued to pay significant monthly premiums for the multiple joint life insurance policies, he explored new and expensive leisure pursuits and he was apparently anticipating receipt of funds in the near future to allow him to clear his debts.

G. Denmark

Arrangements for Denmark

227. Based on Don's involvement in the accommodation, travel, hire car and insurance, I am satisfied that he made all the arrangements for the Denmark trip. Despite Don's attempts in interview with the Danish police to suggest that he had not been keen to go to Denmark and in GMP interview that the choice of Denmark was a compromise, I accept the evidence of Karen Mairs that she was present in

the house with Don when he was booking the trip online and expressed uncertainty as to whether Paula would like it but booked it anyway. Betty, Neville and Lynn Dale also gave evidence to the effect that Paula was not keen on going to Denmark and was only doing so to please Don. Again, I accept their evidence.

The travel insurance policies

228. As noted, shortly before the trip, Don took out the following joint travel insurance:-

- (i) An HSBC single trip policy to Denmark. During the call with HSBC on 24 May 2017 to set up the policy, Don checked whether only one level of cover was available. HSBC confirmed that it was. Don was also asked if he wanted an annual policy. He declined. In the discussion about leisure activities, Don checked that swimming and sauna use was covered (which it was). The premium of £32.05 was paid on Don's HSBC credit card;
- (ii) On 30 May 2017, Don set up an Aviva annual multi-trip travel policy for Europe even though he had declined such coverage six days earlier. The premium of £56.69 was paid on Don's Aqua credit card; and
- (iii) On 2 June 2017, Don upgraded through online banking his Lloyd's current account from a 'Classic' to a 'Platinum' account. As a result, Don would now be charged a monthly fee of £17. Benefits of the account included AXA worldwide travel insurance for him and his spouse, the travel policy going live on 6 June 2017.

229. Such an account upgrade might not seem unusual in itself but, given Don's financial circumstances already described, it is more probable that he would wish to avoid such a monthly account fee, not to incur one. I also accept the Claimants' submission that the three travel policies represented an excessive amount of joint travel insurance for a four day trip to Denmark. Notably, apart from their respective policy types and periods, the most significant difference between the HSBC and Aviva policies was that the former only covered repatriation costs up to £7,500. By contrast, the latter (of the type Don said days earlier he did not require) had much higher repatriation limits of £10m.

230. Given Don's account of events in Denmark, his and Paula's physical health before

and during their trip is of significance. In relation to Don's shoulder:-

- (i) When answering the medical questions for the new life insurance cover in March 2016, Don informed Martin McSherry about his and Paula's ailments, including his minor stage 2 shoulder dislocation. In his GMP interview, Don said that this had occurred at the gym and that he did not have corrective surgery;
- (ii) As noted, the evidence indicates that Don sustained a fall in Spire Hospital on 19 April 2017 while using the toilet. The x-ray indicated no dislocation or bony injury. Don was discharged on 20 April 2017 with Voltorel Gel. The records also indicate a steroid injection and follow up physiotherapy;
- (iii) Neville recalls that he and Mr Daly helped Don on St. Mary's Road about three weeks before the Denmark trip. On that occasion, Don was knocking down a wall using a sledgehammer for about 30 minutes. Willy's recollection was to the same end. I accept their evidence;
- (iv) When taking out the HSBC single trip policy on 24 May 2017, Don did not disclose any conditions for Paula or himself apart from tendonitis and inflammation in his right shoulder, said to have followed a fall and which his doctor had apparently advised would take three or four months to heal;
- (v) In his e-mail of the same day (24 May 2017) enquiring about the MIG29 flight and the HALO jump, Don mentioned his recent ear drum operation when he supposedly suffered that fall but he did not mention his shoulder;
- (vi) Kevan Daly recalled an incident from 25 May 2017 when he and Neville were digging footings for a property in Sale. Don randomly turned up on site, indicating that he was just passing and making small talk, including about the holiday to Denmark and asking whether Neville was 'ok' with this to which Neville said that it was up to Paula. He came and went every hour or so. Mr Daly considered this encounter odd. I agree;
- (vii) When Don came back to site for the fifth time, he said that he had some scaffolding planks which could be used to lay across the footings to make the concrete pour easier. Neville agreed to use these and Don said that he would need some help bringing them from St. Mary's Road because of his

sore shoulder. When they arrived there, Don climbed up onto the garage roof and started to pass down to Mr Daly the eight or so planks (2m x 0.2m). After they had been passed down, Don carried about half of them the distance of about 10 metres to the van. Although not heavy, they were awkward to carry. Mr Daly recalls that Don seemed perfectly able to carry the planks from the garage without mention of his shoulder or need of help and remembered feeling a bit annoyed because Don had wasted his time. Later that day, Don went off to get more planks, this time on his own;

- (viii) Neville recalled the same occasion and how Mr Daly had recounted the above to him, saying that there was nothing wrong with Don. Again, I accept their evidence;
- (ix) On 30 May 2017, Don made no medical disclosures for either Paula or Don when taking out the Aviva multi-trip policy;
- (x) On 31 May 2017, Don sought additional pain relief from his GP for his shoulder;
- (xi) The evidence of Mr Ennis-Cole was that, before leaving for Poland, he was very close to Don. Although Don had mentioned a shoulder injury, this was usually when he was trying to get out of something like work. Mr Ennis-Cole never saw Don experiencing shoulder pain when with him, including when they played golf, their last trip to the driving range together being at the beginning of June 2017. They resumed playing together on Mr Ennis-Cole's return from Poland. I accept his evidence; and
- (xii) In September 2017, Don contemplated doing an abseil of the Manchester Trafford Centre, identifying his relevant medical history as four hernia repairs and a minor knee injury. He did not mention his shoulder.

231. As to Paula's health, I have already referred to the dental issues experienced by Paula prior to the Denmark trip, including her visit to the emergency dentist on 22 May 2017. She declined further treatment then.

232. Willy's evidence was that he saw Paula every day before she went to Denmark. She looked strong and healthy and did not say that she was suffering from any

issues. He was sure she would have done so if she had been unwell. Ben's evidence is that her tooth was sorted or settled by the time she went away. Likewise, he said that she did not look unwell, she did not mention to him that she had been feeling unwell and she did not have an injury. Since they were close, he would have expected her to say something if she had been unwell. Neville's evidence was to the same end, explaining that Paula was not unwell, she did not have any injuries before she left and she told him that her tooth was fine now. Lynn Dale said that she spoke to Paula a few days before she went away and Paula was concerned about her tooth which was hurting. However, it is not clear when that discussion took place. I accept the evidence of all these witnesses but, since Willy, Ben and Neville saw Paula every (or nearly every) day before she left the UK, I am satisfied that, as they said, she was well and, specifically, that her tooth had settled by then.

233. I consider further below Paula and Don's suggested ailments in the context of Don's account of events in Denmark.

Accounts of the events of Denmark

234. I have already noted the common ground between the parties as to (i) how Paula and Don spent their time between 3 and 5 June 2017 and (ii) the key events of 6 June 2017. How Paula came to meet her untimely death that day is, however, contentious. I approach this issue by first summarising the statements, call transcripts and reports of those who were present at the scene or communicated with Paula on that fateful day.

Paula's communications with the Leeson family while in Denmark

235. It is clear from Paula's mobile telephone records that she was in close contact with her family while she was in Denmark. Indeed, it is readily apparent to me from the evidence as a whole that the Leesons were (and remain) a loving, close-knit family and that they confided in each other.
236. Willy testified that he or Betty spoke to Paula every day while she was away, including the day of her death. When they spoke, Paula did not mention that she was unwell or had toothache although she did sound fed up when they last spoke. Likewise, Ben testified that he and Paula messaged or spoke every day that she was in Denmark. Again, although she sounded bored, she never mentioned being

unwell or having suffered an injury. Finally, Neville too said that he spoke to her most days, including the day of her death. Although she did not seem to be excited to be in Denmark and she had said that she was a bit bored, she did not mention that she was feeling unwell or that she had hurt herself. Again, I accept their evidence.

The emergency call – 6 June 2017 (13:46 hours)

237. Don telephoned the Danish emergency services at 13:46. He explained that his wife had just drowned and that he was attempting CPR. Due to apparent language difficulties, the call handler understood Don to say that his mother had drowned. Don told the handler Paula's age, 46, and his own, 43. Don said that he was on his own and no neighbours were around. The caller said that the ambulance was close. When asked again about his mother's age, Don said "*No. I was brought up in foster homes you don't know.*" Don asked how many breaths and presses he should do to which the handler responded "*30 presses and then 2 x breathing for her.*" At one point, Don said he thought he had a heartbeat. The handler asked whether Don had seen Paula fall over. He responded that he had not and that he had pulled her out. He said that her skin was warm. Don spoke to Paula as if to get her to wake up. He told the caller he could not hear her breathing and asked whether he should continue. She said that he was doing the right thing. The handler counted the presses for him. He said he did not know how long Paula had been in the water.

Ambulance crew report – 6 June 2017

238. The contemporaneous report by the ambulance crew includes the following:-

"Found in a swimming pool by spouse. He last saw her 40 minutes beforehand. He pulled her out of the pool and started CPR.

Asystole upon our arrival. Some water and vomit in the airways. Suction performed and continued with CPR."

Danish police report – 6 June 2017

239. The contemporaneous review report prepared by the Danish police states:-

- (i) when they arrived at the cottage, Paula was lying on the living room floor with a blue tube inserted into the throat and drip in the right shin and left underarm;

- (ii) Paula was wearing black trousers, a white bra and a red crop top, with one of her black shoes lying next to her left foot. The other was found at the bottom of the pool;
- (iii) Don had no “*visible marks or injuries to indicate that he had been in a fight*”;
- (iv) “*Everything in the cottage was perfect. There were no signs of drinking or of a fight*”; and
- (v) The pool was approximately 180cm deep.

Don’s statement to the Danish police – 6 June 2017

240. The more detailed report of the Danish police of their interview with Don at the cottage from 15:20-15:40 on 6 June 2017 records Don saying that:-

- (i) he and Paula had been sleeping all day and not done anything beyond packing their suitcases;
- (ii) Paula had been gone for 20 minutes, after which, he left the bedroom to look for her and found her in the swimming pool;
- (iii) he jumped into the pool and tried to pull her out but could not because of his bad shoulder;
- (iv) he ran to the neighbours for help but no-one was at home;
- (v) he then ran back to the cottage and was then able to pull Paula out himself;
- (vi) he called the emergency centre and gave her CPR;
- (vii) Paula did not suffer any mental illness or take any form of medicine; and
- (viii) Paula had suffered from toothache for the last 14 days and stomach pain for the last three or four days.

Palle Hansen’s statement to the Danish police – 6 June 2017

241. The interview report of the Danish police also records that they spoke with the paramedic, Palle Hansen, from 15:34 to 15:41 on 6 June 2017, Mr Hansen stating that ambulance crew arrived at the cottage at 13:58 when they found Paula lying on the edge of the pool with Don administering CPR. They put Paula’s body onto a carpet and moved her into the living room and put her on an automatic CPR

device and defibrillator. The defibrillator was not recommended for use due to lack of a heartbeat. Some fluid was expelled from Paula's mouth due to the use of the automatic CPR device which Mr Hansen found very surprising. At 14:26, they stopped the device and the attending doctor, Dr Mads Rasmussen, declared Paula dead. Mr Hansen also said that they had not noticed anything unusual about Paula or any scars. As for the house, they noticed water on the floor from the front door down to the pool but they did not find this suspicious.

Don's call to Aviva on 6 June 2017

242. On the evening of 6 June 2017, Don explained on the telephone to Aviva the circumstances of Paula's death as follows:-

"Yeah I found her in the pool I found her in the pool and erm I just erm I tried to get her out of the pool I couldn't I started going to the neighbours there was no one I was banging on every door there was no one there and I ran back and then erm I just kept trying and I managed to pull her out and then tried CPR you know I rang the ambulance people they came and then erm they just said there was nothing they could do unfortunately."

Don's call with Neville on 6 June 2017

243. Neville's evidence is that Don explained to him on the evening of 6 June 2017 the circumstances of Paula's death in the following terms:-

"I remember that [Don] then told me three versions of what had happened. He first said he was out on the balcony when it happened, then he suddenly said he was putting the bags in the car, and then he just said that he was around the house somewhere. The answers were one after the other and it seemed like he didn't know what to say. It shocked me how he couldn't know. He never mentioned that he was asleep at the time."

244. In oral evidence, Neville confirmed Don's inconsistent accounts. His evidence mirrors Neville's near contemporaneous e-mail to the Danish police on 20 July 2017 in which Neville confirmed what he was initially told by Don and how this then changed:-

"When Don spoke with me to tell us what happened I asked him several times to tell me how it happened and where he was when it happened. He told me at first he was putting the suitcase in the car and then he said he thought he was around the house doing something. Since then he has told us that he was asleep on the bed resting with my sister when he remembers her getting up from bed."

245. In the same e-mail, Neville also explained that Don had told the family different things about what had happened when he came upon Paula's body in the pool.

As for Paula's suggested physical condition while on holiday:-

“Ever since my sister died, her husband Don has told us that she was unwell during her time there, but my sister never mentioned anything about it to us at all. He has told us that she was vomiting etc each day and that she had a bad tooth which made her face severely swollen on her right side and that her right eye was very swollen all around it too. He said that it was like that from when she arrived until she died.”

246. I have already noted above the evidence of Willy, Ben and Neville (which I accept) with respect to Paula's state of health and how she never told any of them that she was unwell, whether in days before or during the trip to Denmark.

Don's further interview with Danish police – 9 June 2017

247. On 9 June 2017, Don spoke to the Danish police again at the Kolding Police Station from 14:14 to 16:42, the related interrogation report recording him saying that:-

- (i) he and Paula woke up around 6am but they did not get up. They ate breakfast around 8.30. He did not recall if they had a proper breakfast but they ate snacks in bed;
- (ii) he could not recall exactly what they did. He was in bed most of the day, tired and dozing on and off. He got up a couple of times during the day. He packed some bags in the car, having packed it a little the night before. He also took a swim in the pool. They also went on their iPads and phones;
- (iii) Paula got up at one point, complaining of stomach pain and pain in the right hand side of the mouth. She 'threw up' in the bathroom furthest away from the bedroom. She had had stomach ache for several weeks. He tried to locate the pain by pressing her stomach;
- (iv) Paula had had stomach ache on and off for a year, with the pain coming and going. Two months earlier, she had gone to a special hospital and was told she should see a gastroenterologist but she refused. She was on medication but he believed she only took this when she was in pain;
- (v) Paula had also been to the dentist three times in Manchester, including one visit on an emergency basis. One of her teeth was 'dead' and she had a 'cyst'. Having settled for about a fortnight, she got the pain again and,

three weeks earlier, she had gone to another dentist;

- (vi) Don did not remember where he was when he discovered that Paula was away. He was sleepy and had taken a painkiller an hour earlier for his shoulder pain. He got dizzy as he got up. He did not recall how long Paula had been gone but he believed he called out to her;
- (vii) When he reached the pool, he saw Paul lying in the pool on her stomach. He dived into the pool. He could not remember where exactly in the pool she was;
- (viii) Don tried to pull and push her up, including by her arms and legs. He also tried to pull her from the neck (from front and back). He also tried to get her up the ladder. When in the water, he could stand and his head was above the water. He did not succeed in getting her out. She was too heavy and there was a 30cm height difference between the water and the edge of the pool;
- (ix) Don did not remember when but, at one point when trying to get Paula out, he ran to two neighbours for help. They were not home and he ran back to call the emergency services but he could not initially find his phone. He found it and phoned the emergency centre but he could not recall if this was before or after he had got her up;
- (x) Don did not recall how he got her out but at last he succeeded. When he pulled her up, he was standing on the edge of the pool, not in the water. Paula's front was to the edge of the pool;
- (xi) Don did not notice injury to her body or face or recall if Paula's head bumped into the edge of the pool;
- (xii) Despite the pain in his shoulder, he administered first aid. Paula's tongue had a weird colour and she had vomit around her mouth. At one point, it appeared she was breathing and had a pulse but he could not be sure;
- (xiii) Although not comfortable in the water, Paula had gone into the pool earlier during their stay. Paula and Don had tried to be intimate but she was lying in the wrong position; and
- (xiv) They were both unhappy with the condition of the cottage. He had been

hopeful of persuading Paula to stay a few days longer but when they saw the condition of the cottage, he changed his mind. Don had not been in favour of visiting Denmark in the first place.

Palle Hansen's further interview with Danish police – 9 June 2017

248. On the same evening (9 June 2017), Danish police also contacted the Danish paramedic, Mr Hansen, with additional questions about the events of 6 June 2017. They spoke from 18:40 to 18:45. Mr Hansen noted that, when he administered CPR, a lot of water came from the mouth and he thought that Don's resuscitation efforts must have been very bad. Don had not pressed enough and apologised because he had an injured shoulder. During the resuscitation attempt, Don had asked several times in English what the ambulance crew were doing and what had happened. Mr Hansen had been intrigued by several things, including (i) the amount of water in Paula's lungs (ii) the hot and damp conditions of the pool - if Paula had thought these were bad enough, she would never have gone to the pool - and (iii) if Paula had accidentally fallen inside and was conscious, Don would have heard the noise or her scream and rushed out. Mr Hansen said that he had thought a lot about these matters and had a strange feeling about Paula's death.

Don's first interview with GMP – 26 April 2018

249. Don's first interview with GMP took place on 26 April 2018. This records Don stating that:-

- (i) Don and Paula had wanted to go to different locations but they jointly agreed on Denmark;
- (ii) when they went away, Paula had had a tooth abscess problem for up to a month and some stomach problems. These got worse while she was away. She suffered vomiting a couple of times and dizziness. Most of the time Paula was ok but it came and went in waves. Don felt Paula's stomach and was convinced it was a hernia. Paula did not seek medical treatment in Denmark;
- (iii) Paula did not take a swimming costume on holiday. She was not so keen on water. However, she had gone into the pool a couple of times naked when they were intimate. Paula was not so concerned about her physical

condition to prevent her doing so. Paula could not swim but she did not need to swim - you could just walk in the pool;

- (iv) they were thinking about extending their stay but decided not to because they wanted to get back and Paula was unwell;
- (v) he had grown up in foster care;
- (vi) Paula used the toilet in the pool area, probably because the other toilet was not in a good condition;
- (vii) about a month before their holiday, he had slipped and injured his right shoulder, inflaming an old gym (dislocation) injury. This prevented him from sleeping on it fully but he could still do the driving on holiday. He was taking pain relief medication;
- (viii) on 6 June 2017, they had something to eat in the morning but they lay in bed, the plan being to do that until their departure for the airport. They stayed in the cottage;
- (ix) he had used the pool in the morning while Paula was asleep although he could not remember the time;
- (x) when he last saw Paula, she was lying in bed next to him;
- (xi) as for how he came to find Paula in the pool, he woke up and Paula was not in the bed next to him, he called out, went to the back toilet and found Paula floating in the pool, clothed and face down;
- (xii) he got into the pool, brought her back to the edge, keeping her head above the water, and tried several times to get her out by grabbing her on the arms, under the shoulders and by the neck to lift her up over the lip of the pool but she was too heavy. He tried to get her out from both within and outside the pool;
- (xiii) he could not remember whether he was still in the pool or outside when he went to get some help but he went to two neighbours, got no answer and went straight back to the swimming pool with Paula still in it;
- (xiv) he then got the phone and called the emergency services. At some point, he managed to get Paula out, about half her body first;

- (xv) before the ambulance arrived, he performed CPR, using a combination of chest compressions and breaths into the lungs. He pushed very hard and believed he heard a breath or noises and was sure he felt a pulse;
- (xvi) when the ambulance arrived, he and the paramedic dragged Paula into the next room;
- (xvii) he did not notice any injuries on Paula's body when he commenced CPR;
- (xviii) he could not recall how Paula may have bruised her forehead, neck and chin but he may have banged her head on the side of the pool trying to get her out;
- (xix) when CPR was stopped, he cried, held onto the member of the medical team and told him to keep going; and
- (xx) he confirmed that he took possession of Paula's phone after she died. He believed he turned this off. He had not gone into it or used it.

Don's witness statement in these proceedings – 29 October 2023

250. Finally, in his own witness statement in these proceedings, Don explained in relation to the events of 6 June 2017 that:-

- (i) he thinks that they awoke between 6-7am (as was normal for them). They had no time pressures. They did not need to leave for the airport until mid-afternoon so they spent the morning pottering around;
- (ii) he remembered taking a shower, getting dressed and using the pool (alone) although not the order of these events;
- (iii) at some point, they had something to eat, snacking on picnic type food;
- (iv) at another point during the morning, they had both also gone for a lie down in the bedroom furthest from the pool. On some occasions, he was alone; on others, Paula joined him. From memory, they were both fully dressed. They also spent time that morning browsing the internet;
- (v) during the morning and early afternoon, both of them would have been outside on occasion, together and alone. At one point, Paula must have asked him to record them on her phone, when they looked happy and relaxed together although he did not recall this;

- (vi) during the day, Paula told him that she was not feeling well. From memory, she had complained of problems with her mouth and stomach for some time and he thought her comments were another reference to that. At one point, Paula told him that she had been sick;
- (vii) he was also suffering at the time with his shoulder and was taking an analgesia. He recalled going for a lie down on his own but Paula then joined him. He must have nodded off and, when he awoke, Paula was not next to him;
- (viii) Don was dizzy but he went to look for Paula. It was only when he walked into the pool area that he saw Paula face down in the pool. He got into the pool and tried to get her out by pushing her up onto the side. His shoulder would not hold up so he got out and tried to pull Paula out instead. After several unsuccessful attempts, he ran for help from the neighbours, grabbing his phone on the way. There was no answer from the two neighbouring properties he went to. He went back to the cottage;
- (ix) Paula was still in the water and he managed successfully to pull her onto the poolside. He then called the emergency services, the control centre directing him how to do CPR while awaiting the paramedics. When they arrived, he helped the paramedics move Paula to the lounge area. The paramedics took over CPR and attached a machine to Paula;
- (x) Don recalled being told that Paula has passed away. Police officers arrived later. He had a short conversation with them. He went outside and saw the police making notes and the hearse arriving. He cried;
- (xi) The police helped him lock up the cottage. He went to Spangsbjerg emergency ward but it was not possible to see Paula. He thinks he was taken to the psychiatric hospital but could not remember the specifics;
- (xii) he also called Neville but did not recall what was said; and
- (xiii) he spoke to the Danish police again three days later. The interview was not recorded. Don queried (unspecified) elements of the related (translated) notes.

Other matters

251. Finally, although I consider later the contemporaneous and expert pathology evidence, I note here certain information contained in the autopsy report (with emphasis **supplied**) since this too must have been imparted by Don to the Danish police (and the Danish police, in turn, to the Danish pathology team):-

*“The deceased had complained of toothaches and abdominal pains during the days before death occurred. Ostensibly, there was no alcohol or drug abuse. The deceased was found dead, fully dressed in an indoor swimming pool by her spouse. **She could not swim.***

.....

*It appears from the report that the now deceased person was **found lifeless** in a swimming pool in a rented cottage by her husband **on 06.06.2017, at 13:25 hrs.**”*

252. On that timing point, the same autopsy report (and a supplemental autopsy report dated 8 August 2017) indicated that Paula was “**Found dead 06.06.2017, at 13:45 hrs**”.

253. A further police report dated 7 June 2017 indicates:-

*“**Last found alive** (date, time) **06-06-17, app. 1:25pm**” and “**Time when deceased was found**, if time of death is unknown (day, month, year, time) **06-06-17, app. 1:45 pm.**”*

Analysis of the accounts of the events on 6 June 2017

254. Having considered the evidence, I find that Don’s explanations for what happened at the cottage on 6 June 2017 are replete with improbability, inconsistency, lies and distracting observation.

Paula’s health

255. I have already accepted the evidence of the Leeson family that Paula was not ill, either in the days leading up to or during the holiday itself. Paula was in constant contact with her family over that period and I accept that she would have told them if she had been feeling unwell. She did not.

256. Nor, apart from a therapeutic dose of paracetamol found in her system on autopsy, was Paula taking any medication. On 5 June 2017, she did search the internet for Benaday but that is an antihistamine.

257. Don also sought to push his story of Paula’s illness to limits easily refuted by the medical evidence. Although Paula unquestionably had dental issues before she left for Denmark, her UK dental records indicated no abscess. The pathology evidence and related CT scan from Denmark confirmed the same. Despite this,

- Don maintained to Danish police, the GMP and Neville that she had an abscess.
258. To that end, as Neville explained in his evidence (which I accept), Don even told Neville that Paula had a swollen face throughout her trip. However, this is clearly shown to be false by the photographs that Don himself took outside the cottage very shortly before Paula died. Her face was quite normal and not swollen.
259. In my view, that is conclusive of the matter but the idea that Paula had a swollen face (and stomach problem) and yet looked up a local salon to have her hair done on her last day in Denmark (as she clearly did) makes no sense. The hairdresser would be the last place Paula would want to go if her face was swollen. She would be looking for a dentist.
260. Likewise, Don's story to the Danish police of Paula having had stomach issues for about a year for which she had sought treatment is also unsupported by her medical records. If she had suffered with and been treated for her stomach in the way Don suggested, her records would have reflected it. They do not.
261. As Dr Shepherd says, most cases of abdominal pain will not have a pathological counterpart. Dr Schou's evidence was to the same end. However, as the autopsy report confirmed, there was no evidence to indicate nausea, vomiting or diarrhoea such as vomit in the body or airways and no completely liquid faeces or anal soiling.
262. Finally, if Paula had experienced such pre-existing conditions, Don would have disclosed them to the travel insurers. He did not. I am therefore satisfied that Don lied to the Danish police, the UK police, Neville and this Court about Paula's suggested ailments.

Don's shoulder

263. Likewise, I am satisfied that Don lied about the problems he says he encountered with his right shoulder. Again, I have already accepted the evidence of Neville, Mr Daly and Mr Ennis-Cole concerning Don exerting significant pressure on his shoulder in the days before the Denmark trip through heavy lifting, building works and playing golf. These are not the actions of a person suffering from a painful shoulder.
264. Moreover, while on holiday, Don drove extensively, including trips with Paula,

he swam in the pool, including (he says) on the day Paula died, he put the packed suitcases in the car the night before, he ventured outside with Paula and the ‘selfies’ taken on Paula’s phone in Denmark indicate him holding out her iPhone with his right arm. As he told GMP, *“it wasn’t stopping me from doing stuff”*.

265. The evidence also indicates more generally that Don is willing to lie about his health when it suits him, having previously told the German Court about his 2004 diagnosis of an inoperable tumour on his liver, albeit he could not say then which doctor had treated him and he does not appear to have mentioned the condition thereafter.
266. As well as not indicating any shoulder problem for his planned abseil from the Manchester Trafford Centre, he also lied about his health when cancelling this, Don candidly saying that *“I blagged to the people that I was not well, so they just changed it all over no problem”*.
267. I have, of course, already found that Don lied about Paula’s suggested ill-health.
268. The records indicate that Don sustained a minor stage 2 shoulder dislocation, apparently in the 2016 timeframe as well as a fall in Spire Hospital in April 2017 when he hurt his shoulder and following which he received some treatment and pain relief. He also disclosed tendonitis and inflammation related to his right shoulder when taking out the HSBC single trip travel policy. However, he did not disclose any condition to Aviva when he took out the annual trip policy a few days later, nor when enquiring about the Halo jump.
269. There was some suggestion by the Claimants, including by reference to a previous incident in prison when Don claimed the exacerbation of his existing foot injury by a slip, that his fall in the Spire Hospital may have been invented. It is not possible to come to a concluded view about this but I do not need to. I am satisfied on the evidence that his shoulder did not trouble him in Denmark and that he sought to ‘play this up’ before he left for Denmark and when speaking to the ambulance crew and police in Denmark (and, later, the GMP).
270. In any event, even if Don had been suffering from shoulder pain to the extent suggested, I am also satisfied that this would not have stood in the way of a man of his build and obvious strength extricating his wife from the pool as he says he eventually did, albeit (on his account) at a point when he would have been weaker

and more tired.

271. I am reinforced in that view by the evidence of Don's trainer, Jack Richardson, who explained Don's general strength and fitness and his recollection that, when training with Don from March 2018 onwards, the historical injury complained of was in his left shoulder. I accept that evidence which was compelling and consistent with Don's medical records from Denmark, according to which, "[h]e states that he has had problems with his *left shoulder*" (emphasis **supplied**).

272. Accordingly, I also find that Don lied about the shoulder problems he says he encountered in Denmark.

Paula and Don leave the cottage

273. It is also very significant in my view that Don did not inform the Danish police or GMP that he and Paula had gone outside on the last day of their stay or that he had taken photographs of them both with her phone. This was not mentioned by Don until his witness statement in these proceedings. To the contrary, he was explicit to the GMP that they had stayed inside the cottage.

274. In my view, although a small point in itself, this turns on its head Don's framing of events on 6 June 2017 by reference to both of them dozing in bed and being unwell during the morning, including Don being groggy from medication taken shortly before. Paula and Don are both happy and smiling in the photographs. Neither looks ill or groggy.

275. Moreover, that morning Paula had been on her phone extensively with her family, she had undertaken several internet searches, including looking up a Manchester restaurant and trying to find a local hairdresser in Denmark, she had been outside happily with Don minutes before she died and, by then, they were shortly to set off for their return flight to the UK.

276. Given all these matters, Don's story of going to lie down on the bed (presumably after they came back in from outside), being joined by Paula, Don dozing off, Paula getting up and Don then waking (albeit apparently only now groggy) to go and find Paula lying in the pool, all these matters supposedly occurring in the short space of the 26 minutes or so between Paula's last phone activity at 13:13 and Don's next phone activity at 13:39, simply makes no sense.

Paula's suggested use of the pool area

277. Moreover, the idea that Paula would have gone to the pool area, apparently to use the toilet there, also makes no sense. As Mr Hansen confirmed in his evidence (which I accept), the pool area was hot and humid. As he told the Danish police at the time, it struck him as odd that someone would venture there. I agree, not least when Paula was, according (falsely) to Don, ill and there was a perfectly serviceable toilet much closer to the relevant bedroom in the cottage.
278. Don's suggestion to the Danish police and GMP of Paula and Don attempting to be intimate in the pool was also, in my view, gratuitous and intended to distract. As Don himself recognised in his second interview with Danish police, Paula was not 'comfortable' in the water. In fact, the evidence is much stronger than that. As the Leesons confirmed, and I accept, Paula positively disliked being near, let alone in, the water. Indeed, when taking a picture of Don in the pool during their holiday, she ventured no further than the living room door of the cottage.
279. Moreover, as Emma's evidence confirmed (which I accept), Paula dyed her hair and was a frequent visitor to the hairdresser. The video shot outside the cottage indicates Paula bemoaning her visible roots. In all likelihood, that is why she was looking for a local hairdresser that day. She would not have gone into the pool during their stay and risked getting her hair wet with pool water, let alone for intimate purposes, not least, again, according (falsely) to Don, when she was supposedly ill.
280. As already noted, I accept that Don told the Danish police that Paula could not swim. He said the same to the GMP. These were further lies.

Don's story of going to the neighbours

281. As to Don's suggested efforts to rescue Paula, his story that he left her in the pool to get help from the neighbours is highly improbable even if he had panicked in the moment. Don would have known that her head might well slip beneath the water if he left without supporting it. Nor did he need to leave. His and Paula's phones were in the cottage. He could easily have summoned help from there (as he eventually did).
282. In this regard, Don was clear in his second interview with Danish police that he

did not have his phone with him when he went to the neighbours and that he found this after returning from outside and searching for it. In his statement for these proceedings, more than six years after the events, his story changed, Don now saying that he grabbed his phone on the way out of the cottage.

283. I am satisfied that Don invented this new aspect of the story because he realised that he would not otherwise be able to explain his step count activity prior to his call to the emergency services. However, even then, that activity does not align with his story about visiting two neighbouring cottages. It is common ground that the neighbouring properties were a minimum of 43 metres from the cottage. Visiting two properties would have required a trip of at least 150 metres but Don's step count was only 76.45 metres.
284. Moreover, as Palle Hansen testified, although there was water on the floor inside the cottage, there was no water on the doorstep or wood or tiles outside the cottage. I accept his evidence.
285. Mr Hansen also testified that a number of neighbours (five or six) had gathered outside when the emergency services attended. Again, I accept his evidence. Indeed, one of the photos taken outside the cottage on 6 June 2017 shortly before the ambulance arrived showed two cars in the drive of the house across the road from Paula and Don's cottage such that neighbours there were likely home. One of the neighbours at the adjoining property, Ms Andrea Trotz, told Danish police that she did not see or hear anything until the emergency services arrived.
286. Given all these matters, I accept that Don's story of running to two neighbours to summon help (only to get no answer) was another lie.

Other matters

287. Don also had the presence of mind in the supposed panic of the moment to tell the emergency controller that he had been brought up in foster care. He said the same in his GMP interview. As already noted, he grew up with his family, not in foster care. This was another lie.
288. Don also lied to GMP when he said that he cried after the medical team stopped CPR. Mr Hansen confirmed that Don did not cry. I accept that evidence as well.
289. Finally, as noted, Neville's evidence (supported by his contemporaneous

exchanges with Danish police) is that Don initially imparted to him various accounts of events in the cottage on 6 June 2017 before later alighting on the different version of Don and Paula lying on the bed together before Paula then got up and met her (supposedly accidental) fate. I accept Neville's evidence that Don was unable to offer him a consistent account.

Conclusion on Don's accounts

290. Accordingly, even accounting for possible shortcomings in recall, language issues with the Danish authorities, shock, panic, distress, grief and possible feelings of shame in not saving Paula and then having to face the Leeson family, and even setting aside for the moment that Don has, by deliberately absenting himself from trial, positively chosen not to prove the facts asserted in his witness statement and that Don's propensity to lie is well-established, I am satisfied that his various accounts of the events on 6 June 2017 are unreliable and, in very significant part, fabricated.
291. I have also considered a number of further points raised by the Claimants which they say support their case as to what happened in the cottage on 6 June 2017 as well as the apparent inconsistency in timings as to when Don found Paula's body and how long she had been gone for. However, given those important matters that are clearly and objectively established by the evidence in the case, the fundamental problems with Don's different accounts identified above and that some of the Claimants' further points were less clear or more forensic in nature, it is not necessary for me to address them and I do not do so.
292. Having found that Don lied in his various accounts about how Paula lost her life, and that I am unable to accept his untruthful version(s) of events, I now consider whether the pathology illuminates what did, in fact, occur on 6 June 2017.

G. Pathology evidence/ Fitbit data

Contemporaneous pathology evidence

293. Post-mortem examination of Paula's body took place between 10:00 and 15:00 on 9 June 2017. The autopsy was conducted at the Forensic Department, Odense University Hospital, by Dr Mette Schou under the supervision of Prof Peter Leth. The autopsy began but was interrupted. As Dr Schou and Prof Leth confirmed in

their evidence, this was due to the bleeding found in Paula's neck, bruising on the forehead and haemorrhages in the soft tissue to the head. The number of lesions was more than they would normally see for resuscitation and falling injuries. Possible homicide could, therefore, not be excluded and the police were informed and attended the autopsy.

294. It is common ground that the autopsy report records Paula as having the following injuries:-

- (i) a slight swelling and a number of fresh abrasions on the right side of the forehead, 3 cm above the upper edge of the eyebrow, 3 cm from the midline, in an area measuring 2.5 cm in diameter;
- (ii) slight swelling and purple discolouration and reddish, spotted, fresh abrasions on the left side of the forehead, immediately above the upper edge of the eyebrow, 5 cm from the midline, in an area measuring 3 x 4 cm, the largest measuring up to 0.2 cm in diameter;
- (iii) a diagonal, irregular, red bruise with a total measurement of 3 x 0.5 cm on the right of the chin, 5 cm below the lower edge of the eyebrow, 6 cm from the midline;
- (iv) two fresh, pinpoint injuries with a diameter of less than 0.1 cm behind the right ear, 11 cm above the rounding of the shoulder and 14 cm from the midline;
- (v) several partially converging purple bruises on the inside of the right upper arm, 10 cm below the armpit in an area measuring 10 x 10 cm, the largest measuring 4 x 3.5 cm;
- (vi) a reddish towards purple bruise on the back of the right hand, 2 cm below the wrist, corresponding to the fourth finger beam, 1.5 cm in diameter;
- (vii) a round purple bruise on the outer side of the left upper arm, 15 cm below the rounding of the shoulder, 2 cm in diameter;
- (viii) a round purple bruise on the outer side of the left upper arm, 27 cm below the rounding of the shoulder, 0.4 cm in diameter;
- (ix) a longitudinal purple bruise on the back of the right hand between the

second and third knuckles, 0.5 x 1 cm (subsequently corrected in evidence to left hand);

- (x) a longitudinal, fresh abrasion on the stretch side of the second finger on the left hand, corresponding to the base, paper thin and a length of 1 cm;
- (xi) several faintly red, irregular bruises on the front of the right thigh, 56 cm above the sole of the foot, in an area measuring 14 x 15 cm, the largest one measuring 2 x 1 cm;
- (xii) two bruises, one reddish brown and measuring 2.5 cm in diameter, the other one purplish and measuring approximately 1.5 cm in diameter on the inside of the right lower leg, 32 cm from the sole of the foot, in an area measuring 5 x 4 cm;
- (xiii) a round purple bruise on the inside of the left lower leg, 20 cm above the sole of the foot, 2 cm in diameter;
- (xiv) haemorrhages in the soft tissue in the upper part of the skull, on either side of the head, in the temple regions and on the back of the head; and
- (xv) haemorrhages in the soft tissue and the muscles on the right side of the neck and front side and in the soft tissue around the right side of the hyoid bone.

295. In oral evidence, Dr Schou and Prof Leth clarified that the soft tissue haemorrhages in the neck were on both the right and left sides as well as the front. More specifically in relation to the neck bleeding, the autopsy report records that this was observed in the muscles and the soft tissue in the midline on the front of the neck corresponding to the upper side of the musculus sternohyoideus and the musculus omohyoideus, most prominent on the left side and superficially in the soft tissue upwards on the right side of the neck. A small haemorrhage was also seen corresponding to the lower side of the right musculus omohyoideus.

296. Finally, liquid was present in the sinuses and the lungs were large and filled with liquid. There was no pathological evidence to indicate nausea, vomiting or diarrhoea. To the same end, Dr Schou explained in her witness statement that there was no indication of Paula having stomach problems in the days prior to her death, albeit stomach pain does not always manifest itself in pathological changes.

297. The supplementary autopsy report also recorded that Paula did not have any

alcohol in her blood and had not consumed any illegal drugs. The only drug present was paracetamol at a concentration level within normal therapeutic range.

298. The primary autopsy report records the following as to the cause and manner of death:-

*“The **cause of death** must be assumed to be drowning and the most probable **manner of death** must be assumed to be an accident.*

The bruises identified were fresh, sustained when the person was alive through blunt impact, except for the bruise on the right lower leg ... which was older.

The facial injuries may have been caused by a fall. The bruises on both upper arms may have been caused by a firm grip around the arms, for example in connection with a rescue operation at the swimming pool and may be post-mortem injuries. The haemorrhage in the soft tissue on the front of the neck and the fractures identified on the chest bone and ribs, including the surrounding haemorrhage, may have been caused by the resuscitation attempt. The puncture wounds behind the right ear may have been caused by the earsticks having been pressed/ hit against the skin in connection with a fall or a blow. Violence inflicted by another person cannot be completely ruled out. The other injuries were inconspicuous.”

299. In oral evidence, Dr Schou and Prof Leth both confirmed that Paula would not have experienced the bleeding or bruising they found if her heart was not beating at the time of the relevant impact to her body, save for the slight bleeding around the fractured ribs where CPR had been undertaken. I accept their evidence.

Police autopsy reports

300. I should also add that the record contains two reports prepared by the police relating to the autopsy, albeit as both Dr Schou and Prof Leth testified, they represent the interpretation by the police of what they told them and were not, therefore, completely accurate. So, for example, the statement in the police report attributed to Prof Leth that “*no external signs of violence or open wounds were seen on the deceased*” was not correct.

Second UK post-mortem – 22 June 2017

301. A further post-mortem examination was undertaken by Dr Vicki Howarth at Wythenshawe Hospital on 22 June 2017 at 11am following the repatriation of Paula’s body to the UK. The report comments that:-

“This was a second post-mortem on an embalmed body following a death

from abroad and therefore the examination was hampered by this fact. I note that the cause of death had been recorded as drowning. The diagnosis of drowning is often based on the clinical circumstances and the lack of other causes of death at post-mortem, as the features of the drowning themselves can be rather non-specific and subtle. Given the findings at my examination are also non-specific, albeit some subtle findings in the lungs noted, my cause of death is given based on the absence of other significant findings, the clinical history and the reported conclusion of the first post-mortem of drowning. It would be useful to have sight of this examination report for comparison.”

302. As to the manner of death, the report comments:-

“The question as to how the drowning occurred is more difficult and can be speculated. It was noted that Mrs Leeson did have some bruising to her head and it is possible that she slipped and banged her head rendering her unconscious as she fell into the pool, or as a result of her reported gastro-intestinal upset (the colon did contain soft faecal content to support this), she fainted, hitting her head and falling into the pool resulting in drowning. The history provided suggested she had been feeling faint and unwell. There was certainly not a skull fracture seen, and no obvious haemorrhage associated with the brain tissue present, although noting the difficulty in its examination due to the previous dissection and decomposition.”

303. On 29 April 2019, Dr Schou and Prof Leth issued a letter containing certain answers to questions raised by the GMP, including whether the conclusion concerning “mode of death will be changed in light of further information about the circumstances of the case” provided by GMP. In response to this, Dr Schou and Prof Leth state that:-

“In any forensic report, the conclusions made are based on the material available at the time of the writing and if additional relevant information is subsequently made available, the conclusion of the report can be amended. This is the case even if it is not customary to state this explicitly in Danish forensic medical reports. The procedure set down for performing autopsies in Denmark is set down in a service regulation (European legislation identifier/eli/retsinfo/1995/11631). Conclusions regarding mode of death are, especially in drowning cases, based on a combination of autopsy findings and facts derived from the police investigation. Given the additional information provided by the Greater Manchester Police the conclusion regarding the mode of death must be changed from “assumed accidental” to “undetermined”.”

304. In their evidence, Dr Schou and Prof Leth explained that GMP provided them with additional information about Paula and Don’s financial circumstances and investigations into life policies, a timeline of activity around Paula’s death that did not match with Don’s account and some information about financial transactions after Paula’s death. They had also been provided by the police with

further details of the actual depth of the pool at the cottage (120cm), having initially been told (as recorded in the original autopsy report itself) that this was 180cm (with Paula being 168cm tall), suggesting erroneously that Paula would not have been able to stand in the pool without water over her head. As a result of this new information, they changed the mode of death to “*undetermined*”.

305. In oral evidence, Dr Schou and Prof Leth both confirmed that Paula being able to swim (as she could) would have reduced the chance of her drowning being accidental. Likewise, as to their understanding that the pool was, in fact, 120cm deep, rather than the 180cm they had been told by the police, although possible to drown in shallow water, it made it less likely. I accept their evidence which I found to be fair and balanced. Indeed, they were both careful to acknowledge the limitations of what the pathology evidence can (and cannot) show, how their conclusions as to the manner of death are not definitive but for statistical purposes and how these may change (as they have) in light of further information.

Expert pathology evidence

306. Dr Fegan-Earl submitted an expert pathology report for the Claimants, Dr Richard Shepherd for Don. As already noted, there was a suggestion from Don in the pre-trial correspondence that he might still wish to call Dr Shepherd to give evidence despite himself being absent or not represented. The Claimants resisted that course. In my related ruling, I declined that course, there still being ample opportunity for Don to attend trial or to arrange representation, if only for the expert pathology phase. I also confirmed that, whether or not Dr Shepherd did attend to give oral evidence, his written report already formed part of the evidence in the case in accordance with the Court’s prior orders. Since Don chose not to participate in the expert pathology phase either, only Dr Fegan-Earl attended to give oral evidence. In doing so, he provided clarification of certain aspects of his report, he answered questions put to him by Claimants’ counsel in accordance with the fair disclosure duty and he answered my questions. Dr Fegan-Earl was an impressive witness and his evidence too fair and balanced.
307. Indeed, like the pathologists who performed the post-mortems in Denmark and the UK, both experts were fair in acknowledging what the pathology could and could not show as to the *manner* of death, albeit they too agreed that the *cause* of

death was drowning. Having considered their original reports, and both experts recognising the multiple potential mechanisms of death and the limitations of the pathology, their differences appeared to be matters of emphasis, with Dr Fegan-Earl perhaps placing more on the multiple bruises on Paula's head, the possibility that Paula lost consciousness and concerns as to the application of pressure raised by the bruising to Paula's neck. Dr Shepherd perhaps placed more emphasis on the relatively minor nature of the injuries present, the possibility of Paula suffering syncope (fainting) and the ability of a person to drown in shallow water even if others might simply extricate themselves.

308. Despite these differences, their joint statement dated 9 February 2024 is helpful in providing a framework for the possible mechanisms of Paula's death and in focusing the considerations relevant to each:-

“Joint Pathology Report : Dr A Fegan-Earl and Dr R Shepherd

A joint expert meeting was held via Zoom between 15:00 and 15:45 on Wednesday 31st January 2024 at which it was agreed that the following represent our joint opinions.

1. *We note that there are many unknown parameters about the events in this case and also about the medical status of Paula Leeson during the events on 6th June 2017.*
2. *These unknown parameters cause us significant difficulties in interpreting the pathological aspects.*
3. *We are agreed that there is no doubt that the medical cause of death of Paula Leeson was drowning.*
4. *We are agreed that there are no features to suggest that her death was the result of a homicidal drowning. By which we mean the forceful immersion of one individual by another in a body of water so that they drown.*
5. *We believe that such a homicidal act would have resulted in greater injuries to the deceased than were identified and also in injuries to the assailant caused as she defended herself.*
6. *A number of blunt force injuries were identified on the body of Paula Leeson. Individually none of the injuries can be considered to be serious and even when considered together they cannot be considered to be serious and certainly not potentially fatal. An impact to the head could potentially cause loss of consciousness.*
7. *The formation of bruising requires the presence of blood pressure and it follows that bruises (except in unusual circumstance that do not apply here) may only form during life or in the immediate post mortem period.*
8. *We agree that the injuries to the body could have been caused by the receipt of blows. If so, we cannot determine if such blows were delivered accidentally or deliberately.*
9. *We also agree that injuries could have been caused during the attempts at*

- removal of Paula Leeson from the swimming pool and/ or from amateur attempts at resuscitation providing there was some, albeit possibly only residual, blood pressure at that time.*
10. *There is also bruising of the muscles within the neck but there is no externally visible bruising of the skin of the neck and there are no petechial haemorrhages on the face or in the eyes.*
 11. *We agree that we can exclude the possibility of manual or ligature strangulation.*
 12. *The application of an arm lock around the neck may cause such injuries to the muscles without causing external bruising. The presence of petechial haemorrhages is variable when pressure from an arm lock has been applied. We are unable to determine if such an arm lock was or was not applied in this case.*
 13. *Application of advanced resuscitation techniques by trained paramedical staff may involve manipulation of the neck but we have no mechanism to determine if this did or did not happen in the case.*
 14. *There is no natural disease that could explain death or result in unconsciousness and therefore increase the vulnerability to drowning.*
 15. *We cannot state why she could not simply stand up in a shallow pool if she was conscious, other than the result of panic.*
 16. *In summary:*
 - a. *There many unknown aspects of the events on 6th June 2017 that make pathological interpretation difficult and therefore potentially unreliable.*
 - b. *The pathology cannot be considered in isolation and must be considered in the context of the totality of the evidence.*
 - c. *However we do agree that Paula Leeson has died from drowning and that there is no evidence to support the suggestion of a homicidal drowning.*
 - d. *The externally visible blunt force bruises could, individually or in combination, be due to blows, attempted removal from the pool or resuscitation.*
 - e. *The internal bruising of the neck could be due to pressure from an arm lock or to actions during resuscitation providing there was at least some blood pressure at that time.”*

Digital forensic science expert evidence – Fitbit data

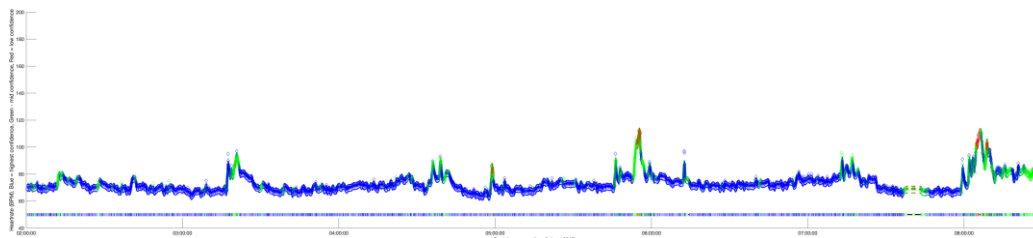
309. Before considering more closely in the context of the evidence as a whole the different possible mechanisms of Paula’s death indicated by this framework, I consider first the expert evidence as to the data extracted from Paula’s Fitbit Alta HR tracking wrist watch. As the contemporaneous documents show, Paula was wearing this when she died. After Paula died, Betty retrieved this from Don who had Paula’s possessions. This was then passed to GMP for data extraction and analysis. GMP, in turn, instructed a digital forensic science expert, Dr Matthew Sorell. He provided initial analysis and a draft report on the interpretation of the Fitbit heart rate (**HR**) data in 2021, albeit this was not completed at the time.

310. In 2024, the Claimants themselves instructed Dr Sorell to provide his expert view. Not being a medical device or sensor, and the interpretation of the Fitbit data being outside their area of expertise, both pathology experts quite properly declined to comment on its accuracy or reliability. It being within his expertise, Dr Sorell did provide his expert views in the form of his report dated 5 March 2024. Dr Sorell attended trial remotely by videolink from Australia.
311. Don elected not to serve any related expert evidence of his own.
312. According to multiple sources, the Fitbit Alta HR had been released onto the market in March 2017, not long prior to Paula's death. Her model was, therefore, contemporaneous. Dr Sorell explained that the watch automatically synchronises to the phone with which it is 'paired' in such a manner that he considers the timestamps of records extracted to be accurate within a few seconds.
313. The Alta HR model uses a sensor process known as photo plethysmography (**PPM**), involving a bright green LED light at the back of the watch flashing rapidly into the skin of the wearer. The green light is partially absorbed by the red blood cells in the blood vessels in the wrist. Blood pulse cycles cause rising and falling volumes of blood and hence variation in light absorption, the sensor detecting light not absorbed under the skin, enabling the pulse cycle to be identified and a pulse rate measurement recorded. Provided that the watch identifies a reflection and movement profile consistent with it being worn, those measurements are logged internally on the watch, typically at 15 second intervals, even if no pulse is detected. If the watch detects that it is not being worn, the PPM sensor will deactivate. The Fitbit Alta HR also counts steps using an accelerometer which detects forces consistent with steps.
314. Dr Sorell presented Paula's HR data as a rate (beats per minute (**bpm**)) and a range of confidence levels on a scale of 0 to 3, meaning:-
- (i) Confidence level 0: the watch has detected that it is probably being worn but cannot find a reliable pulse, the recorded figure being copied from the last measurement, not a new one. This could be because the watch is not being worn but has not yet detected this, the watch is being worn in a way that a pulse cannot be detected, there is excessive movement or there is no pulse. Measurement at this confidence level is only useful to identify that

- the watch is being worn or is moving but the HR values should be ignored;
- (ii) Confidence level 3: the watch has a reliable regular pulse rate, with good optical characteristics and little physical movement, being the most reliable conditions for reading a pulse;
 - (iii) Confidence level 2: the reading is quite reliable, but there is either motion or a drop in optical quality which may affect reliability; and
 - (iv) Confidence level 1: this is similar to Confidence level 2 but the optical or motion impact is more pronounced.
315. Dr Sorell explained that a series of measurements at Confidence level 1 which are consistent with neighbouring higher confidence readings is more indicative of motion, exercise or exertion causing a loss of confidence in the data. This may also be accompanied by an exertion-related rise in HR. Conversely, isolated measurements at Confidence level 1, surrounded by measurements at Confidence level 0 are more indicative of poor optical conditions, which might include how the watch is worn, a weak pulse or false interpretation of fluctuating measurement data (caused, for example, by a body moving in a way that causes periodic signals).
316. In oral evidence, Dr Sorell elaborated on these confidence levels and their provenance, explaining that they are indicators of measurement accuracy determined by Fitbit's own researchers. Dr Sorell himself was content with the reliability of Confidence level 3. He considered that Confidence level 0 might reflect a conservative threshold since there might still be a pulse that the device has decided not to report because it considers it insufficiently reliable. Confidence levels 1 and 2 may indicate some subjectivity, Fitbit describing what is meant by those levels but not providing a quantitative threshold.
317. In analysing Paula's Fitbit data from 6 June 2017, Dr Sorell calculated a weighted average figure across five measurements, weighted by Confidence level from 3 (highest) to 1 (lowest), ignoring Confidence level 0 for this purpose. He presented these weighted averages by plotting them, including against different (overlapping) timescales, colour coded from Confidence level 3 (blue) through to level 2 (green) to level 1 (red). Hence, a solid blue line indicated a set of measurements consistently recorded with high confidence, whereas a solid red line indicated lower confidence. Dr Sorell overlaid the graphs with Paula's

known actions during the day indicated by the Agreed Facts.

318. By way of example, Graph 1 for the period 02:00 to 08:00 shows a steady and confidently measured heart rate (predominantly in blue), consistent with Paula sleeping, albeit with apparent occasional disruptions when the HR is elevated (in green and some limited red). I reproduce Graph 1 immediately below.



319. Graph 6 for the period 12:00 to 13:30 shows an elevated HR between 12:42 and 13:15, which includes the periods of Paula's 133 steps (between 12:58 and 13:08), the photographs of Paula and Don taken outside (between 13:06 and 13:07) and Paula's further 91 steps (between 13:08 and 13:11) (in green and red, with some limited blue).
320. More specifically for the period 13:00 to 13:20 (Graph 7):-
- (i) Between 13:07 and 13:11, reliable measurements show the HR declining from over 125 to under 100bpm;
 - (ii) Between 13:11 and 13:14, the HR is reliably measured as increasing to over 130bpm and being sustained above 120bpm; and
 - (iii) Between 13:14 and 13:17, the HR is unreliably measured as declining below 100bpm before measurement capability is lost.
321. As Dr Sorell explained in oral evidence, the device was still measuring after 13:17, albeit at a Confidence level of 0 (indicated on the horizontal axis by a black dot), it deciding that there was insufficient reliability in what it was seeing to report a measurement.
322. The above measurements are also shown on Graph 8 for the period 13:00 to 14:30. I reproduce Graph 8 immediately below.



323. Dr Sorell considered that the sporadic measurements between 13:17 and 13:48 at Confidence level 1 are well explained by false interpretation. This might have been caused, for example, by Paula’s body moving, albeit the presence of a weak pulse could not be eliminated.
324. Dr Sorell also considered that the mix of low to medium confidence measurements recorded between 13:48 and 14:27 (Graph 9) are consistent with CPR being performed. Indeed, this coincides with Don’s call to the Danish emergency services, commencing at 13:46 (when the handler gave CPR guidance), the arrival of the ambulance crew at 13:58 (when they took over CPR from Don) and the cessation of the electronic CPR device at 14:26 (when Paula was declared dead).
325. There is then a long gap in the data between 15:10 and 16:40, indicating that the watch had ceased to identify optical reflection or movement consistent with the watch being worn on a live wrist (Graph 10).
326. Finally, after 17:00, a small number of sporadic and low confidence measurements are recorded (Graph 10), broadly consistent in nature to the those between 13:17 and 13:48 (Graph 8), lending weight to those earlier measurements being falsely interpreted sensor data. (These later measurements coincide with the removal and transportation of Paula’s body by hearse to the chapel in Esbjerg.)
327. Dr Sorell concluded that:-
- (i) He has not himself inspected the device or seen a photograph or report of its physical condition;
 - (ii) He is not qualified to provide a medical opinion of the time of drowning;
 - (iii) Paula’s HR measurements elevate at 13:11, deteriorating in confidence and rate between 13:14 and 13:17, before falling below confident measurement levels. Unreliable measurements consistent with a very

weak pulse signal or some other stimulus are logged between 13:17 and 13:48;

- (iv) As to whether the Fitbit device was working properly, the user documentation rates the water resistance as ‘splash proof’. Although the possible impact of water includes water ingress and corrosion of the charging port electrodes, the former generally requires sustained immersion or frequent water exposure. The latter are likely to be unaffected in the short term;
- (v) Indeed, during significant periods of no or very sparse measurements (13:17 to 13:48 and 14:07 to 14:20), Confidence level 0 records continue to be regularly captured, indicating continuous operation of the sensor and internal electronics during these periods;
- (vi) There is a significant period (15:10 to 16:40) when no measurements are logged. Since Confidence level 0 records are captured after this period, the most consistent explanation is that the PPM sensor did not detect optical signals indicative of skin contact;
- (vii) The records supplied conclude at 19:14, indicating that the device either detected that it was not being worn (because it was removed from the body or that the sensor no longer detected optical signals indicative of skin contact) or the battery went flat;
- (viii) Given that HR data and a limited step count summary were able to be acquired from this device, that data from 02:00 to 13:10 appears to be operating with expected behaviour under normal user conditions (ie: the device being worn by a live wearer) and that the emergency services were present from 13:58 reporting their own observations of Paula, the device was functioning sufficiently properly to capture HR measurements until after 19:00; and
- (ix) Specifically, between 13:10 and 14:00, the logged measurements indicate that the device was working properly and to specification in terms of measurement accuracy and confidence.

328. Finally, since Paula and Don’s known movements also inform the interpretation

of the data, I should point out that Dr Sorell explained that their step count data identifies the total number of steps taken during the relevant time period, not the distribution of those steps across that period.

329. Dr Sorell too was an impressive witness. I accept his unchallenged evidence. Notwithstanding the limitations of the Fitbit Alta HR watch and the data it reports, including that it is not a hospital-grade device but is used for a variety purposes by different consumers of considerable intersubject variability, I also accept that his analysis is potentially significant to the question of how Paula died. Indeed, I am satisfied that the Fitbit device was functioning throughout 6 June 2017 (until 19:14), including the critical period between Paula and Don being outside the cottage taking photographs (13:06-13:07) and the arrival of ambulance crew (13:58), that the HR measurements recorded are easily reconciled with Paula's likely sleep behaviour and other known recorded activities during the daytime on 6 June 2017, including following her death, that the device was therefore behaving as expected and that, even when unexpected measurements are shown, these can still be satisfactorily explained. Given all these matters, I agree that Dr Sorell's analysis meaningfully informs the manner of Paula's death. Before considering this further, I turn first to the Claimants' allegation that Don also engaged in the deletion of electronic data.

I. Deletion of electronic data

330. It is common ground that, from the time of Paula's death until on or about 3 July 2017, Paula's iPhone was in Don's exclusive possession and that, even though passcode protected, he was able to access its contents during that period. The Claimants say that Don took steps following Paula's death to delete photographs, e-mails, message and telephone call data from Paula's iPhone.
331. The Claimants also say that Don deleted SMS messages and e-mails from his own iPhone.
332. Finally, they also claim that Don has concealed the contents of his Acer laptop by deliberately failing to provide the passcode.
333. Don denies these matters.

Neville's evidence on alleged data deletion from Paula's iPhone

334. As to Paula's iPhone, Neville explained in his evidence how he had attempted for some weeks to obtain this from Don and how, when it came to its collection, Don appeared reluctant. Eventually, he and Ben picked this up from Whitefield.
335. It was about a week after Paula's funeral that Neville says he came to look at the phone. After Neville gained access (by correctly guessing the passcode), he looked through Paula's iMessages and saw that there was only one message received, being from Betty on the day of Paula's death. Neville was suspicious about this because Paula was always sending and receiving messages.
336. Likewise, when reviewing the call logs on Paula's iPhone, he could only see logs for two incoming calls from Ashlands. However, Neville had had calls with Paula every day that she was in Denmark, including the day of her death, but none of these showed up. Neville considered this suspicious as well.
337. Nor were there any e-mails before 15 June 2017 or after 27 June 2017, with those Neville did find being adverts and junk e-mails. Neville considered it strange that there were no e-mails to or from friends or people Paula knew and none before 15 June 2017.
338. Finally, Neville looked at Paula's photographs and, although he did find pictures from other trips she had been on, there were none from Denmark. He then looked in the deleted folder and saw that there were a number of pictures of Paula in Denmark, including those taken at 13:06 and 13:07 shortly before she died and in which she was happy, smiling and did not have a swollen face as Don had told him. This heightened Neville's suspicions further.
339. Neville explained that he had an iPhone himself and knew that it kept deleted items in the deleted folder for 30 days before permanent deletion. He could see that there were 2 or 3 days left before this would occur. Neville counted back 30 days and worked out that the date of deletion was after Paula's death. He recovered the items in the deleted folder and, knowing something was not right, took pictures of some of those he had recovered.
340. I accept Neville's evidence concerning his actions with respect to Paula's iPhone. This is again corroborated by his near contemporaneous e-mail to Danish police on 20 July 2017 and by the related evidence from GMP which develops the analysis.

GMP evidence on alleged data deletion from Paula's iPhone

341. Indeed, Christopher Lees, a Digital Forensic Investigator for GMP for 14 years by the time of his witness statement, confirmed in his evidence how he had examined Paula's iPhone and Don's Acer laptop as part of the GMP criminal investigation.

342. Based on his investigations into the data extracted from Paula's iPhone by GMP, Mr Lees:-

- (i) concluded that there was no evidence that, during the period 6 June to 1 July 2017, Paula's iPhone had been returned to its state at the time of manufacture by 'factory reset';
- (ii) recovered around 6,300 deleted internet records from Paula's iPhone. By default, Paula's device only retained the history from the Safari internet browser for 30 days, the relevant operating system not permitting that default setting to be overridden. Manual deletion was also possible. Mr Lees could not determine the method of data deletion in this case;
- (iii) recovered 33 deleted iMessages (SMS/ MMS) from Paula's iPhone. In his witness statement, and more simply in evidence-in-chief, Mr Lees explained how it had been possible to deduce from the time stamp for certain updates to the journal records contained in the 'Write Ahead Log' (reflecting, for example, the receipt, reading and deletion of messages) a time range for the relevant update. So, for example, Mr Lees identified for certain messages on Paula's iPhone from 5 and 6 June 2017 a time range for deletion of between 11:39:55 and 14:35:46 on 6 June 2017 and between 16:13:33 on 19 June 2017 and 10:58:42 on 20 June 2017. Mr Lees explained that there is no reason for such messages to have been automatically deleted. In his view, this was indicative of user behaviour;
- (iv) recovered 23 telephone call records between 4 and 6 June 2017 which had been deleted from Paula's iPhone. Mr Lees did not identify any automatic deletion function on Paula's iPhone such that, in his view, this too was more likely attributable to user behaviour;
- (v) found 250 e-mails on Paula's iPhone between 15 and 25 June 2017, with

none pre-dating 15 June 2017. There was no auto delete function set up for the iPhone which would not be usual in any event. Mr Lees expected far more e-mails to be present than there were such that a user likely deleted e-mails from the device; and

- (vi) confirmed Neville's understanding that, when deleted, photographs from Paula's device would remain in the deleted folder and could be restored for a period of 30 days.

343. I found Mr Lees' analysis and related explanation to be comprehensive. I accept his evidence.

344. Simon Howe was a Detective Constable in GMP's Major Incident Unit at the time of the investigation into Paula's death. In his role as the case telecoms officer, he assisted in the examination of Paula and Don's devices. In his evidence, DC Howe:-

- (i) corroborated Neville's explanation of the discovery of the photographs deleted from Paula's iPhone by reference to the electronic data sitting behind the photographs that Neville took on 10 and 16 July 2017 of the deleted photographs;
- (ii) ascertained, based on the 30 day period after which images in the deleted folder would be permanently deleted, that the photographs recovered by Neville (i) on 10 July 2017 must have been deleted from Paula's iPhone on 13 June 2017 and (ii) on 16 July must have been deleted from Paula's iPhone on 19 June 2017; and
- (iii) concluded in relation to the deleted and recovered SMS from 17 June 2017 that, since the message post-dates Paula's death when her iPhone was in Don's possession, Don must have deleted at least that message.

345. I also accept DC Howe's evidence.

Expert mobile device examination of Paula's iPhone

346. Finally, the Claimants also submitted an expert mobile device examination report from Ms Emily Weatherill, Managing Director of Zentek Digital Investigations Limited, dated 22 December 2023 (together with her addendum report of 3 March 2024). Ms Weatherill also gave oral evidence.

347. Don did not submit any related expert evidence of his own.
348. In relation to Paula's iPhone, Ms Weatherill explained how her interrogation of GMP's data download revealed the deletion of 27 call records, 84 message threads and 79 messages, the difference in numbers with GMP's analysis likely attributable to forensic software advances since its initial review. As regards Paula's e-mails, Ms Weatherill explained that there was no automatic deletion *per se* but that it was possible to configure the iPhone to only download a set time period of messages on the device, for example from the last 30 days.
349. I found Ms Weatherill's analysis to be comprehensive, fair and balanced. I accept her related evidence.

Deletions from Don's iPhone

350. In relation to Don's iPhone, DC Howe explained that this was seized by GMP on 23 March 2018. GMP was able to unlock it. Mr Lees examined the phone and reported the apparent deletion of various data items, including the following for the following periods:-
- (i) SMS content between 24 April 2017 and 25 June 2017; and
 - (ii) Email content between 31 May 2017 and 16 June 2017.
351. Mr Lees also reported data as having been retained on Don's iPhone and, therefore, not deleted, including:-
- (i) 21 SMS messages from 7 November 2014 to 24 April 2017;
 - (ii) 411 SMS messages from 25 June 2017 to 27 March 2018;
 - (iii) 76 Emails from 26 March 2015 to 31 May 2017; and
 - (iv) 643 Emails from 16 June 2017 to 28 March 2018.
352. In her addendum report, Ms Weatherill confirmed that:-
- (i) There were no SMS messages on Don's iPhone between 24 April and 25 June 2017, albeit there were a small number of other iMessages (14) present for this time period. Since there were SMS messages from before and after this time period, individual SMS messages or chat threads would only be deleted by user action, not by any automatic process; and

- (ii) There were no intact e-mails between 31 May 2017 and 14 June 2017 but there were email messages present from before and after this time period. Again, there was no auto-deletion of e-mails *per se* but, to reduce storage space required, an iPhone can be configured only to download a set time period of messages on the device, such as for the last 30 days. However, the presence of e-mails from before this time period would indicate that any messages sent during that period must have been deleted by a user.

Conclusion on data deletion

353. I consider Don's iPhone first. Given the absence of SMS and e-mail messages noted by Mr Lees and Ms Weatherill during the specific periods April (SMS) or May (e-mail) to June 2017, in both cases spanning the days before and after Paula's death, and given that the same type of material was present on Don's iPhone before and after her death, I am satisfied that (i) both types of message were originally on Don's iPhone during those periods (ii) such messages were deleted and (iii) as the owner of his (passcode protected) iPhone, it was Don who deleted them.

354. As for Paula's iPhone, the following example of messages read after Paula's death are perhaps of particular note:-

- (i) Betty sent Paula an SMS on 6 June 2017 at 18:47, saying "*R u ok, have rung but no ans, worried now. X*". This was read on 20 June 2017 at 09:58. Being in possession of, and having access to, Paula's (passcode protected) iPhone, I accept that it was Don who read this message.
- (ii) More pointedly, at 14:35 on 6 June 2017, Paula's phone received a message from Julie at Trading Places concerning a viewing of a property. This message was read at 21:36 the same day. The message was later deleted. Being in possession of, and having access to, Paula's (passcode protected) iPhone, I again accept that it was Don who read and deleted this message.
- (iii) More pointedly still, the message sent to Paula's iPhone at 10:13 on 17 June 2017 from Total Hair Concepts concerned an appointment on 20 June. This was read at 16:13 on 19 June 2017. Within 11 seconds of it being read, Don telephoned that salon from his own iPhone. The message

was deleted from Paula's iPhone. Being in possession of, and having access to, Paula's (passcode protected) iPhone, I again accept that it was Don who read and deleted this message and went on to phone the salon.

355. That Don deleted data from Paula's iPhone, including from the period around Paula's death, is also clear from the evidence of Neville and the GMP as to the deletion of the photographs taken in Denmark on Paula's iPhone between 3 and 6 June 2017. Since the evidence shows that these photographs must have been deleted from Paula's iPhone after Paula's death, and Don had possession of, and access to, her (passcode protected) iPhone before passing it to Neville on or around 3 July 2017, I again accept that Don was responsible for these deletions.
356. I therefore also accept that Don lied to GMP when he told them that he had done nothing with Paula's iPhone and just left it in a bag turned off. Don also lied to this Court when he departed from the initial coyness in his Defence of his non-admission to the denial of the deletion of any data from Paula's iPhone in response to the Claimants' related information request.
357. In light of the above matters, I also accept that Don deleted the other iMessages and telephone call logs identified by Mr Lees and Ms Weatherill as having been deleted from Paula's iPhone, such deletions again being focused on the period 3 to 6 June 2017 when they were both in Denmark.
358. Given the absence of any e-mail auto-delete function set up on Paula's device, the absence of any e-mails on her iPhone before 15 June 2017 (nine days after she died), that none of the e-mails on her device were from people Paula knew and my findings as to Don's other deletions, I also accept that Don deleted a significant numbers of e-mails from Paula's iPhone, including those predating 15 June.
359. Finally, I consider it more likely that Paula's internet records were deleted from her iPhone automatically, not by Don.

Don's Acer laptop

360. The Claimants contend that Don has deliberately withheld access to his own Acer laptop by failing to pass the correct passcode to GMP. As to this, Mr Lees explained in his evidence how Don's laptop has inbuilt encryption capability,

meaning that the disk cannot be read without a password or key. I accept Mr Lees' evidence that this reflects a level of sophistication more consistent with a professional or experienced IT user than a more standard consumer device.

361. I have read the transcript of Don's interviews with GMP on 25 October 2018 and 8 January 2019 concerning his laptop when he was unable to provide the passcode. Having done so, I am quite satisfied that it was an exercise in obfuscation on Don's part. Even though taken unawares, Don did the same earlier when GMP exercised a search warrant at his home on 28 March 2018 and he declined then to give his passcode for his iPhone and laptop.

362. In my view, it is quite clear from the later interviews that Don had a level of sophistication in IT and IT security matters and that it is highly unlikely that he did not know his password. My view is reinforced by the body of evidence which is replete with references to Don's IT, IT security and computing skills and experience, including:-

- (i) Ben and Neville's evidence about how Don set up a new IT system and computers at the family business;
- (ii) Emma's evidence as to how Don has once fixed her laptop which had a virus on it;
- (iii) Mr Dickens' understanding that, in addition to refurbishing houses, his work was something to do with IT, Don using his laptop in his room after he moved in;
- (iv) Mr Daly's evidence as to how Don told him at Paula's funeral about the sophistication of his IT security and how he could disguise his IP address (recounted by Mr Daly to Neville); and
- (v) Mr Ennis-Cole's evidence that Don had told him he used to work in computers, that he regularly used his iPad and laptop and how he saw Don using his laptop (and inputting the passcode) shortly before this was seized by GMP.

363. I accept this evidence, in light of which, I consider it implausible that Don could not produce the passcode to his Acer laptop. Since he has repeatedly failed to do so when formally requested, I accept that he has deliberately sought to conceal

this from GMP.

J. Don's conduct following Paula's death

364. Lastly, I consider various aspects of Don's conduct following Paula's death. I should say at the outset that the Claimants fairly recognised that this aspect of their case was perhaps the most challenging in terms of whether some of the matters relied on in this regard could support a finding of unlawful killing or whether, as unexpected, questionable or perhaps bizarre as the relevant conduct, if proven, might be, it could more properly be explained on some other basis. In approaching this aspect of the claim, I only address such matters relied on as I consider might indeed bear on such a finding.

Informing the Leesons of Paula's death

365. I agree that it is potentially significant that Don took such a long time on 6 June 2017 to inform the Leeson family of Paula's tragic death. Paula was declared dead at 14:26 in the afternoon but it was not until 19:36 that evening that Don first spoke to Neville about what had occurred. Although Don had just lost his wife, he was preoccupied with various important matters, including speaking to the Danish police and the transportation of Paula's body, and it would have been very challenging for anyone to tell the Leesons that their beloved Paula had died, it is still difficult to understand why it took Don more than five hours to inform the Leeson family.

366. In my view, it is also significant (as I have accepted and is reflected by the near contemporaneous e-mail from Neville to the Danish police dated 20 July 2017) that Don gave Neville three versions of what had happened without mentioning his account to the Danish police that he had been asleep before waking up and finding Paula dead, a version of events not imparted to the Leesons until later. Again, although no doubt an incredibly difficult call to have, that does not, in my view, adequately explain why he gave a different account from that imparted to the Danish authorities only hours earlier.

367. Indeed, only three or so minutes after the last of his short calls with Neville that evening, Don was able to call Aviva Travel Insurance at 20:37 and speak to them for more than 11 minutes, including providing an explanation of what had occurred in similar terms to those conveyed to the Danish police.

Don's banking and payment transactions – 7 June 2017

368. Of particular note, in my view, was a series of banking and payment transactions and calls undertaken by Don in the morning of 7 June 2017, starting only 18 hours or so after Paula had died, and only nine minutes or so after he had just spoken to Neville again, namely:-

- (i) A transfer of £1000 from the Lloyd's joint account to Don's Lloyd's account (08:50);
- (ii) Only a minute later, a transfer of a further £5,700 from the Lloyd's joint account to Don's Lloyd's account (08:51), followed another minute later by a transfer of the same amount from Don's Lloyd's account to his HSBC account (08:52);
- (iii) Two minutes later, a transfer of £2,500 from the Lloyd's joint account to Don's Lloyd's credit card (08:54);
- (iv) Two minutes later, Don called Aqua credit card, the call lasting more than 11 minutes (08:56);
- (v) A transfer of £4,063.53 was then made from the joint Lloyd's account to his Aqua credit card;
- (vi) A further transfer of £2,500 was then made from the joint Lloyd's account to Don's Lloyd's account (09:02);
- (vii) Two minutes later, Don then made another transfer of £2,500 from his Lloyd's account to his own HSBC account (09:04);
- (viii) Don then called Lee from Trading Places (estate agents), albeit the call only lasted five seconds (09:08);
- (ix) Don then called Travis Perkins credit services, the call lasting two and a half minutes (09:11), with a payment also made for £12.36 from the Lloyd's joint account to TP sales ledger;
- (x) Lee from Trading Places then called Don, the call lasting two and a half minutes (09:48);
- (xi) 10 minutes later, Don called HSBC, the call lasting just under four minutes (09:58), Don making a further call to HSBC four minutes later, the call

- lasting just under two minutes (10:02);
- (xii) Don then made two calls to Lloyd's lasting just under half a minute and just over four and a half minutes (10:32 and 10.33), in the latter enquiring about paying the balance of his credit card from his "wife's account";
 - (xiii) A transfer of £6,000 was then made from the Lloyd's joint account to Don's Lloyd's account (10:44), followed by a transfer of £6,000 from Don's Lloyd's account to his HSBC account (10:47);
 - (xiv) Don then called HSBC, the call lasting just over 10 minutes (10:58);
 - (xv) MDNS Financial Planning then called Don, the call lasting just over 15 minutes (11:17);
 - (xvi) Don then called Argos Customer Services, the call lasting just over one and a half minutes (11:35). This was followed by a transfer of £1,072.47 from the Lloyd's joint account to Home Retail Group Cards (relating to Don's Argos card);
 - (xvii) A transfer of £4,000 was then made from the Lloyd's joint account to Don's Lloyd's account (12:11), followed by a transfer of the same amount from his Lloyd's account to his HSBC account (12:11);
 - (xviii) A transfer of £11,004.91 was then made from Don's HSBC account to his HSBC credit card; and
 - (xix) Later that evening a transfer of £7,000 was made from the Lloyd's joint account to Don's Lloyd's account (18:54).
369. The effect of these various transactions was to transfer money out of the Lloyd's joint account (with a healthy positive balance) to various accounts and credit cards in his sole name (with a negative balance), including on matters as trivial as £12.36 for his Travis Perkins account (presumably for the St. Mary's Road build) and £1,072.47 for his Argos store card.
370. Despite spending hours on these calls and transactions, and despite Paula having died only the day before, Don did not make contact with the Leeson family again that day until Neville rang him that evening, the call lasting five and a half minutes (20:52), followed by a further briefer call from Don to Neville lasting a minute

and a half (21:21).

371. Although Don did say to Aviva the following day (8 June 2017) that his “*head’s just completely messed up*” and that he would be receiving psychiatric assessment in Denmark over the next couple of days and, despite suggesting to the Esbjerg Hospital Psychiatric Department that he was suffering from restlessness, sleeping difficulties and even suicidal thoughts, none of these complaints (if genuine) stood in the way of the multiple steps taken so soon after his wife’s death to place his own personal finances on a healthier footing.
372. Indeed, although Don asked Aviva in the same call to tell Neville about his frame of mind and to let him know that “*I can’t speak to anyone really at the minute*”, he was still able to (i) make a further transfer of £5,000 from his Lloyd’s account to his HSBC account (earlier) that morning (ii) speak to MDNS Financial Planning later that day, the call lasting eight and a half minutes and (iii) text Trading Places the following morning (9 June 2017) concerning the payment of the rent on Paula’s Brighton Grove property.

Don’s knowledge of Paula’s injuries

373. On 9 June 2017, Don also had his second interview with the Danish police. As I have already found, Don’s account of events given then cannot be accepted. There is another reason for that: during that second interview, Don explained how he had pushed and pulled Paula’s body by her arms, legs and neck to get her out of the pool. He also told them then that he did not notice whether there had been any damage to Paula’s body or face and that he did not look for any injury.
374. On 10 June 2017, by contrast, Don discussed with Aviva the clothing and cleaning of Paula’s body for repatriation, explaining (inconsistently with his account to the Danish police) that “*It was a distressing sight when I pulled her out*”, (consistently) that “*I was grabbing her in every way possible*” and (inconsistently) “*so it’s not a pretty sight.*”
375. Accordingly, as Don told Aviva, he was, in fact, very aware of Paula’s injuries and how disturbing they looked. Indeed, he was at the cottage when she died. Don was therefore expressing his concern to Aviva about the state and presentation of her body prior to her repatriation to the UK even though he had feigned ignorance of her injuries to the Danish police.

376. Neville's evidence is that, when Don returned to the UK, Don told him that Paula had "no marks, bangs or injuries". Again, this was inconsistent with the distressing picture Don gave to Aviva on 10 June 2017.
377. When asked about Paula's injuries, Don told GMP in interview on 26 April 2018 that he had tried to push and pull Paula out of the water multiple times but (again inconsistent with what he told Aviva on 10 June 2017) that he did not notice any injuries. He was, however, precise in his description to Danish police and the GMP of the different areas of Paula's body he says he grabbed to remove her from the pool (consistent with areas of injury found during post-mortem).
378. It is also notable how Don sought in his interactions with insurers to impress upon them that Paula's death was an "accident" or "accidental" as if that too required emphasis, also drawing on the discontinuation of the criminal investigation by Danish police notified to him on 22 November 2017.
379. Finally, Don repeatedly expressed concern about the medical examination of Paula's body and what this might reveal. For example:-
- (i) When Don spoke to Aviva on 8 June 2017, he was concerned to know when the autopsy report would be available;
 - (ii) According to Neville, when Don and the Leeson family visited Paula's body at Tameside mortuary following her repatriation, Don seemed very concerned when the attendant informed him that a second post mortem had been requested. I accept Neville's evidence;
 - (iii) In a call with Aviva on 27 July 2017, Don sought to establish what Aviva was still awaiting on the "medical side of things";
 - (iv) In a call with Vitality on 17 August 2017, Don enquired whether they had received a letter from the Coroner or toxicology or medical reports (also asking whether they could make an interim payment);
 - (v) In a further call with LV on 22 September 2017, Don was concerned to know what information they had received because he was "searching for answers";
 - (vi) In a further call with LV on 27 September 2017, Don asked whether LV had previously encountered the taking of blood tests;

- (vii) On 13 November 2017, Don called the Coroner’s officer and was “*anxious to know what the translation from Denmark says*” and “*to know if any tox was taken*”;
- (viii) On 31 January 2018, Don called SW “*trying to find out obviously you know what’s happened to my wife and stuff like that, what’s the stuff you need to chase. Is it like medical information ...*”; and
- (ix) In a further call with LV on 13 February 2018, Don enquired as to the type of information LV was chasing, and whether it was “*like medical information*”, Don stating that “*I’m obviously just trying to find out obviously you know what’s happened to my wife and stuff like that*”.

380. On the one hand, Don, therefore, played down his knowledge of Paula’s injuries and played up the suggested accidental nature of her death and how much (and where) he had had to manhandle Paula’s body. On the other, Don clearly knew the extent of Paula’s injuries and was anxious about what the related medical investigations might reveal, attempting to elicit information about them under the pretext of concern about how Paula met her tragic end. Despite this supposed concern, Don did not attend the inquest originally scheduled for December 2021. Instead, he left the UK. He also deliberately failed to attend trial. I am satisfied that Don’s anxiety about Paula’s injuries was not motivated by concern as to how she sustained them rather than as to what others might discover.

Don’s lifestyle and financial position after Paula’s death

381. It is also significant in my view that, upon his return to the UK, Don’s lifestyle took a notably less frugal direction. So, for example, as the documents and witness testimony indicate:-

- (i) By the end of June 2017, Don had reduced his collective bank balances by £27,500, with the effect of reducing his own overdraft and debt to £40,000, a process Don had begun hours after Paula’s death.
- (ii) A few days after his return (25 June 2017), he spent £518 on clothes at Hugo Boss in the Manchester Trafford Centre;
- (iii) He frequented more upmarket restaurants, his credit card bill for September 2017, for example, containing multiple entries for such

restaurants, including Tattu (with one bill for £1,325);

- (iv) The same bill also indicates two balloon flights;
- (v) Mr Ennis-Cole explained that Don was drinking so much champagne at the time that he saved his phone number as “*Don Perignan*”. I accept his evidence;
- (vi) Karen Mairs testified that Don sent her husband by mistake a photograph of a bottle of champagne. I accept her evidence; and
- (vii) As already noted, Don was indicating through his Rob Jones persona his future plans in terms of adventurous (and expensive) pursuits.

382. Following her death, Don represented matters inconsistently to the relevant institutions concerning Paula’s will:-

- (i) On 23 June 2017, Don called LV to report Paula’s death, claiming not to know or to be sure whether Paula had a will;
- (ii) On 28 June 2017, Don notified Lloyd’s Bank of Paula’s death, informing them (inconsistently) that Paula had a will and (falsely) that he was the executor of Paula’s estate;
- (iii) Later that day (28 June 2017), Don attended a meeting in person at Lloyd’s Bank, signing a “*Bereavement Summary*” document declaring (falsely) that he was “*Legal Representative*” of Paula’s estate, purporting to authorise Lloyd’s to deal with him on the distribution of Paula’s funds and to transfer these into the joint account (to be converted into a sole account in Don’s name);
- (iv) Don’s purported authorisation was improper due to the existence of the 2014 Will appointing Betty and Willy as executors and the absence of any grant in Don’s favour of Letters of Administration over Paula’s estate;
- (v) Don knew that this was improper, stating in a manuscript letter (apparently to BMW Financial Services) a few days later (on 3 July 2017) “[p]*lease note that I’m not a personal representative of Paula’s estate*”; and
- (vi) In his GMP interview on 26 April 2018, Don confirmed that Paula made the 2014 Will and her rationale for doing so, namely to ensure that Ben

was well looked after in the event of her death.

383. By around 10 July 2017, Don had applied to remove Paula’s name from the registered titles to Whitefield and St. Mary’s Road.
384. According to Jack Richardson, Don was planning to move to Japan and the only thing he was waiting for was the sale of a property in Sale and his new passport for which Don offered him £200 for his countersignature. Mr Richardson declined because he had only known him a few months. I accept his evidence.
385. When Don applied to renew his passport in February 2018, he requested a 48-page passport, stating that he intended to travel extensively. On his application form, he did not provide his parents’ details, stating (falsely) “[n]ot sure as raised in foster homes.”
386. Don sold Whitefield and St. Mary’s Road in, respectively, February and April 2018.
387. As Mr Ennis-Cole explained, after GMP had left St. Mary’s Road on 28 March 2018 following the execution of their search warrant, Don retrieved cash from the freezer section of the under-counter fridge which the officers had not found. They then went into Manchester so that Don could take more cash out, his concern being that his accounts would be frozen. I accept Mr Ennis-Cole’s evidence.

Don’s mental health – April/ May 2018

388. It appears that, around the time of GMP’s search, Don’s suggested mental health complaints had worsened. So, by 10 April 2018, Don reported a severe depressive episode to his GP, he was seen by the Greater Manchester health team for the onset of auditory hallucinations and, in May 2018, was informally admitted to the Priory.
389. As to these matters, I merely note that Don’s related medical records reveal a number of further lies to the medical professionals involved, including about:-
- (i) The Leesons having become violent in the past (discussed further below);
 - (ii) Don’s wife and daughter having died in Australia while he was working in Germany (when Don was, in fact, in prison at the time);
 - (iii) Being brought up in foster care (and being physically and sexually abused)

and moving from school to school; and

- (iv) In the context of her death being a suggested accident, Paula having a tooth abscess.

390. It is also notable that, at the same time as he had been admitted for auditory hallucinations, Mr Ennis-Cole says that Don telephoned him from the Priory advising him not to give a statement to GMP. Again, I accept Mr Ennis-Cole's evidence.

391. It is fair to say that, in light of these (and other) matters, there was some scepticism on the Claimants' part as to the genuineness of Don's mental health complaints which, they submitted, were likely advanced as a distraction to throw the police or the Leesons 'off the trail'. It is no part of this Court's role to make findings on Don's mental health, even if it were equipped to do so (which it is not). I merely note my view, including based on these further lies, that Don would not hesitate to lie about his mental health if he thought it might advance his interests (just as I have found he lied about his and Paula's health in Denmark). However, even if Don's later reported mental health complaints were genuine, they would not have been inconsistent with his unlawful killing of Paula in any event.

The insurance policies

392. There are three related aspects of Don's conduct following Paula's death with respect to the life insurance policy arrangements which, in my view, provide significant insight into Don's intentions: first, consistent with my finding that Paula was not aware of the joint life insurance policies (save for the Royal London policy written in 2016, ostensibly in respect of Whitefield), Don also failed to disclose their existence in his dealings with the Leeson family, BP and, apparently, even his own solicitors, Higgins Miller.

393. In this regard, I accept the evidence of Willy, Ben and Neville that they were only aware of the LV and SW insurance policies in Paula's sole name, not the joint policies. I also accept Michelle O'Brien's evidence that she too was not aware of the joint policies until she was informed about them by the GMP. In my view, it is quite remarkable - and telling - that Don should continue to keep this information to himself.

394. Second, I also accept the Leesons' evidence that Paula told them that Paula's LV and SW policies were for the benefit of Ben. That this was also Don's understanding was evident from his initial approach to BP in April 2017 concerning the appointment of an additional trustee when Don explained that "*Paula had arranged life insurance to assist her son Ben in the event of her death*".
395. Despite this, Don articulated matters very differently following Paula's death and I am satisfied that he did so to benefit himself financially. Indeed, on 26 July 2017, Don e-mailed Michele O'Brien, now stating differently that "*Paula has set these policies to assist with mortgages, and her son Ben*" (emphasis **supplied**). The idea that Paula's LV and SW policies were put in place to assist with the mortgages was false. As Don himself confirmed in April 2017, the sole reason for those policies was to benefit Ben. That is entirely consistent with Paula's (recorded) telephone conversation with LV on 24 April 2017, the Leesons' understanding of Paula's insurance arrangements and Paula's handwritten note to Ben. In fact, as also already noted, the Whitefield re-mortgage and the St. Mary's Road mortgage were the ostensible reasons for taking out, respectively, the Royal London and Aegon joint insurance policies, not Paula's LV and SW policies.
396. Don therefore lied again. His reason for doing so is clear from his subsequent communications with BP and the Leesons in which he sought to participate in the LV and SW policy proceeds by first deducting the outstanding mortgage liabilities before paying the balance to Ben. In other words, despite having (but not disclosing) the benefit of joint life insurance which far exceeded the total amount of all outstanding mortgage liabilities, Don sought additionally to benefit from monies which he knew were intended for Ben alone and to do so under a false pretext. The suggestion indicated in some of the documents that Don was being magnanimous in this regard stands matters on their head. Ben has received nothing from Don other than the lump sum benefit paid by Paula's NHS pension upon her death.
397. Indeed, Don went further still, in October and November 2017 exploring with his solicitors, Higgins Miller, whether he was able to change the beneficiaries under the trusts over those policies, that firm advising that there was nothing that they could see to prevent him from paying the whole of the proceeds of both policies

to himself.

398. In this context, Don even suggested in his interview with the GMP that, in the meeting with the Leesons and BP on 11 October 2017, Willy picked up a chair, became violent, took a swing at Don and that Don felt threatened. Michele O'Brien confirmed that the meeting was tense and that Willy banged on the table and stood up in frustration but she rejected unequivocally the idea that Willy became violent. I accept her evidence and I have no hesitation in finding that this was yet another of Don's many lies to distract from his own efforts to cash in on Paula's death.

399. Third, turning back to the joint life insurance and travel policies, the documents show that, following Paula's death, Don went about making claims and following up with the insurers concerned. The Claimants say that, as well as making various false representations when taking out the policies, he lied again when it came to making these claims. In this regard, I accept that:-

- (i) Don gave false answers on his travel policy claim received by Aviva on 22 June 2017 as to whether (i) there was other insurance (ii) Don had another bank account and (iii) Don had used a credit or debit card to pay for all or part of his trip;
- (ii) When completing the claim form for the HSBC single trip policy on 12 December 2017, Don failed to declare the Aviva annual travel policy and the related claim made against that policy on 22 June 2017; and
- (iii) When completing the death abroad questionnaire for Paula's LV policy on 15 January 2018, Don failed to disclose any of the joint life insurance policies, the Countrywide life policy, Paula's SW life insurance policy or the Aviva annual trip travel policy.

400. Again, Don had no qualms in making false statements to the institutions concerned.

K. The manner of Paula's death

401. Having now analysed the different elements of the evidence relied on by the Claimants, I turn to the question of the manner in which Paula came to drown. As a preliminary matter, the Danish pathologists' initial conclusion that Paula's

death was assumed to be an accident was based upon incomplete information as to the circumstances of her death. With further information provided to them, they changed their assumption to “*undetermined*”. Moreover, as they explained, and I accept, such conclusions are, in any event, for statistical, not legal, purposes. During the course of this trial, I have received voluminous amounts of information and evidence not available to them.

Mechanisms of death that can be excluded

402. As to how Paula entered the pool, the expert pathologists agree that there is no evidence of natural disease (such as heart attack or stroke) which could have caused Paula to have become unconscious and increased her vulnerability to drowning.
403. Likewise, they agree that there is no evidence of Paula’s intoxication through alcohol or drugs, a common feature of accidental drowning. To the contrary, it was common ground that Paula did not have any alcohol in her blood and had not consumed any illegal drugs. This was also confirmed by the supplementary autopsy report from Denmark.
404. The experts also agree that the possibility of manual or ligature strangulation can be excluded.
405. The experts also agree that there are no features to suggest that Paula’s death was the result of homicidal drowning - the forcible restraint of an individual under the water. Such a method of homicidal act would likely have resulted in greater injuries to Paula than those present here.
406. I accept the related expert evidence and exclude the above as possible mechanisms of Paula’s death.

Paula’s loss of consciousness

407. Turning to other possible mechanisms, I accept that, for Paula to have died by drowning, she must have been unconscious when she entered the pool. As the experts agree, “[w]e cannot state why [Paula] could not simply stand up in a shallow pool if she was conscious, other than the result of panic.” I agree with Dr Fegan-Earl that the possibility of Paula having simply fainted and fallen into the pool is extremely unlikely. As he explained, and I accept, most simple faints

are accompanied by a rapid return to full consciousness with the engagement of self-preservation instincts. Although Dr Shepherd appeared to place more emphasis in his report on the possibility of a faint, he too accepted that many or most people would simply stand up. I agree. Likewise, a person who jumps or is pushed into a pool would have the same reaction.

408. In this regard, I have already rejected Don's account of Paula being unwell while in Denmark. Specifically, she was not suffering from a tooth abscess (or swollen face) or stomach pain. Even if she had been, it is difficult to see how such matters could have caused Paula to enter the water in any event. Vomiting and diarrhoea may cause dehydration and, therefore, fainting but, my rejection of Don's account apart, I have already accepted that the former are not indicated by the pathology. As to the latter, I also accept Dr Fegan-Earl's testimony that there was no evidence of dehydration, such as the tenting of Paula's skin.
409. There is another quite simple, non-pathological reason why fainting is an improbable mechanism of Paula's death in this case: as I have found, it is implausible that Paula would have entered the pool area in the first place, at least of her own volition. Not only was that area unpleasantly hot and humid, the evidence is clear that Paula was averse to being in, or near to, water. Nor was there any need for her to be there: she had all the amenities she needed, including a perfectly serviceable toilet, within the living area of the cottage.
410. Both pathology experts agree that there were a number of blunt force injuries on Paula's body, albeit that none could be considered serious, let alone potentially fatal. Although they also agree that an impact to the head could cause loss of consciousness, neither expert appeared to consider a fall causing loss of consciousness a likely mechanism of Paula's death. In his report, Dr Shepherd was of the view that the injuries present on Paula's body were not such as to have rendered her concussed, unconscious or otherwise incapacitated from a fall. Dr Fegan-Earl considered that Paula's head injuries, being on both the right and left side of her head, were not consistent with a simple fall - the more widely distributed the injuries, the more falls there would have to have been to explain this.
411. I accept that a fall was also an improbable mechanism of death in this case, not

only for the reasons indicated by the pathology experts, but also because she would have had to have fallen, hit her head, lost consciousness and ended her fall in the pool rather than remaining on the poolside. In this regard, it was common ground that the poolside was 2.1 metres wide at its widest point, the tile surface was non-slip and it “*had no fall, slip or trip hazards adjacent to the water*”. Accordingly, even before the implausibility of Paula having entered the pool area of her own volition, this mechanism of death was already an improbable one.

412. In my view, more significant and insightful as to the reason for Paula’s loss of consciousness and the mechanism of her death was the extent of the lesions identified by the Danish pathologists, particularly the soft tissue haemorrhages to the neck and head and the bruises on the forehead. Indeed, it was their related concerns that caused them to suspend the post-mortem and request the attendance of the Danish police. Dr Fegan-Earl too noted in his evidence that it is the multifocality of bruises and the neck injuries that raise the suspicion in this case and that the suspension of the post-mortem examination on this account was entirely reasonable. I agree.

413. The Danish pathologists concluded that the haemorrhage in the neck tissue may have been caused by the resuscitation attempt, albeit violence by another person could not be completely ruled out. In his report, Dr Shepherd noted the former and agreed with the latter. Dr Fegan-Earl’s evidence, however, was more detailed, including his identification of another potential reason for Paula’s neck injuries and her loss of consciousness. As he explained in his report:-

- (i) “*The bruising to the neck raises concerns as to the application of pressure, albeit not for a sustained period, but potentially sufficient to lose consciousness*”;
- (ii) “*There is no evidence of sustained compression of the neck as shown by the absence of petechial haemorrhages, but I could not exclude a brief period of compression and which could cause a period of unconsciousness*”;
- (iii) “*It is difficult to envisage how the extent of bruising could be caused during the resuscitative manoeuvres alone;*” and
- (iv) “*The manner in which she came to enter the pool and not extricate herself, in combination with unexplained bruises must raise the potential for third party involvement in the death that could cause unconsciousness by some mechanism, either through cerebral hypoxia from neck compression or*

brief unconsciousness due to head trauma, and thus render her vulnerable to drowning even in comparatively shallow water”.

414. In the subsequent joint experts’ report, Dr Shepherd too acknowledged possible compression to Paula’s neck, both expert pathologists now agreeing that:-

“12. *The application of an arm lock around the neck may cause such injuries to the muscles without causing external bruising. The presence of petechial haemorrhages is variable when pressure from an arm lock has been applied. We are unable to determine if such an arm lock was or was not applied in this case.*

13. *Application of advanced resuscitation techniques by trained paramedical staff may involve manipulation of the neck but we have no mechanism to determine if this did or did not happen in the case.”*

415. And, by way of summary conclusion, they also agreed that:-

“The internal bruising of the neck could be due to pressure from an arm lock or to actions during resuscitation providing there was at least some blood pressure at that time.”

416. Accordingly, both pathology experts agree that a possible cause of the bruising to Paula’s neck tissue was compression from an arm lock. Professor Leth confirmed the same in oral evidence. I accept their evidence. I also accept Dr Fegan-Earl’s related evidence that this could cause loss of consciousness. As such, I accept that this was a plausible mechanism of Paula’s death.

417. As to other potential reasons for Paula’s neck bruising, neither expert appeared, again, to be of the view that this was caused by a fall. Indeed, Dr Fegan-Earl explained in his evidence how the neck is recessed and an anatomically protected area of the body, not prone to injury due to falls because of the projection of the face and jaw. In light of this, and the absence of external marking, he considered it difficult to envisage how a fall could produce the amount of bleeding found in the neck. I accept this evidence and reject a fall as a reason for Paula’s neck injuries.

418. I also reject resuscitation as a possible reason. First, the experts agreed that actions during resuscitation might have caused the neck bruising provided that there was at least some blood pressure at the time. However, they also identify such actions as advanced resuscitation techniques undertaken by the paramedics involving manipulation of the neck. In this regard, although the evidence indicates that intubation had occurred to secure Paula’s airway and to allow oxygenation of her lungs to occur, that only took place upon the arrival of the

ambulance crew. It is common ground that Paula did not regain any heartbeat from at least the time of paramedic attendance and that it was not possible to revive her. The contemporaneous documents and Mr Hansen's evidence confirm that Paula had no pulse at any time and was asystole throughout. As Dr Fegan-Earl also stated in his report:-

- (i) *"I do not consider that the injuries have arisen as a consequence of resuscitative manoeuvres. Typically any such injuries are associated with minimal, if any, bruising, since by definition for resuscitation to be required means that the heart must have stopped."*
- (ii) *"The bruising to the neck does appear to be reasonably substantial and somewhat difficult to explain if the deceased was in cardiac arrest, as even if trauma to the larynx occurred during rapid intubation, the level of bruising appears too great, given that the pressure is focal and applied to an individual in cardiac arrest."*

419. In oral evidence, Dr Fegan-Earl further explained that:-

"If someone is in cardiac arrest they need assistance with breathing. That means a tube will have to be put into the throat. Now, on occasion that, therefore, means you may have to manipulate the throat to, in some occasions, compress the gullet so if there's vomit it doesn't go up the gullet and then down into the airway, so pressure can be applied, but my view was that the extent of bleeding, and remembering that this is a lady in cardiac arrest, was too great for a resuscitation – associated injury. Now, if, for example, she had been resuscitated, bruising may have developed, but in someone who has never restored circulation, my view was that the level of bruising there was too great, and I would refer back to the operating pathologists who also expressed concern on that, and all forensic pathologists will be familiar with looking at the effects of treatment upon an individual, and the requirement to differentiate them from, perhaps, third party infliction."

420. I accept Dr Fegan-Earl's evidence and reject resuscitation as a reason for Paula's neck injuries.

421. Finally, Don told the Danish police and the GMP that, in his efforts to extract Paula from the pool, he pushed and pulled Paula's body, including by the neck. However, neither expert indicates Paula's rescue from the pool as a possible cause of her neck bruising. Indeed, as noted, Dr Fegan-Earl described the neck injuries are *"reasonably substantial"*. He also explained that there were no markings on the neck to suggest *"firm fingertip pressure"* as there were, for example, on Paula's upper limbs. I also agree with the Claimants that such pressure to the neck was an unlikely method of attempted extraction from the pool, that a more likely point of leverage would have been the chin or upper neck and that applying

pressure to the points of actual injury on Paula's neck would have been more likely to hinder rescue by causing her body to submerge. I therefore reject Paula's attempted rescue as the reason for her neck injuries.

The mechanism of Paula's death

422. I have therefore come to the view that the compression of Paula's neck by a third party applying an arm lock is the probable reason for the injuries found in her neck tissue. Such compression would not only explain Paula's loss of consciousness but also, with the submersion of her body in the pool, her death by drowning too. As Dr Fegan-Earl explained in his evidence, which I accept, unconsciousness leads to the loss of the "*normal protective reflexes*", such that extrication is impossible. As for the drowning process itself:-

"Oxygen deprivation to the brain would be critical and irreversible by 3-4 minutes of submersion, and cardiac arrest would follow soon thereafter. The drowning process may complete to fatality in just a few minutes."

423. In considering whether this is the probable mechanism of Paula's death, I have had regard to the many matters fairly brought to the Court's attention by the Claimants that Don might himself have raised had he attended at trial. I have also considered all the evidence and my earlier analysis of the various elements relied on by the Claimants and my related findings. In doing so, I have also adopted the approach to circumstantial evidence in a civil context indicated in the authorities such as *Lakatamia*. Having done so, I have come to the firm view that Don deliberately and unlawfully killed Paula by compressing her neck in an arm lock, rendering her unconscious, and causing her body to enter the pool to ensure her drowning and death.

424. Distilling the essential elements underlying that finding:-

- (i) Paula's neck tissue injuries were significant and of concern, including to the examining Danish pathologists at her post mortem;
- (ii) The probable reason for Paula's neck injuries was compression from an armlock, itself capable of causing loss of consciousness;
- (iii) Paula's other injuries, particularly to the head, were also significant and of concern, the (fact and expert) pathologists agreeing that a potential mechanism was third party violence;

- (iv) Indeed, although not fatal in themselves, the extent and distribution of those other injuries to Paula's body are consistent with the use of force or violence, including an attempt to overwhelm or subdue her;
- (v) As to that, Paula would not have been in the pool area of her own volition. She must therefore have been there involuntarily, possibly already unconscious;
- (vi) Beyond the pathology, it is no exaggeration to say that lies and dishonesty pervade every aspect of Don's life;
- (vii) Don lies to anyone if it might serve his interests, including to the authorities to get off more lightly for his role in the Commerzbank fraud;
- (viii) Don lied repeatedly to this Court, including in his Defence and witness statement;
- (ix) Don's lies are accompanied by concealment and secrecy, including even about his own family life and identity (past and present);
- (x) Consistent with Don's dissembling, he lied to the Danish police about Paula being ill to give the (false) impression that she was liable to a faint and/ or might have used the pool area toilet and that her death there was accidental;
- (xi) Don also lied to the Danish police about Paula being unable to swim. He did so again to convey the (false) impression that her death was accidental;
- (xii) Don also failed to tell the Danish police that he had been up and about with Paula on 6 June 2017, including outside the cottage taking photos of them both after 1pm. Don knew that this was inconsistent with his story that he and Paula were both ill and dozing in bed;
- (xiii) The photos themselves make that point even more graphically, both looking happy and well together, 40 minutes before Don called the ambulance;
- (xiv) Paula's Fitbit watch is a consumer, not hospital grade, device such that care is required relying on individual HR measurements. Nevertheless, the device showed largely uninterrupted, reliable HR readings from 00:01

to 13:10 on 6 June 2017 at different confidence levels, reflecting different movement and/ or optical reading conditions throughout the day, the device behaving as expected and functioning properly until 19:14. As such, the trends in Paula's HR shown by the device, considered together with her known movements, are instructive;

- (xv) Paula's Fitbit watch showed her HR rising from around 80bpm at 12.40 to an average of around 120bpm or so (at Confidence levels 1 and 2). The HR trends and confidence levels indicated are consistent with Paula having taken 133 steps between 12:58 and 13:08 when she was outside the cottage;
- (xvi) They took the photographs outside at 13:06 and 13:07, with Paula making a short call to Charlotte at 13:09;
- (xvii) The Fitbit analysis shows Paula's HR decline between 13:07 and 13:11 to just below 100bpm at a higher Confidence level of between 2 and 3, consistent with Paula having taken a further 91 steps between 13:08 and 13:13, her likely return to the cottage and, initially at least, her more rested state;
- (xviii) Paula's HR rose sharply between 13:11 and 13:14 to over 130bpm, with a Confidence level of 2 indicated, before declining swiftly from 13:14 to 13:17 at a Confidence level of 1, suggesting greater movement and/ or reduced optical reading quality, followed by a sudden loss of reliable HR measurements;
- (xix) That sharp rise in HR was consistent with the use of force to Paula, including the application of an arm lock to her neck and force to her body and the sharp decline consistent with her unconsciousness and drowning;
- (xx) Whether the unexpected loss of reliable HR measurements at 13:17 reflects the cessation of pulse at that point or loss of measurement capability from, for example, violent movement or immersion in water, is unclear. Either way, the data strongly suggests that she suffered a sudden, catastrophic event then;
- (xxi) That event could not have been an accident. Don had just been outside

with Paula and it is clear from the photographs that he was active and alert. If Paula had suffered an accident, Don was present and could have provided immediate assistance;

- (xxii) In this regard, Don lied to the Danish police about being asleep, his shoulder pain and feeling groggy from the pain relief supposedly recently taken. He did so to give a (false) impression of explicable delay in the discovery of Paula's body and difficulty in assisting her;
- (xxiii) To the same end, Don also lied to the Danish police about leaving the cottage to summon the neighbours to help rescue Paula;
- (xxiv) Don waited until 13:46, when he knew that Paula had already drowned, to call the ambulance;
- (xxv) Don later repeated to GMP and this Court many of his lies to Danish police;
- (xxvi) Consistent with his tendency to conceal, Don later selectively deleted the Denmark photographs from Paula's iPhone, knowing that these would show his accounts to the Danish police to be false;
- (xxvii) Don also selectively deleted SMS and MMS messages and call logs from Paula's iPhone for the critical period around her death (and all e-mails before 15 June 2017). He did so to shut down possible lines of enquiry about the manner of Paula's death;
- (xxviii) Don did the same, for the same reason, and for the same critical period, with respect to his own SMS and e-mail messages on his iPhone;
- (xxix) Likewise, Don failed to provide the GMP with access to his laptop on the (false) basis that he could not remember his password. He did so to conceal matters which might cast doubt on his story;
- (xxx) Don's motive for his unlawful killing of Paula is clear – money;
- (xxxi) Don lied, including to Paula, about being wealthy and an owner of property in New Zealand;
- (xxxii) Don was neither, but money was very important to him, including to the extent of his willingness to commit the massive fraud on his former

employer for which he served prison time;

- (xxxiii) Paula was hard working and frugal. Don was ‘flash’ with his money and pursued expensive interests, including power boating, sailing and flying;
- (xxxiv) Before the Danish holiday, Don’s financial position became increasingly difficult as his overdraft and loan and credit card debt increased and his own buy-to-let property portfolio reduced to nothing;
- (xxxv) Paula was alive to Don’s less frugal ways, she controlled the joint account and there had been a re-organisation of the household finances, including the funding of the St. Mary’s Road refurbishment;
- (xxxvi) Despite these matters, Don explored yet more adventurous and expensive pursuits such as yachting, MIG29 flights and HALO jumps;
- (xxxvii) Don told Aqua and Mr Ennis-Cole shortly before Paula’s death that he expected to come into money soon;
- (xxxviii) Don allowed his own £1m Vitality life insurance policy to lapse but continued to pay annual life insurance premiums exceeding £5,000 for policies that, unknown to Paula, had been written on their joint lives;
- (xxxix) Those policies were procured by Don before they were even married, with £2.5m of cover written in 2013. He sought joint insurance against his adviser’s recommendation to give him control of the policies and keep their existence hidden from Paula;
- (xl) Nor did Don take up the critical illness recommendation, his sole concern being the financial consequences of death;
- (xli) Don selected multiple life insurers, necessitating higher premiums, but no medicals, again enabling him to keep Paula in the dark;
- (xlii) Finally, Don lied about the need for this insurance, the suggested pretext being debts, including mortgage liabilities, of nearly £3m, despite their actual liabilities never exceeding £1m and the mortgages concerned not requiring such cover in any event;
- (xliii) The writing of the further joint life insurance in 2016 (Royal London and Aegon) for a further £488,900 of cover followed a similar pattern, albeit

Paula did know about the Royal London policy, taken out ostensibly for the Whitefield re-mortgage;

- (xlv) As Don knew, the LV and SW policies written on Paula's life in 2016 for a further £800,000 in total were intended to benefit Ben. Despite this, Don caused himself to be interposed as trustee in 2017, including by forging Lynn Dale's signature;
- (xlvi) Don did so to ensure control over payment of the policy proceeds, with Paula not understanding the implications of his actions;
- (xlvii) Don's calls to the various joint life insurers from 2015 until shortly before Paula's death, often on some administrative pretext, were an obvious attempt to make sure that the insurance proceeds would be paid direct to him upon Paula's death rather than to her estate;
- (xlviii) Don also obtained travel insurance well in excess of his and Paula's needs. Having initially declined a multi-trip policy, he took one out only days later, with significantly greater cover for repatriation costs. He also paid for an upgrade to his Lloyd's account he could ill afford, albeit with the associated benefit of yet further travel insurance;
- (xlix) When Paula died, Don took far too long to inform the Leesons but, when he finally did, he gave Neville three different accounts of what had occurred, none consistent with what he had told the Danish police;
- (l) Paula had not been dead for 24 hours before Don transferred thousands of pounds from the Lloyd's joint account and engaged in a series of further banking and payment transactions to reduce his own liabilities;
- (li) Don lied to the Danish police, Neville and the GMP about what he knew of Paula's injuries. He was also anxious about what others might learn from the related medical investigations, even 'tapping' insurers for information;
- (lii) Don kept the Leeson family in the dark about the multiple joint life policies he had procured and against which he made claims following Paula's death; and
- (liii) Don attempted to use his position as trustee to benefit from the LV and

SW policy proceeds. He did so on the (false) pretext that these were intended to pay off mortgage liabilities. However, Don knew that they were intended for Ben alone.

425. Accordingly, as improbable as it may seem in the abstract for a husband to kill his wife, standing back and considering in the round the effects of the implications of the facts found in this case, I have no hesitation in concluding that Don unlawfully killed Paula in Denmark. With his financial fortunes waning by 2017, but his wanderlust growing more intense, Don decided that now was the time to cash in on the life insurance policies he had started to procure on Paula's life before they were even married and to which she was oblivious. With that design, he chose and booked a holiday he could ill afford at a cottage in a remote part of Denmark, knowing that there would be no other witness to his brutal actions. The photographs of them standing together on the last day of their holiday, both smiling, Don knowing that he was about to kill Paula, Paula oblivious to his homicidal intentions, are particularly chilling.

L. Adverse inferences

426. Finally, I consider the Claimants' submissions that the Court should draw adverse inferences from Don's failure to attend at trial and give evidence. As to when such inferences might appropriately be drawn, Lord Leggatt explained in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33 (at [41]) that:-

“The question of whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant

considerations should be assessed cannot be encapsulated in a set of legal rules.”

427. In the present case, I agree that positive significance should be attached to Don’s failure to attend trial to give evidence. Don was obviously a central and material witness, the only other person present when Paula met her death and the only person who could have provided an account of the circumstances leading to it. Moreover, Don vigorously defended the claim until shortly before trial. He voluntarily left the jurisdiction around December 2021, continuing to advance his defence through his solicitors and thereafter as a litigant in person. Don had been on notice of the trial date since August 2023. In correspondence before the pre-trial review, he confirmed his intention to travel to the UK to attend trial. Through Counsel, he confirmed the same at the pre-trial review itself.
428. Although Don did foreshadow potential issues with his legal representation at trial, as noted in my 15 April 2024 ruling, these were never satisfactorily explained. Nor, even if they had been, would they have prevented him from attending trial in any event. I was therefore satisfied that Don had deliberately absented himself from trial. In these circumstances, although not necessary given the firm conclusions I have already reached on the evidence, I agree that it is appropriate for the Court to draw inferences adverse to Don, so reinforcing my existing findings that (i) Paula did not enter the pool voluntarily or by accident and (ii) Don deliberately and unlawfully killed Paula by causing her to lose consciousness, enter the pool, drown and die.

M. Forfeiture - the law

429. Having found that Don unlawfully killed Paula, I now consider the legal consequences. The forfeiture rule is a well-established principle of public policy that a person who unlawfully kills another should not be allowed to benefit under the deceased’s will or intestacy or in any other way. As Toulson J (as he then was) explained in Law Commission Report (No. 295, July 2005) entitled “The Forfeiture Rule and the Law of Succession” (at [2.1]):-

“There is a well-established rule of common law that a person who has been criminally responsible for the death of another cannot take by succession on the death. This rule is often referred to as the ‘forfeiture rule’, and is a consequence of the principle of public policy that the law should not allow offenders to benefit from their own crime. The Forfeiture Act 1982, which modifies the effect of the rule, refers to the

forfeiture rule as meaning the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing. The rule clearly applies where the successor is guilty of the murder or manslaughter of the deceased, although the extent to which it applies to other crimes involving death is less certain.”

430. The rule is recognised (albeit not codified) in s.1(1) of the Forfeiture Act 1982 (Act) in the following terms:-

“In this Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.”

431. Section 1(2) of the Act continues:-

“References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other and references in this Act to unlawful killing shall be interpreted accordingly.”

432. Given my findings as to the manner of Paula’s killing, no question of inchoate action arises in this case. Don unlawfully *procured* Paula’s death. Moreover, a criminal conviction for the killing in question is not a pre-condition to the application of the forfeiture rule. Indeed, the rule has been applied in a number of cases where the killer then committed suicide, precluding any such conviction.

433. If the forfeiture rule applies, Don falls to be treated as having died immediately before Paula, whether for the purposes of distribution of her estate under the claimed intestacy (section 46A of the Administration of Estates Act 1925), alternatively under the 2014 Will (section 33A of the Wills Act 1837).

434. The effect of the forfeiture rule upon a joint tenancy has not been expressly decided by the English court. However, there are strong *dicta* that it must operate to sever in equity the deceased’s interest from the killer’s. So, in *Re K* [1985] Ch. 85 (at [100F]), Vinelott J strongly approved of the concession that the forfeiture rule, unless modified under the 1982 Act, applies in effect to sever the joint tenancy in the proceeds of sale of the former matrimonial home. The beneficial interest vests in the deceased (and thereby their estate) and the survivor as tenants in common. That decision was not disturbed on appeal.

435. The position indicated in *Re K* is supported by Commonwealth authority (see, for example, *Schobelt v Barber* [1967] 10 R. 349; *Rasmanis v Jurewitsch* (1969) 70 S.R. (N.S.W.) 407; *Re Pechar* [1969] N.Z.L.R. 574; and *Re Gore* [1972] I.O.R.

550).

436. Moreover, in *Dunbar v Plant* [1998] Ch. 412 (at [418B]), Mummery LJ endorsed the concession that the forfeiture rule operated to sever the beneficial joint tenancy in the house. Likewise, in *Chadwick v Collinson* [2014] EWHC 3055 (Ch) (at [5]), HHJ Pelling QC (sitting as a Judge of the High Court), readily accepted the severance in equity of joint property as approved in *Dunbar*. This analysis is also supported by the authors of *Williams, Mortimer & Sunnucks on Administration and Probate* (22nd ed) (at [64-15]).
437. I agree that upholding the objective of the forfeiture rule requires the person who unlawfully killed the deceased to be prevented from benefiting, including by way of survivorship with respect to property held under a joint tenancy. Given my finding that Don unlawfully killed Paula, I find that the operation of the forfeiture rule precludes him from acquiring any benefit under Paula's will, her intestacy or any property formerly held by her under a joint tenancy. Finally, I see no basis for the Court to modify the operation of the forfeiture rule under section 2 of the Act, nor has any been suggested by Don.

N. The Probate Claim

438. As noted, the Claimants also claim that the 2014 Will is invalid for want of due execution. They say that the will was signed by Paula and witnessed by Lynn Dale but that there was no-one else present when Lynn Dale signed and the signature and details of the alleged second attesting witness, "Brian McCauley", were dishonestly forged by the Don. As such, Paula died intestate, her earlier will dated 11 January 1990 having been revoked by operation of section 18(1) of the Wills Act 1837 upon her marriage to Don in 2014.

The legal framework

439. Section 9(1) of the Wills Act 1837 states (emphasis **supplied**):-

- (1) *No will shall be valid unless:-*
- (a) *it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and*
 - (b) *it appears that the testator intended by his signature to give effect to the will; and*
 - (c) *the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and*

(d) *each witness either:-*
(i) attests and signs the will; or
(ii) acknowledges his signature
in the presence of the testator (but not necessarily in the presence of
any other witness),
but no form of attestation shall be necessary.

440. This section therefore envisages the following sequence of events, including the requirement for temporal simultaneity of presence of testator and witnesses:-

- (i) The testator must sign the will first;
- (ii) Both attesting witnesses must be present at the same time when the testator signs or acknowledges their signature; and
- (iii) Each witness must be in the presence of the testator (but not necessarily each other) when they sign or acknowledge their signature. (Unlike a testator, a witnesses' signature cannot be given by another at the witnesses' direction.)

441. A will which on its face is duly executed with the presence of an attestation clause in proper form raises a strong, but not irrebuttable, presumption of due execution. In *Wright v Rogers* (1869) LR 1 PD 678, the survivor of the attesting witnesses of a will gave evidence a year later that the will was not signed by him in the presence of the testator. Lord Penzance said (at [682]) that the question was whether the Court could rely on the witness' memory:-

“The Court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail in the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof. Where both the witnesses, however, swear that the will was not duly executed, and there is no evidence the other way, there is no footing for the Court to affirm that the will was duly executed.”

442. In *Channon v Perkins* [2006] WTLR 425, the Court of Appeal held that the trial Judge had been wrong to treat the presumption arising from the existence of an attestation clause as having been rebutted even though both attesting witnesses gave evidence to the effect that they had not been present when the testator made his will. Both witnesses accepted their signatures appeared on the will but denied having any recollection of having signed the will. Arden LJ's judgment is of assistance to the Court in this case:-

- “43. So, in this kind of case, the court is faced with a situation where the execution of the will by the testator together with the attestation of his signature by the witnesses is regular on its face but one or both of the witnesses come to the court later and give evidence that it was not in fact duly executed.
44. Lord Penzance refers to the need for the “strongest evidence” before the court will hold that such a will was not duly executed. I accept that, as Mr Robert Arnfield, for the respondent, submits, the requirement for the strongest evidence does not mean that there could be no other evidence that could be stronger. If that were the meaning of the phrase used by Lord Penzance, there would be no case in which anything less than perfect recollection of execution in accordance of the attestation clause could satisfy section 9 of the Wills Act.
45. So the question of what constitutes the “strongest evidence” for the purposes of this kind of case remains to be explored. As I see it, there is a sliding scale according to which evidence will constitute the strongest evidence in one case but not in another. What constitutes the “strongest evidence” in any particular case will depend on totality of the relevant facts of that case, and the court's evaluation of the probabilities. The court must look at all the circumstances of the case relevant to attestation. The more probable it is, from those circumstances, that the will was properly attested, the greater will be the burden on those seeking to displace the presumption as to due execution to which the execution of the will and the attestation clause give rise. Accordingly the higher will be the hurdle to be crossed to meet the requirement of showing the “strongest evidence”, and the stronger that evidence will need to be.
46. Likewise, if the evidence of due attestation is weak, then the burden of displacing the presumption as to due execution may be more easily discharged and the requirement to show the strongest evidence satisfied. Allegations that were not made, or were not pursued, and mere suspicion, have to be put on one side.
47. I turn to another point. In paragraph 41 of his judgment the judge said:-
- “I do not think it is necessary for me to speculate as to how the signatures came to be upon that document. There are various possibilities but it is not necessary for me to make any finding on what would be no more than a surmise. ...
48. With respect to the judge, it seems to me it will in general be necessary for the court to consider the possible reasons why a witness who signed the attestation clause now avers that it was not signed in the way that the attestation clause states. If the explanation is simply lack of recollection, that on its own may not be sufficient to satisfy the court, but evidence from both witnesses that they were nowhere near the place of execution stated in the attestation clause on the particular date would be likely to carry more weight.
49. In evaluating all the evidence the judge must bear in mind the policy reason identified by Lord Penzance, namely that the court should not, by its decisions in this field, cause “the greatest uncertainty in the proving of

wills”.

The execution of the 2014 Will

443. In this case, the attestation clause to the 2014 Will was in the following form:-

SIGNED by the said **PAULA ELIZABETH LEESON**
in our presence and attested by us in the presence
of her and each other:

Paula Elizabeth Leeson

W	SIGNATURE	<i>L Dale</i>
I	FULL NAME	<i>Lynn Dale</i>
T	ADDRESS	<i>66 Broadock Rd</i>
N		<i>M22 9NF</i>
E	OCCUPATION	<i>Medical Secretary</i>
S		

W	SIGNATURE	<i>Brian McCauley</i>
I	FULL NAME	<i>57 Parkway</i>
T	ADDRESS	<i>Knutsford</i>
N		<i>Cheshire WA163HN</i>
E	OCCUPATION	<i>Builder</i>
S		

Q1

444. Accordingly, on its face the will was signed by Paula in the simultaneous presence of both Lynn Dale and Brian **McCauley** and, therefore, duly executed.
445. It is fair to say that Ms Dale’s recollection of witnessing the 2014 Will was limited. Having considered her statements (including her related statements to the GMP) and heard her oral evidence, I accept that the signature on the 2014 Will is hers and that she has no knowledge of a Brian McCauley.
446. Brian **McCauley** did not give evidence but he too gave statements to GMP (under risk of prosecution for false statements). His position was clear, namely that:-
- (i) he had never seen the 2014 Will before;
 - (ii) it was not his signature;
 - (iii) he has never lived at the address stated;
 - (iv) he was never asked by Paula or Don to sign any documentation or to give his permission to use his details for that purpose; and
 - (v) he does not know Paula well and there is no reason for her to contact him and to sign anything for her.
447. The Claimants’ forensic document examination expert, Ellen Radley, confirmed in her evidence that:-

- (i) There is very strong evidence that Brian McAuley did not write the signature or the details in the name of Brian McCauley on the 2014 Will, that level of confidence falling marginally below, and just short of, the conclusive level by which an alternative explanation is considered highly unlikely;
- (ii) There is very strong evidence that Paula did not write the signature and associated entries of Brian McCauley on the 2014 Will;
- (iii) There is very strong evidence that Don wrote the entries relating to Brian McCauley on the 2014 Will, including the idiosyncratic features between Don's handwriting and the entries on the will, such that it is considered highly unlikely that they were written by anyone else; and
- (iv) The signature and details of Brian McCauley on the 2014 Will are consistent with the signatures on Don's deed of trust for his Vitality policy being of common authorship.

448. Ms Radley was an impressive witness and I accept her evidence.

449. I also accept the Claimants' submissions that Don was predisposed to using Brian McCaul(l)ey as a false witness to his own official documents. I have already found that Don forged the witness signature on the change of name deed dated 15 May 2013 by which he changed his name from Donald Anderson to Donald McPherson (the witness signature for that written as "*Brian McCaulley*"). The name Brian McCauley also featured as a witness to the following documents:-

- (i) Don's deed of appointment and declaration of trust, both dated 25 March 2015, for his Vitality policy; and
- (ii) The HM Land Registry form TR1 dated 6 June 2014 for the sale of Don's buy-to-let property at 24 Ashfield Road, the address given for the Brian McCauley being Don's own address at 101 Fairywell Road.

450. I also accept Mark Dickens' evidence that he did not countersign Don's passport application dated 22 September 2011 and, therefore, that this too was forged by Don.

451. As noted Don was convicted for obtaining property by deception concerning forged cheques. He also admitted having access to forged documents.

452. Finally, it is clear that the intention was to make the 2014 Will and other documents referred to appear as if they had been witnessed by Brian McAuley but the name is clearly misspelt as Brian McCauley.
453. Despite Lynn Dale's limited recollection of execution of the 2014 Will and Brian McAuley not testifying in person at trial, I find that the above evidence, particularly the expert opinion of Ms Radley, Don's record of forgery and the crass misspelling of McCauley, represents the "*strongest evidence*" (within the meaning indicated in authorities such as *Wright* and *Channon*) that there was no due attestation of the 2014 Will under section 9(1) of the Wills Act 1837.
454. I therefore pronounce against the force and validity of the 2014 will and declare that Paula died intestate.
455. As noted, section 46A of the Administration of Estates Act 1925 provides that a person precluded from acquiring an interest in the residuary estate of an intestate is to be treated as having died immediately before Paula. As such, by reason of section 46(1)(ii) of the Administration of Estates Act 1925, Ben, as Paula's sole surviving issue, is the person with the beneficial interest in Paula's estate with priority to extract a grant of Letters of Administration pursuant to Rule 22(1)(b) of the Non-Contentious Probate Rules 1987 (as amended).

O. The Trusts Claim

456. By the Trusts Claim, the Claimants seek Don's removal as sole trustee of the trusts over the LV and SW insurance policies written on Paula's life.
457. Section 41(1) of the Trustee Act 1925 provides that:-
“(1) The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustees or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who lacks capacity to exercise his functions as a trustee, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.”
458. Section 58(1) of the Trustee Act provides that a claim under s.41 may only be made by a trustee or beneficiary. I accept that, as a beneficiary of the LV and SW trusts, Ben has standing under the statutory power (in addition to his application

under the Court's inherent jurisdiction). Willy advances his claim for removal under the Court's inherent jurisdiction.

459. Chief Master Marsh summarised the criteria for the removal of a trustee sought under the Court's inherent jurisdiction in *Harris v Earwicker* [2015] EWHC 1915 (Ch) (at [9]) in the following terms:-

- i. It is unnecessary for the court to find wrongdoing or fault on the part of the personal representatives. The guiding principle is whether the administration of the estate is being carried out properly. Put another way, when looking at the welfare of the beneficiaries, is it in their best interests to replace one or more of the personal representatives?
- ii. If there is wrongdoing or fault and it is material such as to endanger the estate the court is very likely to exercise its powers under section 50. If, however, there may be some proper criticism of the personal representatives, but it is minor and will not affect the administration of the estate or its assets, it may well not be necessary to exercise the power.
- iii. The wishes of the testator, as reflected in the will, concerning the identity of the personal representatives is a factor to take into account.
- iv. The wishes of the beneficiaries may also be relevant. I would add, however, that the beneficiaries, or some of them, have no right to demand replacement and the court has to make a balanced judgment taking a broad view about what is in the interests of the beneficiaries as a whole. This is particularly important where, as here, there are competing points of view.
- v. The court needs to consider whether, in the absence of significant wrongdoing or fault, it has become impossible or difficult for the personal representatives to complete the administration of the estate or administer the will trusts. The court must review what has been done to administer the estate and what remains to be done. A breakdown of the relationship between some or all of the beneficiaries and the personal representatives will not without more justify their replacement. If, however, the breakdown of relations makes the task of the personal representatives difficult or impossible, replacement may be the only option.
- vi. The additional cost of replacing some or all of the personal representatives, particularly where it is proposed to appoint professional persons, is a material consideration. The size of estate and the scope and cost of the work which will be needed will have to be considered.”

460. Accordingly, in addition to consideration of the welfare of beneficiaries, the inherent jurisdiction to remove a trustee is also exercised with a view to the security of trust property, the efficient and satisfactory execution of the trusts and the faithful and sound exercise of the powers conferred on the trustee. Although there is no threshold test of exceptionality, the Court will not remove trustees

lightly (see *London Capital & Finance plc v Global Security Trustees Ltd* [2019] EWHC 3339 (Ch) (at [25] and [60])).

The grounds for Don's removal as trustee

461. The Claimants say that it is expedient and necessary to remove Don as sole trustee and appoint a new trustee under section 41 or the Court's inherent jurisdiction on the basis of Don's unlawful acts, dishonesty and manifest unsuitability, inability to administer the LV and SW trusts and his conduct in respect of the trusts themselves. I have no hesitation in concluding that the case for removal of Don as trustee of the LV and SW trusts is overwhelming and that the Court should exercise its powers to that end, whether under section 41 or the Court's inherent jurisdiction, including for the following reasons:-

- (i) Don unlawfully killed Paula;
- (ii) Don is, therefore, disqualified as potential beneficiary, his only interest remaining as sole trustee;
- (iii) The remaining potential beneficiaries are Ben, Neville and Charlotte;
- (iv) To have the killer of the beneficiaries' respective mother, sister and aunt as trustee is inconceivable;
- (v) The breakdown in the relationship between the Leesons and Don is obviously terminal;
- (vi) Don has a well-established history of dishonesty offences;
- (vii) Don kills, lies, cheats and forges documents for his own personal gain;
- (viii) Don has lied to this Court;
- (ix) Don was himself instrumental in the establishment of the LV and SW trusts with a view to his own personal gain to the detriment of Ben, the intended beneficiary;
- (x) Don took those steps without Paula's understanding of the implications and with a view to countermanding her intentions as settlor;
- (xi) Following Paula's death, Don then took steps to participate in the proceeds of the LV and SW policies on the false pretext that the policies were

intended for the discharge of mortgage liabilities. That was a lie;

- (xii) Don has since presented himself as impecunious and will have a strong incentive to misapply the trust funds;
- (xiii) Don has voluntarily left the jurisdiction and his communication with the Claimants' solicitors and the Court has been sporadic;
- (xiv) As a litigant in person, Don made seven applications which were dismissed as totally without merit;
- (xv) Don made the deliberate decision not to attend trial; and
- (xvi) Don has presented himself as itinerant and having limited ability to communicate from the different countries to which he has travelled.

462. For any one or more of these reasons, Don is manifestly unsuitable to act as trustee. Having Don continue in that role would imperil the £800,000 held on the LV and SW trusts. Don should be removed as trustee and replaced by Ben.

P. Relief

463. Having reached the above conclusions, the following relief is warranted and appropriate in this case:-

- (i) A declaration that Don unlawfully killed Paula;
- (ii) A declaration that, by reason of Don's unlawful killing of Paula, he has forfeited any benefit under Paula's intestacy, the 2014 Will or otherwise arising from Paula's death;
- (iii) An order for an account of all benefits received or to be received by Don in consequence of Paula's death;
- (iv) An order that Don return or restore, or answer or account to Paula's estate for, any property or benefits received or to be received by him in the future in consequence of Paula's death, including but not limited to (the following figures being common ground between the parties):-
 - (a) £134,871.20, representing 50% of the net proceeds of sale of Whitefield;
 - (b) £80,190.00, representing 50% of the net proceeds of sale of St

Mary's Road;

- (c) £37,978.66, representing 50% of the balance of the Lloyd's joint account at the date of Paula's death;
 - (d) £3,758.56 and such further sums paid to Don under Paula's NHS pension; and
 - (e) any sum or benefit received or to be received under the joint life insurance policies and/ or the travel insurance policies.
- (v) An order pronouncing against the force and validity of the 2014 Will;
 - (vi) A declaration that Paula died intestate;
 - (vii) An order granting Letters of Administration of Paula's estate to Ben;
 - (viii) An order under section 41 of the Trustee Act 1925 and/ or the Court's inherent jurisdiction, removing Don as trustee of the LV and SW trusts; and
 - (ix) An order for Ben's appointment as replacement trustee of the LV and SW trusts.
464. I would ask the Claimants to prepare a draft Minute of Order encapsulating this relief and any consequential matters arising that can be agreed. If there are any such matters that cannot be agreed between the parties, I will hear from the Claimants and, if he now chooses to participate, Don, at the hearing for the hand down of this judgment.

Q. Concluding remarks

465. I cannot begin to comprehend the pain and heartache that the Leesons have experienced as a result of Paula's death, particularly in the appalling circumstances of her unlawful killing at the hands of Don. I thank them for the enormous dignity they have shown during these proceedings.