



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 45

A214/24

OPINION OF LORD HARROWER

In the cause

(FIRST) NADEEM-UL CASIM HAQ, (SECOND) MOHAMMED NAWAZ HAQ, (THIRD)  
KASHIF HAQ, AND (FOURTH) SABRINA HAQ

Pursuers

against

(FIRST) GRAHAM PATTINSON IRVINE, (SECOND) CARMEN ELIZABETH MACIVER,  
AND (THIRD) SAMINA KAUSAR HAQ

Defenders

**Pursuers: Whyte; Lindsays LLP**  
**First and Second Defenders: Macleod; Shepherd and Wedderburn LLP**  
**Third Defender: No appearance**

8 May 2026

**Introduction**

*The claim*

[1] Abdul Haq died on 31 March 2022. He is survived by his second wife, Samina, their two young children, and four grown-up children from his first marriage: Nadeem-Ul Casim (Nadeem), Mohammed Nawaz (Nawaz), Kashif, and Sabrina.

[2] Five months previously, on 3 November 2021, Abdul had been diagnosed with metastatic cancer located in his abdomen and bowel. Having been told that he might only

have months to live, depending on the treatment he chose to receive, Abdul opted for palliative care.

[3] Shortly after he received his diagnosis, Abdul had conversations with Nadeem, Nawaz and Kashif, in which he gave them to understand that he wished to prepare a will and that they would benefit.

[4] Several months later, on 11 February 2022, Abdul did indeed make a will. In it, however, Abdul bequeathed the entire residue of his estate to Samina.

[5] The four children by Abdul's first marriage cannot accept that Abdul wanted to do this. In this action, as pursuers, they seek production and reduction of the will on grounds of undue influence and/or facility and circumvention. Put short, they contend that Abdul, when making the will, was in no state to resist the influence of Samina, in whom they argue he had placed his trust, or the pressure to which she had subjected him.

[6] As it happens, Abdul had already made a will many years earlier, although the pursuers remained unaware of it until after he died. He made it in 2004, after he had become separated from his first wife, Razia, but before his marriage to Samina. If the pursuers were to succeed in this action, the earlier will would take effect. It provides that Abdul's estate is to be distributed in accordance with the principles of Islamic law.

According to these principles, all of Abdul's children stand to benefit.

[7] For simplicity, in this judgment, I have referred to all Haq family members by their first names. No disrespect is intended.

### *The defenders*

[8] The first and second defenders are Graham Pattinson Irvine and Carmen Elizabeth Maciver. They are the two most senior partners at Caesar & Howie, solicitors, and

confirmed executors of Abdul's estate, confirmation having been granted on 22 February 2023. However, they played no role in the drafting and execution of Abdul's will. That was carried out by Martin Monaghan, a vastly experienced solicitor within the same firm, who had also acted for Abdul at the time of his divorce settlement with Razia between 2003 and 2008. The first and second defenders had no patrimonial interest whatsoever in Abdul's estate. They defended the action purely on the basis of their belief that Abdul's will represented his true wishes, as instructed by him, and that he had received independent legal advice in relation to its preparation. As confirmed executors, they regarded themselves as duty bound to ensure that Abdul's estate would be distributed in accordance with his wishes, as expressed in his will.

[9] The third defender is Samina. She did not enter appearance.

### *The proceedings*

[10] The pursuers' challenge was intimated, and the action raised, after the grant of confirmation. After sundry procedure, the case called before me at a proof before answer. Parties entered into a joint minute, some of which has already been reflected in this introduction. In addition to each of the pursuers and Razia, I heard evidence from Delia McPhillips, a nurse with the Marie Curie charity, who was primarily responsible for Abdul's care between 13 January 2022 and his death, and from Kaeli King, a social worker to whom the local authority had assigned the task of overseeing the provision of care to Abdul. I heard from Mohammed Farooq, a long-standing friend of Abdul's, and from Wasim Abbas, a friend of Nawaz's, who knew Abdul primarily from the local mosque which Abdul attended with his two younger children. Counsel for the first and second defenders led Mr Monaghan and Zainab Shahzad, who assisted in the preparation of the

will. All the witnesses, other than Delia McPhillips, provided affidavits. By agreement, the affidavits of each of the first and second defenders were treated as the totality of their evidence without the need for them to be called as witnesses. The other witnesses who had provided affidavits adopted them as part of their evidence in chief.

[11] I am satisfied that all the witnesses were doing their best to assist the court and that, save where noted, no issues of credibility arose. I accept as reliable the evidence of Ms McPhillips, Ms King, Mr Farooq, Mr Abbas, Mr Monaghan and Ms Shahzad. The evidence of the pursuers was, perhaps inevitably, coloured by their genuine love and affection for their father coupled with an understandable concern over his relationship with his new wife. So far as Razia is concerned, following the divorce, she had no contact with her ex-husband until his diagnosis, and her comments on Samina's controlling attitude towards him would not have been based on extensive direct, first-hand experience. These limitations notwithstanding, there was much in the evidence of the pursuers and Razia with which I had little difficulty, and I was able to draw heavily upon it in the following findings in fact. In what follows I have also highlighted certain passages of their evidence which were more problematic, contrasting it where appropriate with evidence from others that I did accept.

### **The facts**

#### *Abdul Haq*

[12] Abdul was born in 1947 in Pakistan and moved to the United Kingdom in 1975. In the same year, Abdul and Razia were married in London, the marriage having been arranged by Abdul's older brother, for whom they soon began working in a small grocery store in Cardenden. Later, with the help of a bank loan, they acquired their own shop in

Deans, but with a Co-op just three doors up, it was difficult to make a go of it. Eventually, when the Co-op closed, they took over the lease of its premises, and their business began to flourish. Abdul and Razia worked alongside one another in the store, 7 days a week, with their children helping out from time to time.

[13] Abdul's mother tongue was Urdu and he also spoke Punjabi. He had no difficulty communicating in English, occasionally blended with the vernacular of his adopted homeland. Mohammed Farooq gave evidence that Abdul had struggled to attend mosque regularly during his working life, though he had always managed to make it to Friday prayers. In retirement, Abdul was able to participate more readily in the mosque's activities, and he would take his two younger children to attend classes there. Abdul contributed financially to the mosque's projects, and at some stage, he appears to have made a pilgrimage to Hajj. Parties agreed that Abdul was an observant Muslim.

[14] Until his illness, Abdul enjoyed robust good health. He was a bright, sociable and confident character. He was also strong-willed. Those involved in his care towards the end of his life said he could be blunt when expressing his wishes and needs. Once he had taken up a position on a matter, he could not be easily swayed. To some extent, Abdul's stubbornness during his final months may have been accentuated by his illness.

Ms McPhillips was familiar with patients in palliative care seeking to re-assert control over their own lives. But when the social worker, Kaeli King, was asked if she considered Abdul to be someone who would be vulnerable to influence, she replied, firmly, "No".

### *The breakdown of Abdul's first marriage*

[15] After 25 years, Abdul and Razia retired and focused on their property investments. However, their marriage faced difficulties, leading to a separation in 2002, followed by

divorce in 2008. Razia referred to the divorce as “bitter”; Nadeem described it as “messy”. It was a complicated dispute involving some 25 properties worth around £5 million. Abdul instructed Martin Monaghan of Caesar & Howie to act on his behalf. There were many meetings and discussions over the course of the 5 years that it took for the dispute to be resolved. Ultimately, the divorce settlement involved Abdul transferring substantial heritable assets to Razia. Razia indicated that she gave half of her share of the properties to their children. She understood that Abdul would also be providing for them in a will.

### *The 2004 will*

[16] In addition to the divorce settlement, Abdul had instructed Caesar & Howie in relation to 14 other transactions over the years, in at least one of which Mr Monaghan was directly involved. When, in 2022, Abdul required a lawyer to prepare a new will, it was to Mr Monaghan that he turned. Mr Monaghan had not been involved in the preparation of the 2004 will. However, once instructed, Mr Monaghan located it among the firm’s files. It was dated 29 April 2004, and provided that Abdul’s estate was to be distributed in accordance with the principles of Shariah law. Attached to the will was a note signed by Abdul dated 23 January 2004. The note detailed concerns about potential threats to Abdul’s life by Razia’s extended family residing in Scotland or Pakistan.

[17] At a meeting on 27 January 2022, to which I will return, Mr Monaghan discussed the 2004 will with Abdul, in particular the clause in terms of which Abdul’s estate would be distributed according to Shariah law. According to Mr Monaghan, Abdul did not understand what that distribution would entail in practice, and he preferred to change it to something he clearly understood. They did not discuss the 2004 will further. They did not discuss the note that had been attached to it at all.

*Marriage to Samina and concerns regarding Abdul*

[18] In 2009, Abdul married Samina, a much younger woman from Pakistan. This marriage too had been arranged by Abdul's brother. It took place in Pakistan. Following the wedding, they lived together in Murieston. The pursuers had little, if any, contact with Samina in the early stages of the marriage. Nadeem could not recall meeting Samina before her first child was born. Sabrina did not even know that Samina had been pregnant. No doubt the acquisition by the pursuers of half-siblings brought the pursuers more readily into contact with Samina. To begin with Samina seemed pleasant. The pursuers respected her, as their father's wife, even if their relationship with her was somewhat guarded. For example, although Abdul would bring his young children to Sabrina's house, Sabrina would only visit her father's house if asked. Over the course of time, each of the pursuers began to form negative opinions about Samina. These were based to a significant extent on their perceptions of her behaviour towards their father. In varying degrees, they described Samina as cold, unkind, selfish and abusive towards Abdul.

[19] Whether or not these were accurate descriptions of Samina's personality or her relationship with her husband is something which I find it difficult to assess. There may have been a significant amount of truth to them. On the other hand, they may have been rooted in an understandable concern for their father and a perceived need to protect him from someone who had perhaps been regarded as an intrusion. To take just one example, all the older children believed that Samina made little effort to contribute to household responsibilities, while their father was occupied full-time with the care of their children, for example in taking them to and from school. They would express this in terms of Samina showing a lack of respect for their father. Nadeem referred to rumours he had heard from

cousins that Samina made his father “push the pram while she strutted beside him swirling keys with her fingers”. However, it is quite possible that Abdul enjoyed occupying himself with his younger children. After all, he had been very attentive to the pursuers themselves when they were little, as will become clear when I come on to discuss Mohammed Farooq’s evidence. The pursuers’ concerns may also have been based on attitudes regarding who should primarily bear responsibility for child-rearing, which there was no evidence that their father shared. In any event, whatever the truth may have been on these matters, I did not find the pursuer’s and Razia’s negative perceptions regarding Samina a reliable evidential basis from which to conclude that she necessarily exerted pressure or control over Abdul.

#### *Transfers of property to Samina*

[20] Abdul placed his trust in Nawaz in relation to property investments. Nawaz was a chartered surveyor and so had expertise in that area. One day, while carrying out some work on his father’s portfolio of properties, Nawaz discovered that Abdul, without consulting him, had transferred two properties to Samina worth over £1 million, and capable of earning £80,000 per year. Nawaz was unsure when the transfers took place, or when it was that he discovered them, though it was a matter of agreement that they took place in or around February 2011.

[21] In Razia’s view, even these transactions had not been Abdul’s choice but had been forced upon him by Samina. She knew Abdul well and claimed that he would never have transferred assets “just like that, especially to someone who [had] never worked for it or lifted a finger”. According to this view, Samina must have held sway over Abdul from the very earliest stages of their relationship, at a time when he was in robust good health, and

certainly not facile or otherwise suffering from any weakness of mind. In the pursuers' view also, confirmed by Mr Whyte in his submissions, Samina's control over Abdul had been exerted throughout the entire duration of their marriage. I was not persuaded that there was a reliable basis in the evidence for concluding that Samina exerted control over Abdul to anything like this extent or over such a long period. As a result, this extension of the pursuers' complaint beyond the period when Abdul was in poor health tended to undermine their case as a whole.

[22] When Nawaz asked Abdul about these transfers, he was embarrassed, not wanting to go into any detail. Asked what he meant by "embarrassed", Nawaz explained that Abdul was unable to "justify" the transactions to him. When asked why Abdul might need to justify the transactions at all, Nawaz started out by saying that Abdul had a soft nature, and that he, Nawaz, had to be alert to the risk of someone taking advantage of him. Nawaz continued his answer in a manner that suggested his motivation went beyond filial duty. He said it was his "right" to look after his father's interests. He said his father's property was the property of "everyone", by which I understood him to mean all the children, or at least all the children of Abdul's first marriage. I found this passage of evidence revealing. It was consistent with evidence of an emerging conflict between the pursuers and their father, about which Mr Monaghan gave evidence, and which I shall discuss presently.

#### *Expectations of inheriting from Abdul*

[23] In late 2021, following his cancer diagnosis, Abdul spoke with Razia for the first time in over 15 years. Razia said that Abdul revealed to her that he regretted the marriage to Samina and felt manipulated by her. Abdul asked her for forgiveness for what he had done, which I understood to be a reference to the divorce settlement. She did forgive Abdul, but

asked of him that, whatever he did now, he should not be unfair to their children.

According to Razia, Abdul cried and said that he wanted to leave their children at least half of what Razia referred to as his “full estate”. Razia understood Abdul to have indicated that, having already transferred large amounts to Samina, he would leave the rest of his property to the pursuers.

[24] At around the same time, Abdul appears to have had discussions with his older children, or at least the boys, about their inheritance. Abdul asked Nawaz to arrange a will for him. Abdul was adamant that he needed to do right by all his children. Nawaz had previously discussed with his father the fact that Abdul had transferred roughly half the value of his properties to Samina. Abdul wanted the remainder to go to the pursuers, together with a fair share of his savings to make up what he referred to as any shortfall. According to Nawaz, they decided to approach Raeside Chisholm, who were solicitors he had used previously. As we shall discover, however, whether it was at this stage or only later, Abdul had serious reservations about using Nawaz’s solicitors.

[25] Nadeem was with his father on the day he received his terminal diagnosis. Abdul told him that he wanted to write a will. He mentioned five properties and something else, that may have been a sum of money, although Nadeem was too pre-occupied with the cancer diagnosis for any discussion concerning a will to be of concern to him at that time.

[26] Kashif also had a discussion with his father about his inheritance. Abdul told Kashif that he was going to get property and cash worth around £400,000. Kashif believed that his father was happy to have been able to have that conversation with him, describing it as a burden lifted from his shoulders. Later, however, whenever the issue of inheritance arose, Abdul would go very quiet.

*Discussions about a lifetime transfer to Samina*

[27] In January 2022, Abdul phoned Nawaz in a panic to say he wanted to transfer all his properties to Samina. He asked Nawaz to obtain the title documentation from Raeside Chisholm. Nawaz said that he could tell, from the tone of his father's voice, that Samina was in the background. Nawaz told Abdul that he was concerned that Samina was influencing him, but Abdul appealed to him not to ask any questions. Nawaz believed that it would have been clear to his father that, if he were to follow through with this plan, Nawaz would question him about it, and following the call, there was no further mention of it.

*The new will*

[28] In January 2022, Mr Monaghan received a message from one Assad Afsal, whom he later learned was the son of a longstanding friend of Abdul's. The message was to the effect that Abdul wished to prepare a will, and that one of Abdul's sons had referred him to solicitors, presumably Raeside Chisholm. According to the message, Abdul was not comfortable about using his son's solicitors. Mr Monaghan responded by leaving a message with Abdul offering to meet with him. On 27 January 2022, Abdul left a voicemail message with Mr Monaghan, explaining that he wished to make a will, and that he was seriously ill. Mr Monaghan made an arrangement to attend Abdul's home that same day.

[29] During the meeting, Mr Monaghan noted that Abdul appeared physically frail but also that he was mentally alert, coherent, and capable of providing clear instructions. Abdul expressed concerns about the pursuers, whom he believed were seeking to exert undue influence over him. He said he had been "ripped off" by at least one of them, regarding the purchase of a home with money that he had provided. Abdul also complained specifically

about Nawaz, who had been managing his properties, and from which he had not been receiving any income. Abdul believed that Razia and their children had already had enough. They did not need anything more from him. He wished to leave his entire estate to Samina, to ensure her financial security and the care of their two young children.

Mr Monaghan confirmed that Abdul understood the legal implications of his decisions, including the legal rights of his children to claim a share of his moveable estate.

[30] Due to Abdul's frail health and concerns about potential challenges to the will, Mr Monaghan arranged for his colleague, Zainab Shahzad, who spoke Urdu, to attend at Abdul's home to get the will signed. Mr Monaghan had originally planned to go himself, but was unable to keep the appointment. Prior to the meeting, on 1 February 2022, Ms Shahzad made a telephone call to Samina, with the intention of speaking to Abdul about his will. In evidence, Ms Shahzad explained that Abdul had been unable to understand her clearly over the phone. When asked in both English and Urdu if he was happy with the will, Abdul replied that he did not understand anything. She could hear Samina explaining to Abdul that the will had been written according to his instructions, at which point, Abdul said "Ok" and passed the phone back to Samina. Samina told Ms Shahzad that, if the will had been written according to Abdul's instructions, then it was "fine to sign". However, Ms Shahzad advised Samina that she would need to explain the will to Abdul himself before he signed it.

[31] On 7 February 2022, Ms Shahzad visited Abdul at home in order to get the will signed. During the meeting, she observed that Abdul appeared frail but also attentive, making eye contact and nodding as she explained the will's terms. Abdul confirmed that he understood. However, before the will could be signed, Nadeem turned up quite unexpectedly, at which point Abdul became visibly distressed. Ms Shahzad was ushered

out of the house, but before leaving, she made sure to advise Abdul that the will would not be valid unless signed.

[32] Ms Shahzad returned, this time with Mr Monaghan, on 11 February 2022. During this meeting, Abdul reiterated his instructions, which were also interpreted for him in Urdu by Ms Shahzad to eliminate any potential language-based challenges to the will. Abdul again appeared frail but still attentive. He expressed his understanding and agreement with the will's terms. Mr Monaghan observed no undue influence from Samina during the meeting, noting that during both the meetings that he attended, she had remained seated away from the discussions and had not interfered. Abdul signed the will that day, in the presence of both Mr Monaghan and Ms Shahzad, who acted as witnesses.

[33] Mr Monaghan confirmed that he saw no need to separate Abdul from his wife before taking his instructions. There would only have been a need to see Abdul on his own if he had detected a degree of influence. Neither he nor Ms Shahzad knew of any rule of law or practice making this a requirement, though Ms Shahzad confessed that she had started to incorporate it into her own practice, possibly as a result of her experience with the subject matter of the present case. Shortly after the will had been signed, Nadeem again arrived unexpectedly, causing visible distress to Abdul and Samina. The solicitors were quickly ushered out of the house. Nadeem took photographs of them as they left.

[34] Mr Monaghan completed a "Capacity and Undue Influence" checklist immediately after the signing, confirming that he had no concerns regarding Abdul's capacity or the possibility of undue influence. He confirmed that Abdul had been perfectly conscious during the entire time he was in his presence. There was nothing to suggest that Abdul had been confused. There was nothing that gave him cause to be concerned regarding the

instructions Abdul had given him. Abdul requested a copy of the will to be sent by email. He did not want any of the pursuers to find it lying about the house.

[35] It is instructive to contrast the lawyers' evidence, which I accept, with the account given by Nadeem of the day the will was signed. Nadeem had started the day by going to the mosque to pray. Shortly after 10 o'clock, he went round to his father's house. However, Samina would not let him in, putting the chain on the door. He could hear low voices and whispering from within. Eventually he saw a man leaving from the back of the house, and he realised something was going on behind his back. The man was wearing a black tie, and Nadeem assumed he was a funeral director. Nadeem thought to himself, "How dare Samina plan a funeral, while his father was still alive, and without first consulting his children?" He took a video of the man as he approached his car, and asked him who he was, to which the man replied only that his father "knew everything". A few moments later he saw a woman leave, but when he asked her who she was, she ignored him. When eventually Nadeem managed to speak to his father, Abdul told him, "They've taken everything". Abdul raised his hands and said that everything was now out of his control.

[36] I found it impossible not to have sympathy for Nadeem. It was clear that he had a genuine concern for the well-being of his father, for whom he had deep affection. Nadeem conceded that there had been difficulties in their relationship, following his parents' separation, but as I shall come on to discuss, Nadeem was instrumental in ensuring that his father was well cared-for towards the end of his life. It was perhaps unfortunate that he happened to turn up at his father's house just as the will was being signed. I could understand that he might well become suspicious after Samina had prevented him from entering the house. However, accepting Mr Monaghan's and Ms Shahzad's evidence as I do, I am satisfied that nothing untoward had taken place behind closed doors, and that,

from Abdul's point of view, he had good reason not to want the pursuers to find out about the will. I conclude that Nadeem must have allowed his imagination to get the better of him.

### *Abdul's health*

[37] Evidence regarding Abdul's health towards the end of his life came primarily from Delia McPhillips, a specialist nurse in palliative care working with the Marie Curie Hospice. Her first meeting with Abdul took place on 13 January 2022. At this stage he was frail, uncomfortable, agitated and in pain. He was suffering from various symptoms including urinary problems, constipation, incontinence, back pain, weight loss and burning sensations in his feet.

[38] Ms McPhillips was referred to her file note from 14 February 2022, in which she noted a conversation with Nadeem regarding his concerns that Abdul was not being looked after by Samina. Nadeem had suggested that Samina was not giving him the right foods, had withheld medications, and had declined to allow him to see his GP. Asked about what she could say about these matters on the basis of her own observations, Ms McPhillips said that she knew that Abdul had not been taking his medications. That had been his choice. He preferred not to take them. She also knew that he had not kept his appointments with his GP because she had spoken to the GP. She could not comment on foods.

[39] In a file note date 13 January 2022, Ms McPhillips had noted that Abdul had no cognitive impairment and that there were no capacity issues. Even towards the end of his life, on 30 March 2022, she had noted that Abdul had capacity to make decisions about his care. Ms McPhillips did however question the quality of Abdul's decision-making. She described Abdul's ability to make decisions as "fluctuating", and his views as very

changeable: he would agree to take his medications, then not take them; he would agree to take equipment to help with his independence, but then cancel it. Ms McPhillips did not notice Abdul referring to or relying upon anyone else when making these decisions. The problem was that although Abdul had capacity to make decisions, he did not necessarily have insight into their consequences.

[40] In a file note dated 9 February 2022, Ms McPhillips described Abdul's family as very supportive. That was consistent with a letter from the GP dated 16 February 2022 which described Samina as "attentive" to Abdul. He was "clear when he wanted her to do things/put things away". Ms McPhillips confirmed that she had no cause for concern at that point. However, her impression of Samina changed over time. She was not particularly forthcoming about why this should have been the case, preferring to make allowances for Samina on the basis that, evidently, Samina did not have a particularly good command of English. Ms McPhillips also reasoned that cultural considerations might have been a factor.

#### *Abdul moves in with Nadeem and Razia*

[41] Ms McPhillips noted that Abdul's needs were not being adequately met while he was being cared for at home in Murieston. Nadeem and Nawaz had raised concerns regarding various matters including soiled clothing, Abdul not receiving proper food, his medications being withheld, and missed GP appointments. These concerns were taken sufficiently seriously to warrant a referral to adult social work. Ultimately, however, no findings were made that Abdul was at risk. For her part, Samina had stated that she could no longer cope with caring for Abdul, citing emotional distress and alleging certain troubling behaviour on his part. She wanted Abdul to be cared for in a hospice. However,

Abdul expressed a wish to move to Nadeem's house and, on 4 March 2022, Abdul was transferred to East Whitburn to live with Nadeem and Razia.

[42] On the same day as Abdul was moved to Nadeem's house, Samina phoned Ms Shahzad. In a file note of the same date, Ms Shahzad noted Samina as saying that she "wanted to look to see if they can revoke Mr Haq's will because she didn't think she would have the energy to deal with arguments in the family". After speaking to Mr Monaghan, Ms Shahzad telephoned Samina to advise her that only Abdul could change or revoke his will. Ms Shahzad's file note presented difficulties in interpretation, to which I shall return.

[43] Razia and the pursuers cared for Abdul in his final months. Ms McPhillips described Nadeem and Nawaz as caring and attentive, with both having their father's best interests at heart. Samina complained that Nadeem prevented her from seeing Abdul and made her feel unwelcome. She alleged that Abdul was being held against his will. However, she was unable to provide specific evidence of any threats or unsafe conditions. Samina tried to persuade the medical and social work team to have Abdul returned to Murieston, but they resisted any further move, considering it to be unsafe.

[44] Throughout her involvement, Ms King observed a strained relationship between Abdul and Samina. On one occasion, Abdul asked Samina to leave Nadeem's house. Ms King had felt it necessary to intervene, and to advise Samina that she should respect his wishes. Despite Samina's request that Abdul return home, Abdul consistently expressed a desire to remain at Nadeem's house. Ms King assessed Abdul as being capable of clearly articulating his wishes and making decisions, at least until the final stages of his life, when his condition deteriorated due to morphine. By then he had become bed-ridden and unable to communicate.

*Mr Farooq*

[45] Mohammed Farooq lived in Livingston and had known Abdul since he moved there in 1984. Their families became very close, at least during the time Abdul was still married to Razia. Mr Farooq observed that Abdul was a proud man who worked all hours to ensure his family were well cared for, had a roof over their heads and were fed and protected. In his evidence, he was at great pains to point out that Abdul was always making sure the children were cared for. He was "always thinking of his kids". Since Mr Farooq had less contact with Abdul after he separated from Razia, I am sure that when he was referring to Abdul's children, he would have had Abdul's older children in mind. But as I indicated earlier, I am also sure that Abdul would have been just as attentive towards the children of his second marriage, and concerned that Samina would be financially in a position to care for them after his death.

[46] One evening, during the period in which Abdul was being cared for at Nadeem and Razia's house, Mr Farooq went to visit him. Nadeem and Razia were in the kitchen. As Mr Farooq was entering the house, he could hear a conversation in the living room where Abdul was set up with his bed. Mr Farooq had just come through the door, when he heard Abdul repeating, in Punjabi, "I don't want to sign, I'm not doing this". He did not know what the other person was trying to get him to do but, whatever it was, Abdul was adamant that he was not going to do it. As Mr Farooq entered the living room, a woman left abruptly. She appeared to be frustrated. She did not acknowledge Mr Farooq or introduce herself. He later learned that it was Samina.

*The recordings*

[47] Nadeem recalled one morning, when Abdul was in one of his weakest states, how his father somehow managed, unaided, to get himself up and dressed. He came through to Nadeem's room and started talking about Samina and wanting to change whatever it was that he had done. Nadeem asked his father if he felt that he had had his arm twisted, and Abdul replied, "You could say that". Nadeem summoned his brother, Nawaz, and they decided to video and audio record conversations that they had with their father.

Apparently, there were several such recordings, but only two were played in court or otherwise referred to in evidence. It was not clear exactly when the recordings were made, but it seemed likely that they took place between 8 and 11 March 2022, a month after the will had been signed and not long before Abdul died. Transcripts, certifying that they had been translated into English from Urdu, were provided to the court. However, even with the benefit of the translations it was difficult to make out the sense of what was being discussed. They included Nawaz asking Abdul questions about his accounts, about whether he had signed something when the lawyers from Caesar & Howie had visited him, about whether Abdul had consented, and whether pressure had been put on him. They included the following exchange.

"Nawaz: She twisted your arm so much that you were like this toward me about other things

Abdul: Yeah it's just like that.

Nawaz: Caesar & Howie knew that you had cancer

Abdul: Yes.

Nawaz: Then how did they get signatures from you, when you were not fully conscious, properly, you were ill?

Abdul: Don't know.

[...]

Nawaz: So that Muslim girl, was she a witness or a translator?

Abdul: She is a translator.

Nawaz: Samina got four shops registered in her name, that's why she came.

Abdul: Understand it like this.

Nawaz: Then what else is it – then it became a kind of blackmail

Abdul: Just consider it blackmail then.

[...]

Nawaz: Okay dada, one more last question, do you feel regret doing that?

Abdul: What.

Nawaz: What ... happened, do you regret it, that you should not have done it like this?

Nawaz: You should have taken your own decision because when you came from the hospital, you were very happy.

Nawaz: Because you even told mom that you would give five shops, but then you changed.

Nawaz: They must have twisted your arm.

Nawaz: I need to know the truth, dada.

Abdul: I don't know, son, I don't remember that much."

[48] The reference in that conversation to "five shops" may have been the sons' attempt to remind their father of the situation as it had been, after he had returned from hospital, when he had indicated that the children were to inherit. Nadeem's evidence was that, by the time they took the video, Abdul had become tired. As a result, they had been unable to capture what their father had been trying to tell them earlier in the day. My own impression was of an old man in obvious poor health, who was reluctant to be recorded saying anything very much in response to fairly persistent questioning. For that reason, I found the recordings painful to have to watch. Perhaps understandably, Mr Whyte did not introduce all of them into evidence. Ultimately in his submissions, he made little, if anything, of either the recordings or the transcripts.

### **The law**

[49] The relevant legal principles were not in dispute and can be summarised as follows.

[50] To succeed in a plea of facility and circumvention it is necessary for the pursuers to establish (i) that the deceased was weak and facile; (ii) that he was pressured to make the new will by acts of circumvention or fraud; and (iii) that lesion or harm was caused thereby

(*Mackay v Campbell* 1967 SC (HL) 53, per Lord Guest at paragraph 61). The three factors are interrelated and must be looked at as a whole. In particular, where facility and circumvention are established there is no requirement for any separate proof of harm; the fact that the will had been made in such circumstances is sufficient: *Pascoe-Watson v Brock's Exr* 1998 SLT 40 at 47K-L; *Smyth v Romanes's Exrs* 2014 CSOH 150.

[51] A person is said to be “facile” if his mind is so weak or pliable that he is unlikely to be able to resist pressure applied by another. Circumvention is the name given to improper pressure applied to such a person by another in such circumstances. The pressure may be, at one extreme, direct, forceful and overpowering or, at the other, more subtle or insidious, working by solicitation or importuning. A robust individual will usually be able to resist pressure, or at least decide whether or not he wants to resist it. A facile person may not. But facility is a spectrum; it comes in degrees. A deed will only be at risk of being reduced if the pressure applied is unacceptable having regard to the extent to which the person on whom it is exerted is facile.

[52] To succeed in a plea of undue influence, it is necessary for the pursuers to establish (i) the existence of a relation between the grantor and grantee of the deed which creates a dominant or ascendant influence; (ii) the fact that confidence and trust arose from that relation; (iii) the fact that a material and gratuitous benefit was given to the prejudice of the grantor and (iv) the circumstance that the grantor entered into the transaction without the benefit of independent advice or assistance (*Gray v Binny* (1879) 7 R 332, per Lord Shand at p347). The influence that was undue in the case of *inter vivos* gifts was different from that which was required to set aside a will. A testator may be led but not driven, and the will must be the offspring of the testator's own volition. In the case of wills, undue influence is inherently improbable because potential beneficiaries were less likely to resort to coercion

than to rely on affection, gratitude or even persuasion. The circumstances must be such that undue influence is more probable than any other hypothesis. If another possibility is just as likely, undue influence will not have been established (*Rea v Rea* [2024] EWCA Civ 169).

Ensuring that the granter of the deed obtains separate and independent advice is the means by which the grantee can avoid having the deed reduced. As Lord Glennie observed in

*Smyth*:

“Even a transaction which *prima facie* results from abuse of a position of trust may be saved if there has been independent advice or assistance given before the transaction is concluded” (*op cit*, paragraph 47).

[53] While facility and circumvention, on the one hand, and undue influence, on the other, are distinct grounds of challenge, they are commonly run together because the evidence in support of one remedy is often similar to the evidence in support of the other (*Pirie v Clydesdale Bank plc* 2007 SCLR 18, at paragraph 14; *Smyth, op cit*, Lord Glennie at paragraph 126).

## **Discussion**

[54] In Mr Whyte’s helpful submissions on behalf of the pursuers, he accepted that the pursuers’ case was circumstantial, and he identified a set of seven core circumstances from which the court should infer the existence of facility and circumvention and/or undue influence. I propose to set these circumstances out in what follows, and to adopt the same structure as the basis for my discussion.

### ***Abdul’s age and terminal condition***

[55] In the recordings to which I have already referred, Nawaz had suggested to his father that he had not been fully conscious on 11 February 2022, when he signed the will.

This belief was repeated by Nadeem in evidence. Nadeem explained that his belief was based on his observations of his father 1 or 2 weeks prior to the signing of the will. He appeared to maintain this position, even while recounting a conversation he had with his father shortly after the solicitors had left.

[56] However, the parties had agreed that Abdul did not lack testamentary capacity when signing the will, and in his submissions, Mr Whyte disavowed any intention of introducing such an argument. Rather, and without suggesting that Abdul was senile or suffering from any significant age-related decline in cognition, Mr Whyte submitted that Abdul's understanding of matters was "fluctuating", whether through age, pain or the effects of his illness. Mr Whyte described Abdul towards the end of his life as having been "less able or willing" to explain his reasons for doing or not doing certain things.

[57] I fully accept that Abdul was reluctant to discuss matters with his children. That is clear from Nawaz's evidence of his discussions with Abdul following his discovery of the transfer of properties to Samina. It is also clear from Kashif's evidence about Abdul, following certain encouraging remarks, no longer wishing to discuss his inheritance with him. There was also evidence from Nawaz about a conversation he had had with Abdul in which he told his father that he needed to know what his savings were. Nawaz had been particularly concerned about money going to Pakistan. Abdul did not want to "open up" about that, and Nawaz had only found out later that his father had told Wasim Abbas to ask Nawaz not to discuss the subject with him.

[58] However, none of this evidence necessarily supports any declining or fluctuating cognitive awareness or any reduced level of understanding. Rather, it seems that Abdul, having formed an intention to exclude his children from his will, was understandably reluctant or unwilling to discuss that decision with them, or the reasons for it. In this

context, it is relevant to note that Abdul was sufficiently astute to instruct Mr Monaghan as his solicitor, rather than go to Raeside Chisholm, whom Nawaz had wanted him to use. Moreover, Abdul's insistence that Mr Monaghan should not leave him with a paper copy of the will, lest the pursuers discover it lying around, displayed a significant degree of mental acuity. Abdul's reluctance to discuss his financial affairs with Nawaz, so far from evidencing cognitive decline, was consistent with the concerns Abdul had expressed to Mr Monaghan about his sons' attempting to exercise undue influence over him.

[59] Mr Whyte submitted that Abdul's terminal condition had also affected him emotionally. He said that Abdul seemed to want to address matters that had arisen in the past with Razia, and to unburden himself by organising his affairs. As a result, Mr Whyte submitted, Abdul may not have been as balanced in his thinking as he would have been had he not been ill. I have no difficulty in accepting that when, in early November 2021, Abdul received the diagnosis that he was suffering from terminal cancer, this was likely to have had a profound emotional impact upon him. However, such evidence did not give me any reason to believe that Abdul would have been unbalanced in his thinking in late January 2022, when he contacted Mr Monaghan about preparing a new will, or in February 2022, when he signed it. Indeed, if there had been any lack of balance in Abdul's thinking at any stage, then it is more likely to have taken place in the period immediately following the receipt of the diagnosis, when he appears to have given his sons some encouragement regarding their prospects of inheriting from him.

*Abdul's fluctuating condition*

[60] Mr Whyte submitted that Abdul's condition was accelerating through January and February 2022, having an adverse effect on his pain, hygiene and behaviour. As a result,

Abdul's level of understanding, his precision in self-expression, his appreciation of the consequences of his decisions, and indeed his decision-making ability itself appeared to fluctuate, leaving him more vulnerable to undue influence and to circumvention. In support of these submissions Mr Whyte referred me to the evidence of Ms McPhillips and to entries in Abdul's medical notes from between 7 February 2022 and 3 March 2022, in which, according to Mr Whyte, Abdul had been variously described as "vague, lacking in insight and suffering from delirium and confusion".

[61] The medical notes to which Mr Whyte referred are a little difficult to interpret, since they all appear to have been taken by GPs rather than the nursing team, and the pursuers did not call any GP who might have been able to speak directly to them. The only reference to Abdul being "vague" was in a note of a telephone conversation on 7 February 2022, in which Abdul and Samina declined the GP's offer of a visit, preferring to wait until the nurse from Marie Curie came the following day. On 9 February 2022, two days before the will was signed, the GP had noted, "Very supportive and local family. Great faith. Main issue: constipation, burning pain in both feet." On 16 February 2022, following a home visit, the GP noted that Abdul had lost a lot of weight since she had last seen him, which from the notes would appear to have been in November 2021. She also noted that Abdul appeared "a little distracted/confused and agitated", although she found that difficult to assess as Abdul had "always been not always clear in conversation". The reference to Abdul lacking insight came from a note taken by the GP, following a telephone conversation with Ms McPhillips on 2 March 2022, two days before Abdul moved to Nadeem's house. Ms McPhillips appears to have reported a ninety-minute visit she made to Abdul's home, accompanied by an interpreter, in which she witnessed a "very difficult situation" involving Abdul, Samina and Nadeem. Based on Ms McPhillips' report, the GP had noted:

“fluctuating del[i]rium, intermittently confused and stubborn[,] Samina struggling[.] Offered hospice place which Mr Haq seemed to want and then Nadeem pushed him to not accept (?stay at Nadeem[']s house)”.

After noting various allegations made by Nadeem against Samina, the GP expressed her agreement with Ms McPhillips that Abdul had capacity but that he lacked some insight and might not fully appreciate the consequences of his decisions or the options open to him.

[62] In my view, the medical evidence does not support the proposition that Abdul was vulnerable to pressure specifically at the time he made his will. I accept that he may not always have been clear in communicating with medical professionals, but as noted by the GP, this seemed always to have been the case. When, on 7 February 2022, Abdul was described as being vague, this was against a background in which he had expressed a clear preference to wait until Ms McPhillips visited him, rather than discussing matters with the GP. I accept that Abdul may have lacked insight, from a medical point of view, into the consequences of his decisions. In short, Abdul was not necessarily the best judge of what was good for him. However, I do not accept that this particular aspect of his character rendered him more vulnerable to pressure or undue influence. The reference to “fluctuating delirium” was made in the context of a visit by Ms McPhillips during which there was a stressful discussion about where Abdul should reside and who should be responsible for his care. In my view, it would be entirely understandable if Abdul had been displaying a degree of agitation at this time. It should also be noted that this visit took place almost three weeks after the will had been signed, and over a month after Abdul had first contacted Mr Monaghan about his testamentary intentions.

*Abdul's willpower*

[63] Mr Whyte submitted that the court should resist reading too much into the incident, witnessed by Mr Farooq, in which Abdul appeared quite able to resist pressure apparently being placed upon him by Samina. By that stage, Abdul had moved to Nadeem and Razia's house, where he was comfortable and being well treated. His apparently robust dismissal of Samina on that occasion was not a reliable indication of whether Abdul could have coped with the consequences of refusing Samina's day-to-day requests, while he was living with her. I accept that a degree of caution is advisable with regard to this aspect of Mr Farooq's evidence. Apart from anything else, there was no evidence at all about what it was that Abdul was refusing to sign. However, I am not persuaded that Abdul exhibited any radically different attitude towards his wife just because he had left the marital home and moved in with Nadeem. One significant aspect of Mr Farooq's evidence was that it revealed how Abdul and Samina interacted with one another in private, being the only evidence of that nature before the court.

[64] Mr Whyte further submitted that evidence of Abdul's stubbornness, in relation to medical matters in particular, should not be regarded as indicative of a stubborn disposition more generally. In particular, the court should not read too much into Abdul's apparent stubbornness during his end-of-life care, in relation to which Ms McPhillips was able to offer an alternative explanation. I have already acknowledged that it would be wrong to infer general propositions about Abdul's character from the medical evidence alone. However, the pursuers also accepted that stubbornness was a significant component of their father's personality. As I have already indicated, I was satisfied from the evidence as a whole that Abdul was resolute, independent, and resistant to control by others.

[65] Finally, under this heading, Mr Whyte made submissions in relation to the evidence from Wasim Abbas and others that Abdul did not wish his older children to inquire into certain matters. Where Abdul would resort to expressions such as, “What has happened, has happened”, this should be interpreted as evidence of fatalism or resignation on Abdul’s part rather than as evidence of any certainty of intention. In my view, it was neither. The most likely explanation is that Abdul was attempting to resist what, in conversation with Mr Monaghan, he perceived to be undue influence being exercised upon him by the pursuers. Seeking refuge in tautology is a well-known rhetorical device for shutting down unwanted discussion.

[66] There was also something contradictory in the pursuers’ position. On the one hand, they say that Abdul immediately felt more comfortable and able to resist Samina as soon as he moved in with Nadeem and Razia. However, they were unable to explain why, if that were the case, Abdul did not change his will again.

*The radical departure from the 2004 will*

[67] Although there was no evidence regarding exactly how an estate would be divided according to Shariah law, all the witnesses asked about it appeared to have an understanding that it required the testator’s children to inherit. It was therefore likely, Mr Whyte submitted, that Abdul would have had at least the same level of understanding. Moreover, shortly after his diagnosis, and prior to making the will, Abdul expressed an intention to carry out a division according to which the pursuers would benefit. The will he eventually made represented a significant departure from what would, for him, have been a religious duty.

[68] I can find no reason to doubt Abdul's faith. However, I do not accept that Abdul had any real understanding of what Shariah law required when it comes to inheritance.

Mr Monaghan's evidence, which I accept, was that, when they came to discuss it, Abdul professed not to understand how his estate would be divided according to the terms of his 2004 will. Moreover, he expressed a clear preference that his will should be drawn up in such a way that it would be clear to him who would inherit what, rather than that the division of his estate should be left to be determined according to a set of what he regarded as obscure principles. By this stage, so far from considering himself bound by any religious duty, Abdul appears to have been under the impression that he possessed full testamentary freedom, subject only to the legal rights of his children, as explained to him by Mr Monaghan.

[69] It is true that Nawaz, Nadeem and Kashif all had conversations with Abdul, following his diagnosis, in which he gave them to understand that he wished to draw up a will from which they would each inherit. However, in none of these conversations, at least as reported by his sons, did Abdul state that he intended to make a will under Islamic law. Indeed, the fact that Abdul's stated intention, following his diagnosis, was to make a will of any kind suggests that he either wished to depart from the 2004 will or that he never really understood what that will required in the first place.

*Financial provision already having been made for Samina*

[70] In his written submissions, Mr Whyte argued that Mr Monaghan appeared to accept that Samina would have received considerable assets from Abdul, "as his surviving spouse", whether or not he changed his will. However, not only do I not recall this being Mr Monaghan's evidence, but Samina's rights as surviving spouse would have been

restricted under the 2004 will to her legal rights over Abdul's moveable property. Since it was not disputed that Abdul's estate was tied up largely in heritable property, it follows that Samina would not have received considerable assets under the 2004 will.

[71] Be that as it may, the real thrust of Mr Whyte's submission was that Samina had already been adequately provided for during Abdul's lifetime even without Abdul making any change to the will. There was no urgent need for her to receive any more from him whether by immediate transfer, such as appeared to be Abdul's intention when he spoke to Nawaz in January 2022, or by bequest.

[72] I do not accept this submission. There was no evidence before the court of the current value of the properties that had been transferred to Samina in 2011. As I noted earlier, Nawaz could not recall when he discovered that the transfer had been made. Therefore, although Nawaz's evidence was that the value of the transferred properties was over £1 million "at the time", it was unclear whether he was speaking about their value at the time of the transfer or at the time he discovered it. Nor was there any evidence as to Samina's current assets, or even as to Samina's age, which would obviously be relevant when considering how much she might need for the rest of her life. In short, I had no proper basis on which to make a finding that a transfer of properties carried out 15 years ago would necessarily have been regarded by Abdul, acting under no pressure or undue influence of any kind, as sufficient to provide for Samina and their children.

[73] Even if Abdul would ordinarily have considered that Samina had already been adequately provided for, there is a further major difficulty standing in the way of this submission. Abdul, when instructing Mr Monaghan to prepare his will, appears to have been of the view that the pursuers had already received enough, that they had "ripped him off", and that they had been exerting undue influence over him. Whether any of that was

the case or not is beside the point for the purposes of the present discussion. What matters is that this was Abdul's perception at the time he made his will. It provided him with a sufficient reason to bequeath everything to Samina. While there was evidence in general terms that Samina sought to isolate Abdul from the pursuers, there was no evidence from which to infer that she had poisoned Abdul's mind. Specifically, there was no evidence that she had any information about Abdul's financial affairs, his property investments, Nawaz's management of these, or indeed any of the motivations that Abdul had expressed to Mr Monaghan for wishing to make a new will.

*Apparent red flags in relation to the will preparation process*

[74] Mr Whyte submitted that Mr Monaghan was required to exercise greater caution in taking Abdul's instructions in order to exclude the possibility of undue influence. This submission was advanced on the following grounds.

[75] Firstly, it was submitted that any impression Mr Monaghan might have formed about Abdul's "demeanour or genuineness" would have to be understood against a background in which he had not seen him for some time. I accept that submission as far as it goes, but I do not accept that Mr Monaghan was not well placed to make an assessment of whether Abdul had been subject to pressure or undue influence. It was further submitted that Abdul's instructions had been taken over a relatively short period. However, I am not persuaded that any longer period would have been required. There must have been a degree of urgency in view of Abdul's condition, notwithstanding which there had been three meetings overall, which Mr Monaghan indicated was more than would usually have taken place.

[76] Secondly, Mr Whyte submitted that Samina had played a role in “organising and approving” the will. However, there was no suggestion that Samina had played any role in Abdul’s initial contact, through an intermediary, with Mr Monaghan. Nor can I recall any evidence of Samina “approving” the will, beyond indicating over the telephone to Ms Shahzad that, so long as the will she had prepared was in accordance with Abdul’s instructions, it was “fine to sign”.

[77] Thirdly, Mr Whyte submitted that Abdul was unable or unwilling to discuss the meaning of the 2004 will or his reasons for departing from it. That may well be the case, but as Mr Monaghan pointed out, he was there to take instructions for Abdul’s new will, not explore the meaning of an old one that Abdul did not even understand.

[78] Fourthly, Mr Whyte made a number of related submissions that cluster around the fact that Samina had been present throughout the meetings with the lawyers. Since this had not been a situation of “mirror” or mutual wills, he submitted that it might have been advisable to consult Abdul and Samina separately. While Mr Monaghan had testified that Samina did not intervene at any stage, this was of little significance since, in Mr Whyte’s submission, the core instruction to executors was relatively straightforward. There would not have been much need for a testator, who had been pressured, to have to be reassured. Nor would there have been much opportunity for him to go “off script”. Abdul had been only minimally responsive throughout the process; he had been described as “nodding along” when explanations were being given.

[79] Mr Whyte was careful not to suggest that there was any rule of law or practice which required, in order to protect a will from challenge, that a testator and the beneficiary be separated while his instructions were taken. There are situations where, in order to protect an *inter vivos* transaction from challenge based on undue influence, the granter of a deed

should receive independent advice at a face-to-face meeting in the absence of the grantee. An example is the wife granting a standard security over her interest in the matrimonial home in order to secure her husband's borrowing (*Royal Bank of Scotland plc v Etridge (No 2)* [2001] UKHL 44; [2002] 2 AC 773, at paragraph 66). However, the duty of inquiry that courts have imposed on lenders in such situations is based on the obvious conflict of interest between husband and wife. There is no such conflict of interest where one spouse seeks to make a will in favour of the other.

[80] I have no difficulty with the general proposition that the mere existence of independent advice is not by itself sufficient to exclude all possibility of undue influence. As Lord Drummond Young observed in *Horne v Whyte*, while the case was at procedure roll, much will depend on the nature and quality of the advice (2004 SCLR 197, at paragraph 13). I accept, therefore, that there may well be circumstances in which, in order to protect a will from challenge, the testator should receive independent advice in the absence of the beneficiary. Mr Whyte referred to the decision of Lady Smith following the proof before answer in *Horne v Whyte*, in which she criticised the solicitor for having failed to advise the testator in the absence of the beneficiary. However, that was a situation where the solicitor had already, in his file note, expressed a degree of concern regarding the testator's state of health and the nature and extent of his dependence on the beneficiary. Moreover, the beneficiary had participated in the telephone call while instructions for the preparation of the will were being taken ([2005] CSOH 115, paragraph 53). Reference should perhaps also be made to the recent case in which the Court of Appeal took the extraordinary step of interfering with a first instance finding that there had been undue influence exercised by a daughter over her mother when making a will in her favour. As regards the fact that the daughter had been present when her mother's instructions were being taken, Lord Justice

Newby, with whom the other members of the court agreed, saw nothing untoward, noting that the mother might have found it helpful to have the daughter on whom she relied close at hand (*Rea v Rea, op cit*, at paragraph 51). Each case will of course turn on its facts, but in my view, there were no circumstances in the present case that would have given Mr Monaghan cause for concern.

[81] Fifthly, Mr Whyte submitted that Abdul had been labouring under a misapprehension as to Samina's financial security and assets. However, the only basis for this assertion was the fact that the 2011 transfer of properties to Samina had not been apparent to Abdul's legal advisers. The unstated assumption on which the submission was based is that Abdul would have mentioned the transfer to his lawyers had he been aware of it. I can think of no evidential basis for that assumption.

[82] Sixthly, Mr Whyte submitted that Abdul's apparent vehemence towards his older children was "more constructed than real". I am not sure what was intended by this distinction. If the suggestion was that Samina had poisoned Abdul's mind, it must be remembered that the burden of proof is on the pursuers. I would emphasise that I have made no finding that Abdul was justified in his beliefs regarding the pursuers' exerting undue influence upon him, mismanaging his financial affairs, or having already had enough from him. It is sufficient for me to find that he held these beliefs, and that there was insufficient evidence from which to infer that he did so as a result of any pressure or undue influence brought to bear upon him by Samina (still less as a result of fraud, though the question of whether any alleged poisoning of Abdul's mind should be treated as a case of fraud, and how such a case might be proved goes beyond the scope of parties' submissions: see *Edwards v Edwards* [2007] EWHC 1119, paragraph 47; *MacGilvary v Gilmartin* 1986 SLT 89).

[83] Seventhly, Mr Whyte submitted that there had been “potential questions” regarding Abdul’s understanding of the will following the first meeting, and that these had not been immediately picked up on. It was unclear to me what these potential questions might have been. The reference to the first meeting with Mr Monaghan suggests that Mr Whyte may have had in mind the telephone call that took place on 1 February 2022, in which Abdul had difficulty understanding anything Ms Shahzad was saying. However, Samina had reassured Ms Shahzad that, if the will had been written according to Abdul’s instructions, then it was “fine to sign”. In response, Ms Shahzad advised Samina that she would need to explain the will to Abdul before he signed it. In other words, she immediately picked up on the need for Abdul to understand the will. She immediately communicated that need to Samina. Abdul’s understanding of the will, prior to signing it, was confirmed at the meeting on 11 February 2022.

[84] Finally, Mr Whyte relied on Samina’s telephone call made on 4 February 2022 to Ms Shahzad, in which she “wanted to look to see if they can revoke Mr Haq’s will”. I agree with Mr Whyte’s submission that this note presented difficulties of interpretation.

Ms Shahzad appeared to be of the view that the reference to “they” would have been a reference to Abdul. Moreover, it would be unusual for a solicitor to use the word “revoke” if she were referring to anyone other than the grantor of the deed. However, she went on to advise Samina, after speaking to Mr Monaghan, that only Abdul could change or revoke his will. This suggests that she understood Samina to have been raising a concern about the will being “revoked” or changed by others. On that basis, Mr Whyte submitted that the best interpretation of the note was that Samina had started to panic over the possibility that both the new will, and her influence in procuring it, might be discovered now that Abdul was no longer under her control. I entirely accept that Samina may have been concerned that the

pursuers might discover the existence of the will. As I have already noted, Abdul was concerned to keep that a secret from them. He had been very distressed when Nadeem turned up unexpectedly at the house when he was due to sign the will, and he had gone to some considerable lengths to ensure that a paper copy would not be left lying around. To that extent, any concerns that Samina might have had, now that Abdul was living with Nadeem, would have been entirely consistent with protecting Abdul's own wishes. Anything else is pure speculation.

*The generally controlling attitude of Samina towards Abdul*

[85] In support of the proposition that Samina displayed a controlling attitude towards Abdul, Mr Whyte relied primarily on the pursuers' evidence. However, he also submitted that their evidence was corroborated by the independent evidence of Ms King and Ms McPhillips. Specifically, he submitted that Ms King had given evidence of a "rupture" in Abdul's relations with Samina, following Abdul's move to Nadeem's house. Ms McPhillips and Ms King had both given evidence that Abdul no longer wanted to be visited by her. I accept that evidence, but do not believe it supports the inference that Mr Whyte sought to draw from it. Samina's visiting Abdul at the home of his ex-wife was always likely to be a delicate situation; all the more so in circumstances where Samina had expressed a wish to have him back, whatever her motivation for that might have been.

[86] Mr Whyte submitted that Samina had been deceptive and manipulative in her communications with Ms King and Ms McPhillips. However, these were not the words used by either Ms King or Ms McPhillips. At most Samina may have tried to enlist their help in her efforts to get her husband to return home. In doing so, she appears to have been

indifferent to Abdul's welfare at that time. However, it is not evidence that supports the proposition that Samina pressured Abdul or subjected him to undue influence.

### **Decision**

[87] I accept Mr MacLeod's submissions, on behalf of the first and second defenders, that Abdul's health, while declining, did not impair his ability to make independent decisions or resist pressure. Abdul was strong-minded and clear in his testamentary instructions, as evidenced by the independent professionals who interacted with him during the preparation of the will. Abdul's instructions were consistent across multiple meetings with his solicitors, and the will was prepared and signed with independent legal advice. Scots law gave Abdul the freedom to dispose of his estate as he saw fit, regardless of the pursuers' expectations or beliefs. I am satisfied that the will reflected Abdul's true intentions. His failure to revoke it further supports that conclusion.

### **Disposal**

[88] I shall sustain the plea-in-law for the first and second defenders and refuse to grant the conclusions of the summons. Meantime I shall reserve any question of expenses.