

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SC GLA 77

GLW-B316-26

JUDGMENT OF SHERIFF K McCARRON

in the cause

JM and CM

Applicants

against

DR

Respondent

and

JW

Interested Party

**Act: Sanders, Advocate, Clarity Simplicity Ltd
Alt: Coffield, Solicitor**

GLASGOW 5 May 2026

The sheriff, having resumed consideration of the cause, Makes the following findings in fact:

1. HM was born on 20 February 2003. The applicants Mr JM and Mrs CM are her father and mother.
2. HM lived with her parents at their family home for most of her life.
3. In May 2024, HM was diagnosed as suffering from a brain tumour. After investigation it was confirmed her condition was terminal.
4. On 25 August 2024, HM met JW, the interested party, and they entered into a relationship within one week of their first meeting. HM told JW on the first day they met she had terminal cancer.

5. In January 2025, HM entered the Beatson Unit for treatment to her illness.
6. In January 2025, while HM was in the Beatson Unit, JW resigned from his employment.
7. JW then stayed in the Beatson Unit with HM, night and day, while she was in-patient there.
8. In early March 2025, HM was discharged from hospital to the home of her sister, the respondent, DR.
9. HM had a disagreement with her mother while in hospital, in January 2025. After this, the two did not meet or speak to each other face to face, with their only contact being two brief telephone conversations. They never reconciled.
10. When HM moved in with her sister, DR, JW also moved in. He resided there from March 2025 onwards with HM, her sister DR, and the daughter of DR.
11. The house is a two-bedroom property, where HM and JW shared one bedroom, with DR and her daughter sharing the other bedroom.
12. After her discharge from hospital, HM maintained a good relationship with her father and brother BM, and they saw each other regularly.
13. HM never discussed funeral arrangements with her mother before they were estranged. She refused to enter into any such discussion with her.
14. HM never held any discussions with her father about her funeral arrangements.
15. HM never held any discussions about her funeral arrangements with her brother BM, stating to him that she did not want to talk about it.
16. HM's eyesight was severely affected by her condition however she was not completely blind and with the assistance of spectacles was able to write, read and send text messages, and play games on her mobile phone.

17. HM's condition deteriorated towards the end of 2025. She required assistance with showering, mobility and personal care. That assistance was provided to her by DR and JW, night and day.

18. HM discussed what would happen after her death with JW, particularly at night when they lay in bed together. She stated to him that she did not want to be buried.

19. HM held conversations with DR about what would happen to her after her death. She stated to her that she did not wish to be buried and spoke about coming home and being with her animals.

20. HM made a number of notes in notebooks and diaries, referring to the ground, worms, and not wanting to be buried.

21. HM sadly passed away on 24 January 2026 while in the company of DR and JW.

Findings in fact and in law:

1. HM did not make an arrangements on death declaration in terms of section 65(8) of the Burial and Cremation (Scotland) Act 2016.

2. For a period in excess of 6 months prior to her death, HM and JW were neither married nor in a civil partnership but were living with each other as if they were married to each other.

3. HM expressed in life a wish not to be buried.

Therefore, Repels the first and second pleas in law for the applicants; Repels the first, second, third, fourth and fifth pleas in law for the respondent; Repels the first, second and third pleas in law for the interested party and Sustains the first second and fourth pleas in law for the interested party; Finds and declares as second craved by the interested party that the interested party has the right and is entitled under section 65(2) of the Burial and

Cremation (Scotland) Act 2016 (the 2016 Act) to make arrangements for the remains of his deceased partner HM, born 20 February 2003, whose remains are being retained at Alex Black Funeral Care, 7 Peel Glen Road, Glasgow, G15 7XN, to be cremated, qua the nearest relative of HM in terms of section 65(2) of the 2016 Act, and Makes an order accordingly in terms of section 68(1) of the 2016 Act; Finds no expenses due to or by either party.

NOTE:

The evidence

Mr JM

[1] Mr JM adopted as evidence in chief the affidavit signed by him on 1 April 2026.

There is no reason to repeat its contents. To supplement this, he confirmed that his daughter HM lived with him until she moved out of the family home around 13 March 2025. She had a boyfriend JW at that time, but he never lived with them in the family home. Mr JM had a good relationship with HM before she moved out and afterwards, when she moved in with her sister DR, he saw her approximately once a week and spoke to her every day on the phone. At no point did he have any discussions with HM about her funeral arrangements, nor did he have any discussions with DR. He explained after her operation HM had issues with her eyesight and although she was not totally blind, her vision was blurry. He explained he took HM to hospital for her appointments before she moved out of the house. Afterwards he saw her in DR's house. He was aware HM had a relationship with JW which started in 2024 and they had been going out for just over a year before she died. HM never discussed future plans in so far as her relationship with JW was concerned.

Cross-examination

[2] Mr JM was asked why HM moved out of the family home. He replied that she wanted to stay with DR. The precise reason was never explained to him. HM never told him why she moved out. He accepted that he had taken HM's house keys from her in March 2025, while she was in hospital at the Beatson. He explained HM had five lizards which she kept in the family home and "the story was" JW was going in to feed the lizards. Neither he nor his wife wanted a stranger in the house when they were not present.

[3] At no point did HM ever speak to him about her passing away and at no point did HM ever speak to him about what arrangements she wanted for her funeral. When asked why he wanted HM to be buried he replied, "That is my wishes, to bury my daughter". HM never spoke about death to him. When asked whether HM may have spoken to other persons about her funeral arrangements he replied, "I don't know, but I know she didn't". On being shown production 6/1.2 he stated that he did not recognise the signature. On being shown production 6/1.3 he identified the handwriting as being that of HM. He was asked if HM was capable of thoughts and feelings she did not share with him and he accepted this was a possibility. When asked if HM could have spoken to someone else about her funeral other than him, he replied, "no".

[4] Mr JM was asked whether JW lived with HM from March 2025 until HM died, he replied, "I cannot confirm it, it is up to JW to prove it". It was put to him he did not know whether JW lived there or not and his answer, "Yes, I don't know".

[5] He was then asked why he was so opposed to his daughter being cremated. He replied, "Because I have been told that I cannot bury my daughter, I have been told that I cannot do it, and I want to bury my daughter. If somebody tells me I cannot do it, I have a

right to bury my daughter". It was put to him his case was about what he wanted rather than what HM wanted, but he denied this.

Mrs CM

[6] Mrs CM adopted as her evidence in chief her affidavit of 1 April 2026. There is no need to repeat its terms. To supplement this, she explained that she and her daughter HM had a good relationship until HM moved out of the family home in March 2025. She moved in with DR then. She estimated HM moved out of the family home between 5 and 15 March 2025. After that date, she had several conversations with HM on the phone only, as HM did not want to see her. She had one conversation with her just before Christmas 2025 when she was in Dubai on holiday. HM telephoned her dad and spoke to him on loudspeaker. She spoke to HM about her missing a hospital appointment. She asked her if DR was going to take her back to hospital for the appointment and HM replied that she was.

[7] On being asked what HM wanted in terms of her funeral arrangements, Mrs CM replied, "HM never expressed her views. I asked her in a car journey, and she said that she was not dying she had 5 years left. She did speak about her favourite song and flowers but that was it". She confirmed this conversation occurred between 6 months and 12 months after her diagnosis and HM was not ready to discuss funeral arrangements at that time.

[8] When asked about the writings allegedly made by HM, Mrs CM stated she did not agree they were written by HM. If the court decided that this was her wish, to be cremated, she would have to go with it but would not agree with it. On being asked why it was so important to her that HM was buried and not cremated, she explained that she wanted to have somewhere to go and pay her respects and speak to her daughter. On being asked whether following cremation if she had the ashes of HM to inter would that not be sufficient

and she explained that no-one in her family has ever been cremated they have always been buried. This was just the way she had been brought up. Her family were all christened and buried from the same church.

Cross-examination

[9] On being asked why HM moved out of the family home Mrs CM replied, "We never got to the bottom of it. She maybe got the wrong assumption about the keys being taken from her". She denied that the reason was anything to do with an allegation of assault by her upon HM. She accepted that she never saw HM face to face after they became estranged from each other. It was put to her that HM had blocked her telephone number, and she stated that she had no idea if this had happened. Since March 2025 she confirmed that she had only spoken to HM twice on the telephone. The first was when she was on holiday in Dubai in December 2025. The second was when she listened in to a telephone conversation between HM and her dad. She explained that Mr JM had gone out of the car to get something, and she simply said hello to HM, and confirmed that her dad was outside of the car to do something. On neither occasion did she speak to HM about funeral arrangements or her relationship with JW.

[10] The witness was asked how she could possibly know what HM's intentions may have been for her funeral and she replied, "I think I could I know her personality". She was asked if she accepted the possibility that HM could have spoken to other people about her funeral arrangements and her answer was, "Yes, but I wouldn't believe it". It was suggested to her that HM could have changed her mind about her funeral after they became estranged and she replied, "I have no idea, I don't know". She explained HM kept lizards, spiders,

beetles and centipedes and she did not mind the dirt from them. The witness found it difficult to believe she would ask to be cremated.

[11] She was asked when HM had commenced her relationship with JW and she replied, "I don't know, she had another boyfriend in April 2024, I think maybe autumn 2024. I wouldn't know when her relationship started with JW". She never discussed her relationship with JW with her, but the witness accepted that HM did love JW.

[12] She was asked about HM's vision and stated that the last time she saw her in March 2025 HM could not see anything. She could only see colours and movement. She was shown production 6/5.21, a picture of a person holding a card. She was asked who it was and she explained that she had no idea. She was asked could it be HM? She replied, "yes". She was asked what HM was holding and she replied it was a card. The date of the picture, 13 March 2025, was drawn to her attention. It was put to her this was a picture of HM looking at a card with handwriting on it, but she denied this was possible. On being shown a picture of HM sitting on a sofa playing with her phone she was asked what HM was doing on the phone and the witness replied, "I don't know". It was put to her HM was playing a game and she replied, "No, I would say she could not see her phone". She was shown another image dated 10 May 2025 and it was put to her this was a photo of HM playing on her phone. She replied, "I don't know if she is playing on her phone, but she is holding her phone".

[13] She was shown production 6/5.22 and it was put to her this was a text message sent to HM by her dad, and also pictures sent by her dad to HM. She replied, "It doesn't say when, it could have been sent so that people could read it out to her, I do not know whose phone it is". A text message from 11 July 2025 sent from her husband to HM was read out to the witness and it was put to her that HM must have been able to read at that time if her

husband was sending text messages. She responded, “We don’t know if it was HM that wrote that or not, we were not there, I don’t even know if that’s her phone”. When asked whether HM was prescribed glasses by the optician after her operation she stated, “The ophthalmologist said she can wear them if she likes but it won’t make any difference”.

[14] She was asked why she was so against cremation and she responded, “In my mind I can’t believe she would want to be burnt”. She stated while she had been prepared to compromise over all of this, that could not entail her burying HM “because I am paying for it”. She could not possibly contemplate compromising and cremating her daughter. She wanted to bury her daughter.

BM

[15] BM is the brother of HM, and his parents are Mr JM and Mrs CM. He adopted his affidavit signed on 31 March 2026 as his evidence in chief. There is no need to repeat the terms thereof. In supplement, he explained he was close to HM, and he was living in the family home when she moved out in March 2025. After then he was in touch with her regularly. He saw her every week. He spoke to her on Snapchat and sent her voice notes. He had asked her twice about what was to happen when she died and she did not want to speak about it to him, she simply would cry when he asked.

[16] In cross-examination he was asked why HM moved out of the house in March 2025 and he stated that he did not know her exact reason. He did not know what she had told other people about her reasons. HM did tell him about her relationship with JW in February 2025. That was when he first met JW. This was also when HM moved to live with DR. He was asked if JW lived there with HM and DR and he replied, “Yes, when HM lived there”.

[17] He agreed JW and HM were close and that she had told him she loved JW. He stated DR cared for HM when she was unable to go to the shower or the toilet. He visited several times a week and DR was caring for HM each time that he visited. He was asked whether JW was there when he visited and he replied that he was. He was asked if HM had mentioned marrying JW and he confirmed she had done so. He was asked if HM would have married JW ultimately and the witness replied, "I imagine so".

[18] He admitted there was obviously a reason why HM moved out of the family home but he did not know what it was. He accepted HM could have made decisions and never told him. He was asked about production 5/1.2 and asked to read it. It stated, "I didn't want buried". He explained he did not recognise the handwriting or the signature. He was asked if it could be HM's handwriting and her saying that she did not want buried and he replied, "It could be". He accepted HM could have spoken to other people about her funeral arrangements. His opinion was that HM should be buried. It was what he described as the "natural thing to do".

DR

[19] DR adopted her affidavit as her evidence in chief. In supplementary evidence, she confirmed her desire was her sister's wishes were granted and respected. Her sister told her on several occasions she did not want to be buried. After being discharged from the Beatson Unit, her sister moved in with her in early March 2025. She lived with her until she died.

[20] DR first met her sisters partner JW in September 2024. HM brought JW to her house and introduced him as her new partner. When HM was discharged from hospital in March 2025, JW came with her, and together they lived in her house. He did not want to leave her sister's side. He loved her. He wanted to care for her. He wanted to be with her, and her

sister told her she wanted to be with him for the rest of her life. She wanted to marry him and discussed going to Ireland for this purpose. Each of them told her separately how much they loved each other.

[21] In March 2025 when she was discharged from hospital, HM could look after herself reasonably well. She could walk around, make food, go to the toilet, go up and down stairs, and shower herself. She was very independent. By December 2025 HM's health had deteriorated, and she needed assistance with mobility, showering, and personal care. At the same time, her mental health deteriorated. She cried a lot and had breakdowns. She often said how much she loved her dad. She would come to DR's bedroom door at 4.00am. DR would talk to her and calm her down. JW slept with HM in one bedroom, and she slept with her daughter in the other bedroom. She admired JW for staying with her sister throughout her illness and helping her. Many other young men would have walked away in the circumstances.

[22] DR was shown production photographs of HM reading a signed CD. This was a screenshot from a video she took. She had an artist that HM liked to sign the CD, and he wrote a message on it, which HM was reading out loud at the time she took the video. This was 13 March 2025. She took a photograph of HM lying on the couch looking at her phone. JW could be seen at the bottom of the photograph. It was obviously HM; you could tell by her ring and her hairband. DR took this in her living room on 10 May 2025. At the time was HM was playing a Pokémon game on her phone. HM did this all the time, she was very good at it and had reached a high level. DR was shown a picture of a photo she had taken on her own phone, of HM's phone, after she had passed away. It was a screenshot of HM's phone showing messages sent to her by her father. He sent these on Facebook Messenger. She replied to him, sending a video. A subsequent photo showed HM and her father

sending text messages to each other and replying to each other on 11 and 12 July 2025. HM could only have sent these text messages if she was able to read. Although HM's eyesight was poor, she was not blind, she had glasses, and a walking stick. She was never so blind that she could not see anything.

[23] DR was shown production 6.1.2 which is a diary she found under HM's bed after she passed away. On 4 August 2025 she stated that HM wrote "I do not want buried".

[24] She knew HM did not want buried. Once in the garden of her house in the summer of 2025, in the company of herself, JW, and her daughter, HM had said so. HM also came into her room at night and would talk to her and her daughter about it. She remembers HM's exact words in the garden. She said, "see when I cop it I have three wishes". HM then said one of her wishes was that she did not want to be buried. She did not like the thought of going into the dirt. They had a conversation in the form of a joke about her brother eating worms when he was young. HM stated this thought gave her the "heebie jeebies". It made her uncomfortable.

[25] As her disease progressed HM became more and more scared of dying and being alone. She never liked being alone. At least twice a week she would wake up at 4.00am and text DR to see if she was awake. She would then come into her bedroom and lie and speak to her and her daughter.

[26] DR was shown production 6.1.2 which was a diary entry written by HM dated 28 July 2025. She recounted the entry, which referred to HM being scared of worms in the ground. She understood this to be HM intimating again she did not want buried. She signed this because she thought it was relevant that HM had said this. HM asked her to write things down for her in her diary. On 10 July 2025 she wrote that HM said she would haunt her if she did not look after her animals when she passed away. On 18 November

2025 another diary entry referred to her brother eating worms and her being scared of being buried. HM had mentioned that day about her brother eating worms and that being buried was creepy.

[27] She confirmed HM and JW were together while she was in the Beatson. HM had asked them to deal with her ashes after her death. She wanted her ashes to come home and for her to be with her animals.

Cross-examination

[28] The witness accepted under cross-examination there was no mention in her affidavit of HM intimating a desire for her ashes to go to any particular place or to be in the company of any particular thing. However, she denied that she was making this up. She denied making up evidence about HM's desire not to be buried. She was asked if she had made any funeral arrangements and she stated that the funeral was on hold so she had not time to consider what the funeral arrangements would be.

[29] She confirmed that a letter had been sent to HM advising that she was "registered as severely sight impaired". But HM was not fully blind in her opinion. She was referred to production 6.1.2 at page 4, a notebook, where HM had written "Life is good even if it blinds you". She was asked why HM would describe herself as blind if she was not blind. The witness responded by stating, "If she was blind how did she write that then?".

[30] It was put to the witness that she had stolen money from HM's bank account after her death and she denied this, explaining the money was withdrawn from the account but was placed in an envelope and remains there within her home address. The messages written by HM were revised with the witness and it was put to her that there was no specific detail on HM's wishes, there was no mention of cremation. She accepted this was the case

but stated that there was mention of her not wanting to be buried. It was put to her she wrote this up afterwards in the diaries, but she denied this. It was put to her there was no piece of paper from HM saying that she wanted to be cremated. She responded, “HM never said that she wanted to be cremated, she said she did not want to be buried”.

[31] In re-examination she accepted HM never told her that she wished to be cremated. However, she explained that she did say she did not want to be buried. In that case, she could not see any alternative other than being cremated if there was no burial.

JW

[32] JW adopted his affidavit as evidence in chief. He confirmed he was 28 years old and all he wanted from this case was for HM’s wishes to be respected and granted. She wished never to be buried. She had a fear of it. He believed that fear was partly because she never wanted to be alone.

[33] He first met HM in August 2024 at her parents’ home address. They began a relationship within a week. She lived with her mum at that time. She was honest with him that she had a stage 4 brain tumour. He told her this could have happened at any time in their relationship. He had cancer when he was young and knew how she felt.

[34] At the time they met, he was working in the Co-operative. He left his job in January 2025. HM was in the Beatson Unit the day he resigned. He did not want to leave her side. He stayed with her every single day thereafter. The first day HM went into the Beatson, he stayed with her that night, and from then on. The nurses gave him a pull-out sofa bed to sleep beside her. He was right next to her bed.

[35] When she was discharged from hospital, HM went to live with DR. She told him that she wanted a place she could call home and feel safe. He also moved in with her,

initially intending to stay only for a week, but he loved HM and decided to stay on. He wanted to stay with her as long as he could. Every single day that passed, he told her that he loved her.

[36] HM asked JW to promise her that he would marry her “before anything bad happens”. He gave her that promise and now regrets that he never married HM.

[37] He described HM’s eyesight as being “like a camera out of focus”. She used glasses and a cannabis oil, all of which improved her sight. He was referred to the picture of HM playing on her phone. He explained she was playing a Pokémon game. She was always beating him at this game. She was a very high level. You need sight to play this game.

[38] On production 4.8.25, he confirmed this was HM’s handwriting, next to flowers that she had preserved. He read what she wrote as, “I didn’t not want buried”. He confirmed this was on 4 August 2025. To him, HM wanted people to know she did not want buried, that is why she wrote it. If it was him, and that was his wish, he would want people to respect that. He knows what she did not want. He had conversations with HM at night about it. She did not want to be buried. She did not want to be alone. They discussed this every day. They would lie in bed together and HM told him she had a fear of being buried. She was very determined. He confirmed he signed the diary entry on 28 July 2025 (production 6.1.2) along with HM and DR which referred to HM mentioning, “The ground scared her” and with reference to worms. He signed this because he thought it was of great importance. He felt it was HM’s way of saying what she wanted to happen.

Cross-examination

[39] He accepted that the address given in his affidavit was that of his mother. He explained he stays with his mother at weekends and with DR during the week. It was put to

him he was not in any fit state to arrange a funeral. He disagreed stating that HM was the love of his life, he knew what she wanted. It was put to him he could not afford a funeral, and he stated that his dad had told him he would cover the cost. He was asked why HM had not written out her wishes specifically and he stated it would have upset her to do so, and he did not want to put her through that. He was asked about the conversations in bed with HM and he confirmed she told him she was scared of being in the ground, she had an irrational fear of being in the ground and not being with the people she loved. He was asked why he did not record any of the conversations that he had with HM in bed. He stated it would have been overwhelming for him to do so, as it was overwhelming to listen to her. He repeated HM said she did not want to be buried. She wanted to come home. That did not suggest to him a body coming home. It suggested ashes albeit she never used the word “cremated”. He was asked why she never used this word, and he explained that she did not have to say it, he knew what she meant, and if someone says that is what they want, then it should be respected. He described the whole case as being incredibly disrespectful, and when he eventually received letters about the case, he had to defend HM as he knew she would not have wanted to be buried.

Submissions

Submissions for the applicants

[40] It was acknowledged on behalf of the applicants the applicable law was contained in the Burial and Cremation (Scotland) Act 2016, section 65 (“the Act”). In that context, there were three questions for the court:

1. Did HM make an arrangements on death declaration?
2. Is the nearest relative the applicant or JW?

3. Did HM express any wishes as to the form of her burial?

[41] Counsel submitted such a declaration is relative to which person should be entitled to make the funeral arrangements. It relates to the person who has this entitlement not to the type or method of the funeral. Counsel accepted such a declaration can be verbal or written. It was submitted there is no written arrangements on death declaration. While there was reference in evidence to conversations occurring during the night between HM and JW, there was no clear explicit declaration made by HM regarding a wish to be cremated. There is no written record from HM of such a declaration. There is no diary entry by her. Counsel submitted if there was a clear declaration to this effect, why was it not diarised like other conversations were? And if it is correct that there was a declaration by HM that JW should be the person to arrange her funeral, this is contradicted by DR. She proceeded to make funeral directions and arrangements after HM's death, without involving JW. All that exists is an alleged verbal declaration by HM which has no note, contemporaneous record, or anything of authenticity attached to substantiate it.

[42] In the absence of an arrangements on death declaration there were two options as to who qualified in terms of the Act. The first was JW and the second was HM's parents. It was submitted JW required to prove that he was the qualifying party in terms of section 65(3)(b) as opposed to the applicants. He required to prove that he and HM were living together as if they were married to each other and had been so for a period of at least 6 months. Counsel submitted that reference to section 25 of the Family Law (Scotland) Act 2006 may be of some assistance in determining whether JW was a "cohabitant" as therein defined. Section 25(2) refers to the court having regard to (a) the length of period during which the parties had been living together; (b) the nature of their relationship during that period and (c) the nature and extent of any financial arrangements subsisting. It was

submitted there was a serious credibility problem over whether they had been living together for 11 months. JW suggested he had been living partly with his mother at her address when giving evidence, and partly with DR. He now claimed benefits from the address of his mother. If he cannot tell the truth about his address now, what confidence could the court have in his evidence as to where he was living at the time. It was submitted that the living arrangements between the parties were unclear. There was an absence of evidence from JW as to matters such as payment of utility bills, council tax, benefit claims and a bank account, applicable to that address. It was suggested while there was no dispute they were boyfriend and girlfriend; the evidence did not entitle a conclusion to be reached that they were living together as man and wife or as partners. It was further submitted that their financial arrangements clearly were separate. There was no joint bank account. There were no bank statements covering the period of cohabitation. Money was withdrawn from HM's account on the day of her death. It was submitted JW was neither credible nor reliable in his evidence that he was a cohabitant. However, even if it was decided they were living together as man and wife, it was submitted section 65(7) should be considered. It was submitted any relationship should be left out of account on the basis the person qualifying is unable to make the necessary funeral arrangements. It was submitted JW was unable to make the necessary funeral arrangements. He could not afford it. He had not made any arrangements thus far. He was not in a good frame of mind. He was in no fit state to arrange a funeral. He was having difficulty looking after himself, never mind arrange a funeral.

[43] It was submitted that DR was not a credible and reliable witness. Although initially thoughtful and straightforward, in cross-examination she was hostile and refused to answer simple questions. She departed from her affidavit in substantial respects. She was evasive

about what funeral plans she had arranged. She had removed benefits from HM's bank account. She had made no funeral plans to date. It was suggested the court should be dubious about her evidence.

[44] On the issue of whether HM expressed any wishes, it was accepted the law ought to have regard to any wishes expressed, in accordance with section 67(3) of the Act. It was submitted that any writings left by HM were dubious and unclear. The phrase in her notebook "I don't want not buried" was unclear and contradictory. Her verbal declarations were unclear and unreliable. There was no clear expression of wish by her.

Submissions for the respondent and interested party

[45] It was submitted HM did make an arrangements on death declaration. Such a declaration can be written or verbal. HM did write in a notebook about whether she did or did not wish to be buried. Those notes would allow a finding in fact to be made about her wishes after her death. Those notes confirmed that she did speak about her death and what should happen afterwards. It was clear from her notes that she said being buried was creepy. She spoke on several occasions about not wishing to be buried. She discussed her future funeral arrangements with JW in bed. This included who would attend, flowers, songs to be sung and the desire not to be buried as the ground scared her. She made it clear in these conversations JW was to carry out her wishes. Cumulatively, this amounts to an arrangements on death declaration.

[46] It was submitted the evidence confirms JW and HM resided for more than 6 months together before her death. Their relationship began on 14 August 2024. JW stayed with her at the Beatson Unit until she was discharged in March 2025. They then lived together until HM passed. He assisted her, cared for her, and planned a future together with her. They

lived together from March 2025 until January 2026, more than the minimum 6-month period required by the Act. JW had correspondence directed to this address in relation to things such as prospective employment and car insurance.

[47] It was submitted the evidence established HM and her mother were estranged from March 2025 until her death and they did not reconcile. It was established that HM did not disclose her wishes with Mrs CM, Mr JM or BM. It was suggested her parents want HM buried simply because that is what they personally wish to happen and not what HM wanted.

[48] It was submitted the evidence established Mr JM and Mrs CM and BM all accept HM never spoke to them about her funeral arrangements. They all accept she could have spoken to someone else about this. They do not know what happened in the home that HM lived from March 2025 until her death. JW lived with HM at the Beatson Unit and after her discharge. It is reliable she would make some consideration as to her funeral arrangements and convey this to others. It seems improbable she would not think of this. It was clear she did not like talking about her death, and so there was no family meeting or official document. She was young, scared, but still hopeful of beating cancer. She had no desire to formalise arrangements. The evidence in relation to her desire not to be buried is consistent. As to the suggestion the writings may be a forgery, it was suggested if that were the case, one might have made a better job of it. HM wrote something about not being buried and this was consistent with other evidence that she expressed this desire.

[49] It was submitted JW should be considered as a hero, someone who was gentle and kind, even in the face of cross-examination. He was a good man who stayed with HM until her death. While we ordinarily have decades living with a partner before we require to deal with their personal care when they are in the process of death, JW had no such time to

prepare. Many would have walked away, but he remained and it was clear that nobody had a bad word to say about him.

[50] It was submitted there was clear information and evidence that an arrangements on death declaration was made by HM. It is improbable that the three people living together in the home over the 11 months before HM passed would not discuss mortality and funeral arrangements. *Esto* this could not be established, there was clear evidence that JW was a cohabitant and that he ranked higher than Mr JM and Mrs CM in terms of section 65(3) of the Act. Alternatively, it was submitted that if it could not be concluded a declaration had been made, and it could not be held that JW and HM were cohabitants, then there was sufficient evidence available for the purposes of section 67(3) in terms of which whoever had responsibility for the funeral arrangements, HM's wish that she should not be buried had to be regarded by whoever arranged her funeral.

Applicable law

[51] The applicable law in this case is to be found in the Burial and Cremation (Scotland) Act 2016. Section 65 (arrangements on death of adult) states the following:

- “(1) This section applies where an adult dies and —
 - (a) the adult has not made an arrangements on death declaration, or
 - (b) the adult has made an arrangements on death declaration but it would not be reasonably practicable to give effect to it.
- (2) The nearest relative of the adult may make arrangements for the adult's remains to be buried or cremated or hydrolysed.
- (3) The nearest relative is the person who immediately before the adult's death was —
 - (a) the adult's spouse or civil partner,
 - (b) neither married to nor in a civil partnership with the adult but was living with the adult as if they were married to each other and had been so living for a period of at least 6 months (or if the adult was in hospital

immediately before death had been so living for such period when the adult was admitted to hospital),

- (c) the adult's child,
- (d) the adult's parent,
- (e) the adult's brother or sister,
- (f) the adult's grandparent,
- (g) the adult's grandchild,
- (h) the adult's uncle or aunt,
- (i) the adult's cousin,
- (j) the adult's niece or nephew,
- (k) a friend of long standing of the adult."

- (4) If the adult's spouse or civil partner —
 - (a) is permanently separated (either by agreement or under an order of a court) from the adult, or
 - (b) has deserted, or has been deserted by, the adult and the desertion continues,

subsection (3) is to be read as if paragraph (a) were omitted.

- (5) Relationships in different paragraphs of subsection (3) rank in the order of those paragraphs and for the purposes of that subsection (including that subsection as modified by subsection (4)) —
 - (a) a relationship of the half-blood is to be treated as a relationship of the whole blood,
 - (b) the stepchild of an adult is to be treated as the child of the adult.
- (6) Where more than one person falls within a paragraph of subsection (3) —
 - (a) each such person ranks equally for the purpose of the paragraph, and
 - (b) either (or any) person falling within the paragraph may be the nearest relative.
- (7) For the purposes of subsection (3), a person's relationship with the adult is to be left out of account if —
 - (a) immediately before the adult's death the person was under 16 years of age,
 - (b) the person does not wish or is unable to make arrangements for the remains to be buried, cremated or hydrolysed, or
 - (c) it is not reasonably practicable to communicate with the person in the time available.
- (8) In this section —
 - 'adult' means a person who is 16 years of age or over,
 - 'arrangements on death declaration' means a declaration by an adult specifying the person by whom the adult wishes the arrangements to be made for the burial, cremation, or hydrolysis of the adult's remains on the adult's death.
- (9) This section is subject to section 92 of the Public Health etc. (Scotland) Act 2008.

...

67 Arrangements under sections 65 and 66

- (1) This section applies where a person is entitled by virtue of section 65(2) or 66(2) to make the arrangements for the remains of an adult or child to be buried or cremated or hydrolysed.
- (2) The person may decide whether the remains are to be buried or cremated or hydrolysed.
- (3) In making a decision for the purposes of subsection (2), the person must, so far as known to the person, have regard to –
 - (a) any wishes that the adult or child expressed as to the burial, cremation or hydrolysis of the remains, and
 - (b) whether the adult or child is of a particular religion or belief.”

Analysis and decision

[52] The background to this case involves the tragic passing of a young woman, HM, at the age of 22 after having been diagnosed with a brain tumour. Her survivors have been unable to reach an agreement regarding her funeral arrangements. This action is brought by her parents against her sister and her partner, who have conflicting views as to the appropriate funeral arrangements for HM.

[53] Evidence was led by and on behalf of the parties on 27 and 28 April 2026 and I heard submissions for both on 29 April 2026. It is vital that there is no ongoing delay in a matter of this nature. Grief should not be prolonged more than is absolutely necessary. Accordingly, I have issued judgment at the earliest possible stage. In the absence of agreement between the parties, matters such as this can only be decided by the application of the law to the facts and circumstances of the case.

[54] Both counsel and solicitor for the parties correctly identified the issues which the court must address in submissions, and I proceed on that basis.

1. Did HM make an arrangements on death declaration?

[55] The first issue for the court is to determine whether HM made an arrangements on death declaration in terms of section 65(1)(a) of the Act. The evidence on this point can be summarised in a straightforward fashion. Mr JM, Mrs CM and BM, for the applicants, all agree HM failed to discuss, indeed actively avoided discussing, her funeral arrangements with them. They provide no evidence in support of any qualifying declaration having been made.

[56] DR and JW, contrastingly, gave evidence that HM did discuss her funeral arrangements with them, and various notes were made by both HM and them about what she wanted.

[57] There is a distinction to be drawn between the mechanics of the funeral and the person who is responsible for arranging it. There is plenty of evidence about what HM may have wished for her funeral arrangements but very little that relates to the person whom she wished to make those arrangements. The only evidence on this point is a conversation which occurred during the night in bed with JW when it is suggested she stated among other things she wished him to arrange her funeral.

[58] On any view this appeared to be a very oblique reference made during a quiet conversation where other aspects about the funeral were also discussed, but again not necessarily in the clearest of terms. Declarations can, of course, be made orally. However, the very nature of the word is such that any qualifying declaration must be clear, to the extent that it can be properly considered as having a legally binding nature. It is obvious HM was very uncomfortable discussing her funeral at all. That is entirely understandable. Even when she did discuss it, a great deal of evidence has been led about what she actually meant when she did so. It is obvious from the evidence that her sister DR was much more

active after her death in attempting to make preliminary arrangements with the funeral director, and the like. It is evident JW did very little at that stage. Had there been a specific instruction to him, I would have expected that he would have known this, would have been more actively involved in the arrangements, and that information would have been known to HM's sister, causing her to take a less active role. On this evidence, I cannot find that HM made a declaration of the type required by section 65(1)(a) such that it can be held to constitute an arrangements on death declaration.

2. Who is the "nearest relative"?

[59] Section 65(3) of the Act defines a hierarchy of relatives who may make funeral arrangements in the absence of an arrangements on death declaration. There are two primary competing parties in this regard, JW as a person who has entitlement under section 65(3)(b) and HM's parents, Mr JM and Mrs CM, in terms of section 65(3)(d).

[60] JW's evidence is that he and HM were boyfriend and girlfriend from August 2024 onwards. When HM entered the Beatson Unit in January 2025, he moved in beside her and stayed with her night and day. No other witness disputed this. HM moved out of the Beatson Unit in March 2025 to live with her sister, DR, and JW moved into the house at the same time as HM. It is his position that he lived with HM, in a relationship, until she passed away. They were deeply in love and told each other so on a daily basis. They spoke about getting married. She made him promise that he would marry her "before anything bad happened". He deeply regretted never having married HM. DR corroborated all of this. She confirmed her sister was very much in love with JW. They had many common interests and got on very well together. HM had spoken to her about marrying JW and going to Ireland to do so. JW was an incredible support to HM as her health deteriorated. He fed,

showered, attended to her personal care, and dealt with all of the small tasks HM asked him to do. DR's admiration for JW was immense. She was in no doubt that most young men would have walked away from such a situation.

[61] The applicants' evidence does not actually dispute the veracity of this position, rather it merely challenges the sufficiency of the evidence to support it. On being asked whether HM lived with JW as claimed, Mr JM simply replied "I cannot confirm it – it is up to JW to prove it. I don't know". Mrs CM had no contact with her daughter whatsoever during this period other than two brief telephone calls. She was in no position to say one way or the other whether JW was living with HM or not. BM was asked in cross-examination whether JW lived at 68 High Parksail and he responded, "Yes, when HM lived there". When asked whether JW and HM were close, he replied, "Well, they were together, yes". He confirmed JW was in the house every time he visited HM, which was on a weekly basis. When asked whether HM mentioned marrying JW to him, he replied, "Yes". When asked whether HM would have married JW, he replied, "I imagine so".

[62] The evidence of JW was overwhelmingly credible and reliable in this case. He was measured, thoughtful and respectful to all of the parties involved in the case. He spoke from the heart but avoided unnecessary emotion. His evidence was sincere and persuasive. I have no hesitation in concluding that he was living with HM, as if they were married to each other, and had been so living for a period of at least 6 months prior to her passing. At no point have the applicants positively disputed this fact, merely challenged the interested party to prove it. He has done so comfortably.

[63] Counsel for the applicants referred to section 25 of the Family Law (Scotland) Act 2006, section 25 and the definition of cohabitant therein. It was legitimate to advance the absence of the type of financial arrangements which would normally exist for couples, and

the absence of full use of the common residence for formal purposes. But the 2016 Act does not use the word “cohabitants”, it utilises a timescale of 6 months. This is a much more limited period of time, where not having attended to all of the ‘formal’ aspects of change of address is unsurprising, especially in the circumstances of this case. Further, there is no basis for the application of section 65(7) of the Act as the applicants submit. JW is as able as anyone else could be to arrange a funeral.

3. Has H expressed any wishes as to her funeral arrangements?

[64] The applicants seek to have HM buried and the respondent and interested party seek to have HM cremated on the basis that this was her expressed wish. While the answer to the second question might render this question academic, such is the contentious nature of this issue it is important that it is addressed. The applicants’ position is they want HM to be buried, and they do not believe that she would ever have wanted to be cremated. Mr JM had no discussions with HM about her funeral. She refused to discuss it with him. He wants to bury his daughter. He believes he has a right to bury his daughter if he so wishes. Mrs CM, similarly, never discussed funeral arrangements with her daughter. She does not think that HM would ever have wanted to be cremated. She does not believe that she would ever have said anything other than that she wanted to be buried. She wants to have somewhere to go and pay her respects and speak to her daughter. No one in her family has been cremated. BM never discussed funeral arrangements with HM. He believes she should be buried; it is just the natural thing to do. The respondent and interested party’s position is that HM said on a number of occasions she did not want to be buried. She was scared of being under the ground. She was scared of being alone. She wanted to come

home after her funeral and be with her animals and loved ones. She left notes confirming this. There was no doubt in their minds that she did not want to be buried.

[65] This is not a case where there is conflicting evidence about what the wishes of HM were regarding her funeral. The applicants do not know what her wishes were. They know what their own wishes are for her. They have no understanding as to what her wishes were. Of course, the wishes of a young woman's parents are to be respected and given due regard. Is there sufficient evidence to allow a conclusion to be reached as to what HM's true wishes were for her remains?

[66] The clearest method of expression of wishes is, of course, to have them written down in a will or other similar document. Many people attend to this, but they tend to be more mature in years. It would be unusual for someone of HM's age to have a formal will. One can also understand why someone so determined to defeat illness may view the discussion of funeral arrangements as an admission of failure and hopelessness. It seems evident HM did not wish to discuss her passing with her parents or her brother – perhaps to insulate them from that harsh reality. She was more willing to discuss it with her sister and partner, particularly towards the end of her life. There is clear evidence about HM's discussions with JW, DR, and the various notes and diary entries made by them. None of these have the clarity and certainty of a will but the law cannot dismiss expressions of wishes purely on the basis of lack of formality. There has to be a place for informal expressions. The evidence from DR and JW about the informal expressions of HM is credible and reliable. The real issue is whether those expressions made by HM can be simply ignored.

[67] HM was a young woman, bravely dealing with a terminal illness, scared of death and reluctant to discuss the aftermath but she made it clear enough that she did not want to be buried. If not individually, then cumulatively, the evidence considered as a whole, points

to this being her obvious wish. The inevitable conclusion, then, is that she ought to be cremated. This was her wish, and it has to be respected. This will cause pain to those who do not want it to happen. But greater pain would arise if something happened to HM's remains that she positively did not want. What HM said and wrote about her wishes cannot simply be overrode by those who remain.

[68] While the dispute between the parties in this case is bitter, the origin of their deeply held views is the considerable love and affection which they have for HM.

[69] It merely remains to convey sincerest condolences to all of the parties involved in this case.