



Neutral Citation Number: [2018] EWHC 317 (Ch)

Case No: C3BS914 / C30BS666

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN BRISTOL**  
**PROPERTY TRUSTS AND PROBATE LIST**

Bristol Civil Justice Centre  
2 Redcliff Street  
Bristol BS1 6GR  
Date: 23/02/2018

**Before :**

**THE HON. MR JUSTICE BIRSS**

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**Between :**

<b>LUCY ANN ANDREWS HABBERFIELD</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>JANE SARAH ANDREWS HABBERFIELD</b>	<b><u>Defendant</u></b>

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**Leslie Blohm QC** (instructed by **Stephens Scown**) for the **Claimant**  
**Richard Wilson QC** (instructed by **Wilson's**) for the **Defendant**

Hearing dates: 17th, 18th, 22nd, 23rd, 24th January 2018  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**THE HON. MR JUSTICE BIRSS**

## Mr Justice Birss:

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### *Introduction*

1. This is an action about a family farm called Woodrow which is close to Yeovil in Somerset. The claimant Lucy Habberfield is one of four children of the defendant Mrs Jane Habberfield and her late husband Mr Frank Habberfield. I will refer to the various individuals in this case by their given names without meaning any disrespect to them. Frank was born in 1930 and Jane was born in 1936. They married in 1957. Woodrow Farm was purchased in 1961. Initially farmed by a partnership of Frank and his two brothers, in 1975 the farm was transferred to Frank and Jane. From then on the farming business was a partnership between Frank and Jane. Lucy has three older siblings: Emily (generally referred to as Emma), Andrew and Sarah.
2. Today Woodrow Farm as a whole includes further land, in particular 104 acres of land at Mudford which was bought in 1989. The total acreage is now about 220 acres. The holding, including the business and all the land and buildings including the farm house, is worth about £2 ½ million. Unless it is necessary to draw the distinction, from now on I will refer to the whole farm including the land at Mudford as Woodrow.
3. Lucy claims to be entitled to the whole farm or to such lesser share of it as the court thinks fit. The claim is brought based on proprietary estoppel and alternatively as a claim under the Inheritance (Provision for Family and Dependents) Act 1975. Jane denies the claim in its entirety.

4. Lucy's case that she devoted her working life to the farm because her father assured her that she would eventually take it over when he retired. Lucy was born in 1967. She started full time work at the farm in the early 1980s when she left school. Her particular focus was the dairy herd and dairy farming. In 1998 she met her partner Stuart Parker and in 1999 the couple moved into a house called Bryony about ½ mile from Woodrow. Their eldest child Tom was born in 1999 and they have four children. Lucy continued to work at Woodrow when she had a young family and was helped by Stuart, who had a full time job on another farm. In 2007 he left that other job and worked full time at Woodrow. Lucy left Woodrow in 2013 following a fight in the milking parlour with her sister Sarah.
5. Jane's case is that no such assurance or promises were made. She did not make any and denies that Frank did either; but even if he did, Jane was not aware of it and cannot be bound by them. In any event even if the assurances alleged are proved, they are insufficient to found a basis for proprietary estoppel. Detriment is denied on the basis that Lucy has exaggerated her work on the farm and her contribution and minimised the work by her siblings and the employees. She also received benefits such as accommodation at the farm before she moved out to live with Stuart and, after her children were born, childcare from their grandmother Jane. Causation is also denied. Even if a case is made out, it is submitted that to pass the entire farm to Lucy would be disproportionate. At best a modest cash payment would satisfy any equity established.
6. Frank died in April 2014. Since Frank and Jane held the property as beneficial joint tenants, that meant that from Frank's death Jane was the sole owner of Woodrow. In any case, by his will, which was made in 1998, Frank left his entire estate to Jane.
7. Milk production at Woodrow ceased in 2015 and since then the farm business has been based only on beef cattle and arable. The work is carried on by Sarah, her husband William Cobden and their 19 year old son James. Today James lives at Woodrow.
8. The Inheritance Act proceedings were commenced in August 2015 as a Part 8 claim in Exeter County Court. The claim form of the action based on proprietary estoppel was issued on 29<sup>th</sup> June 2016. The county court action was transferred to the High Court and the two have proceeded together and been managed together. The matter came on for trial in the Bristol Civil Justice Centre starting on 17<sup>th</sup> January 2018. Before me Lucy was represented by Mr Leslie Blohm QC instructed by Stephens Scown. Jane was represented by Mr Richard Wilson QC instructed by Wilsons.

*The witnesses*

9. The main witnesses for the claimant were Lucy herself and Stuart. I also heard evidence from further witnesses called by the claimant:
  - i) Neville Loder, a local dairy farmer who has known Lucy as long as he can remember.
  - ii) Suzanne Loder, who is married to Neville and did some relief milking at Woodrow in the mid 1990s.

- iii) Marguerite Skinner, a professional hairdresser who has been Lucy's friend and hairdresser for 25 years.
  - iv) Robert Symms, a farmer based about 2 miles from Woodrow at Adber. His is a mixed farm. He has known Lucy and Stuart for many years. Stuart started working for him as a Saturday boy when he was 13 years old until he left in 2007 to go full time at Woodrow.
  - v) Jeffrey Stamp, a farm worker. He and Lucy had a relationship in the 1980s for 4 or 5 years.
  - vi) Rod Cherry, a nutritionist and feed supplier who dealt with Frank and Lucy regularly since the mid 1990s and got to know them well.
  - vii) Michele Harding, a supplier of bull semen used for artificially inseminating the dairy cows. For a period of 18 months in the mid 1990s she visited Woodrow frequently aiming to sell Lucy and Frank semen for the herd.
10. All of the claimant's witnesses were cross-examined. The claimant's seven further witnesses listed above were thoroughly honest and doing their best to assist the court. None of them has any reason to do other than tell the truth. That does not mean I do or should accept everything they have said as accurate, since memory is fallible and a witness's impression of what happened may be mistaken. I will address my findings about Lucy and Stuart together with the other the main family witnesses below.
11. The main witnesses for the defendant were Jane herself, Sarah, William and Andrew. They were cross examined. The defendant also relied on evidence from Emily and James. They were not cross-examined and their witness statements stand. Further witnesses called by the defendant were:
- i) Martin Taylor, of Old Mill accountants. He and his predecessor Ian Sharpe acted as the accountants for the partnership for many years, until 2014.
  - ii) John Sprake, Jane's brother. He is a retired farmer based near Sherborne.
  - iii) Peter Gosney, a retired aircraft fitter. He knew Frank for over 55 years and worked on the farm at weekends for much of that time.
  - iv) Brian Brooks, a retired agricultural worker. He worked at Woodrow from 2001 until his retirement in 2013.
  - v) Len Parsons, a retired farmer now living in South Perrott, Dorset. He is a long standing friend of the family and helped Frank to teach Lucy dairy farming in the 1980s.
  - vi) Shane Buckle, he was a farm worker but now works in Beaminster. He has known both Lucy and Jane since 1995 and worked at Woodrow until 2001. His departure from Woodrow coincided with Stuart starting to do more work at Woodrow.

- vii) Angela Davis, a relief milker and race horse trainer. She worked as a relief milker at Woodrow in 2010 (the date in her witness statement was corrected in chief and corrected again in cross-examination).
  - viii) Graham Davis, a dairyman, married to Angela. He worked as a relief milker at Woodrow (and scraped the yard) from around 2005 until 2010.
  - ix) Jonathan Cabot, a building contractor. He had a relationship with Sarah for five years from about 1982 and in that period spent a great deal of time at Woodrow.
  - x) Jonathan Dowding, a dairy farmer at Lower Vagg Farm at Chilthorne Domer, Yeovil. He has known the family since 1980.
12. The defendant also served a witness statement from Andrew Robinson. He is a chartered surveyor and became involved in 2008, giving advice to Frank and Jane about succession at Woodrow. Much of the detail about what happened concerning succession in 2007/08 is disputed. What took place bears on the merits of the case but also on the credibility of the most important witnesses. Mr Robinson had been due to come to court to give oral evidence but became unable to attend as a result of serious health problems and the defendant served a Civil Evidence Act notice on his witness statement. It was not objected to.
13. My impressions of the ten further witnesses called by the defendant and listed above is that they were thoroughly honest and doing their best to assist the court. None of them has any reason to do other than tell the truth. Again, that does not mean I do or should accept everything they have said as accurate for the same reason as I gave above.
14. In his witness statement Mr Gosney was very negative about Lucy's character and behaviour especially towards Frank, although he accepted that everyone, including Lucy, had a good and a bad side. As the previous paragraph already accepts, Mr Gosney was giving his evidence honestly. However his is a good example of honest evidence I do not accept in its entirety. It was unbalanced. In my judgment a likely explanation for the way Mr Gosney expressed his views is a generational one, concerning the degree of deference Mr Gosney felt children should show their parents.
15. I turn to my impressions of the main witnesses. Counsel's submissions about the evidence of Lucy, Stuart and Jane were diametrically opposed. The claimant's counsel submitted Lucy and Stuart were good witnesses and told the truth in court, while Jane's evidence was wholly unimpressive even making allowances for her age and the stress both due to the trial and which she has suffered recently with Frank's ill health and the breakdown of relations in the family. The defendant's counsel's submissions were the opposite: Lucy was a thoroughly unreliable witness who rarely gave a simple answer to a simple question and gave a misleading and exaggerated account of her work at the farm; Stuart's evidence was unsatisfactory and unreliable, particularly bearing in mind an episode in which he had lied to HMRC; and Jane was a good, clear and honest witness despite her age and consequent failing memory.

16. Given the importance of the credibility of these three witnesses, I will address this issue as carefully as I am able.
17. I have well in mind that Lucy and Stuart stand to gain significantly from the success of Lucy's claim. However I do not accept the defendant's counsel's submission that Lucy rarely gave a simple answer to a simple question. Not surprisingly all three of Lucy, Stuart and Jane found the trial and process of giving evidence difficult. All three became emotional at times and on occasions they had to pause to compose themselves.
18. My impression of Lucy was that this took place particularly when the questions went to matters which caused Lucy to remember her father and his death. Lucy was clearly devoted to her father. Her answers to questions did not appear to me to be attempts at evasion.
19. The episode concerning Stuart and HMRC matters for two distinct reasons, one as going to Stuart's general credibility and second on a point about the number of hours Stuart actually worked. There was a tax investigation into Woodrow in 2011. HMRC interviewed Frank and Stuart. Stuart's evidence was that before the inspectors arrived Frank briefed him to downplay the number of hours he worked. It mattered because the inspectors were concerned that he might be working for below the minimum wage. In cross-examination Stuart accepted that he had lied to HMRC and therefore he was prepared to lie on important occasions. Stuart accepted that but maintained that he had taken an oath and would not lie in court. I will return to that after addressing the dealings with Mr Robinson.
20. In cross-examination Jane would sometimes explain that she did not now remember things. As a person in her early 80s, that is not surprising and is entirely credible. Although generally composed, Jane also became emotional on occasions, particularly when the question of contact with her grandchildren was mentioned. In general Jane gave clear and articulate answers, correcting points of detail, such as whether a farm in Taunton which had been looked at in 2007 as a possible tenancy for Sarah and William (and for Lucy and Stuart) had been a Council or Crown tenancy. However in response to some important questions Jane would give a vehement answer that she couldn't remember, referring to have been through so much and to her age. A telling instance of this was when the claimant's version of the dealings with Mr Robinson was put to her, although at one point Jane also said that she remembered Lucy receiving a telephone call at Woodrow and "blew up" when she heard the proposal.

#### *The dealings with Mr Robinson*

21. It is clear that in early 2008 Frank and Jane had a discussion with Andrew Robinson about a possible plan for succession at Woodrow. He had been introduced to them by his partner Mark Northcott of the firm Symonds & Sampson in Wimborne. He was to offer a fresh perspective and was asked to give advice. A letter from Andrew Robinson to Frank and Jane dated 8<sup>th</sup> February 2008 records his advice. The letter was not shown to the children. The advice includes a proposal for a new limited partnership to run the business and refers to Frank and Jane having made clear that it was their desire that Lucy should end up being the owner of the overall farming unit including the farm house and farming stock. This would only happen on the latter of the deaths of Frank and Jane. The couple also wished to provide for their other

children and the proposal refers to passing a barn and agricultural occupancy building plot to Andrew during their lifetime and bequests for Emma and Sarah in the form of amounts of money raised against the value of the farm.

22. It is clear that a proposal along the lines of the letter was communicated to Lucy although what was actually proposed in relation to the partnership is not the same as the content of the letter. Lucy rejected what was proposed to her but at this stage the point is not what was proposed but how it happened, because there is an acute factual dispute about how the communication took place. According to Lucy and Stuart there had been a previous meeting in late 2007 or early 2008 between themselves, her parents and Ian Sharpe, the accountant at Old Mill, at which Lucy and Stuart were told that her parents were seeking tax advice about how the farm was to be transferred to her. Their evidence on this goes further than the pleaded case on this point (it is the tenth pleaded representation). In any event, they say that there was then a meeting at Woodrow in early 2008 between themselves, Frank and Jane and Mr Robinson. They say that at that meeting, Mr Robinson outlined the proposal to Lucy and Stuart. Frank and Jane sat and said nothing. Lucy says she put her head in her hands, saying that it was not what had been agreed. Stuart says he felt like a scolded schoolboy who had been put in his place.
23. The case put to Lucy and Stuart in cross-examination was that this account of what happened was invented and untrue. It was put that her mother said the meeting at Old Mill never happened and that there was no meeting at Woodrow attend by all five of Mr Robinson, Frank, Jane, Lucy and Stuart. The true way the proposal had been communicated to Lucy was put as being by Mr Robinson telephoning Lucy and speaking to her.
24. Stuart remained out of the court room throughout Lucy's cross-examination. Despite counsel's firm but entirely proper cross-examination both Lucy and Stuart maintained their version of events. Their accounts only differ in a manner consistent with their being given from an individual's own perspective. It was accepted that a telephone call from Mr Robinson had taken place but Lucy said it was a follow up after the meeting. Stuart thought he had received the call.
25. Counsel for the defendant pointed out that the claimant had not called three witnesses who could corroborate her story, in particular Mr Sharpe who was not only the accountant for the partnership at Woodrow but was also Stuart's accountant. The other two witnesses not called who could corroborate part of Lucy's account of this episode were John Snell and Jane Parsons. Lucy said that she had discussed the advice received at Old Mill with John Snell and that she had told Jane Parsons she was going to the meeting at Woodrow. None of these witnesses were called. Stuart said that he knew Mr Sharpe had been asked but he hadn't responded. Lucy said Mr Snell did not want to be involved. Counsel pointed out that the burden of proof lay with the claimant and the failure to call these witnesses led to the obvious inference that they would not support Lucy and Stuart's account.
26. In her witness statement Jane denies that a proposal of the kind Lucy says was made at the Old Mill meeting was ever made. The only relevant meeting she describes is one between herself, Frank and Mr Robinson. Mr Robinson's witness statement describes an initial meeting with Frank and Jane in the firm's Yeovil office, explains his advice was as set out in the letter and also mentions advice that Stuart could be

introduced into the partnership at a later stage. He says that he telephoned Lucy to deliver the message, says he does not remember the details of the case but does remember that Lucy was not at all pleased and refused to accept his suggestion. He refers to a letter dated 18<sup>th</sup> March from him to Frank and Jane which refers to a “conversation last Friday” which seems to have resulted in Lucy giving her notice. Lucy denies she gave her notice at that stage and there is no doubt she and Stuart did remain working at Woodrow from then until 2013. There was a point taken on the grammar of the 18<sup>th</sup> March letter but I am not persuaded it is clear enough to support either party.

27. Three sheets of paper (a note, a request for payment and an accounting record) which emerged as late disclosure show that there seems to have been a meeting between (at least) Frank, Jane and Mr Sharpe in December 2007 at Old Mill concerning a possible share farming agreement as well as a reference to “tax implications” and to Mr Northcott and Mr Robinson. These documents are consistent with Lucy and Stuart’s account that a meeting of some kind happened but they do not prove that Lucy and Stuart were present and that Jane is wrong.
28. There is also a letter of 25<sup>th</sup> April 2008 from Mr Robinson to Frank and Jane which refers to letting matters lie for the time being and includes an offer by Mr Robinson if required to have “a further meeting with you and the relevant members of the family”. In cross-examination counsel suggested this supported the idea that Mr Robinson had already had a meeting with Frank and Jane and the relevant members of the family (i.e. at least Lucy and Stuart). It could bear that meaning but it is not clear cut.
29. Finally there is an invoice dated 12<sup>th</sup> May 2008 for Mr Robinson’s work in early 2008. This includes entries for receiving instructions and an initial meeting in Yeovil between Mr Robinson, Frank, Jane and Mr Northcott. However it also includes the following two entries:
  - To: attending at Woodrow Farm in March, to discussing the matter with yourselves and your daughter Lucy both to receiving a rejection of the proposals.
  - To: a telephone discussion thereafter but to the matter not progressing.
30. These entries do support Lucy and Stuart’s account and contradict the case put against them that there was no meeting at Woodrow which included Frank Jane, Lucy and Stuart and Mr Robinson. Looking again at Mr Robinson’s witness statement, the fact is that he has not been cross-examined, although that is no fault of the defendant’s. Mr Robinson’s statement does not say in terms that no such meeting took place, but he does say that he telephoned Lucy to deliver the message along the lines of his advice letter, which cannot be completely accurate if Lucy and Stuart’s evidence is accepted. His statement does not refer to the invoice so I do not have the benefit of knowing what he would have said if it had been put to him.
31. Standing back and considering all the evidence, including the witness statements, the oral evidence, the absence of corroborative witnesses called by Lucy and the documents, in my judgment Lucy and Stuart have told the truth about their meeting with Mr Robinson. They independently maintained their testimony and it is

supported by the invoice. I cannot give Mr Robinson's statement sufficient weight to overcome that. I reject Jane's contradictory evidence about the meeting not including Lucy and Stuart. I conclude that the evidence given by Lucy and Stuart about the dealings with Mr Robinson has been essentially honest and truthful.

32. I find that their evidence as a whole has been honest and aiming to tell the truth as they see it. Stuart's willingness to mislead HMRC at Frank's behest does not establish that he has sought to mislead this court. As with the other witnesses, that does not mean that they are correct about everything they have said but that is a different issue. One thing is worth mentioning at this stage. Lucy denied she has a temper. There was clear evidence from a number of witnesses that all the Habberfield family had a temper. It is an accurate description of Sarah, Andrew and Jane but also and in particular of Lucy (I refer to Mr Gosney). It is plainly so and has been that way for very many years. However, contrary to the submission of counsel for the defendant, Lucy's refusal to face up to her own personal failings like that does not impugn her reliability as a witness. Many honest people have difficulty accepting how they appear to others.
33. I find that the events relating to Mr Robinson took place as recounted by Lucy and Stuart. If Jane did see Lucy receive a telephone call from Mr Robinson, that was a follow up call and does not mean the meeting took place in the manner Jane contends. I also accept Lucy and Stuart's account of the prior meeting at Old Mill. The documents related to that do not lend much support for their testimony but in any case in my judgment they have told the truth. I do not accept Jane's evidence to the contrary that no such meeting at Old Mill took place.
34. I have not accepted Jane's contradictory evidence but I go further than that. The questioning about the meeting at Woodrow with Mr Robinson was one of the occasions when in cross-examination Jane gave vehement evidence about not remembering important matters. I am not prepared to accept that denial. It was a particularly significant occasion for both her and her husband and, given Jane's clear memory of other matters, I believe her answers there were seeking to avoid the issue and close down an awkward line of questioning. I will not place weight on her evidence unless it is supported by other witnesses or documents or amounts to an admission.
35. Turning to the remaining witnesses, Sarah, William and Andrew.
36. The claimant's counsel rightly did not criticise the evidence of Sarah or William. In my judgment they were both honest witnesses. Nevertheless they are not neutral either. They are now responsible for farming at Woodrow with their son James and if the farm is passed to Lucy, they will lose considerably. Lucy clearly blames Sarah to a significant extent for all that has happened and conversely Sarah blames Lucy and Stuart. Lucy also believes that Sarah and William had been given (or taken) numerous calves from Woodrow over the years without their being paid for. I reject that. Mr Gosney described Lucy as not being able to get into her head that Frank was not simply giving Sarah half a dozen calves a year (as opposed to charging for them). In my judgment Lucy was wrong about this. I find the calves were properly paid and accounted for. It indicates that the tension between Lucy and Sarah has gone on for a very long time and that by no means all the blame lies with Sarah.

37. On the other hand there is an aspect on which I do not accept that Sarah's and William's evidence is entirely accurate. That relates to a meeting at Woodrow with Martin Taylor in 2013. Mr Taylor was the accountant at Old Mill who took over the work from Mr Sharpe. The meeting related to the financial state of the farm business. Sarah and William maintained that an important part of this episode involved the question of Lucy and Stuart at that time being paid too much from the business for their work on the farm and a recommendation that they should be paid less. Their witness statements do not put it in quite that way but that was their oral evidence. However the record of the meeting made by Mr Taylor does not mention that and indeed refers to future pay increases. Mr Taylor did not remember the question of Lucy and Stuart being paid too much arising either. His recollection of the meeting was that it was a difficult one and that Sarah throughout made negative comments on the running of the farm about Lucy and Stuart. Mr Sprake attended the meeting representing Frank, who was ill in bed (and a fair point by the defendant is that Mr Sprake's attendance is not recorded in the meeting note). In his oral evidence Mr Sprake said that he did raise a concern about high amounts being paid to Lucy and Stuart. He has no reason to make that up and I accept his testimony however, having heard Mr Sprake, I find that while he mentioned it, the idea that this was a major aspect of the meeting would not be correct. What has happened is that Sarah and William, who clearly blame Lucy and Stuart for all this and do believe that Lucy and Stuart were being paid too much in 2013, have magnified the significance of that issue at that time. To a lesser extent so too has Mr Sprake.
38. Finally I turn to Andrew. When he was 17 years old Frank and Jane made a proposal to him that they would rent a farm called Greenfields and he would farm it. To Frank's evident disappointment he refused. Andrew's interests lay in machinery. While he has lived at Woodrow all his life and has helped out at the family farm throughout that period, he also has built up a machinery and contracting business using premises at Woodrow.
39. In late 2014, after Lucy and Stuart had left and Frank had died, Andrew instructed his own solicitors (Stokes Partnership) to act for him. They wrote to his mother's solicitors (Wilsons). One letter (dated 27<sup>th</sup> November 2014) refers to the situation at Woodrow as intolerable and to Sarah's family and Jane ganging up to bully their client Andrew. It refers to Sarah "inveigling" herself into favour with Jane and as this being not only the cause of the fall out between Andrew and his mother but as leading to the departure of Lucy and Stuart. The letter advances a proprietary estoppel claim (and 1975 Act claim) on Andrew's behalf, related in particular to certain barns at Woodrow and their surrounding land. The idea of Andrew being given such a plot fits with the content of Mr Robinson's advice letter of 8<sup>th</sup> February 2008.
40. In the 27<sup>th</sup> November 2014 letter Andrew's solicitors assert a case that Frank would typically justify the low wage paid to Andrew on that basis that "they can't have it now and then". That statement corroborates part of Lucy's evidence that when she complained in the late 1980s that both her and Andrew were being paid the same amount of money but Andrew was (says Lucy) working a fraction of the hours she worked on the farm and was also earning from his machinery business and using farm electricity for it, she was told by Frank "I couldn't have it now and in the future", which she says she and Andrew both knew meant that if she wanted Woodrow farm then she had to make sacrifices.

41. It appears that relations between Andrew on the one side and Jane and, I presume, Sarah on the other side have improved since these letters were written and Andrew was called as a witness by the defendant.
42. The 27<sup>th</sup> November 2014 letter and another letter from Andrew's solicitors which referred to there being as much of a dispute between the siblings as between the children and their mother, were put to him in cross-examination. He said that "we were just as bad as one another" and said "Mum asked would I like to move out. I declined a little bit" and "I was being a bit stubborn". When asked about the statement "they can't have it now and then", he said he didn't quite understand. When asked if he had an expectation that he and Lucy would inherit the farm, he said he had never really looked at it like that and never thought about what he was going to be left by his parents. He said people can think what they like and he had earned his own money.
43. Andrew was asked about his use of the farm's fuel for his own business. He said his father said: "you've done work here, help yourself to fuel".
44. Andrew's solicitors' letters were put to him in cross-examination on the basis that the content of the letters must have come from what he told his solicitors. He did not find it easy to answer these questions, saying at one point, "I don't quite understand". In my judgment Andrew did understand the point being made and was simply unable to think of anything he could say. He understood that based on what he had told his own solicitors, they had advanced points on his behalf which provide some support for Lucy's case, but that since he is now reconciled at least to a degree with Sarah and Jane, that is unhelpful to them. I find that the content of Andrew's solicitors' letters was based on Andrew's instructions. I do not rule out the possibility that there might have been contact between Lucy and Andrew at that time but that was not explored before me.
45. When Andrew discussed his dealings with his father his account would attribute to Frank statements which in my judgment were transactional in nature. What I mean by that is that they are in the form: you are or will be entitled to something from me in return for what you have done for me. An example was the statement about the fuel and another is the one set out in the letter of 27<sup>th</sup> November 2014 justifying low wages. Andrew's evidence in this respect had a ring of truth and I believe he has accurately described an aspect of the way Frank ran the farm and maintained the strong control of the family and the business over the years which a number of witnesses described.
46. I do not believe Andrew sought to mislead in giving his evidence but I am not satisfied I can rely on it as supporting the defendant's case.

*The law*

47. There was no dispute about the law relating to proprietary estoppel. A convenient starting point is Lord Walker's formulation in *Thorner v Major* [2009] 1 WLR 776, HL:

"29. My Lords, this appeal is concerned with proprietary estoppel. An academic authority (Simon Gardner, *An*

*Introduction to Land Law* (2007), p 101) has recently commented: “There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither).” Nevertheless most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance: see *Megarry & Wade, The Law of Real Property*, 7th ed (2008), para 16–001; *Gray & Gray, Elements of Land Law*, 5th ed (2009), para 9.2.8; *Snell's Equity*, 31st ed (2005), paras 10–16 to 10–19; *Gardner, An Introduction to Land Law* (2007), para 7.1.1.”

48. A point in this case is that Lucy’s case is not based on many clear cut events at which clear statements were made. Lord Walker also addressed the necessary degree of clarity in *Thorner v Major* itself:

“56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* [1994] CA Transcript No 479 (in which the mother's ‘stock phrase’ to her son, who had worked for low wages on her farm since he left school at 15, was ‘You can't have more money and a farm one day’). Hoffmann LJ stated, at para 16:

‘The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made’.”

49. Counsel for the defendant referred to the recent judgment of HHJ Matthews in *James v James* [2018] EWHC 43 (Ch), which was given during the trial. At paragraph 24 the judge draws a distinction between a statement of current intention as to future conduct and a promise of that conduct, let alone a promise intended to be acted upon. I respectfully agree with the judge that such a distinction exists. Its significance is likely to depend on the facts of the case.
50. Many of the alleged assurances relied on by Lucy in this case were made by Frank and the question arises of the extent to which Jane can or should be bound by them. In *Fielden v Christie-Miller* [2015] EWHC 87 (Ch) Sir William Blackburne had to consider the extent to which a representation by one of a number of co-owners of land can bind the other co-owners. At paragraph 26 he put it this way:

“[counsel's] fundamental proposition that where estoppel is in issue it is sufficient merely that the claimant asserting the estoppel believes that the person with whom he is dealing has the authority needed and that it is sufficient that the agent has the appearance of authority with nothing to suggest to the claimant that he does not is not one with which I am able to

agree. Elementary fairness requires that before a person can be bound by the acts of another purporting to act on his behalf, that other must have his authority to bind him in the matter. Whether he has will depend on the usual principles of agency. This applies, in my judgment, as much in the field of estoppel as it does in other contexts. In the language of estoppel, there is nothing unconscionable in a person denying what another has come to believe and acted upon to his detriment if that person has not, either himself or through his agents, allowed the other to reach that belief.”

51. I respectfully agree with Sir William Blackburne. As beneficial joint tenants Jane and Frank held Woodrow under a trust of land for themselves. Therefore for any estoppel to arise which binds Jane, any representation must either have been made by her or made with her authority.
52. Although for the purposes of analysis one can identify distinct elements of representation, reliance and detriment, cases have cautioned on taking an approach which is too compartmentalised (see Davies v Davies [2016] EWCA Civ 463 paragraph 3 per Lewison LJ). Similarly in Gillett v Holt [2001] Ch 210 at p255C-D Walker LJ warned against subdividing proprietary estoppel into watertight compartments and explained that preventing unconscionable conduct permeates all elements of the doctrine. Bearing this in mind I will take an integrated chronological approach to what happened.

*1980s to late 1990s - Restarting dairy farming at Woodrow*

53. There was dairy farming at Woodrow in the 1960s but Frank disposed of the dairy herd in the early 1970s and from that time the focus of the farm was on beef cattle. Dairy farming started again at Woodrow in 1982 or 1983. By then Frank had a bad shoulder and could not have taken on the dairy work without an able-bodied person. In 1982 Lucy was 15 years old and still at school. All four children had helped on the farm when they were schoolchildren but when Lucy left school at 16 in 1983 she went to work at Woodrow. Lucy had no other job. The issue of hours worked will be addressed below. There was a suggestion that Lucy did not start full time at Woodrow until the late 1980s (about 1988) but I find that this characterisation of Lucy as full time from a later date was driven by tax and accounting questions. In practice from 1983 Lucy’s full time job was working at Woodrow.
54. Lucy’s work on the farm was then and afterwards focussed on dairy farming.
55. There was some suggestion that Lucy left school at 16 (rather than for example staying on or obtain further qualifications) in return for a promise that if she worked on the farm she would inherit it in the long run. It was not pleaded clearly but in any event the evidence for it was insubstantial. Although Lucy’s pleaded case in the Particulars of Claim contends that the representations relied on were made in a period which starts in “about 1980” and would therefore include her time at school, in cross-examination Lucy accepted that the representations relied on must have happened not before 1983 (or in one instance not before 1982). I find that no operative assurance was made to Lucy before she left school.

56. Nevertheless it is manifest that Lucy's interest in dairy farming, her willingness to take it on and the discussions about it with her father were fundamental to the restarting of dairy farming at Woodrow. Frank acquired a dairy herd and restarted dairy farming because he had a daughter who expressed genuine enthusiasm for taking on the work that this would involve. I accept Lucy's evidence that the milking parlour was called "Lucy's parlour" when it was set up to be the milking parlour in 1982/83. In the early years Frank taught his daughter how to be a dairy farmer. They clearly had a close personal bond. I am sure Frank loved sharing his passion for dairy farming with his daughter. Len Parsons also assisted, teaching Lucy how to trim the cows' feet and de-horn the calves.
57. Any animal husbandry involves a significant time commitment and responsibility since the animals may need looking after at any time of the day or night on any day of the year. All the same, a number of witnesses gave evidence that dairy farming is hard by the standards of farming generally, in other words by comparison with beef cattle or arable farming. Dairy farming involves milking the cows twice a day, seven days a week and every day of the year. The yard has to be scraped and the milking parlour kept clean. Slurry has to be dealt with (there is a slurry lagoon at Woodrow). The animals have to be fed and looked after. Cows have to be artificially inseminated. Calves are an inevitable by-product of dairy farming. Some calves may be kept to be reared for beef or they may be sold. Food such as silage may be grown on the farm or bought in.
58. Employed farm workers at a dairy unit can work 40 hour weeks with holidays but many family members in a family run dairy farm do not work in that way. Based on the evidence of a number of witnesses before me, it is plain that the work done by family members on a family run dairy farm involves an intense degree of commitment and effort.
59. From 1983 the dairy farm quickly became and then remained the cornerstone of the business. The dairy herd restarted with approximately 80 cows, rising to a peak of 100-120 cows in the years 1995-1999. After that numbers dropped off a little until 2007. There is a dispute about the numbers in 2013. Beef cattle were being farmed as well and there was some arable too but throughout this period the beef was an adjunct to the dairy business. A figure of between 200 and 300 for the number of beef cattle was given by Sarah. I accept it. The figure is not inconsistent with the size of the dairy herd since calves could be kept for more than one year before being sold for beef. Some of the arable farming was to make silage for the animals but there was also some arable which was independent although that was always on a modest scale. The evidence referred to some other projects such as sheep, pigs and chickens but I find that they too were modest at best.
60. Extracts of information from the farm accounts is in Annex 1. Little useful information is available from this period but the more recent figures show that in that time the receipts for milk represent between about 60% to 90% of the turnover in round figures. I find that is representative of the whole period once dairy farming was well established in the mid-1980s.
61. The Mudford land was bought in 1989 and used for grazing beef cattle.

62. Once dairy farming restarted at Woodrow, Lucy was closely involved in the milking. By 1987 Frank had given up milking completely although he maintained a role looking after nursery cows. From 1987 Lucy was responsible for the milking. Without Lucy's work there would have been no dairy farming at Woodrow. However it would be wrong to think that others did not work at Woodrow. Others did too and I will return to that below.

*The representations relied on (first batch)*

63. This is a convenient point to consider the first and the third to eighth pleaded representations alleged to have been made to Lucy by Frank and, in some cases, by Jane. The second representation relied on was alleged to have been made by Jane and involved Lucy's children. I will address that in context below. A further two representations are relied on but they are alleged to have taken place in 2007 and 2008 and will also be addressed in context. Some of what I have called the first batch of representations are alleged to have been made from time to time or frequently, and therefore are said to span the whole relevant period, but it is convenient to deal with them now.
64. The first allegation is "Mr Habberfield would from time to time tell the claimant that she would take the farm over when he could not do farming any more." In cross-examination Lucy maintained her evidence that this is what her father assured her. Her second witness statement (paragraph 19, first bullet point) says this happened soon after she left school and as she was beginning to take over the milking. She says the discussions were usually in the milking parlour or just outside if she had finished milking. Paragraph 17 of her witness statement says this happened on many occasions.
65. A point was put in cross-examination that the words alleged could be interpreted as concerning running the business rather than owning the property. I will come back to that after I have decided if they were spoken at all.
66. The main evidence against this is Jane's evidence such as paragraph 45 of her first witness statement that:
- "I can categorically deny that Frank or I ever promised Lucy she would inherit Woodrow Farm, nor did we do anything that should have given her the impression this would happen. She has invented this. It was not Frank's way to make promises of that kind. He expected people to make their own way and to earn their own living. Lucy knew that we wanted to provide for all our children and that there were no guarantees about what any of them would receive."
67. In cross-examination Jane maintained her case that that the representations alleged by Lucy did not take place. In cross-examination Jane was asked if she was quite certain her husband had made no promises to Lucy about the farm, her firm answer was no, in other words no promises were made. She confirmed that if he had done this then she would have known about it.

68. Three points arise here. First Jane's denial applies whether the representations are construed as referring only to running the farm or to include ownership of the property. Her case is that no such promise of any kind was ever made.
69. Second Jane gives evidence of what was and was not Frank's way of operating. Having been married to Frank for so many years, raising a family and farming together at Woodrow for decades Jane could be expected to know what her husband's way was. But Jane is not a neutral observer. I heard from many witnesses who knew Frank and dealt with him. Neither Frank nor Jane were open with others about their plans. Lucy (also not a neutral observer) gave evidence that they were guarded a lot of the time. I accept Jane's evidence to the extent that it reflects Frank's and her guarded nature but that reticence does not mean that statements of this kind would not have been made to Lucy to encourage her. I do not accept Jane's evidence that making a statement to Lucy of the kind alleged was not Frank's way.
70. Len Parsons gave evidence that Frank would have told him if he (Frank) had intended to pass his property to one of his children and he (Frank) never did. I do not doubt that that is what Mr Parson's believes but I do not accept he is correct. The 8<sup>th</sup> February 2008 letter from Mr Robinson shows that Frank and Jane did at that time intend to pass essentially the whole of Woodrow to Lucy, albeit with land for Andrew and legacies for the other two siblings. Mr Parsons did not know about it.
71. Third, in cross-examination Jane said that she would have known about this if Frank had done so. I think that is true. Jane said it to support her evidence that promises were never made but it applies either way. Frank and Jane ran the farm together for over 40 years. I find that if Frank did make the statements to Lucy which Lucy alleges then Jane would have been well aware of them.
72. A number of other witnesses said that Frank or Jane never made a promise of the alleged kind to Lucy, which means they never heard that happen or heard about it. The fact these witnesses did not see the representations take place does not prove they did not happen. It may explain the attitude of some witnesses to this claim. The conversations which Lucy contends took place would not have been the kind of thing at which another person was present. An example of this sort of evidence is in Emma's unchallenged witness statement. She says that to her knowledge Frank never promised anyone anything as he was not a man to praise or promise. Emma also says that she thought her parents would probably leave most of the farm to Lucy and Andrew as they had the most to do with it, while trying to be fair to Sarah and herself.
73. The dynamics of the Habberfield family meant that the siblings regularly fell out between themselves and with their parents. Witnesses who knew Frank, including John Sprake and William Cobden, explained that he did not talk about dying. In my judgment neither Frank nor Jane discussed these matters with others. The reference in Mr Robinson's letter of February 2008 about saying nothing at that stage to Lucy's siblings is an example of that.
74. The only witness outside the family who appears to have had a conversation about succession with Frank (or Jane) was the nutritionist and feed seller Rod Cherry. He had been visiting the farm for many years. He had a regular calling pattern of once or twice per month when he was younger, less regular when he was older. Mr Cherry described Frank as frightening and abrupt initially but Mr Cherry was not put off and

they became good friends. In later years he would see Frank in his home. Although relevant to a point arising later, in answer to a question whether Frank was still the boss at this later stage, he said it was a combination of Frank and Lucy. Mr Cherry also explained that he understood from Frank that the dairy had been reinstated by Frank and Lucy together. He gave clear evidence that the main enterprise at Woodrow was dairy farming – both from the point of view of income and in terms of work required. His feed sales covered both beef and dairy. He recognised the beef operation but said everything else that went on aside from the dairy was a satellite of the dairy. His view was that without the work of Lucy (and Stuart) the income stream at Woodrow would have been compromised many years ago.

75. Mr Cherry did have a discussion with Frank about succession. It is not clear when that happened. It was probably in the period leading up to the discussions with Mr Robinson in 2007/08. Mr Cherry sought to persuade Frank to seek succession advice because he (Frank) had not sorted it out. The suggestion on the defendant's behalf is that this evidence counts against the claimant's case that the representations were made or were serious. It is not strong evidence against the claimant because in my judgment it actually reflects the acrimonious circumstances leading up to the meeting with Mr Robinson in 2008. In Mr Cherry's witness statement he said he understood Lucy would get the farm but in cross-examination he confirmed that Frank had never told him that. I will not place weight on that aspect of Mr Cherry's understanding.
76. Turning to circumstantial factors, there are a number which support Lucy's case. Frank wanted a dairy farm and none of his other children showed an interest in making a career doing that at Woodrow. No doubt in part because she was interested in dairy farming, Lucy was her father's favourite. Jane did not accept this and maintained the parents did not have favourites but other witnesses attested to Lucy's position. For example Emma described Lucy as her father's blue eyed girl. Jane's denial is understandable but I do not accept it. I suspect part of the bitterness which is manifest in this dispute has been caused by long running and deeply felt resentment about Lucy's position in relation to Frank as compared her siblings.
77. Restarting dairy farming at Woodrow involved a significant investment in money and time, which would make more sense if Frank could see that Lucy was committed in the long term. The commitment required of a dairy farmer is substantial. It is a career. Once established, dairy farming was the heart of the farming operation.
78. Circumstantial factors also point in the other direction. In cross-examination Jane said a number of times that if Lucy had not helped in the dairy then Frank could have found an alternative. I do not doubt that if cover had been needed when Lucy was unavailable then it could and was arranged. But that is not the same as the idea that if Lucy had not shown an interest in and commitment to dairy farming Frank could or would have restarted dairy farming in 1983 or would have maintained it in operation for years afterwards. I reject that. I do not know if it could have been done as a practical matter but in any case I am not persuaded it would have been done. Frank wanted to do dairy farming at Woodrow with Lucy.
79. Counsel for the defendant submitted that the fact that Lucy encouraged her father to reinstate the dairy herd and given his shoulder injury and given the fact that dairy work is hard work, all these together indicate that Frank will have needed to offer encouragement to Lucy to work hard rather than make serious promises. Therefore

the alleged representations need to be seen in that light. I accept those factors may have a bearing on how seriously one could be entitled to take the representations if they are made, but at this stage I am considering whether they were made at all.

80. A further submission on behalf of the defendant is to emphasise the difference between ownership of the farm and running the business. I have that in mind.
81. Further points against Lucy were that no mention of this claim was made in the Employment Tribunal documents and that by not bringing the claim until her father had died, Lucy made it difficult to answer. Lucy explained in cross-examination that she was unaware that a claim of this kind could be brought until, after those events, she heard about a newspaper article concerning the *Davies v Davies* case. I accept her evidence, which answers these two points.
82. Weighing all this up, I accept Lucy's evidence about this first representation. I find that from time to time over an extended period of years from 1983 onwards Frank did tell Lucy that she would take the farm over when he could not do farming any more.
83. I turn to the other six representations which can conveniently be dealt with at this stage.
84. Lucy's case is that shortly after the re-establishment of the dairy herd Frank told her that "they are your cows, and if you want them you should milk them". This is the third pleaded representation. Lucy was asked in cross-examination for details of the circumstances when this occurred. She said that the reason she could not provide any was that it happened so long ago but she maintained that she remembered that the cows were her responsibility and she did not take this statement by her father lightly. When pressed on this Lucy replied: if he didn't want me to do it why did he encourage me? Why did mother encourage me?
85. I find that Frank did say this to Lucy sometime not long after the reinstatement of dairy farming.
86. The fourth pleaded representation is that in about 1985 Lucy and Frank were discussing the likely cost of replacing the milking parlour in due course; Frank said that he did not know how much it would cost but said that the responsibility for doing so would be Lucy's, thereby indicating that Lucy would be the owner of the farm. In cross-examination Lucy maintained that this discussion did take place and said that he (Frank) said: it will be up to you (Lucy) when the time comes. She said that this was recognition that the need to replace the milking parlour would have been many years away. Consistent with this is the fact that looking back from today, Woodrow had the same milking parlour from 1983 to 2013.
87. When pressed that Frank did not refer to ownership of the farm (or sole ownership) but to running the business, Lucy's evidence was that he had implied it. She said her parents were not open and a lot of the time kept things guarded. But if they encouraged her to do a job and do it well, it (ownership) must have been in the back of their minds otherwise they would not have implied it.
88. I find that the conversation took place as Lucy alleges and the statement was made by Frank to Lucy.

89. The fifth pleaded representation was about remuneration. The allegation is that from time to time Lucy would raise the issue of her extensive work and limited remuneration and/or need for time off. It is alleged that Frank and Jane would frequently assure Lucy that she could not have the benefit of her hard work both now and in the future. It is also alleged that it was said that Lucy was working for the benefit of her children but I will address that in context below.
90. Finally as part of this fifth allegation it is pleaded that Frank in the presence of Jane assured her that she (Lucy) would receive the farm and the farming business in the future because they (Frank and Jane) could not run the farm forever. I interpret this as a plea that that is what the assurances alleged were intended by Frank and Jane to mean and were understood that way.
91. Jane does not accept Lucy's case that her remuneration was in fact as low as she alleges, particularly when other benefits are considered, but at this stage I am not concerned with that but with whether exchanges like this happened. Jane did not accept that they did.
92. Lucy maintained her evidence about this and maintained that her mother was present. That discussions of this nature took place at some point is also corroborated by what Andrew must have told his solicitors as shown by their letter of 27<sup>th</sup> November 2014.
93. In her second witness statement Lucy gave an example of this kind of representation when she complained to her mother in the late 1980s that she and Andrew were paid the same amount but she felt it was unfair because Andrew was working a fraction of the hours she was and because Andrew's workshop and machinery business was using the farm's electricity. Lucy said her mother said that she could not have it now and in the future. Jane denied that this conversation took place.
94. I find that Lucy did raise complaints about what she perceived to be low pay with Frank and Frank did say in response that she could not have the benefit of her hard work both now and in the future. This exchange happened more than once. Jane was probably present on at least some of those occasions (I find she was). On at least one occasion the same exchange was directly between Lucy and Jane rather than Lucy and Frank.
95. The pleading of the sixth alleged representation is that "frequently thereafter and invariably when she (Lucy) asked for any time off she was told that if she did take time off 'the cows would not be there when she got back'. The inference was that she would lose that which she would otherwise be entitled to, unless she continued to work". The eighth representation is similar – that in 1992 when she asked for a weekend off to spend at South West Young Farmers Club she was told that if she wanted the farm then she had to stay to ensure the work was done.
96. Lucy was pressed about how often she claimed the statement about the cows not being there when she came back had been made. She said it happened when she wanted to go to Young Farmers. Lucy accepted it was not frequently but maintained it happened more than once or twice. When pressed on the seriousness of the alleged promise Lucy said that sometimes it was not an empty threat. When pressed that it was not a promise that the farm would come to her, she said that one went hand in hand with the other.

97. The eighth pleaded representation is an instance of the wider sixth pleaded representation. With that caveat I accept Lucy's evidence about this. I find that the specific exchange about Young Farmers did happen and the wider alleged representation was made more than once. However it was an exaggeration to say it happened frequently.
98. The seventh allegation was that Frank would require Lucy to deal with staff employed to help on the farm, telling her that the employee would in time be working for her. Lucy said that staff took orders from her, but accepted that this related to work on the dairy farm operation rather than the whole farm. Jane said this did not happen while Frank remained in good health. I do not accept the categorical nature of Jane's denial but I believe that the extent to which this happened increased significantly once Frank's health declined. I find that this did occur in relation to milking, again more frequently later on, and I accept that Frank put it to Lucy on the basis that the employee would in time be working for her.
99. Having found what representations were made, I turn to their meaning. In isolation some of the things which are alleged to have been said could be construed as referring to running the farming business and so not making any statement about ownership of the property. However looking at the matters as a whole and in context I find that in making these statements the idea which was intended to be conveyed to Lucy was not only the idea that the farming business would be hers in future after Frank could not run it anymore but that the farm as a piece of property itself would be passed on to her too, subject to a point below. From her parents' point of view the farm and the business went together. Turning to how Lucy understood them, in my judgment they conveyed their intention sufficiently clearly for Lucy to understand it. Her view of what her parents were intending to convey was accurate.
100. I do not believe the representations in this case could have been understood as simply statements of what Frank's and Jane's current intentions were about what they were going to do in future (cf James v James). The statements in this case were in the form of assurances that in return for what Lucy was being asked to do now, she would receive something in the future.
101. However I do not accept Lucy's case on meaning in its entirety. One qualification is about how much of the property or business was being referred to. When the idea was conveyed to Lucy that the farming business and the farm itself would be hers, this did not mean that every single acre of land at Woodrow would necessarily pass to Lucy nor was it focussed on whether making some provision for Lucy's siblings was to be ruled out. And Lucy did not understand it to mean either of these things. The statements were made and understood in a context in which Lucy was the person responsible for the core work of the dairy farm, i.e. looking after and milking the cows, and dairy farming was the heart of the farm both in terms of land use and the business.
102. The idea that Andrew might be given some land in due course would not have been contrary to the statements as they were understood. A particular piece of evidence which supports the view that Lucy understood this aspect of Andrew's position is in the witness statement Suzanne Loder. She said that "while there was always going to be a place for Andrew at Woodrow, everything I saw and heard at Woodrow Farm gave me the clear impression that Lucy would take over the farm from her parents and

for all practical purposes she and her partner Stuart already had.” Since Mrs Loder did relief milking at Woodrow in 1994/95, before Stuart was involved, the inclusion of Stuart is inaccurate. Nevertheless I find it genuinely represents Mrs Loder’s view based as it was on what Lucy told her. It therefore reflects Lucy’s view of the position of her brother.

103. A second qualification relates to the circumstances in which things would come to Lucy. As I have said I find that her parents intended and Lucy understood that the farming business would be hers in future after Frank could not run it anymore. However the precise circumstances in which the land would be passed on to Lucy was not discussed. By the time her parents had died Lucy would be the owner of the farm (subject to the previous qualification about what “the farm” would consist of) but I do not believe they meant or Lucy understood that the farmland and farmhouse would necessarily be conveyed to her in their entirety during her parents’ lifetime rather than, for example, Lucy working it while her parents were elderly.
104. Turning to the seriousness of the representations, I recognise that a teenager may well have needed encouragement at the start. Nevertheless I find that the statements made by Frank and, to the extent they were, by Jane, were not idle or casual remarks. They were made in a manner in which it was intended Lucy would take seriously –to continue her commitment to the farm, to continue to work hard and to accept the wages and hours she was working. She did so. Irrespective of the question of wages, on any view dairy farming is very hard work. Frank wanted Lucy to do the work not only in the sense that the work had to be done, but in the wider sense that he wanted Lucy to be committed to dairy farming at Woodrow and he wanted that commitment to continue. He intended her to understand that the reward for her commitment would be that the farm would be hers in future. Lucy understood what was meant.
105. I have asked myself whether the fact that the representations were not understood to promise 100% of the farm to Lucy or promise something specific about the circumstances surrounding a conveyance, mean that they were not sufficiently certain to be relied on. I find that they are sufficiently certain. They were focussed on something concrete, the dairy farm. The fact that one could not draw a bright line at some point in the 1980s or 1990s and say that land on one side had been promised to Lucy whereas land on the other side had not been, does not undermine their seriousness nor does the fact that the precise way in which the transfer would be undertaken was undecided.
106. I have accepted that some of the statements relied on were made by Jane but those were not frequent. In my judgment in any event Jane knew that statements of the kind I have accepted as coming from Frank were being made by Frank throughout the period, Jane knew what they meant and knew that Lucy was taking them seriously. To the extent that they were made when Jane was not present, they were made with her authority.

*The work of the others on the farm*

107. Frank clearly ran the farm throughout this period. He gave the instructions and made the decisions. It is not clear when Frank’s ability to work physically on the farm came to an end. Nothing turns on this point but doing my best I think Frank’s physical contribution started reducing significantly in the 1990s. However despite his

physical contribution declining, Frank continued to be in charge and to control the finances. He was largely responsible for instructing the employees while he was in good health, which started declining in the 2000s.

108. Jane always helped on the farm and over the years she reared calves, rounded up cows, took care of sheep, pigs and chickens and sold trays of eggs at Yeovil market on Mondays. As well as the household chores, Jane cooked every day for the family so that each morning when they came in from milking she would have a full English breakfast on the table for 9am sharp.
109. Jane's eldest daughter is Emma. She worked on the farm when she was at school. She left school in 1975, went to secretarial college in Yeovil and then in 1977 went to work at the Westland, remaining there until the 1990s. She has helped out from time to time but she has not worked on the farm to any relevant extent since going to secretarial college. Her unchallenged evidence was that "while the milking brought in money on the farm ... dad continued with other work as well such as rearing beef cattle". I take this as evidence emphasising that other things did take place at Woodrow but that the dairy farm was the cornerstone. Emma also explained that as well as beef, the business could not have managed without Andrew's input on the machinery side.
110. Andrew has always done some farming work at Woodrow and that includes in the period I am considering from the re-start of the dairy up to the end of the 1990s. It was focussed most on the arable farming and the beef but also included other work. He was paid wages. When he was 30 years old (he was born in 1961) they were £40 per week and when he was 40 they became £80 per week and have remained at that level until recently. However Andrew's farming work at Woodrow was never his sole occupation. His interest was in his machinery and I accept Emma's evidence that Andrew contributed to the farm substantially in that way.
111. Sarah left the farm when she finished school, which must have been in about 1981/82. She went to college in Yeovil and worked full time at Westland until about 1988 (it might have been 1987 but nothing turns on that). She also helped out at the farm in the same period up to 1988, which essentially coincides with her relationship with Mr Cabot. In 1988 Sarah left Westland and from that time Sarah's work on the farm increased. This period of working on the farm went on until the end of the 1990s, probably 1998 and in that period Sarah also had other jobs, off the farm. They were mostly part time. She was paid £50 per week for her farm work. Her job was to rear the calves and she was in charge of the store cattle (that is cattle being reared for beef which are then sold for finishing). She will also have helped with the dairy farming if Lucy was away or unable to do the milking but that was not a substantial part of Sarah's work. Lucy said that Sarah only worked full time on the farm for five years. I think that is correct but to focus only on the period of full time work ignores the fact that Sarah did work part time on the farm throughout this period. Sarah also helped with the paperwork in the business. Sarah met William Cobden in the early 1990s. They married in 1996 and have two children. Their elder son James was born in 1997.
112. In 1995 Shane Buckle started working at the farm. He worked a 40 hour week as an employee. Mr Buckle and Andrew were the two people responsible for most of the work aside from the dairy farm but Mr Buckle's duties did also include helping Lucy

in the milking parlour and helping Frank feed and bed down the calves. Part of Mr Buckle's work helping Lucy involved holding the tail of the cow (not hurting it) to help control the animal. Mr Buckle said he received his instructions from Frank and sometimes from Lucy. Jane was the person who always wrote and gave him his pay cheque.

113. Suzanne Loder did some relief milking in 1994/95 in order give Lucy some time off.

*Detriment – Lucy's hours and her pay*

114. When she left school Lucy was paid between £40 and £50 per week. This was paid in cash until the HMRC investigation in about 1988 when she was put on the payroll and paid £80 per week. Her wages increased to £120 per week in her mid 20s (approx. 1995). By 1999 Lucy was paid £750 per month. These are net figures. At the same time Lucy lived at home and received free board and lodging. Two other benefits are significant enough to be relevant - Lucy was allowed to use Jane's car (she did not have one of her own) and Jane says Lucy had free keep of eight beef cattle per year.
115. The hours Lucy worked at the farm were in dispute. Her evidence was that in this period she worked about 60 to 70 hours per week. Jane's evidence was that Lucy worked six days per week and 8 hours per day (making 48 hours per week).
116. Lucy said that she suffered depression when aged 22 or 23 and was prescribed steroids. The medical records do not record a diagnosis of depression and Jane knew nothing about this. I am not satisfied Lucy had clinical depression in that period but I accept Lucy's testimony as evidence that she was working exceptionally hard and had got into a state at which many people would have stopped working or reduced their hours significantly. But she did neither of those things.
117. There was a dispute about time off, holidays and days off. To do the milking, which happens twice a day, requires the herds person to work very early in the morning and then later in the afternoon. That leaves time in the middle of the day for other jobs. In that time there were occasions when Lucy and her father went racing but it would not be right to infer from the fact that they did go racing that Lucy (or Frank) were idle in the middle of the day. That is when other farm work was done. All the same the evidence of Mr Stamp, who had a relationship with Lucy in the 1980s showed that Lucy was able to have a social life in that period which she could fit in around milking.
118. Lucy gave evidence that she had had 5 weeks holiday in over thirty years. I accept that evidence, which is not concerned with days off but with periods of extended vacation. The holidays referred to included a week in Tenerife and two weeks in the USA.
119. As for days off, it is quite clear that Lucy had some days off but there were not so many of those to detract from the idea that her work on the farm was a seven day per week commitment in the 1980s. There is clear evidence that a regular relief milker came to Woodrow from about 1989. From the period between then and 2007 I estimate that the regular relief milker typically came once per fortnight until mid 2004 and from then increased to two milking shifts per fortnight. With the exception of the period when she was having children, Lucy was responsible for the milking at all

other times. I find that Lucy was milking the cows somewhere between six and seven days a week.

120. A substantial dispute was about the relative contribution of Lucy and the rest of her family. For example just as Lucy had very few holidays, Jane had no holidays at all in the same period. Equally, counsel for the defendant was right in his submission that the idea that Lucy (and Stuart latterly) did virtually everything on the farm and not merely the dairy does not stand up to scrutiny. It is manifest that the rest of Lucy's family did help on the farm in the manner I have described already. However the fact that others did work on the farm too, and did so to a greater extent than credited by Lucy, does not mean that Lucy's evidence about her hours and remuneration is wrong. Regarding Lucy's hours generally, I prefer Lucy's evidence to Jane's for the period up to 1998.
121. A single joint expert accountant Mr Ian McVicar of the firm Albert Goodman in Taunton was appointed to give opinions about the remuneration Lucy might have been expected to receive on various assumptions in the period. He was not cross-examined. At this stage I simply note that Lucy's figures for hours worked, which I have accepted, in the period up to 1998 mean she was being paid less than the sum which Mr McVicar's opinion gives as for an agricultural worker doing her work (including accounting for the value of the board and lodging). The difference fluctuates over the period but if I take Lucy's pay in 1995 as £120 per week, that would be £6,240 net whereas taking the lower of Lucy's estimate of hours of 60 per week gives a gross figure of £12,687 (inc. board and lodging). The difference between gross and net figures does not account for that difference.
122. Even on the figures based on Jane's estimates there is still a gap albeit a much smaller one. Mr McVicar's figure for 1995 based on Jane's evidence is £9,206. I did not have attention drawn to a relevant tax calculation but I would be surprised if in 1995 a gross income of £9,206 produced an income net of tax and national insurance as low as £6,240.
123. I find that Lucy's work on the farm over this period (1983-1998) can properly be characterised as a relevant detriment. The acts of detriment include the long hours, low pay and few holidays Lucy took. The fact that family members often work very long hours on a family dairy farm and take very few holidays does not mean this sort of work is not a detriment to the person doing the work. A person employed in an arm's length transaction would simply not have put in the hours Lucy worked nor accepted the pay she was paid nor accepted the number of holidays she took. I bear in mind that in the early years, up to 1987, Lucy was learning how to be a herdsman. It is also manifest that Lucy did this out of family feeling and because she loved dairy farming. Nevertheless overall she was committed herself not just to dairy farming as a career but to dairy farming at Woodrow. No doubt it never occurred to her to leave and go elsewhere but that was in large part the result of the assurances Lucy had been given. She relied on those assurances and that is what kept her at Woodrow. In addition to the terms on which Lucy was employed (hours, pay and holidays) the detrimental reliance also includes the commitment to farming at Woodrow rather than going elsewhere and setting about building a successful dairy farming business on her own account.

124. There is a fallacy in the emphasis placed by the defendant's counsel on the argument that what Lucy did was not unusual for a family dairy farm. It may well be that the hours, pay and commitment from Lucy over more than 30 years are not unusual compared to the effort put in by members of other dairy farming families. However I do not have evidence of how those other families arrange their affairs. The families on these other farms may be working together in a common enterprise in which they either already share some form of ownership or at least share a common expectation of ownership in future based on promises made by the current heads of the family. In that case the comparison would not favour the defendant. However unless I have evidence about these matters, the comparison with other farms does not help either way.

*1998 until 2007 – Lucy and Stuart*

125. Lucy met Stuart in 1998. In March 1999 she moved into the house he had bought called Bryony and was pregnant with their first child. Lucy and Stuart's son Tom was born in August 1999. I accept Lucy's evidence that she worked until the late stages of pregnancy and was back to work in a matter of a week or two of giving birth. Their three further children were born in 2001, 2002 and 2004.
126. Lucy found this period hard. She was still getting up at 4:30am when pregnant with their first child Tom, and would be at Woodrow by 5:00am to do the milking. After Tom was born and once Lucy was back working, she would start milking at 5:30am. When her second child Henry was 10 days old Lucy returned to Woodrow and did the morning milking from 5am to 9:30am. Stuart would stay at home until Lucy returned and then he would go to Adber at 9:30 am. A relief worker was employed at Woodrow in 2002 but again after Lucy's third child William was born Lucy started milking again after 10 days. There was an altercation at the farm involving Lucy, Frank and Sarah in 2003. After Lucy's fourth child Emily was born in October 2004 Lucy was unwell. She returned to work at the end of 2004.
127. From 1999 Stuart began helping on the farm but maintained his full time job at Adber. His work at Woodrow increased over the years as Lucy had children. He eventually started working full time at Woodrow in 2007. Once Lucy had children, Jane helped by looking after them while Lucy was working. The fact that Jane said in cross-examination that she would have looked after the children in any event does not mean it was not a benefit to Lucy. Mr Dowding said he saw the children being looked after in the farmhouse and in the garden under Jane's supervision. That clearly is true. Nevertheless the children were also frequently in the yard with their mother. In his witness statement Mr Dowding suggested that when he visited, Lucy (and Stuart) were rarely there during the day. I do not doubt Mr Dowding's honesty but I do not accept that gives an accurate picture of what was going on, no doubt because Mr Dowding's visits did not put him in the position to know.
128. In 2000 Mr Buckle felt that Lucy and Stuart wanted him off the farm because Stuart worked there part time to help Lucy but Stuart wanted a full time job at the farm. I accept that is what Mr Buckle thought at the time. I doubt it entirely reflects Lucy's and Stuart's motives because after Mr Buckle left a new employee Brian Brooks came to the farm but it does not matter. In any case in 2001 Shane Buckle left Woodrow and went to work at Adber. He did some relief milking at Woodrow after that.

129. In 2001 Brian Brooks started working at Woodrow. The precise position relating to the hours he worked was confusing because Mr Brooks worked both for Frank and Jane and also worked for Andrew on his machinery and contracting business. Records of his hours which seemed to be slips he had given to Jane in order to be paid did not show a full working week. He gave clear evidence, which I accept, that he spend a full working week at Woodrow. The most logical explanation is that the slips account for his hours worked for the farming partnership and not for Andrew but it is fair to say Mr Brook's evidence was not clear on this or entirely consistent. But nothing turns on it. He also had a period off work owing to an injury. It was at least four months and may have been a year. It was put to Mr Brooks that he stopped altogether when Stuart went full time. He did not agree (in other words he said he continued part time for a period after that) and I have no reason to doubt his evidence.
130. In 2005 Graham Davis started as a relief milker at Woodrow. He did this once or twice per month. Although it relates to a later period addressed below, in 2008 his wife Angela Davis took over the relief milking on the same basis. Both Mr and Mrs Davis were generally paid by Jane although I accept that there is evidence that in 2010 Lucy paid Angela Davis directly at least on one occasion.
131. Stuart's evidence is that by 2006 he and Lucy were effectively running the farm. This is disputed. Jane's evidence is that Frank's health did not decline significantly until 2011 and until then he was very hands on. The matter can be tested by considering a Wiseman milk contract to supply Tesco at a good price (34/34p per litre instead of the price of 13p from the previous purchaser) which was signed in June 2007 although the negotiations started in 2006. Stuart's evidence was that this was negotiated by Lucy and him rather than by Frank or Jane and that this is evidence that they were in effect running the farm at that time. Stuart refers to a meeting between Lucy, himself and June Ricketts of Wiseman in the summer of 2006. Jane did not agree that this was how things were done but she clearly knew very little about the relevant details of the contact. The contract documents and letters are addressed to "Frank and Jane" and it was put that this indicated a degree of familiarity between Mr and Mrs Habberfield and the Wiseman Milk Procurement Director called Pete Nicholson. Since the farming business was a partnership between Mr and Mrs Habberfield, the contract was signed by them and the letters will naturally have been addressed to them. In the absence of evidence from Mr Nicholson (who signed the letters "Pete" but whom Jane said she did not know) I do not draw an inference that Mr Nicholson's mode of address indicates that Stuart's evidence is wrong. I prefer Stuart's evidence about the negotiations.
132. I find that the Wiseman contract was negotiated by Lucy and Stuart and I find that by 2006 Stuart and Lucy were running the dairy side of the business at Woodrow farm.
133. As for Frank's health, he had Parkinson's disease and I find his health began to decline earlier than 2011. William gives evidence of a change in Frank in the mid-2000s and refers to seeing him shaking although he tried to hide it. From the way William's witness statement is written this must have been before 2008. I find that by 2006 the combination of Frank's increasing age and his declining health meant that he was becoming less able and less inclined to take part in the day to day running of the farm. All the same Frank and Jane remained in overall control although I doubt Frank's health meant he was really capable of doing this.

134. In 2006 Sarah and William moved into a house near Woodrow. Their circumstances had changed. There was a dispute between William and other members of his family which led to his being bought out. From this period Sarah became more closely involved in the way Woodrow was being run than she had been before. She was also helping with the beef cattle. This led to tension between Sarah (and William) on one side and Lucy and Stuart on the other.
135. In this period (2006) the possibility of a farm becoming available for rent near Taunton emerged. Sarah and William were interested in taking it and looked into it. Stuart says that Frank tipped him off about the Taunton farm. Stuart was interested too. Lucy was reluctant because of the time she had put into Woodrow. Lucy and Stuart prepared a formal tender for it but never submitted it. They both say that was because Frank persuaded them not to on the basis that Woodrow was their future. They say that on this occasion Frank, in Jane's presence, encouraged them to stay for the benefit not only of themselves but their children. Their second eldest son Henry was the one of their children most interested in farming. I accept Lucy and Stuart's evidence about this. This is the ninth pleaded representation.
136. Since they never tendered for it, Lucy and Stuart did not get the Taunton farm. Sarah and William did not get it either.
137. It was put to Lucy that the fact she was prepared to move to Taunton undermined her case. She did not agree and I do not agree either. Lucy clearly did not want to leave Woodrow but the fact she was prepared to contemplate doing so, given the acrimonious family circumstances, does not cast doubt on her case. It was put that on the figures in their draft submission Lucy and Stuart would never have won the tender anyway because it went for a higher sum. That is true and the submission therefore was that this episode was not of itself a relevant detriment. However it seems to me that from the claimant's point of view at the time, she (and they) gave up the chance of something of potential value. I do not have to decide whether the decision not to tender for the Taunton farm is of itself a relevant act of detriment. If it mattered I would say it was.
138. Relationships in the Habberfield family have not been harmonious for a very long time. For example Lucy says that she never had a good relationship with her mother and thought Andrew was her mother's favourite. Emily says that Lucy was her father's favourite, and so on. Nevertheless I infer that the relationships deteriorated further in the period from the early 2000s onwards. In particular Lucy's relationship with Frank worsened in this period. An example was the altercation in 2003 mentioned above. The acrimony was a factor in Lucy's considerations about the Taunton farm tender.
139. Looking ahead in time, after Stuart started work full time at Woodrow (which was in the summer of 2007) Sarah felt that Lucy had continued to apply pressure to Frank. Stuart says that in this period Frank gave him the cold shoulder. Lucy's view was that by 2006/07 her parents hardly spoke to her or Stuart and that this was because they were coming under attack from Sarah and from Andrew. She said that Sarah and Andrew made no secret of the fact that they did not really want Stuart involved at all.
140. In terms of other representations in the period 1998-2007, I find that the first, fifth and seventh pleaded representations were made from time to time in this period just as

they were before. That possibly also applies to the sixth pleaded representation (cows not being there when Lucy got back) but I doubt it and I find the sixth representation was not made after Lucy and Stuart got together.

141. This is a convenient point to address the second pleaded representation – that Jane told Lucy that she (Lucy) was working on the farm for the eventual benefit of Lucy’s children, meaning that they would succeed to the farm after Lucy. The fifth pleaded representation includes a similar allegation, that the explanation for Lucy’s low wages and hard work which was given to her by Frank and Jane was that Lucy was working for the benefit of her children. These representations are similar to the ninth pleaded representation already dealt with.
142. It is not necessary to reconsider the circumstantial matters I have addressed already above. In terms of direct evidence, Lucy maintained that this did take place. She associated it with times when her children would talk to their grandfather, which she said was an everyday occurrence. She said that the conversation with her mother was only once or twice but said that it did not need to be said every day. Counsel pointed out that in her evidence Lucy had said that her mother had often said this to her and she was changing her story. Her response was that she could not remember every time but denied that she was making it up. It was put that the words were not a promise of sole ownership of the farm but rather simply meant as a statement that she was doing a good thing. Lucy’s response was that Sarah had her life, Andrew had his business and Emma was not around, only Stuart and herself were doing the farm. Lucy also accepted that splitting the farm four ways would still be a benefit to her children.
143. It was put to Jane that she and Lucy discussed the amount work that Lucy was doing. This was another occasion on which in her testimony Jane gave a vehement denial which I do not accept. When it was put that Jane would comment that Lucy’s work was for the benefit of her children Jane replied that when she started Lucy had no children. Jane also said that Frank may have said this but she never did.
144. I find that the second pleaded representation is proved.
145. The points on meaning, sufficient seriousness of the representations to be relied on, Jane’s involvement and authority are the same as for the previous period up to 1998. If anything the reference in the second pleaded representation to being for the benefit of Lucy’s children reinforces the point that the representations related to ownership of the farm as well as running the business.
146. I turn to detrimental reliance. Mr McVicar conveniently summarises Lucy’s and Stuart’s evidence about hours worked. For this period Lucy’s evidence about the hours she worked increased to 87.5 hrs per week in 1999 (save for August 1999 when her first child was born) and remained at that level until August 2001 when her second child was born. After that her weekly hours were said to be between 51 and 63 until May 2004 when she was pregnant with her fourth child. After than her hours were 40 per week until the birth and then nil until the end of 2004. In 2005 her weekly hours were 54 per week and then from 2006 onwards were 56 to 77 hours per week.

147. Mr McVicar's summary of Jane's evidence about Lucy's hours in this period shows it is the same as for the whole period from 1983 until 2005, that is 48 hrs per week. After that the hours are said to be 42-52.5 per week.
148. I prefer Lucy's evidence to Jane's for the period up to 2005. For the period 2006 onwards I am not convinced by the upper end of Lucy's estimate (77 hrs). I find that 60 hours per week fairly reflects Lucy's hours from 2006 onwards.
149. I do not regard Stuart's hours at the farm as a relevant detriment. As one might expect his hours on the farm before he went full time in 2007 fluctuated significantly. There is no reason to doubt his evidence about the hours in this period which Mr McVicar has used in his calculations.
150. Lucy's wages in this period had been £750 per month from 1999 when she left home until 2003, when they rose to £1000 per month. I will look at two years in detail as examples— 2002 and 2006.
151. Based on Lucy's hours for 2002 (which I have accepted) Mr McVicar's opinion for what Lucy might have expected to receive at that time was £16,569 gross. Her net pay of £750 per month comes to £9,000.
152. Looking at 2006, based on Lucy's upper and lower estimated hours Mr McVicar's figures are from £22,711 to £33,806 gross. Based on my finding of 60 hrs/week in that period, by my calculation the gross figure would be £24,824. Lucy's actual income of £1,000 per month comes to £12,000.
153. Based on these two examples and again noting that I have not been given the detailed means to convert gross to net, I am satisfied that Lucy's actual pay for any given year in this period is substantially lower than what would have been the net result based on Mr McVicar's figures.
154. Lucy received a benefit in that Jane helped look after the children while Lucy and Stuart were working. Mr McVicar was asked what information he needed to quantify this and he gave an answer but I have not had my attention drawn to a calculation in which he attempted to quantify it. Other benefits which Mr McVicar referred to in the same appendix to his letter of 13<sup>th</sup> April 2017 are the value of the free use of Jane's car, beef cattle upkeep, Lucy and Stuart's oil tank, the Mole Valley Farmer's account and the free milk and eggs provided to Lucy and Stuart. Some of these others would also apply to the first period (1983-1999) but those were not as significant as the ones applicable in this period.
155. It is not possible to demonstrate numerically whether these benefits would cancel out the difference between Lucy's actual wages and what the typical remuneration for someone doing that work would have been. However given all the inherent uncertainties, to put numbers on all these things and the purport to add them up would fall into the familiar trap of spurious precision.
156. Overall, taking into account these various benefits to Lucy as best I can, I find that her wages in this period were lower than the typical remuneration for her work. The difference varies from time to time and, for examples like 2002, it may be relatively modest although in 2006 there was a clear difference.

157. I find that detrimental reliance by Lucy on the representations is established in this period just as it was in the previous period. In concrete terms the detriment was pay which was lower than typical for her work, long hours and few holidays but also, as before, the commitment to Woodrow rather than going elsewhere. As before the assurances she had been given were not the only reason Lucy continued with her commitment to Woodrow in this period but I find they were an operative cause in her staying.

*Events in 2007-2008 – the offer to Lucy*

158. The events in 2007 at Old Mill and in 2008 involving Mr Andrew Robinson have been referred to already.

159. I have found that Lucy and Stuart did attend a meeting at Old Mill in 2007 along with Frank, Jane and the accountant Ian Sharpe. I accept their evidence that in the context of the meeting they were told that Frank and Jane had sought advice as to how the farm could be transferred to Lucy and that there was a tax planning issue if the farm was transferred without the farmhouse. The point was that the exemption from inheritance tax for agricultural holdings might not apply to the farmhouse if it was treated separately.

160. This is the tenth and final pleaded representation. I have already taken into account the fact that the evidence goes further than the pleading on this point.

161. The proposal was put to Lucy in early 2008 by Mr Robinson which she rejected is the next topic and I turn to examine those events in more detail.

162. To recap, the 8<sup>th</sup> February 2008 letter from Mr Robinson to Frank and Jane records a proposal to be put to Lucy which he had discussed with Frank and Jane. Broadly, the letter records a proposal for a new limited partnership to run the business and that Lucy should end up being the owner of the overall farm after her parents' deaths and albeit some land would be passed to Andrew and bequests would be made for Emma and Sarah. The letter itself was not shown to Lucy or her siblings or anyone else in the family (aside from Frank and Jane).

163. It is clear that the letter is based on instructions provided to Mr Robinson by Frank and Jane. In the third paragraph the letter makes the point that essentially the farm is owned by Frank and Jane and "is currently farmed by a family farming partnership which also includes (as well as yourselves) Lucy your daughter and her partner Stuart". This is obviously not correct because Lucy and Stuart were not partners in the business with Frank and Jane. Nevertheless in my judgment it corroborates Lucy's case that she and Stuart were by then effectively running the farm.

164. The letter then notes that Andrew lives with his parents and gives part time assistance on the farm but it is not his principal source of livelihood. I find that is an accurate reflection of Andrew's position.

165. Next the letter refers to both Sarah and Emma, noting that they both live off (i.e. away from) the family holding and "have no involvement with the family business". This is obviously based on what Frank and Jane were telling Mr Robinson and I find it is an accurate reflection of the state of affairs in early 2008, particularly regarding Sarah. It

does not mean that Sarah did not help out as needed on the farm but that help was minor at that time.

166. The letter then refers to the partnership proposals as follows:

“You [*Frank and Jane*] have now decided that you wish to reduce your working input to the family farming partnership and with this in mind we believe it may make sense to set up a Limited Liability Partnership with Lucy introducing capital so that she can obtain a bigger stake in the business and by implication a bigger return from the business. As partners of any future Limited Liability Partnership, we believe it would be right for you to take a salary at an agreed level (perhaps somewhere between £5,000 - £15,000 per annum) for Lucy and Stuart to also take a salary equivalent for their work and for the surplus profits to then be split between you. We suggested that perhaps 80% of the profit would go to Lucy and Stuart and perhaps 20% of the profit to you.

In time we felt it appropriate that Lucy should build up her capital in the farming business and you should reduce yours.”

167. A number of things emerge from this. The proposal refers to Lucy obtaining a bigger stake, as if she already has a stake, which reinforces the idea that Mr Robinson’s understanding that Lucy was already a partner was not a slip of the pen. Although the reference to Lucy introducing capital points the other way, the reference to the proposed profit share of 80% to Lucy and Stuart contemplates that Stuart as well as Lucy would be made partners in the proposed limited partnership. That proposal is also consistent with Mr Robinson’s understanding that both Lucy and Stuart are already partners in the family farming partnership.

168. Jane’s evidence was that Mr Robinson’s advice was that Lucy should be offered a position as a partner in a limited partnership but that Stuart should be taken on as an employee on a two year trial basis and they could at that stage consider bringing him into the partnership. There is no doubt that that this is what Lucy and Stuart were in fact offered at the meeting but it is not the advice in the letter. There is no reference to a two year period for Stuart nor to a contingent entry into the partnership for him at a later date.

169. The letter then turns to ownership, as follows:

“In the longer term, you made it clear that it was your desire that Lucy should end up being the owner of the overall farming unit including the farm and live and dead farming stock. This would only happen on the latter of your two deaths although agricultural property relief should ensure that no inheritance tax will be payable.

In doing this you do wish to look after Andrew, Sarah and Emma. As far as Andrew is concerned we considered the possibility of erecting a barn on part of the off lying land, in

due course obtaining planning permission for an agricultural occupancy dwelling and then passing the barn and agricultural occupancy building plot perhaps to your son Andrew during your lifetime.

On the later of your two deaths, I think we then also felt that you would wish to ensure that Sarah and Emma received a bequest and we felt that this could be done by leaving them a given amount of money within your will with these sums then being raised against the value of the farm; Lucy therefore effectively having to take out a loan.”

170. This part of the letter firmly supports key aspects of Lucy’s case. It is documentary evidence that in 2007/08 Frank and Jane were expressly contemplating that the farm was to pass to Lucy. I infer that one reason why this was in their mind was because it is what they had been assuring Lucy for years would be the result of her commitment to the farm. It is not a proposal to split the holding four ways nor even to pass just the dairy farm to Lucy or just the business as opposed to the property. Of course the proposal as expressed in the letter would not have given Lucy the entirety of the farm, but that was the essential idea, subject to the land for Andrew and bequests for her sisters. The amount of land for Andrew was clearly modest. Nothing is said about the size of the bequests and they were clearly meant to be substantial but I do not believe they would be a quarter each of the value of the whole farm since that would be out of scale with what was to go to Andrew.
171. The next paragraph in the letter refers to an insurance policy which is due to pay out in due course and is in trust for Andrew, Sarah and Lucy. Investigations are to be made to see if Frank and Jane can keep the cash without incurring a tax penalty.
172. Next the letter notes an agreement that Mr Robinson’s partner Mr Northcott would have a word with Lucy on a strictly private and confidential basis, to let her know that “we” (the firm Symonds and Samson and Frank and Jane) were looking into her security and the long term future but that “nothing at this stage will be said to the other three children.” The evidence does not address whether Mr Northcott had the conversion referred to but nothing turns on that. It is notable that the other three children were not to be told anything. I infer that this reflects the fact that Jane and Frank were aware of the tension among their children that a proposal like this might cause.
173. The remainder of the letter is not relevant aside from a reference to Mr Robinson and others putting together a tax efficient plan for the current situation and the long term future.
174. The proposal made to Lucy and Stuart, which I have held took place at a meeting at Woodrow, is similar to but not the same as the content of the letter. The long term proposal about ownership was part of what was put, but the immediate proposals about the partnership arrangements were different because all that was offered relating to Stuart was the two year trial period as an employee and the possibility of partnership after that.

175. I infer that the reason the proposal made to Lucy and Stuart in person was different from the one in the letter was due to pressure on Frank and Jane from Sarah and Andrew. It is the likely explanation. Lucy, who was unaware of the way the letter was drafted, thought that the fact Stuart had no recognition from her parents was due to pressure from Sarah and Andrew. Sarah's oral evidence indicated that before Christmas of 2007 she was aware of the idea that Lucy and Stuart were hoping to be partners and she (Sarah) discussed things with Frank and Jane.
176. In any event Lucy (and Stuart) rejected the proposal which was put to them. An important question in this case is what the consequences of that rejection are. Counsel for the defendant submitted that what Lucy was offered at this stage was tantamount to everything she could be entitled to even if, which was denied, Lucy had otherwise established a claim for proprietary estoppel.
177. Lucy had expected that Stuart and she were both to be offered partnership. She understood that was what was going to be proposed. And of course that was not a fanciful idea since that is what the 8<sup>th</sup> February letter sets out. She and Stuart were bitterly disappointed. Lucy's reasons for rejecting the proposal at the time were focussed on the offer of partnership. There were two points. First she was not happy about the offer relating to Stuart. She felt her parents had gone back on what they had originally said. Second, as one of three partners in a partnership with her parents she would not have been in control and her siblings interference in the farm, via their parents, would continue.
178. With the benefit of hindsight, including knowledge of Mr Robinson's original advice in the letter and the later events, perhaps it would have been better if Lucy had kept her cool and tried to negotiate a better offer with a closer involvement for Stuart. But that did not happen, no doubt in part due to Lucy's temperament and attitude but also the temperament and attitude of her parents and the influence and temperament of her siblings. The offer was not presented as open to negotiation.

*2008 to 2013 – from the offer to the fight in the milking parlour*

179. There is an issue about whether Lucy handed in her notice after the meeting with Mr Robinson. He was told that she had (see the letter of 18<sup>th</sup> March 2008). She denied that she did. Given Lucy's reaction I would not be surprised if her parents thought she had given her notice even if she had not, but nothing turns on it because there is no doubt that Lucy and Stuart continued afterwards to work at Woodrow in the same way as they had before. Lucy stayed at Woodrow because she hoped she would get what she expected in the long run and staying was the way to do that.
180. The way things worked at Woodrow in the period after March 2008 was essentially the same as they had been since 2006. In practice the dairy farm was run by Lucy and Stuart.
181. In 2010 the insurance policy referred to in Mr Robinson's 8<sup>th</sup> February 2018 letter paid out and £44,000 was paid to each of Sarah, Andrew and Lucy as beneficiaries. There was nothing due to Emma. I have not had my attention drawn to the date when the policy was put into trust for those three of the four siblings. It was probably in the 1980s. The fact Sarah, Andrew and Lucy were the beneficiaries when Emma was not

was a reflection of the fact that at the time this was done Frank and Jane felt they were helping on the farm while Emma was not.

182. In 2011 there was an HMRC tax investigation into the affairs at Woodrow. This has been mentioned already. The interviews took place in early 2012. The topic of the interviews was the employment status of Stuart. There are HMRC notes of a meeting with Frank and Jane at Old Mill on 28<sup>th</sup> February 2012 and with Stuart at Bryony on 27<sup>th</sup> March 2012. Stuart says that Frank briefed him to downplay his hours and he did so. Counsel for the defendant submits that what Stuart told HMRC in terms of hours and his role was true and he did not downplay them.
183. The note of the meeting with Stuart shows that he said his role was day to day running of the dairy herd and he would not be deployed to another task on the farm. By that time Lucy and Stuart had been running the dairy farm for some years. Stuart told HMRC that his hours were roughly 60 hrs per week in the winter and roughly 40 hrs per week in the summer but that he would work whatever hours were necessary. In cross-examination two invoices were put to him, for his work in February 2008 and March /April 2008. They are for 160 hours in each month (i.e. 40 hours per week) priced at £9 per hour, expressed as coming to £1,700 (in fact the sum should be £1,440 so there is an unexplained element somewhere but nothing turns on that). The point was put that these show fewer hours in the winter months than Stuart told HMRC, so that if anything he was overstating his hours not understating them. Stuart maintained that his statement to HMRC downplayed his true hours and said that the invoices were generic invoices which were needed for the farm accounts.
184. I have no doubt that the figures in the invoices did not reflect actual hours worked. The figure for hours is simply designed to produce the monthly sum Stuart was to be paid at a realistic hourly rate. Given the nature of the work, I am sure Stuart did not work such regular hours in that period or at all. I believe Stuart's evidence that he was asked to downplay his hours but I am not convinced he downplayed them so much that the hours he now maintains he worked in that period (56-77 hours per week for the whole year) can be relied on. For one thing the point he made to HMRC that the total hours worked in summer and winter differ was a credible one. The fact that in livestock farming terms the dates when winter starts and ends are themselves very variable does not make any difference. I find that a figure of 56 hours per week for the whole year is representative. It may be a little high for the summer months and a little low for the winter months, and of course to do it with perfect accuracy would require decisions for each year about which months are part of summer and winter from the point of view of animal husbandry, but that figure is representative in my judgment. That will apply to all of Stuart's time from 2006 inclusive.
185. I will make a similar adjustment to Lucy's hours because Lucy and Stuart supported each other's evidence and so if one is overstated, so is the other. I find the figure for Lucy's hours from 2006 will be 60 per week for the whole year.
186. Turning back to what happened at Woodrow, in Emma's witness statement she explains that Sarah and William became much more involved with the farm as Frank's illness worsened and she dates this to 2012. That fits with the other evidence I heard. Emma says that this led to conflict as it seemed Lucy felt that Sarah and William were telling her how to do her job, which she had been doing to years. I

accept that too. It does not mean that on any given issue Lucy was in the right and Sarah was in the wrong.

187. By 2013 things were not going well at Woodrow. Sarah and William on one side and Lucy and Stuart in the other side could not agree how things should be done. Frank, who had kept control in his family for decades, was not capable of keeping control anymore.
188. Mr Taylor was now the partnership accountant having taken over from Mr Sharpe. The partnership made a loss in the year to March 2013. Mr Taylor met Frank and Jane to discuss the future of the farm. Mr Taylor's evidence was that given Lucy's and Stuart's involvement in the dairy business, he advised that their cooperation and input would be needed to improve the performance of the farming partnership. A meeting was arranged to take place at Woodrow.
189. The meeting took place on 1<sup>st</sup> October 2013 with Mr Taylor. It is the meeting about farm finances which has been mentioned above. The focus was the future of the farm, how to increase profits, allow for expansion and allow for future rises in costs. One of the concerns was a need to cover the cost of Frank's care. The idea of future pay increases for Lucy and Stuart is recorded. The meeting note records the original conversation with Jane and Frank, and puts figures on the profits from the partnership of £20,000 and, in future, £30,000. Milk sales are discussed and the note records that cow numbers were 85 at the end of March 2013 with a further 21 heifers to come into the herd and 6 to cull. These numbers refer to the dairy herd. The note refers to the possibility of increasing the dairy herd to 120 by purchasing some further animals and with future replacements to be reared from the herd. Stuart and Lucy agree then to look at increasing the milk. The meeting note also refers to there having been a bad year on fodder and to Sarah's suggestion that a feed rep be consulted. There is mentioned of new investment in buildings – which is a reference to a building to be erected by Andrew.
190. After the meeting Sarah felt that Stuart and Lucy were not doing what had been agreed at the meeting with Mr Taylor. One aspect was buying more cows but the other was about animal feed. The topic of animal feed was a particular source of conflict between Sarah and William on one side and Lucy and Stuart on the other. Sarah and William had experience with rearing beef cattle. Sarah and Stuart had a disagreement about animal feed, Sarah feeling that Stuart (and Lucy) was not giving the animals the appropriate feed which had advised by the feed rep and therefore, as far as Sarah was concerned, had been agreed upon. One dimension to this dispute was whether the protein pellets should be given to all the cattle or only to beef herd and not the dairy cows.
191. Ultimately, on 14<sup>th</sup> October 2013 there was a fight between Lucy and Sarah in the milking parlour. Neither side asks me to make findings about whose fault it was. It is not possible to do so. Lucy and Stuart left Woodrow on that day and did not return. Since then Lucy, Stuart and three of their children have not been back to the farm at all. Tom has visited. There was a suggestion that Lucy prevented her children from visiting. She denied that that was the case.
192. Lucy and Stuart formally resigned their employment on 28<sup>th</sup> November 2013.

193. Sarah and William said that the number of productive cows in the dairy herd at the time Lucy and Stuart left was 63. Lucy did not accept that this was accurate and maintained there were more cows in the herd than that. I believe Sarah's and William's evidence about the number. There is no reason to doubt it. Andrew's evidence was that the dairy herd had been increased from 70 to 120 after Lucy left. His figure of 70 is a bit higher than 63 but it supports the idea that the number was in that range.
194. It is not suggested that the representations were made after 2008. Nevertheless the detriment relied also covers this period and I turn to that. Lucy and Stuart's income in this period was criticised as being too large, particularly by Sarah and William.
195. Stuart's initial salary when he started full time in 2007 had been £1000 per month (net). In early 2008 following a conversation with Frank it was increased to £1,700 per month. That may have been a gross figure (see Sarah's witness statement paragraph 29). Sarah says that Lucy's and Stuart monthly wages increased, from £1,000 to £1,500 net for Lucy and from £1,700 gross to £1,650 net for Stuart. I do not believe this was challenged. From the full partnership accounts, the difference in employment costs between the year to 2012 and the year to 2013 (£26,774 and £49,475 respectively) leads me to infer that Sarah's figures for wages related to the year to March 2013 and onwards (Lucy and Stuart left in October 2013). I infer that prior to that time (and from 2003) Lucy's wages were £1000 per month net.
196. For the years 2008 to 2011 Lucy's net annual pay was £12,000. For the same period Mr McVicar's upper and lower gross figures (for 56 hr and 77 hr weeks) rise from £24,790 - £36,901 for 2008 to £26,803 - £39,896 for 2011. Based on a 60 hour week, by my calculation that amounts to £27,096 for 2008 to £29,296 for 2011. Therefore throughout this period and making allowances for net/gross and for other benefits to Lucy, her pay was substantially below a typical rate for her work.
197. Mr McVicar's figures are based on calendar years rather than on financial years to March. For the year to March 2013, in which I have found Lucy was paid £1,500 per month net, that comes to £18,000 for the year. I will compare it to McVicar's figures for 2012 since most of the year to March 2013 is in 2012, accepting that it will understate the typical rate for the year by a modest amount. Mr McVicar gives a figure of £27,541 for a 56 hr week in 2012 which by my calculation equates to £30,103 for a 60 hr week. So even for this year, for which Sarah and William felt Lucy was overpaid, and making all the same allowances as before and also the understatement caused by using 2012 figures, Lucy was still being paid less than a typical amount in that year.
198. It is not necessary to go to the trouble of putting figures on the period from March to October 2013. The figures will scale in the same way as the others.
199. I find that detrimental reliance by Lucy on the representations made prior to 2008 is established in this period (2008-2013) just as it was in the previous period. In concrete terms the detriment was pay which was lower than typical for her work, long hours, few holidays and the continued commitment to Woodrow.

*2013 to the present*

200. In December 2013 Lucy and Stuart issued employment tribunal claims against the partnership. The claims were settled in September 2014. I have not been told what the terms of that settlement were.
201. In the meantime, in April 2014, Frank Habberfield died. He was 83. Probate was granted on 3<sup>rd</sup> March 2015.
202. Andrew's evidence was that after Lucy left the dairy herd increased to 120, and William and his son James milked the cows for a time. The farm then employed a good dairy man called Henry Swain, but he left. Milk production ceased in 2015.
203. The issue about the number of cows when Lucy left and what happened afterwards was a point advanced as part of a wider argument which is ultimately a continuation of the long running dispute between Lucy and Sarah about competence as a farmer, and the allegation that Lucy and Stuart were overpaid. Sarah's evidence was that milk production increased significantly under her's and William's management after Lucy and Stuart left and she referred to figures for the years to 2014 and 2015 which do indeed show an increase in turnover from milk sales as compared to 2012/2013. No doubt the increase in turnover occurred because the number of cows increased. The cessation of milk production at Woodrow in 2015 was against Sarah's and William's advice. The decision to cease milk production was made by Andrew, Jane and John Sprake. There is not a sufficient pattern for the time after Lucy and Stuart left from which I can draw any conclusion about the relative abilities of the rival sisters or their partners as dairy farmers or farmers in general and I decline to do so.
204. Since leaving Woodrow, Lucy has stayed at home and looked after her children. Stuart now works as a greenhouse installer. Lucy has used her share of the equity in Bryony in part to fund these proceedings by raising a mortgage. She is represented under a Conditional Fee Agreement. On 31<sup>st</sup> May 2017 Lucy and Stuart entered into a deed whereby they held Bryony on trust for themselves as tenants in common with Stuart having a 90% share and Lucy a 10% share. That difference reflects Lucy's use of her equity to fund the action. Lucy was cross-examined about this deed and the mortgage. Her answers did not present a clear picture to me but nothing turns on it.
205. That completes the chronology.

*Has an equity arisen?*

206. Although I have addressed representations and detriment in context already, it is worth drawing the strands together at this stage. I have found that the representations relied on are proven and I have dealt with their meaning. For the purposes of further analysis the expression "a viable dairy farm at Woodrow" is one I will use to encapsulate what it was that Lucy expected as a result of the assurances given to her by or on behalf of Frank and Jane. That term makes allowances for the fact that Lucy did not and could not have expected that no provision of any kind would be made for her siblings, including in particular some land for Andrew. The term was never used at the time. The various representations used different words and were not always explicit, but they fit together and amount to a coherent promise to Lucy that she would inherit a viable dairy farm at Woodrow.

207. As for detriment, the position must be judged by looking back from the moment the person who has given the assurances seeks to go back on them (see *Davies v Davies* paragraph 38(v), citing *Gillett v Holt* at p232). It does not matter whether I take that as being today, when the action started in 2015 or in 2013 when Lucy left. I have found that Lucy relied on the representations to her detriment. The detriment overall can be summarised as pay lower than she could have reasonably expected for her work, long hours, few holidays and the continued commitment to Woodrow. This applied for all the time she was at the farm. By 2013 Lucy had acted in this way for just under 30 years. A notable feature of this detriment is that it does not only consist in the level of pay and conditions, it also involves her commitment to farming at Woodrow rather than elsewhere. She became and is a highly skilled dairy farmer. It is hard to imagine what would have happened if Lucy had not been assured she was working to build and maintain a successful dairy farm which she would inherit, because that is a long way from what happened. The assurances had been given from more or less the start of her working life in the early 1980s and continued until 2008. If they had not been given things would have been very different. Most likely Lucy would still have learned dairy farming from her father but then she would have gone elsewhere, probably sometime in the 1990s. She probably would have sought a farming tenancy elsewhere long ago. To borrow an expression from other cases, in this case the claimant has positioned her working life based on her parents' assurances.
208. Subject to what are in effect allegations of unconscionable conduct by Lucy, I would hold that a proprietary estoppel had been established and an equity had arisen. The issue is Lucy's refusal of the offer in 2008. Since the question of unconscionability permeates all the elements of proprietary estoppel, I do not believe there is a difference in this case between analysing the matter by asking whether the estoppel has been established at all as opposed to taking the estoppel as having been established and then asking if it would be equitable to resile from it.
209. Counsel for the defendant made the following submissions. The offer made in 2008 would have satisfied any promise made to Lucy and would have ensured the fairness Lucy said she wanted. If she had accepted the offer she would have had an interest in the partnership and Stuart might have been a partner by now. There is no reason to believe that in that event Frank and Jane would not then have left the property to their children in the way they said they would at the time. Given the offer, there is nothing unconscionable about leaving Jane to decide for herself how the farm should be run in her lifetime and devolve on her death.
210. Counsel for the claimant submitted that the refusal of the offer could not be held against Lucy on the basis that the assurances relied on did not refer to entering into partnership with her parents and were not conditional on Lucy accepting an offer of partnership and because the offer did not offer an interest in the farm itself.
211. In principle the offer plays a part in two ways. First a refusal by the person who would otherwise have established an equity, to accept an appropriate offer made by the owners of the property, might be such that the estoppel never arises (or if it does, it would not be inequitable for the owners to resile from it). Second and separately however, even if the circumstances are not such as to allow the owners to resile from their assurances, the circumstances may still be relevant in an overall consideration of how an equity is to be satisfied. At this stage I am concerned with the first point.

212. I have not found this aspect an easy matter to decide because looking back from today it is probable that if it had been accepted by Lucy and if it had been implemented in full by her parents (who would have to have resisted a likely outcry from some of Lucy's siblings), the result would have led to Lucy receiving the farm in the long run as a viable dairy farm. I am sure the need to fund legacies to her sisters by mortgaging the farm was not intended to prejudice its long term viability. There are two reasons I find this difficult. First although counsel for the claimant is right that the offer was not an offer of an interest in the farm then and there; as I have already held the assurances given to Lucy did not descend into the detail of whether and in what circumstances prior to Frank's and Jane's death the farm or an interest in it might be conveyed to her. In any case Lucy did not reject the offer because of the terms about property ownership.
213. Second, one of the two major reasons why Lucy rejected the offer was about Stuart's position. But Lucy's proprietary estoppel case does not establish and does not seek to establish that Stuart was entitled to anything from Frank and Jane nor that Lucy was entitled to require Jane and Frank to give Stuart anything. Therefore Lucy's refusal on that ground was because she was not offered something which her estoppel claim cannot entitle her to demand from her parents.
214. It seems to me that the decisive factors are the following. Lucy had been assured that the farming business would be hers in future after Frank could not run it anymore. By the time of the offer in 2008 Lucy and Stuart were in practice running the dairy farm, which was the heart of the farming business at Woodrow. Frank was 77 years old and his health was deteriorating. Really it was time for him to retire and it was the point at which Lucy could legitimately have expected to take over. I recognise that Frank and Jane continued to retain control after this date but it was a struggle and does not falsify the idea that in 2008 Frank ought to have retired.
215. One of Lucy's reasons for refusing the offer was that it would make her one of three partners with her parents, whom she felt were being influenced by her siblings. That is less than the assurance Lucy had been given about the business. Control of the business, on the footing that Frank's age and health meant he, and inevitably therefore Jane, were retiring from the business, was not on offer. The lack of control was a real problem.
216. No doubt part of the motivation for the offer was the need for Jane and Frank to maintain an income. Also I suppose Jane's age and health would not have prevented her from continuing in the role she had alongside someone else and therefore other possible arrangements might have been possible, perhaps a partnership between Lucy and Jane; but whether that would have been practical was never considered.
217. Finally, the offer was consistent to a significant degree with the assurances Lucy had been given up to that point since it was put on the footing that she was going to inherit a viable dairy farm at Woodrow. It was not put to Lucy on the basis that by refusing the offer of partnership she would forfeit that inheritance. Whether such a term in the offer would have been effective or not does not matter because it was never put that way.
218. I conclude that Lucy's refusal in 2008 does not entitle Jane (nor would it have entitled Frank) to resile from the assurances Lucy had been given.

219. Counsel for the defendant posed the question whether the assurances had been procured by bad behaviour of Lucy's part. As I hope is clear, I do not accept that submission. Lucy clearly had a temper and this played a part in the events over three decades but so did other family members. I reject that submission as it relates to the time before 2008. As for March 2008, to criticise what happened after the meeting with Mr Robinson as a mere tactic by Lucy, throwing a tantrum when she did not get her way, ignores the reality of the situation. Lucy reaction was a strong one because she was upset. Nor do I accept that Lucy is at fault because she brought the claim after her father had died.
220. Counsel for the defendant submitted that the falling out in 2013 was of little relevance to the issue of unconscionability. I agree.
221. I conclude that Lucy's case of proprietary estoppel is established and that an equity has arisen in Lucy's favour.

*What relief is appropriate?*

222. The judgment in *Davies v Davies* cited above was concerned with relief. At paragraph 38 of his judgment Lewison LJ summarised the applicable legal principles. In deciding how to satisfy the equity the court has to exercise a broad but not unfettered discretion (paragraph 38(ix)). Then in paragraph 39 Lewison LJ explained that there is a lively controversy about the essential aim of the exercise of this discretion. The difference is between giving effect to the expectation or compensating for the detriment suffered. As Lewison LJ explained the two approaches in their starkest form are fundamentally different. That can be seen in this case. Lucy's expectation was to end up with a viable dairy farm at Woodrow. Now Woodrow as a whole is worth about £2 ½ million. Whereas if one tries to add up the quantifiable parts of the Lucy's reliance loss they produce a much lower sum, especially when one takes care to ignore any amounts attributable to Stuart, who has no claim. I will address the detail as best I can below at this stage even without looking at the figures it is obvious the quantifiable amount which Lucy would typically have been entitled to expect to have earned over the whole period will end up around £½ million and once what she did earn is subtracted, the loss will be no more than a sum of the order of £¼ million. So Lucy's quantifiable reliance loss could be a factor of ten smaller than the value of the fullest expression of her expectation.
223. Given the importance of this point I will set out the relevant paragraphs of Lewison LJ's judgment on this in full. They are following:

“39 There is a lively controversy about the essential aim of the exercise of this broad judgmental discretion. One line of authority takes the view that the essential aim of the discretion is to give effect to the claimant's expectation unless it would be disproportionate to do so. The other takes the view that essential aim of the discretion is to ensure that the claimant's reliance interest is protected, so that she is compensated for such detriment as she has suffered. The two approaches, in their starkest form, are fundamentally different: see *Cobbe v Yeoman's Row Management Ltd* [2006] EWCA Civ 1139, [2006] 1 WLR 2964 at [120] (reversed on a different point [2008] UKHL 55; [2008] 1 WLR 1752). Much scholarly

opinion favours the second approach: see Snell's Equity (33<sup>rd</sup> ed) para 12-048; Wilken and Ghaly Waiver Variation and Estoppel (3<sup>rd</sup> ed) para 11.94; McFarlane The Law of Proprietary Estoppel para 7.37; McFarlane and Sales: *Promises, detriment, and liability: lessons from proprietary estoppel* (2015) LQR 610. Others argue that the outcome will reflect both the expectation and the reliance interest and that it will normally be somewhere between the two: Gardner: *The remedial discretion in proprietary estoppel – again* [2006] LQR 492. Logically, there is much to be said for the second approach. Since the essence of proprietary estoppel is the combination of expectation and detriment, if either is absent the claim must fail. If, therefore, the detriment can be fairly quantified and a claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim: Robertson: *The reliance basis of proprietary estoppel remedies* [2008] Conv 295. Fortunately, I do not think that we are required to resolve this controversy on this appeal.

40 In *Jennings v Rice* at [45] Robert Walker LJ referred to a class of case in which the assurances and reliance had a consensual character not far short of a contract. In such a case "both the claimant's expectations and the element of detriment will have been defined with reasonable clarity." In that kind of case the court is likely to vindicate the claimant's expectations. Although Robert Walker LJ does not say so in terms, it is implicit that in such a case the claimant will have performed his part of the quasi-bargain. At [47] he referred to another class of case in which:

"... the claimant's expectations are uncertain (as will be the case with many honest claimants) then their specific vindication cannot be the appropriate test. A similar problem arises if the court, although satisfied that the claimant has a genuine claim, is not satisfied that the high level of the claimant's expectations is fairly derived from his deceased patron's assurances, which may have justified only a lower level of expectation. In such cases the court may still take the claimant's expectations (or the upper end of any range of expectations) as a starting point, but unless constrained by authority I would regard it as no more than a starting point."

41 What is not entirely clear from this passage is what the court is to do with the expectation even if it is only a starting point. Mr Blohm suggested that there might be a sliding scale by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the greater would be the weight that should be given to the expectation. I agree that this is a useful working hypothesis.

42 Nevertheless in my judgment the judge in this case applied far too broad a brush and failed to analyse the facts that he found with sufficient rigour. Nor, to my mind, did he explain why he reached the conclusion that he did. Although he said that he took "expectation" as an appropriate starting point, he did not explain which expectation out of the many he found he regarded as the starting point."

224. With this passage in mind I address the following further points.
225. First - can it be said that the detriment can be fairly quantified such that if the claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim (see paragraph 39 penultimate sentence)? In my judgment the answer to that question is a clear no. This is not a case like Davies v Davies with a series of different expectations and mutually incompatible expectations over the years (cf Lewison LJ paragraph 48). In this case a single promise was made albeit in different guises and reinforced over a single long period. Although part of the detriment can be quantified, compensation for the claimant having committed to the farm for three decades instead of going elsewhere and building a different life is not readily quantifiable.
226. Second - how certain were the claimant's expectations (see the quoted passage from Jennings v Rice)? The case that the expectations were 100% of the farm has been rejected. Lucy expected to receive a viable dairy farm at Woodrow. That is something whose specific vindication is possible. The fact it is possible does not mean it is necessarily the right thing to do but that is a different point.
227. Third, were the level of the claimant's expectations fairly derived from the relevant assurances (see further in the quoted passage from Jennings v Rice)? The answer is yes. She was promised a viable dairy farm at Woodrow. Therefore at least if one follows the approach in the quoted passage, this is not a case for saying the expectation is no more than a starting point.
228. However the converse of this point cannot be taken too far. What I mean is that just because the level of the expectation is fairly derived from the relevant assurances, it cannot be right that that alone justifies an award of expectation. In paragraph 41 Lewison LJ holds that an approach whereby (amongst other things) the longer the expectation was reasonably held, the greater would be the weight given to the expectation, is a useful working hypothesis. I would add a refinement to paragraph 41 derived from the article by McFarlane and Sales which is referred to in Lewison LJ's judgment. The article was not cited to me directly but I read it. The authors highlight the importance of the backwards looking nature of the principle being applied. They make the point (at p620) that the level of the claimant's expectation in a case like this effectively stays the same throughout the period when the claimant is working to fulfil the promise made to them. As the authors suggest, if the defendant in Thorne had died six months after making his promise then the claimant would have been restricted to having his equity satisfied by payment of reasonable remuneration for that period. The claimant's expectation in Thorne was characterised by the authors as being that the claimant would earn the right to the farm by working on it for very little remuneration over many years. So once the claimant had given service over many years, the idea that the equity should be fulfilled by a transfer of the farm seems more readily justifiable. With this in mind the authors propose a "hybrid" model as follows:

"The relief afforded to B under the promise-detriment principle is protection in respect of B's detrimental reliance, unless and until any performance he or she rendered under a reciprocal arrangement with A of which A's promise forms part amounts

to substantial performance by B of the return A wished to secure by making the promise.”

229. In other words it is not simply that an expectation reasonably held for a long time necessarily justifies giving greater weight to the expectation over the reliance loss, an important factor (if true) is that the long period of time amounts to fulfilling what the person promised was told they had to do in order to secure what they had been promised. That seems to me to be an equitable approach.
230. To reach a conclusion on the satisfaction of the equity, the value and nature of the various elements of Woodrow need to be examined as well as the figures relation to detrimental reliance. The valuation evidence of the experts was not challenged.

*Value and viability of Woodrow*

231. The evidence of the value of Woodrow and its constituent parts was given in the unchallenged single joint expert report of Mr Alex Rew, a chartered surveyor at the firm STAGS in Tiverton. His view (as at Feb 2017) was that the current value of Woodrow as a whole is £2,450,000 (subject to a typographical slip – see below). The value of Woodrow farm itself (125 productive acres plus the farmhouse and buildings) was £1,600,000. He said a purchaser would be cautious about purchasing this as a commercial dairy unit but would not rule out its use as a dairy farm and it offers opportunities for stock farmers and purchasers with equestrian interests along side farming. The agreed statement of Mr Rew (in his capacity as expert called by the claimant) and Mr Patrick Woodford, a chartered surveyor at the firm Symonds & Sampson (in his capacity as expert for the defendant) was that Woodrow as a whole (i.e. 229 acres or thereabouts) was viable as a dairy farm but also that the land at Mudford was not essential to that dairy operation provided the buildings at Woodrow farm itself were available to the business. The experts also agreed that while not ideal, the farm could be operated as a dairy farm by a person living within approx. half a mile of the main farm holding. The point is that this would include Bryony.
232. As for Mudford, Mr Rew’s single joint opinion was it was worth £950,000. Mr Rew and Mr Woodford agreed that Mudford alone was not a viable dairy farm.
233. The value of Woodrow without the farmhouse and garden and without the amenity land (about 1.35 acres) that would remain with the farmhouse if it was sold separately (which is what would be done to maximise its sale potential) would be £1,170,000. That is in effect the value of the 128 acres of farm land and farm buildings at Woodrow.
234. If all the property was to be sold, Mr Rew recommended it should be marketed as available as a whole or in two lots:
- i) Lot 1 Woodrow farm £1,600,000
  - ii) Lot 2 Land at Mudford £950,000
  - iii) The Whole £2,550,000

235. There is what I believe to be a typographical error in para 4.5 of Mr Rew’s report about the price for the whole since it is inconsistent with his value for the whole given at para 4.1. Also in the joint report of June 2017 a figure of £2,550,000 for the whole is used and I will use the higher figure.
236. The joint experts’ statement (Mr Rew and Mr Woodford) agreed reinstating a dairy business at Woodrow was viable and looked at the cost. That would include buying 115 cows and 29 “in calf” heifers etc. and feed, machinery and reinstating the milking parlour. The total cost of £415,420. This does not include labour. They estimate the total cost of purchasing an equivalent farm (including stamp duty and professional fees) to be £3,114,920.
237. I accept all these figures.

*Quantifiable part of the detrimental reliance*

238. Mr McVicar, the accountancy expert who addressed typical wages in agriculture produced a summary table 5.6 which set out the totals of what Lucy would typically have been able to earn, allowing for the benefit of board and lodging based on the two sides’ rival evidence of hours. Mr McVicar broke down the overall period from 1983 to 2013 into two parts up to 2004 and beyond. It is convenient to set out the whole table:

Employee	Years	Lucy’s view		Jane’s view	
		Lower	Upper	Lower	Upper
Lucy	1983-2004	269,267	305,177	161,768	161,768
Stuart	1983-2004	14,285	14,285		
Lucy	2005-2013	217,932	315,669		
Stuart	2005-2013	200,087	297,824		
Lucy and Stuart	2005-2013			126,987	172,966
<b>TOTAL</b>		<b>£701,571</b>	<b>£932,955</b>	<b>£288,755</b>	<b>£334,734</b>

239. The figures are all in sterling. They are based on multiplying up hours worked by rates which in Mr McVicar’s opinion were typical for agricultural wages in the relevant period and subtracting a value for those compensating benefits which Mr McVicar could quantify. I include the figures produced by Mr McVicar based on Jane’s view of the matter although I have not accepted Jane’s view.
240. The difference between the upper and lower figures on Lucy’s view is accounted for by the range in Lucy’s and Stuart’s estimate for how many hours per week were worked for some (although not all) of the period. Broadly the lower figures are for 60 hrs per week and the upper figures are for 70 hours per week (although the actual numbers vary). I do not have a full set of figures which would be produced using the hours I have accepted but it is not necessary to do so.
241. For the period up to 1998 I have accepted Lucy’s evidence on hours – which was 60 to 70. To make an estimate I will use 65. For the period between 1999 and 2004, there is no range in Lucy’s estimate of hours worked, which related to the time her children were born and was more detailed. So the right figure based on Mr McVicar’s table to reflect the 65 hrs estimate is half way between the two numbers for the period up to 2004. Rounding to the nearest thousand that is £287,000.

242. For the period after 2004 I have accepted Lucy's figures for 2005 and then from 2006 onwards held that 60 hrs per week reflects her time. That means the figure for hours I have accepted is a bit more (but not more than 10% above) the figures for hours used by Mr McVicar for the "lower" of Lucy's figures. Adding 10% to £217,932 and rounding to the nearest thousand gives £240,000.
243. A reasonable estimate of the upper limit on Lucy's quantifiable reliance loss can be derived. One should ignore Stuart. The sum of the two period's figures comes to £527,000.
244. To accurately calculate the difference between that figure and what Lucy actually earned is not possible with the information available. Its magnitude can be gauged. In 1995 Lucy's net income for the year was £6,240 while her typical gross income calculated by Mr McVicar (making allowance for board & lodging and some other benefits but not all) would have been £12,687. In 2002 the actual net pay figure was £9,000 and Mr McVicar's number was £16,569. In 2006 the figures are £12,000 vs £24,824. In 2006 to 2011 the gap is wider (actual net £12,000 vs £27,096 in 2008 and £29,296 in 2011). In the year to March 2013 the two numbers are £18,000 vs £30,103. So a rough estimate of the difference is a half. It is less than a half in many years but more in some higher earning years. That produces a figure Lucy's loss in terms of employment (rounded) of £264,000.
245. The sum Lucy received from the insurance policy ought also to be taken into account since that was something Lucy (and Sarah and Andrew) received as a result of her farm work while Emma did not. That was £44,000.
246. So I conclude that the best estimate on the material I have of the upper limit of the quantifiable aspects of Lucy's reliance loss £220,000.

### *Decision*

247. Lucy was not being told that she only had to work on the dairy farm for a year or two and then she would inherit it. She was being asked to work on the dairy farm until Frank was no longer capable. When the representations were first made that event was expected to be many years in the future, and as it turned out the event was about 30 years away. In the intervening years, putting it in terms of a reciprocal arrangement, in effect Lucy has kept her side of the bargain. She did what was asked of her and in my judgment that means that to take an approach whose primary aim is only to compensate Lucy for her reliance losses would not be equitable. Unless there are strong reasons why not, Lucy ought to receive compensation based on what she was promised, subject to any relevant deductions. What she was promised was a viable dairy farm at Woodrow.
248. Today counsel for the defendant maintains that Jane wishes to be fair to all her children. That implies (but does not commit to) sharing the estate four ways. If the terms of the February 2008 letter were to be fulfilled then, when her mother died, Lucy would inherit the whole of Woodrow (including the farmhouse and Mudford). But she was also being asked to put money into the partnership and in addition some Mudford land would go to Andrew and legacies for her sisters.

249. The value of Mudford as a whole (about 100 acres) is £950,000. The parcel for Andrew was never described in detail but it was not intended to be the majority of the Mudford farmland. It seems to me that the legacies to Lucy's sisters were unlikely to be intended to be out of scale with the value of what was given to Andrew. I find that the value of Mudford itself represents an upper limit on what would be given to Lucy's three siblings together. Since Lucy's expectation was always qualified by the fact that something would be done for her three siblings, the fairest way of taking that into account would be deducting either Mudford as a whole or its value.
250. In terms of property, the expert's view is that the Mudford land is not essential to a dairy operation at Woodrow. Therefore looking at the minimum needed to satisfy the equity, that is another reason not to include Mudford or its value.
251. The value of Woodrow alone (including the Farmhouse) is £1,600,000. Without the farmhouse the value of the land alone (with the farm buildings) is estimated at £1,170,000. The latter would be capable of sustaining a viable dairy farm from Bryony although to do so would not be ideal. On the other hand simply to pass the land to Lucy does not pass a viable dairy farm because there is no longer an operational dairy unit at Woodrow. To set one up would cost £415,420. The sum of the value of the land without the farmhouse and the set up costs is £1,585,420, which is remarkably close to the value of Woodrow including the farmhouse. So one way of compensating for the absence of an operational dairy farm would be to transfer Woodrow with the farmhouse, or the equivalent value.
252. I find that the most Lucy should receive is Woodrow itself with the farmhouse but without Mudford, or the equivalent in money terms. I turn to consider other factors.
253. The farmhouse is Jane's home and is also the home of Andrew and of James, Sarah and William's son. While Lucy did expect to be farming Woodrow before her parents had died (once Frank was unable to do so), she did not expect necessarily to inherit any property itself until both her parents had died. A further factor is that, as emerged in 2007, separating the Woodrow land from the farmhouse may be very tax inefficient.
254. The other factor I take into account is the refusal of the offer in March 2008 and separately Lucy's departure in 2013. As to the former, although refusing the offer does not justify denying her claim in its entirety, it seems to me that some account should be taken of it because the offer was a genuine attempt by Lucy's parents to resolve the issue of succession. Also the fact that Lucy and Stuart left in 2013 should be taken into account too. It is not possible to say who was to blame for the fight in the milking parlour but Lucy can hardly complain that dairy farming has ceased at Woodrow since she chose to leave. If Lucy had accepted the offer in 2008 or if she had stayed after 2013, while no doubt it would have been a struggle, there would still today have been a working dairy unit at Woodrow. In my judgment it is right to take some account of these points without attributing blame for what happened. The fair way to do so is to measure Lucy's compensation by reference only to the value of the land and farm buildings at Woodrow itself (excluding Mudford and excluding the farmhouse). That is a piece of property which is capable of being a viable dairy farm, excluding the cost of reinstating a working unit.

255. Another separate factor which, in my judgment, might have justified a reduction in the value of the compensation to Lucy is the relative size of the quantifiable reliance loss as compared to the value of the expectation. However given the previous paragraph, I regard that as further support for making the deduction in the previous paragraphs rather than a reason to reduce the compensation any further (indeed I doubt it would justify the whole of the deduction in the previous paragraph).
256. Another factor to note is the amount each of the siblings might expect if the value of Woodrow as a whole was shared equally between them (ignoring any other property in Jane's estate). Based on the value of the whole of £2,550,000, a quarter is £637,500. That does not justify any adjustment to the figures.
257. There are no other factors of sufficient weight to take into account and I conclude that the right way to satisfy Lucy's equity in this case is by a cash payment of the value of the Woodrow farmland and farm buildings (excluding Mudford and the farmhouse). I put it in these terms because the valuation evidence was done in February 2017 and things might have changed. Based on the February 2017 valuation that would be a cash payment of £1,170,000. It is much more than a quarter of the value of Woodrow and less than half.
258. The appropriate compensation is a cash payment rather than a transfer of property for two reasons. I am not satisfied it would be fair to require the farmhouse to be split from the rest of the holding. Nor am I satisfied that I should make an order for transfer which inevitably forces Jane to leave her home. It may not be possible to raise the money due without selling all the property but at least by making the award in this way it allows for the possibility. If the parties can agree a sum representing the value at the date of the order then that will be the sum to be awarded. I will hear the parties as to whether there are any details concerning the drafting of an appropriate order.

#### *Inheritance Act*

259. In the result it is not necessary to consider the Inheritance Act claim.

#### *Conclusion*

260. The claimant's case is proved.
261. The defendant must pay the claimant a cash sum equivalent to the value of the farmland and farm buildings at Woodrow itself (excluding Mudford and excluding the farmhouse). Valued at February 2017 that sum would be £1,170,000. The only adjustment necessary is to take account of any change in property value between that date and the date of this judgment.

Annex 1 – Partnership figures

262. The figures below are extracts from accounts and tax return information in the trial bundles. The information is not complete. I have included all the years I can find including the final year in which Lucy was at Woodrow (year to 2014). The figures are in pounds. Some of the source documents state slightly different figures for the same periods but the differences are minor. The treatment of the single farm payment varies with the result that more recent turnover and gross profit figures include it while earlier ones do not. The pre-2003 figures come from tax returns. The net profit figure is the stated figure not the adjusted net profit for tax purposes. The tax returns after 1998 are in short form and do not contain enough information to be worth setting out.

<u>Item</u>	<u>1997</u>	<u>1998</u>
Turnover	496,626	243,166
Milking income	not stated	
Gross profit	309,486	115,264
Net profit/loss	88,786	25,146

<u>Item</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Turnover	152,556	161,130		145,109
Milking income	94,738	116,172		124,614
Gross profit	99,749	85,237		80,115
Net profit/loss	4,451	(11,368)		15,941

<u>Item</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Turnover	177,836	169,391	182,757	174,177
Milking income	121,088	151,844	141,167	145,499
Gross profit	104,117	93,986	117,691	71,525
Net profit/loss	31,172	14,335	23,747	6,329

<u>Item</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
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Turnover	204,131	268,129	227,450	355,107
Milking income	145,953	172,124	169,901	234,719
Gross profit	100,178	141,827	135,057	164,401
Net profit/loss	20,802	16,516	(3,049)	18,278

263. The turnover figure for 2014 includes £49,875 for herd transfers which is treated differently when the 2014 accounts are stated in the 2015 accounts but nothing turns on this.