

Neutral Citation Number: [2007] EWHC 2298 (Ch)

Case No: HC06C02343

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/10/2007

**Before :**

**THE HONOURABLE MR JUSTICE HENDERSON**

-----  
**Between :**

**ZORAN KOSTIC**

**Claimant**

**- and -**

**(1) SIR MALCOLM CHAPLIN**

**Defendants**

**(2) MARTIN SAUNDERS**

**(3) H M ATTORNEY GENERAL**

-----  
-----

**Miss Clare Montgomery QC and Mr William Henderson** (instructed by **Allen & Overy**) for  
the **Claimant**

**Mr Andrew Simmonds QC and Miss Tracey Angus** (instructed by **Penningtons**) for the  
**First and Second Defendants**

**Miss Lucy Wilson-Barnes** (instructed by the **Treasury Solicitor**) for the **Third Defendant**

Hearing dates: 17,18,19,20,23 and 26 July 2007

-----  
Judgment

## **The Honourable Mr Justice Henderson:**

### **Introduction**

1. This is a probate action concerning the late Branislav Kostic who died on 24 October 2005, three days after his eightieth birthday, leaving a net estate before inheritance tax worth in excess of £8.2 million. Mr Kostic was generally known to his family and friends as Bane Kostic, “Bane” being pronounced, approximately, “Barnay”, and sometimes spelt with an acute accent on the “e”. I will refer to him in this judgment by that name.
2. By a will dated 13 July 1989 which, if it is valid, was his last will (“the 1989 Will”), Bane left his entire estate to the Conservative Party Association (“the CPA”), expressing the hope that it would establish a cultural institution in London named after his late father Milan Kostic to maintain and promote what he termed the Christian Democratic values of love, truth and freedom, and to carry out certain other specified purposes.
3. By an earlier will dated 16 June 1988 (“the 1988 Will”) Bane had left his entire estate to the CPA “for the general purposes of that association”.
4. The main issue that I have to decide in this case is whether Bane had testamentary capacity to make the 1988 and 1989 Wills, it being common ground that from the mid-1980s until the end of his life he suffered from a serious and untreated mental illness which took the form of a delusional disorder. In particular, he believed that there was an international conspiracy of dark forces against him in which, at least, his wife, mother and sister were implicated. The central question is whether Bane’s delusions affected the dispositions of his estate in the 1989 Will, or (if it is invalid) the 1988 Will. Subject to proof of due execution, there is no challenge to the validity of either the 1988 or the 1989 Will on any ground apart from lack of testamentary capacity, although if the 1989 Will is valid various further questions of construction arise which I have not been asked to resolve at this stage.
5. Apart from the 1988 and 1989 Wills, Bane had made earlier wills on 11 November 1971 (“the 1971 Will”) and 13 August 1974 (“the 1974 Will”), and a codicil to the 1974 Will dated 14 July 1984 (“the 1984 Codicil”). In the events which have happened, the sole beneficiary on Bane’s death under each of these earlier testamentary dispositions would be his son (and only child) Zoran Kostic (“Zoran”), who was born on 9 July 1957. It is undisputed that Bane had full testamentary capacity at the dates of the 1971 and 1974 Wills. The question whether he had capacity to make the 1984 Codicil is in issue, but nothing turns on it because if the 1988 and 1989 Wills are invalid Zoran takes the entire estate whether or not the 1984 Codicil is also invalid.
6. The present action was begun by a claim form issued on 14 June 2006. The claimant is Zoran. The defendants, Sir Malcolm Chaplin and Mr Martin Saunders, are respectively the Chairman and Secretary of the CPA, which is an unincorporated association. They are sued both in their own right, as members of the CPA, and as representatives of all the other members of the CPA. It is agreed that a representation order should be made by the court so that all the members of the CPA will be bound by the outcome of the action. The principal relief sought in the claim form is that the

court should pronounce against the 1989 Will, the 1988 Will and the 1984 Codicil, and pronounce for the force and validity of the 1974 Will. There is also an alternative claim, with which I am not concerned at this stage, that even if the 1989 Will is valid, in the sense that it was validly executed and Bane had capacity to make it, the gift in favour of the CPA is nevertheless void for uncertainty and/or as a purpose trust for purposes which are not exclusively charitable, with the result in either case that Bane's estate devolves as if he had died intestate. Zoran would again be the sole beneficiary of the estate on an intestacy, so this alternative claim provides another possible route for him to succeed in his claim to be beneficially entitled to his father's estate.

7. Because the alternative claim raises the question whether the gift in the 1989 Will would be void as a non-charitable purpose trust, the interests of charity clearly needed to be represented before the court could determine it. Accordingly, Her Majesty's Attorney General was joined by consent as the third defendant by an order of Deputy Master Cousins made on 14 August 2006 in order to represent the interests of charity.
8. Zoran's pleaded case is now set out in the Amended Particulars of Claim dated 29 May 2007, and a Response to a request by the CPA for further information dated 24 May 2007.
9. The Amended Defence and Counterclaim of the first and second defendants on behalf of the CPA is dated 16 June 2007. It includes this admission in paragraph 8(22):

“It is admitted that the delusion from which the Deceased suffered was an irrational belief that there was an international conspiracy of dark forces in which his sister, his mother and (at times) his wife were active participants and that he and the Claimant were victims of that conspiracy.”

It is therefore common ground, not only that Bane suffered from a delusion about the existence of an international conspiracy in which his sister, his mother and his wife were implicated, but also that he believed Zoran to be a victim of that conspiracy.

10. The Defence of the third defendant, the Attorney General, is dated 3 November 2006. It is directed towards establishing, in the interests of charity, that the 1989 Will created valid charitable trusts, or alternatively that it made a valid gift to the CPA while making it known (without imposing any legal obligation) how Bane wanted the gift to be applied.
11. By an order of Master Teverson made on 18 October 2006, each party was given permission to adduce the evidence of a single medical expert on the issue of Bane's testamentary capacity. I have been much assisted by the expert evidence of the two distinguished psychiatrists who were instructed, Dr Adrienne Reveley for Zoran and Professor Robert Howard for the CPA.
12. As I have already indicated, the parties are agreed that all questions of construction of the 1989 Will should be deferred for consideration on a future occasion, should the need to determine them arise. It is obvious that they will not need to be determined if the 1989 Will is invalid for want of testamentary capacity. Accordingly, Counsel for the Attorney General, Miss Lucy Wilson-Barnes, played almost no part in the hearing

before me. It was agreed that she need not attend while the witnesses gave evidence, but that she should be supplied with the daily transcript and should have an opportunity, if she wished, to make submissions on behalf of the Attorney General on the questions between Zoran and the CPA. In the event she informed the court in a letter dated 26 July 2007 that, in the light of the evidence, there was no need for her to make any submissions.

13. On the crucial issue of testamentary capacity, it was common ground that the burden of proof lies on the CPA, as the party propounding the 1989 Will (or alternatively the 1988 Will), to satisfy the court on the balance of probabilities that Bane had testamentary capacity on the dates when they were executed, and in particular that the gifts in those wills in favour of the CPA were not affected by any delusional disorder of Bane's mind.
14. It was also common ground that the basic test of testamentary capacity is still that set out in the celebrated judgment of Sir Alexander Cockburn CJ, giving the judgment of the Court of Queen's Bench (comprising, apart from himself, Blackburn, Mellor and Hannen JJ) in Banks v Goodfellow (1870) 5QB 549 at 565:

“It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”

15. There was, however, a disagreement between the parties, to which I will need to return, about the precise degree of capacity which has to be shown in a case where the testator suffered from insane delusions. The difference between the parties lies in the answer to the question whether the delusions brought about a disposal of the testator's estate which he would not have made if of sound mind. Does it only have to be shown, in order for the will to be valid, that the delusions did not in fact exercise any influence on the dispositions in the will, or does it also have to be shown that the delusions were not likely to influence the dispositions in the will, whether or not they actually did so? The CPA argued for the former of these tests, and Zoran for the latter.
16. It is convenient to record at this stage that Miss Clare Montgomery QC and Mr William Henderson appeared for Zoran, and Mr Andrew Simmonds QC and Miss Tracey Angus for the first and second defendants.

### **The Facts in Outline and the Terms of the Wills**

17. I will begin by giving a brief account of some of the key events in Bane's life, and describing the terms of his wills in more detail than I have done so far.

18. Bane was born in Belgrade on 21 October 1925, and brought up in what was then Yugoslavia and is now Serbia. His father was Milan Kostic, who was married to his mother Bosiljka. There were two children of the marriage, Bane and his younger sister Jovanka. After the Russian army liberated Belgrade in October 1944 Bane was briefly imprisoned by the Communists, but then sent to the front in March 1945 to fight against the Nazis. He was severely wounded, suffering eight shrapnel wounds from a mine, and was lucky to escape with his life. There followed another spell of imprisonment by the Russians, and extensive treatment for his wounds. He went on to study organic chemistry at the University of Zagreb, and graduated in 1951 with a diploma in that subject. He then worked for a company in Zagreb called Inex which had a number of offices around the world. His work took him abroad on a regular basis, including a spell of two or three years in Egypt and frequent visits to England. In 1963 he was posted to London, and from then onwards he lived in England.
19. Meanwhile, in 1956 Bane had married Mirjana Demarchi ("Mirjana"), who came from Zagreb and was some two years younger than he was. Zoran, their only child, was born, as I have already said, on 9 July 1957.
20. Bane's sister Jovanka had also studied in Zagreb and obtained a doctorate in technological science. She married and in 1961 moved with her husband to Switzerland where they formed a pharmaceutical company called Transtrade AG. The company prospered, and the decision was taken to open a UK branch which they invited Bane to run. He agreed, and in October 1964 Transtrade UK Ltd was formed with the shares held as to 45% by Bane, 5.5% by Mirjana and 49.5% by Transtrade AG. Bane and his wife were therefore together the majority shareholders in Transtrade UK Ltd.
21. Bane was very good at his job, and built up a thriving pharmaceutical business trading with all the major companies in the sector such as Glaxo, Ciba-Geigy and Hoffmann-La Roche; he also traded extensively in precious metals. However, in 1971 tragedy struck. Bane and his brother in law, Zdenko Kovacevic, were driving home from a football match in Switzerland. They were involved in a very serious car crash. Mr Kovacevic, who was driving, was killed. Bane suffered a serious head injury, concussion and shock, but survived. For a second time, he was lucky to escape with his life.
22. Following her husband's death, Jovanka became the sole shareholder in Transtrade AG, but Bane took over the running of that company as well as continuing to run to Transtrade UK Ltd. According to his sister, it was a very stressful time for him, and he would fly between England and Switzerland at least once a week. When in Switzerland, he would stay at Jovanka's apartment in Zollikon, near Zurich.
23. Perhaps because of his near brush with death, Bane decided to make a will. The 1971 Will was prepared for him by his solicitor, Mr Victor Hadley of Herbert Oppenheimer, Nathan and Van Dyke ("Oppenheimers"). It was confined to his estate in the United Kingdom, and in clause 1 Bane recorded that he had been born in Yugoslavia and was still domiciled there, not having acquired a domicile of choice in any other country. He expressed the wish to be buried, if practicable, in the family grave in the principal cemetery at Zagreb. He appointed as his executors his wife Mirjana, a Mr John Hurst and his accountant, Alfred Nathan Homburger of Blick, Rothenburg & Noble (who were also the auditors of Transtrade UK Ltd). He

bequeathed his personal chattels to Mirjana, and left his residuary estate on trust to pay the income to her during her life, with remainder to such of his children as should attain the age of 25 in equal shares absolutely. He also gave his trustees power to pay or apply capital for Mirjana's benefit.

24. The 1974 Will, made less than three years later, was in substantially similar terms to the 1971 Will but included a provision for substitution of issue if any child of Bane died before attaining a vested interest. There were also some immaterial changes to the administrative provisions. The executors were the same as before, except that Mr Hadley was now appointed in place of Mr Hurst or Mr Homburger should either of them die in Bane's lifetime or refuse appointment.
25. On 17 January 1978 Bane's father, Milan Kostic, died. In the same year, Zoran graduated from Dundee University where he had read psychology, after being educated at Kings College School, Wimbledon. From 1975 onwards Bane lived principally at Westmead House, 8 Westmead, London SW15, a substantial property which he had bought for £120,000 in 1974 and then renovated. There was also a family home at Gleneagles in Scotland called Airlie Court which was owned by Jovanka.
26. In the early 1980s Transtrade UK Ltd began to run into difficulties, although Transtrade AG continued to prosper. In about 1983, the first signs of Bane's mental illness began to become apparent to his family and friends. He began to make unfounded accusations of infidelity against Mirjana, and in May 1984 he began to abuse her physically as well. On 20 May 1984 he was persuaded by Jovanka, at whose holiday home in Lugano he had been staying with his mother and Mirjana, to visit a family friend who was a doctor, Dr Zoran Radivojevic. They went to see the doctor together at his surgery near Zurich. Bane told him he thought he had caught a venereal disease from his wife, as a result of the affairs she was having with other men. Dr Radivojevic informed him that he did not have any venereal disease, and diagnosed him as suffering from paranoia. He prescribed a sedative, Hemineurine. In a subsequent medical report dated 7 October 1984, Dr Radivojevic recorded that:

“On 20 May 1984, I had a consultation with [Bane] at my surgery and diagnosed paranoia. Since that date I have noted, through phone calls and postcards with pathological contents that he sent to me, that his illness progresses and that it requires immediate psychiatric attention and treatment. Given that I know only part of the symptoms of his illness, I suspect that the degree of the illness could be even graver.”

27. On 10 July 1984, Bane left the matrimonial home at Westmead House and separated (permanently as it turned out) from Mirjana. He went to stay with a friend, Reg Wigmore, at his home in Pinner Hill, and a day or two later travelled to Scotland with Mr Wigmore to visit some friends who lived near Gleneagles, Ronnie Taylor and his wife Margaret. Before leaving London, Bane consulted Oppenheimers who evidently advised him to make a codicil to the 1974 Will as a matter of urgency, cutting out Mirjana as a beneficiary and also revoking her appointment as an executor. The 1984 Codicil was drafted for that purpose, presumably by Mr Hadley, and Bane executed it when he was in Scotland on 14 July. It was witnessed by Mr and Mrs Taylor, both of whom have since died.

28. The changes to the 1974 Will made by the 1984 Codicil were as follows:
- (a) the existing appointment of executors was revoked, and in its place Bane appointed Mr Homburger, Mr Hadley and Mr Wigmore to be his executors and trustees;
  - (b) the existing trusts of residue were revoked, including in particular Mirjana's life interest, and replaced with a gift of residue to Zoran upon his attaining the age of 35, with a provision for substitution of issue, and an ultimate trust of the whole of residue for Mr Wigmore absolutely;
  - (c) the existing powers to pay or apply capital to or for the benefit of beneficiaries were also revoked, and replaced with a power for the trustees to pay capital to Zoran or apply capital for his benefit as they should think fit.
29. Later in 1984 Bane resigned from the board of Transtrade AG, and Transtrade AG transferred to him its shares in Transtrade UK Ltd. Thus from this stage onwards the affairs of the two companies were separated. The business of Transtrade UK Ltd continued to decline, and the company was eventually put into voluntary liquidation in 1989.
30. Meanwhile, on 15 May 1985 Mirjana petitioned for judicial separation from Bane. In the ensuing matrimonial proceedings, agreement was eventually reached between Bane and Mirjana that they should divorce and a decree nisi was made on 18 December 1985, followed by a decree absolute on 4 February 1986. In the divorce settlement, Bane transferred Westmead House to Mirjana and paid her a lump sum of about £155,000; while she transferred to him her shareholding in Transtrade UK Ltd. The settlement was on a "clean break" basis, and the property adjustment order dated 21 February 1986 provided that on death neither party should be entitled to make a claim against the other under the Inheritance (Provision for Family and Dependents) Act 1975.
31. Around the same time, Bane also made an agreement with his sister and his mother as to the division between them of family assets. One of the results of this agreement was that Bane's mother gave £50,000 to Zoran, which he used to buy the Gleneagles property from Jovanka for £47,000.
32. From about the end of 1984 onwards, Bane's delusions were firmly established and although he remained fully capable of dealing with most financial and business matters, and although in many respects his behaviour was perfectly normal, in other respects his behaviour and lifestyle became very strange indeed. For example, he lived a nomadic life with no settled base, and for considerable periods he slept on a camp bed in the offices of Transtrade UK Ltd, or moved from hotel to hotel to escape imagined persecution. The list of those conspiring against him expanded to include business colleagues and associates, his Swiss bankers, his professional advisers, old friends, and many others. His writings degenerated more and more often into disjointed and demented ramblings, displaying a wide range of semi-comprehensible (and at times wholly incomprehensible) references to history, politics, literature, mythology and much else, and a series of recurring fixations, especially with people's sexuality, and a strong streak of anti-Semitism.

33. I will need to describe later in more detail some of the events which led up to the preparation and signing of the 1988 and 1989 Wills. It is enough to say at this stage that by December 1986 at the latest Bane had raised the question of making a new will with Oppenheimers, and in 1987 he engaged in correspondence with his local constituency MP, Mr David Mellor QC, seeking to enlist his support in his battle with dark forces and (after he had lost confidence in his solicitors and accountants) asking him to agree to be his executor and to introduce him to a trustworthy solicitor. Mr Mellor politely declined the invitation to act as Bane's executor, and does not seem to have recommended a solicitor to Bane himself. However, in May 1988 Bane sent a donation of £5,000 to the Conservative Board of Finance, and in June he was in touch with the Conservative Central Office who through the good offices of Sir Henry Lee recommended Mr Anthony Trower of Trowers & Hamlins to him as a solicitor.
34. Mr Trower (who has subsequently died) was at the time the senior partner of Trowers & Hamlins, a well-known firm of solicitors with a specialist private client department. Their main offices at were at 6 New Square, Lincoln's Inn, London WC2. Trowers & Hamlins were also the Conservative Party's solicitors, and Mr Trower was himself one of the three members of the executive committee of the CPA.
35. On 10 June 1988 Bane went to see Mr Trower in Lincoln's Inn with a view to making a new will. Mr Trower's attendance note records that Bane told him the main features of his life history, including the fact that he had been granted British nationality in 1975 and had been accepted by the Inland Revenue as domiciled in the United Kingdom since 6 April 1987. Bane also gave Mr Trower details of his former solicitors, Oppenheimers, and his former accountants, Blick, Rothenburg & Noble, as well as of his present accountants, Thomas & Howe of Wimbledon (whom he had first instructed in relation to his personal and business financial affairs in April 1988). He informed Mr Trower that he had been married and had a son of 31, but had been divorced in 1986 on a clean-break basis. Mr Trower asked Bane to supply him with a copy of the order in the matrimonial proceedings. The attendance note concludes:
- "Wants to create a trust for the advancement of the political ideals of Margaret Thatcher – what he calls the Margaret Thatcher Revolution.
- ...
- Temporary Will in favour of CPA."
36. The question of how to fulfil Bane's wish to create a trust for the advancement of the political ideals of Mrs Thatcher (as she then was, and as I shall refer to her in this judgment) was obviously one that required careful consideration, because a trust for political purposes could not be charitable under English law, and a non-charitable purpose trust would be void and ineffective. One solution might have been to establish a company with the desired objects, and for Bane to leave his estate to the company. However, that could not be done immediately, and no doubt there were other possibilities too which merited consideration. Accordingly, the decision was taken to execute a temporary will leaving the whole of Bane's estate to the CPA. It was agreed that Mr Trower would prepare the necessary will, and that Bane would return to the offices of Trowers & Hamlins to execute it on 16 June.



37. The 1988 Will, which Mr Trower prepared or caused to be prepared for Bane, was very simple. By clause 1, Mr Trower and another partner in the firm, Mr Donald Whittaker Jones, were appointed to be Bane's executors and trustees. By clause 2, he gave the whole of his estate to the CPA "for the general purposes of that Association", and declared that the receipt of the secretary or of any one member of the executive committee should be a full and sufficient discharge to the trustees. Clause 3 was a standard-form investment clause, in wide terms, and clause 4 an equally standard professional trustee's charging clause. On 16 June Bane duly attended at the offices of Trowers & Hamlins, and signed the 1988 Will. His signature was witnessed by Mr Trower's secretary, Eiluned Jones, and by another secretary who shared an office with her, Jacinta Mary Clarke (now Loveland). Both of the attesting witnesses have made short statements verifying their signatures and saying that they have no specific recollection either of Bane or of the circumstances in which the 1988 Will was signed. They were not cross-examined, and I see no reason to doubt that the 1988 Will was duly executed in accordance with the requirements of the Wills Act 1837.
38. At their meeting on 16 June Mr Trower handed to Bane a copy of the Memorandum of Association of a company which could be used as a template for a corporate foundation. On the same day, Bane also wrote a letter to Mr Trower confirming their appointment and enclosing copies of 15 items of what he called "my confidential, private correspondence". There is no indication that this letter was received by Mr Trower before their meeting, and it therefore seems likely that Bane brought it with him and delivered it by hand.
39. The enclosures included documents relating to Bane's divorce, letters to his bankers, and recent correspondence with Oppenheimers culminating in a letter of 16 June confirming his change of solicitors and requesting them to forward all his documents in their files to Trowers & Hamlins. The enclosures also included a letter dated 28 December 1987 from Bane to his Inspector of Taxes, Mr D G Brayzier, the terms of which must have caused Mr Trower some surprise if he had not already seen any evidence of Bane's delusions. The letter began:
- "Dear Mr Inspector Brayzier,
- My battle and nightmare's Saga with the International Dark Forces continues. These bestial creatures use deceit, dishonesty, misinformation, fear, corruption, thievery, any type of vice and intimidation, blackmail and even assassin [sic] to nourish theirs [sic] egoistic, sadistic, satanic and greedy souls, aiming to destroy the best human's virtues – Dignity, Decency and Freedom."
40. On 18 June Bane wrote again to Mr Trower giving particulars of all his real and personal estate. There followed details of various bank accounts in London, Jersey, Luxembourg, Paris and West Germany, details relating to Transtrade UK Ltd, and a list of various items of personal property. The letter concluded:
- "I hope, that Almighty God doesn't need urgently my presence in the Heaven, so my dear Trustee perhaps we shall have a chance to visit together my Debtors in Monastery in W.Germany, Bourgogne etc."

The reference to “debtors” was presumably intended to refer back to the “loans to few persons etc” mentioned by Bane in the preceding sentence.

41. On 22 June Mr Trower replied, thanking Bane for his letter of 18 June and saying he had placed a copy of it with the will so that the executors would know where first to turn in the administration of the estate. He continued:

“Your existing temporary Will is perfectly good on the basis that you simply want to leave your money to the Conservative Party but as I understand it you want to do something more sophisticated than that and to create a trust to advance certain ideals which are personified by Mrs Thatcher and which, in your view, have brought about the current success of the Conservative Party and its policies. As I explained English law does not conveniently permit a trust for this sort of thing but I see no reason why you should not create a non-profit making company which would have the advancement of these ideals as one of its principal objects. This will of course need careful drafting to meet your particular requirements and the draft memorandum of association which I gave you was merely by way of example of what could be done.

Having established a company you could make a simple will very much on the lines of the temporary will I have made you, leaving your property to the company rather than the [CPA]. During your lifetime the company could remain dormant or, if you so desired, be activated so that there was something in existence on your death which had already proved itself.

When you have had the opportunity of considering the draft memorandum of association and what I have written above, it might be useful if we met again.”

42. On 14 October 1988 Mr G M Tisdall of Oppenheimers wrote to Bane informing him that he and most of the partners of Oppenheimers were joining Denton Hall Burgin & Warrens, and taking most of their associates and staff with them. This news prompted Bane to write in characteristically extravagant terms to his accountant (Mr Peter Evans of Thomas & Howe) and to Mr Trower, the latter of whom received this letter dated 21 October:

“I enclose a photocopy of the letter I received from “The Mutiny Partners on (the ship called) Oppenheimers”.

It seems to me, that my previous 24 years’ solicitors ... are disintegrating. I wonder – Why??? They used to be one of the most prominent Company in the City of London. Distinguished member of the Law Society. Even, if I remember correctly, they divorced Richard Burton from E. Taylor.

It leaves myself with the very unpleasant thoughts about their  
“Good Faith” Services I received from them.

Could you contact a new Company, Mr G M Tisdall and ask  
him if they have something to tell us.”

43. If Mr Trower was perturbed to receive this letter, he did not betray it in his brief reply dated 27 October:

“I was naturally interested by your letter of 21 October and particularly the enclosure ...

I wonder if you have had time to consider the suggestion I made in my letter of 22 June and the specimen memorandum of association of a non-profit making company which I sent you.”

44. A few weeks later, on 17 November 1988, Bane read and cut out an article by Bernard Levin in “The Times” which evidently made a deep impression on him. The article was headed “Obsession called to account”, and described how an obstinate and immensely wealthy litigant, whom Levin dubbed “Ajax”, would not give in when let down by his advisers in an action for professional negligence, but wished to start a fresh action against them, and thus embark upon what Levin foresaw would be an endless series of ever more expensive cases against ever more incompetent professionals. To illustrate his thesis Levin used the metaphor of a man swallowed by a boa constrictor whose response to his plight was to ask for a larger boa to come and swallow the one in which he was being engorged. Levin’s advice to his “stiff-necked Ajax” was to give in, and not to throw good money after bad. Bane, however, regarded this as a piece of “scurrilous dysjournalism”, and saw himself in some way as an Ajax figure standing up to the “tandem conspiracy” of Boa (C) and Boa (Z). His manuscript annotations to the article include the sub-heading “Ajax-Reply” and beneath that “Truth and Justice called to account”. The Ajax in question is “Not Sophocles’ tragic hero – but “the cruiser” who sank Graf von Spee ... with union jack flag in his hand, chanting: rather war than pact rather death than slavery”. The Boas “(C)” and “(Z)” can be elucidated by reference to a draft letter to Mr Trower (in the bundle at volume 8.3/265) as standing for Communism and Zionism respectively.

45. Bane eventually wrote to Mr Trower on 19 December 1988, but the letter had been through several earlier unsent drafts, all of which display his delusions, and what I can only describe as his general mental derangement, in an extreme form. The letter as sent, on 19 December, is too long to quote in full, but the following extracts will give its flavour:

“Dear Mr Trower,

Thank you for your letter of 27 October 1988. I am still meditating your suggestion to form The Association.

I enclose [*various photocopies, including the Bernard Levin article*]. I know very well this noble and generous person called AJAX and I spent with Him many nights in my offices recently. He dictated me over 50 pages (real TRILOGY) ....

Secret Works (My job is so secret, that really I don't know what I am doing), in a way, enslaved persons involved in a huge web of secrecy and they become victims of it, especially IF (Kipling) – not permitted or couldn't use naturally O RA TD. For various reasons - no decision – hesitation – FILLING CABINETS covered with dust. ... the DARK FORCES escape again and grow like OCTOPUS. AJAX calls them (BOAs/Dark Forces) CHOSEN BEASTS of the 11<sup>th</sup> COMMANDMENT from the AUGEAN STABLES. ...

Ajax never sued anyone – he leaves to the CONSCIENCE of the SOCIETY to JUDGE and decide VERDICT. He is always at the DISPOSAL as a WITNESS (and a very good one).

I suppose that you, Mr Trower, with a French connection during the last War could guess who is really AJAX.

At the end of my conversation with AJAX, he said to me: My Dear HERCULES, one important advice to you:

The Christianity is the greatest LEGEND but, up till now, the only LEGEND of MANKIND'S SURVIVAL AND SALVATION – anything else is just "MAKE BELIEVE" (HOCUS, POCUS, PREPERANDUS) ... RUBBISH! AJAX was a pupil of PLATO.

My Dear Mr Trower, using Ajax's code O RA TD and all his TRILOGY, you will understand now my prolonged MEDITATION. I live at the moment in my OFFICES, the only place where I could find peace. I bought a Baden-Powell's bed but I shave every morning. Anywhere I go (Hotel, Restaurants, Clubs, Roehampton Club (15 years my Club); etc) I meet only ATROCITY, IGNORANCE, ARROGANCE, LIES, DISINFORMATION, INTIMIDATION, CAR FAILURES, ETC., All the time (Eric ... G. Orwell) the SHADOW OF THE BIG BROTHER (Mengele-Doberman styles) is following. I don't CARE and I despise THEM ALL!

...

For that reason, Mr Trower, as my Solicitor, I instruct you as follows:

IN THE EVENT OF MY DEATH (NATURAL OR UNNATURAL) THROW MY REMAININGS IN THE GARBAGE (LA POUBELLE). NO CREMATION – WAISTING (sic) OF THE PLANET EARTH'S ENERGY. I AM A CHRISTIAN. USE MY FUNDS ONLY REPEAT ONLY ... FOR THE BENEFIT OF CHRISTIAN DEMOCRACY'S GOALS (CAUSES) ...

A MERRY CHRISTMAS Mr Trower!"

46. On 18 January 1989 Mr Trower wrote to Bane, having previously telephoned him to acknowledge receipt of his letter of 19 December:

“Following my telephone call you will realise that I safely received your letter of 19<sup>th</sup> December. I thought however, in view of its contents, that there should be a record on the file acknowledging it.”

Mr Trower went on to say that he looked forward to seeing Bane in the not too distant future.

47. On 30 January Mr Trower wrote again, enclosing a note of his firm’s fees in the sum of £400 plus VAT covering the preparation and drafting of the 1988 Will, advice on the creation of a company to advance Bane’s ideals, and “subsequent correspondence with you about sundry matters”.
48. On 2 May 1989 Bane sent a donation of £3,000 to the Conservative Party to mark the tenth Anniversary of Mrs Thatcher’s premiership. In his covering letter to Lieutenant-Colonel Barton at the Conservative Board of Finance, he said that the cheque was “to honour the greatest World’s LEADER of our time”. However, he then enclosed a photocopy of a further piece of “dysjournalism” by Bernard Levin, and the letter degenerated into a semi-intelligible anti-Semitic rant. On the following day, 3 May, Bane wrote to Mr Trower inviting him to lunch in the second half of May. He enclosed three articles, two of them evidently by Bernard Levin. There is a strong anti-Semitic undercurrent to this letter too, although it is mercifully much shorter than the letter to Lieutenant-Colonel Barton.
49. On 5 May Mr Trower replied, saying that he would “re-read with interest” the two articles by Bernard Levin which he had already read in his morning paper, and confirming their lunch date for 1 June at Simpsons in the Strand.
50. The lunch was evidently an excellent one. In his letter of thanks dated 2 June 1989 Mr Trower described it as “a Lucullan feast”. He said he would telephone shortly to arrange a date when Bane could lunch with him in Lincoln’s Inn and meet one or two of his partners. He then continued:

“May I now turn to your affairs. Your temporary will contains a munificent benefaction to the Conservative Party. Far be it from me to suggest that you should alter that. But it was a “stop gap” will pending consideration of the creation of something which, while supportive of the Conservative Party, had rather wider application. I refer you to my letter of 22 June 1988.

If on reflection you feel a bequest to the Conservative Party meets your desire for the disposal of your fortune, then there is nothing more to be done. But the Conservative Party’s policies are adaptable and changing. Thirty years ago its policies were very different from what they are today. Would you have

wanted to leave your money to a Conservative Party led by Harold MacMillan or Edward Heath? Personally, if I had been in your position, I would have done so.

Having posed that question I invite you to come and discuss it with me ...”

51. On 29 June 1989 Bane wrote to Mr Trower. The letter is a bizarre mixture of apparently clear instructions on the one hand and disjointed historical and political allusions on the other hand. I suspect this was the first time in his life Mr Trower had ever received a letter addressing him as “Saint Anthony”. It is of course possible that some private joke arising from their previous meetings lay behind this, but equally it may have been some association triggered in the recesses of Bane’s mind. The clear instructions in the letter were to the effect, first, that he did not wish to form a company, but thought it would be much more appropriate to establish a foundation in the name of his late father Milan Kostic, and secondly, that the 1988 Will must be revoked and torn up. Bane expressly recognised that the effect of this would be to leave him intestate until he made another will. However, whether he really understood the consequences of dying intestate must in my judgment be open to considerable doubt, because he went on to say that if anything happened to him in the meantime

“the chief executors of my FUNDS will be Archpriest MILUN KOSTIC [*his address was then given*] together with you my dear Saint ANTHONY.”

Plainly, if Bane were to die intestate, before having made another will, there could be no question of his having any executors, or of his estate passing to anybody other than his only son, Zoran.

52. Mr Trower decided on a low key response. He replied on 3 July 1989:

“Thank you for your letter of 29<sup>th</sup> June. I confirm that I have destroyed your will so that you are now intestate unless you have made another one. I note that you say that meantime the chief executors will be Archpriest Milun Kostic and me. I suppose it is conceivable that if he is your next of kind [sic] he might [be] your administrator but I could not fulfill [sic] such a role unless appointed by will.”

Evidently Mr Trower did not consider it necessary to enlighten Bane any further about the consequences of dying intestate.

53. Bane’s invitation to lunch at Trowers & Hamlins was fixed for 13 July. In advance of the meeting, Bane wrote out in manuscript, and then typed up on the notepaper of Transtrade UK Ltd, the provisions that he wished to include in his new will. The typed-up version reads as follows:

“I, BRANISLAV KOSTIC of Broadway House, The Broadway, Wimbledon, London SW19, HEREBY REVOKE

all previous testamentary dispositions made by me and declare this to be my last WILL.

I APPOINT ARCHPRIEST MILUN KOSTIC of [address] and ANTHONY GOSSELIN TROWER of [address] to be the executors and trustees hereof and the expression “my Trustees” shall mean the executors or trustees for the time being hereof.

2. I DEVISE AND BEQUEATH all my real and personal estate whatsoever and wheresoever including all entailed property of which I have power to dispose by WILL (hereinafter called “my estate”) to the Conservative Party Association of [address] for the purpose to establish a cultural INSTITUTION in London named MILAN KOSTIC FOUNDATION (my late father). Its purposes among others – to operate, maintain and promote CHRISTIAN DEMOCRATIC VIRTUES – LOVE, TRUTH, and FREEDOM. To promote the NURSING, EDUCATIONAL, LITERARY WORKS, RELIGIOUS, SCIENTIFIC RESEARCH, JOURNALISTIC (not DYSJOURNALISM) and ARTISTIC ENDEAVERS [sic], proclaiming International and British Contest, prize awards in money.

Each year to allocate £50,000 ... to the Conservative Party Assoc. for the protection and the promotion of British INDENTITY [sic], TRADITION, CULTURE and TOLERANCE. To provide with £25,000 ... each year the SERBIAN ORTHODOX CHURCH in London for the protection and promotion of the SERBIAN HISTORIC, CULTURAL and RELIGIOUS VIRTUES (VALUES).

I entrust and command the undersigned executors of my Will to establish such a CULTURAL FOUNDATION, when I fade away.”

54. This draft was evidently Bane’s own composition, although he presumably copied the formal parts and the definition of his estate in the first part of the clause numbered 2 from the 1988 Will. It will be seen that the intended gift of his entire estate to the CPA was no longer, as it had been before, a gift for the general purposes of the Association, but rather a gift for the specific purpose of establishing a cultural institution in honour of Bane’s late father. The purposes of the proposed institution were not exhaustively stated, as is shown by the words “among others”, but prominent among them were the maintenance and promotion of the Christian democratic virtues of love, truth and freedom, together with promotion of research and endeavours in the other areas he singled out. £50,000 was to be allocated to the CPA each year, but earmarked for the protection and promotion of British identity, tradition, culture and tolerance. £25,000 was also to be allocated each year to the Serbian Orthodox Church, for the protection and promotion of Serbian historic, cultural and religious values.

55. Bane must have brought this draft with him to the lunch meeting at Trowers & Hamblins, which according to a brief attendance note prepared by Mr Whittaker Jones lasted for two and a quarter hours. If Mr Trower himself made an attendance note of the meeting, it has unfortunately not survived. The lunch itself, according to Mr Whittaker Jones' recollection as set out in his witness statement, was not at the firm's offices but again at Simpsons on the Strand. He remembers the lunch for a memorable discussion with Bane of his love of art. Either during the lunch, or perhaps more probably just before it, the 1989 Will was signed by Bane and witnessed by another of Mr Trower's partners, Mr Martin Amison. The other attesting witness was a Ms Heather M Gregory. The will as executed consisted of Bane's typed draft on the notepaper of Transtrade UK Ltd, but with certain manuscript alterations made in the handwriting of Mr Trower. The first alteration was the addition of Mr Whittaker Jones as a third executor, together with Archpriest Kostic and Mr Trower. The second alteration was the deletion of the words "for the purpose to" after the gift to the CPA and their replacement with the words "in the hope that it will". Similarly, at the beginning of the following paragraph the words "Each year to" were deleted and replaced with "I hope that it will each year". The purpose of these two alterations was obviously to replace purpose trusts, which would probably if not certainly have been void, with mere expressions of a wish or hope as to how the money would be applied ("precatory words" in the jargon of probate lawyers). However, if the words are indeed to be construed as mere precatory words, not imposing any trust, the effect of the 1989 Will was again to leave the whole of Bane's estate to the CPA, albeit subject to a non-legally binding expression of wishes as to how it was to be applied. Since Bane had recently given emphatic instructions for the revocation of his 1988 Will leaving the entirety of his estate to the CPA, one may be forgiven for wondering whether this was really what he intended, or how fully and carefully the matter was explained to him by Mr Trower before or during their lunch.
56. The final manuscript alteration made by Mr Trower to Bane's draft was the addition of an attestation clause in standard form. He does not seem to have noticed that the reference to "the undersigned executors" in the last paragraph of the draft was inappropriate, nor did he delete the words "entrusting and commanding" them to establish the cultural foundation, notwithstanding the apparent conflict between that mandatory language and the precatory words which he had been at pains to substitute earlier in the draft.
57. Of the two witnesses to the 1989 Will, Ms Gregory has apparently not been traced, but Mr Amison has provided two witness statements. In his first statement he says that his office was near to Mr Trower's on the ground floor of 6 New Square, and as a result he was sometimes asked by Mr Trower to witness clients' wills. He confirms his signature on the 1989 Will, but has no recollection of its signing or of any details about Bane. In his second statement he confirms that the manuscript attestation clause is in Mr Trower's handwriting, and also confirms his understanding that alterations to a will need to be made before execution. He goes on to say:

"It is inconceivable to me that the alterations could have been made after execution, as I would have refused to sign or initial against such alterations and I recognise my signature against such alterations to the Will."



The signatures of Bane and Mr Amison, and the initials of Ms Gregory, do indeed appear in the margins of the 1989 Will, opposite the first three of the alterations to which I have referred, and I have no doubt that, as an experienced solicitor, Mr Amison would not have placed his signature against the alterations unless they had been made before the 1989 Will was executed. He was not cross-examined on his evidence, and on balance I am satisfied that the 1989 Will was duly executed.

58. On the following day, 14 July, Mr Whittaker Jones telephoned Bane at the latter's request. Bane thanked Mr Trower, according to Mr Whittaker Jones' attendance note, for a "lovely and delicious lunch". Bane then mentioned a name which he had been trying to remember – Sir Alexander Glen – and an "interesting conversation" ensued. The attendance note throws no light on the nature of this conversation, and Mr Whittaker Jones has no present recollection of anything about the 1989 Will or Bane apart from their discussion of art over lunch on the previous day. Sir Alexander Glen, who died in 2004 aged 91, had spent much of the Second World War as an intelligence officer in Yugoslavia, and had also been chairman of the Advisory Council of the Victoria and Albert Museum from 1978 to 1984. It is therefore not at all surprising that he should have been a figure of interest to Bane, and this small example serves as well as any other to make the important point that, despite his delusions, Bane was a man of wide cultural and intellectual interests, who could and did have perfectly normal conversations with a wide variety of different people, and could also be very congenial company.
59. On 18 July Bane drafted, but did not send, a letter addressed to Lieutenant- Colonel Barton at the Conservative Board of Finance. The draft was in the familiar rambling, delusional style, but it included a reference to the events of 13 July in the following terms:

"On the 13 July I had a very pleasant lunch at the offices of Mr Anthony Trower and D. Whittaker Jones and I do hope, when I fade away, your ASSOCIATION will be better off."

A scribbled note on the letter indicates that although Bane originally intended to send it to Lieutenant-Colonel Barton, he subsequently decided to address it to the Chairman of the Conservative Party, Mr Kenneth Baker MP. On 3 August he duly sent it to Mr Baker, under cover of a letter of that date, together with copies of two of his earlier letters to the Board of Finance, including the letter of 2 May 1989 which is one of his most demented effusions. Mr Baker replied on 13 September 1989, thanking Bane for his letter of 3 August and saying:

"Your enclosed letters made very interesting reading and I am most heartened by your generous support for the Prime Minister and the Party."

60. Around the same time, Bane placed Transtrade UK Ltd into members' voluntary liquidation, and in October and early November interim distributions totalling £200,000 were made to him as shareholder.
61. A further development in late 1989 was the ending of Bane's nomadic existence with the purchase by him of 5 Audley Road, Ealing, London W5 for £300,000. Bane instructed Trowers & Hamblins in relation to the purchase, and conduct of the matter

was transferred to Mr David White, a senior partner in the firm. Mr Trower had by now retired as senior partner, although he remained as a consultant. His successor as senior partner was Mr Whittaker Jones.

62. Mr White had not met Bane before, and they had an introductory meeting over breakfast at Simpsons where they discussed French impressionist art. Bane impressed Mr White on this occasion as a “nice” man in both senses of that word, a pleasant, kindly and stimulating companion on the one hand, and also a precise, intelligent man who would spot and deprecate insincerity on the other hand. According to Mr White’s witness statement, he had been told by Mr Trower that Bane “was a learned, wealthy Yugoslav chemist who could at times be incoherent, but not so as to cause a problem”. Mr White himself recalls that “incoherence” only manifesting itself once to him, when during a telephone conversation there was suddenly a brief interlude while Bane rambled about spiritual matters involving the Virgin Mary before returning to the business in hand. Mr White stresses that Bane’s instructions to him were always clear and perfectly rational. Nevertheless, he was evidently sufficiently concerned to ask Mr Trower’s son Christopher, who was then an articled clerk with the firm, to carry out some research for him on the law on capacity. This exercise resulted in a note from Christopher Trower dated 30 November 1989, which dealt with both the capacity needed to purchase a house and the capacity needed to retain solicitors. In the light of that research, Mr White says he had no reason to doubt, then or subsequently, that Bane was fully aware of the nature and quality of his actions, and fully competent to give instructions. He also says he has no doubt that Bane’s references to Mr Trower as “St Anthony” were made “in humour, affection and respect”.
63. At the end of 1989 Bane was 64 years old and Zoran was 32. He had a house in London, for the first time since his separation from Mirjana in 1984, and the affairs of his company, Transtrade UK Ltd, had finally been wound up. He had made the 1989 Will, and was not to make any further testamentary dispositions. It is unnecessary for me to trace the remainder of his life in chronological order, although there are a number of episodes to which I will return when describing the evidence of the witnesses and considering, in more detail than I have so far, Bane’s relationships with Zoran and with the Conservative Party. For now, it is enough to record that on 14 December 1992 Bane’s mother died, and he himself died on 24 October 2005.

### **Bane’s Diary of Vital Events**

64. One important document to which I have not yet referred is a typed list, or diary, of events in chronological order covering the years from 1984 to 1997 inclusive, which was then extended to cover the next four years up to 2000. This document was clearly typed by Bane himself – the type face which he used is very distinctive – and equally clearly it was created retrospectively: the first page is headed “The Vital (Major) Events During 1984-1997”. There then follow some 29 pages of single-spaced A4 paper, with a left hand column showing dates and opposite them diary-style entries. These entries, or at least the majority of them, were probably derived from contemporary diaries which Bane kept, but which unfortunately no longer survive. The chronology almost always appears to be accurate, and on more than one occasion witnesses were prepared to accept that the date shown in the document for an event was more likely to be correct if it conflicted with their own unaided recollection of when it occurred. Nevertheless, the very fact that the document was

prepared retrospectively, towards the end of Bane's life, on the basis of raw material which has now disappeared, means that it must be treated with considerable caution. Judging from the rest of Bane's voluminous writings which survive, and also from some internal indications, it is likely to have gone through a number of intermediate stages or versions, and to have been the subject of a good deal of editorialising and insertion of subsequent comments. That said, however, and allowing for the fact that it is probably something of a palimpsest, Bane's diary (as I shall call it) offers a vivid insight into his thinking and his delusions; and although many of the events recorded appear to be trivial, such as records of his movements, meals or sporting engagements, others were obviously perceived by him as being of particular significance. Indeed, the title of the diary suggests that all of the events recorded were seen by Bane as important in one way or another, even if their significance cannot now be reconstructed. Another striking feature of the diary that even a cursory glance reveals is the plethora of dismissive comments it contains about people of all kinds (comments like "what a bastard!", or "monster" abound), often combined with derogatory references to their sexuality (almost anybody Bane disapproved of is likely to be labelled a homosexual) and (if Jewish) to their race.

### **The Witnesses of Fact**

65. Bane's writings are so voluminous, so idiosyncratic, and at times so obviously demented, that there is perhaps a danger of being over-influenced by them, and of forming a one-dimensional view of a very complex human being. For this reason I was fortunate to have the opportunity to hear oral evidence from a number of people who knew Bane in one capacity or another at different stages of his life, as well as from the two members of his close family who survive him, Zoran and Jovanka.
66. Apart from Zoran and Jovanka, the witnesses of fact who gave evidence for the claimant were:
  - (a) Salvatore Joseph Rinaldi;
  - (b) Andrew Waclaw Kaczmarek;
  - (c) Igor Sulmoni; and
  - (d) Derek Brown.

### **Jovanka**

67. I have already drawn extensively on Jovanka's evidence in the account which I have given of Bane's early life. Her evidence is of particular value because she is one of the few witnesses who can attest today to Bane's character before illness struck him in the mid 1980s. In her written evidence she said that Bane had always had a very happy marriage with Mirjana, and had been very close to Zoran. He also had a close relationship with Jovanka, both personally and in the context of the business of the two Transtrade companies. They had a joint account in order to make the practical arrangements easier. In her oral evidence in chief, Jovanka described the family relations between Bane, his mother, his wife and herself as being "very close". In cross-examination she said:

“We were all, all together like this ... and Bane was fantastic, you know, with mother, with all of us. This illness changed him completely.”

68. Jovanka goes on to say in her written evidence that it was in about 1983 that they started to notice real changes in Bane's behaviour. It became very clear that something was not right, and he started making accusations of infidelity against Mirjana for which there was no basis whatsoever. In May 1984, he also began to abuse her physically and they all became afraid of him. However, he still had moments of clarity, and later in May he apologised to Jovanka for having acted in such a way towards Mirjana. Jovanka then persuaded him to visit Dr Radivojevic, and as I have already said he diagnosed paranoia and prescribed a sedative. Unfortunately, however, Bane discovered from one of Jovanka's medical books that the sedative prescribed was a treatment for delirium and he formed the belief that Jovanka was trying to poison him. He began referring both to her and to Dr Radivojevic as “Dr Mengele”. He also began to say terrible things about their mother, although they had previously been extremely close. At this stage Bane still had some insight into his condition, and arrangements were made (in fact through the good offices of his American friend, Mr Rinaldi) for him to receive treatment at a clinic in America. However, Bane then changed his mind and refused to attend the clinic or to go to America for treatment. In June 1984 Bane flew back to Zurich from London and stayed for the last time with Jovanka at her house in Zollikon. In her written evidence she gives a graphic account of his condition:

“Bane was not in a good state. He was shivering and shaking all over. He began to cry. He was staying with me and three or four days later, at around 5.00 a.m., I heard a noise. I went immediately to his room to see if I could find him. He was not in his room. I went downstairs and ... found him in his car. He proclaimed that he was leaving right away. He said he was going away forever and drove to Lugano. He stayed there for sometime. He invited people to visit him and told them all kinds of strange stories. Our mother and I visited him for two days, but it was a horrible experience. He was very aggressive and we were both afraid of him.”

69. Later in June 1984, Bane left Switzerland and returned to London alone. He never returned to Switzerland. Mirjana returned to London a little later, but he began to lock her in her bedroom, sometimes for an entire day, and would also unplug the telephone to prevent her meeting or speaking to her mythical lovers. He would also spread powder around and claim that she was taking cocaine.
70. Bane's delusions soon extended to the circumstances in which he had left Switzerland. In a letter to the Kreisbüro (local government office) in Zurich which he wrote on 6 June 1985, he explained why he had decided not to renew his residence permission (“Niederlassung”) in Switzerland. He said that he had taken this decision “for the sake of my personal safety”, and proceeded to give a graphic description of how he had been drugged and taken to various European cities. He blamed Jovanka and a friend, Max Kohler, for organising all of this. He also began to accuse Jovanka of having had a hand in their father's death, and began writing strange letters to many

people. One of the recipients of these letters was Bane's paternal uncle, Spiro Kostic. On 7 November 1984 Bane wrote to him in the following terms:

“Dear Uncle Spiro,

Since June I move around like a Bedouin from one relative to the next. I just made it out of Switzerland because the wife of my noble father and her daughter tried, and still try today, to incapacitate and eliminate me, so as to hide their bad deeds and their blackest sin. Poor dear Papa Milan, your brother. Now it is clear to me, after a lot of time, who was really responsible for the arguments between you and dad. He died poorer and did not understand.”

On Christmas Day 1984 Bane wrote again to Uncle Spiro, saying he had not received a reply to his earlier letter:

“Why? Do you belong to the same group, if so, God shall reward you as appropriate.”

Unsurprisingly, after receiving these letters, her uncle called Jovanka in a state of desperation to ask what had happened to Bane.

71. In her witness statement Jovanka goes on to describe how, as a result of his behaviour, Bane had to leave the family home and then embarked on his nomadic existence. She tried to invite Bane to come and visit her, and wrote to him in affectionate terms. However, he did not reply to the invitation, and became increasingly hostile to his family. After 1985, he never spoke to his mother again. He would still telephone Jovanka regularly, but repeatedly accused her of poisoning him and would often refer to her as “Dr Mengele”. Jovanka also discovered around this time that Bane had withdrawn all the money from their joint account. This prompted her to instruct a lawyer, and in November 1984 she wrote to Bane saying that it was no longer appropriate for them to have assets under their joint control and proposing a formal division of assets on an agreed basis. She offered to come to London for that purpose.
72. Bane did not respond to this letter immediately, but in the summer of 1985 he telephoned Jovanka to say that they were clever enough to reach an agreement between themselves without having to go through lawyers, and inviting her to come to London. This she did in August 1985, and a number of informal meetings took place at the Serbian Orthodox Church, at least one of which Mirjana also attended, at which agreement was reached on a division of family assets between Bane and Jovanka on the one hand, and Bane and his mother on the other hand, in each case with the agreement of Mirjana who was by this stage in the process of negotiating her own divorce settlement with Bane. The agreement was evidently recorded in a formal document, which no longer survives. One of the terms of the agreement, as I have already mentioned, was that the Gleneagles property should be transferred from Jovanka to Zoran, who received a gift of £50,000 from his grandmother in order to enable him to buy the property from Jovanka for £47,000.

73. Jovanka was cross-examined at some length about this agreement for a division of assets. Her answers were rather confusing and unfocused, but I am satisfied that the substance of the agreement was broadly as I have stated it above. Jovanka impressed me as a witness of patent sincerity, but her oral evidence was often difficult to follow, partly because English is not her first language and she needed the assistance at times of an interpreter, partly because her answers were sometimes inaudible, but mainly because she found it very hard to concentrate on the particular questions she had been asked and tended to embark upon long, discursive answers.
74. Despite Bane's delusions concerning her, Jovanka continued, with striking generosity, to try to keep in contact with him. She would send him presents for Christmas and his birthday, and also sent him chocolates which, however, as she discovered from friends of Bane's at his funeral, he never ate because he thought they were poisoned. Bane believed that the female members of the family were conspiring against him, and when his mother died in December 1992 he did not come to the funeral. Apparently, he feared that he would be caught and forced to go into hospital. Jovanka met Bane only twice during the 1990s, once in July 1993 when they had lunch together at the Ritz and when it was clear to Jovanka that he was still not well, and again in May 1996, when he was on holiday in Burgundy and invited her to join him for two days. Jovanka accepted the invitation, and they spent one lovely day together. However, the next day he suddenly turned against her, saying he never wished to see her again and referring to her as "Mrs Medici". Jovanka remembers it as being a very emotional trip, during which Bane cried on at least two occasions. One of those occasions was when she showed him a photo of Zoran. He asked who the photograph was of, and when she replied "Zoran" he went away and wept.
75. In this context it is worth noting Bane's diary entry for 16 May 1996:

"Jovanka left Beaune with Pierre for Zurich. I paid everything – in the last moment - before leaving she told me [that] Zoran lost his busine[ss] – everyone achieved something except Zoran – I said for that the persons to be guilty is YOU and MIRJANA – you two destroyed him!!!"

A week later, on 24 May 1996, Bane wrote to Jovanka enclosing 30 photographs which he had taken, presumably during their time together in France. He said:

"Last time we were together in Lugano in June 1984. Twelve years have passed – a lot has happened – nothing nice, good or happy – everything ugly, sad and ghastly. To forgive partially – maybe – but one can never forget the monstrous plot "IN CONCERT" where you played the main PART!!! There does not exist the MAGIC SPONGE (not flute) to wipe out all the conspiring and vile WORKINGS.

Time is passing by and the memories stay – whether they are sad or pleasant and nice!

I wish you all the best!!!

God Bless You."

This letter is an eloquent testimony both to the persistence of Bane's delusions and to the conflicting emotions which they generated in him.

### Zoran

76. Zoran describes himself in his witness statement as a scholar of independent means. He amplified this in cross-examination, explaining that he conducts private research into the philosophies of the world and pursues interests which include psychology and the occult. Apart from a brief period of work in a school for handicapped children near Gleneagles in 1979 to 1980, and part-time work for Transtrade UK Ltd in the summer months of 1981 to 1985, Zoran has never been in employment. From 1987 to 1989 he ran a second-hand bookshop in Edinburgh which he had established, called Orpheus, but he closed it because there were too few customers to make it profitable. On his grandmother's death in 1992 he inherited her estate, and since that date has been a man of substantial independent means. He declined to say how much he had inherited from her, but agreed that she was a wealthy woman. Before 1992, Zoran was supported by both his parents until their separation, and by his mother thereafter. I have already explained how the house at Gleneagles was transferred to Zoran in January 1986, the purchase price being financed by a gift to him from his grandmother in August 1985. Zoran agreed in cross-examination that these two transactions were interconnected, and that the property was effectively given to him.
77. The picture that emerges, of a gentleman amateur scholar of independent means, could hardly be further removed from Bane's own life history as a self-made man who had fought and been severely wounded in the Second World War, travelled extensively before settling in England, and then made a fortune in the pharmaceutical industry. Bane clearly hoped that his son would follow in his footsteps, but equally clearly Zoran had no interest in doing so. As he said in cross-examination, he "wasn't that interested in pharmaceuticals", but was interested rather in philosophy and psychology. Zoran explained that after he had graduated from Dundee University in 1978 with a degree in psychology and had spent four months travelling around America, it was his father's wish that he should go straight into a full-time job with Transtrade UK Ltd. However, Zoran decided to live in Gleneagles, and he has been based in Scotland ever since. The periods of summer work at Transtrade from 1981 to 1985 did not in my judgment betoken any commitment to a business life on Zoran's part, but were something he was happy to do because he knew it would please his father.
78. It is interesting to note in this connection that in the summer of 1984 Bane, who was now approaching the age of 60, was thinking in terms of taking a break of between six months and one year for health reasons from his work, and asking Zoran to look after the business during his absence. This can be deduced from a manuscript note in Bane's handwriting dated 31 July 1984, and a letter written to Bane by a friend with whom he had been on holiday that summer in Lugano dated 19 August 1984. Zoran had no recollection of this proposal having been discussed with him, but agreed that, if it had been, it was probably not something he would have wished to do. He added that he might perhaps have agreed if he had been approached in the right way, but I confess I am sceptical about this. It seems to me that Zoran's character and interests were so unlike his father's that he could never willingly have settled into any kind of full-time employment with the company.

79. With regard to the onset of his father's illness, Zoran's evidence was that before 1984 his father "was a perfectly normal, considerate man. He was a charming and successful businessman and there was no indication that there was anything wrong mentally or physically". However, in 1984 his father started to behave erratically, and he began to have paranoid delusions about the female members of his family, believing in particular that they were trying to poison him. Zoran says in his witness statement that he cannot put his finger on any particular trigger for this change in behaviour, but it was in the summer of 1984 that his father's behaviour became too much for his mother and he was forced to leave the family home in London. Zoran had been in Scotland, and returned to London to be told that his father had left. He says that he was stunned. He adds that his father also began to behave erratically at work, and would only appear in the office sporadically. No doubt the onset of Bane's illness was one of the reasons which encouraged him to think of taking a break from work at this time, although as I have explained the plan came to nothing.
80. Zoran says that his relationship with his father became strained after 1984, because he supported his mother and also because he did not like the way his father was behaving at work. In September 1985, Zoran decided he had had enough and he returned to Scotland. The office in London had an unhealthy atmosphere and his father's deteriorating mental state made it unpleasant to work there. In the event, September 1985 was the last time when Zoran saw his father, even though he was not to die until 20 years later. During his last month in London his father had stopped speaking to him completely, and would ignore him. As Zoran said in cross-examination:

"I think he just thought that I had taken the side of my mother, and she had had the locks changed and I was in league with her, so he decided to cut contact with me."

81. It is convenient at this point to refer to three important entries in Bane's diary for 1984 and 1985 which involve Zoran.
82. The first entry is dated 22 April 1984. It needs to be read in the context of an earlier entry dated 1 March 1984 recording that he had an accident skiing in Switzerland in which he cracked a bone in his leg. He had returned from Switzerland on 15 March, and gone to Gleneagles on 17 April. The entry for 22 April read as follows:

"Easter – St Andrews with damaged left leg, Zoran ask me to make promenade at Links, where tide is high – I refused, he went to second-hand library in St Andrews."

This episode evidently made a strong impression on Bane, because another entry for Easter 1984 can be found at the end of the entries for 1996, as follows:

"Zoran drove Mirjana and me Gleneagles Village, Airlie Court to St Andrews (I had cracked left [fibula] from Davos 1/03/1984) and he wanted that we walk on the links!!! I said, are you crazy – with my limping tide could be very quickly high. He went then to the second-hand bookshop – near Old Course. He paid us a tea."



In re-examination Zoran said that he had no recollection of this incident. Its potential significance lies in the fact that, particularly in the 1996 version, it is open to the interpretation that Bane thought Zoran was trying to drown him, or at the very least was recklessly asking him to take a walk on the links with an injured leg when he might be in serious danger from a rapidly rising tide.

83. The second entry is dated July 1984, at the time of Bane's visit to Gleneagles following his separation from Mirjana. It was during this visit that the 1984 Codicil was executed and witnessed by Mr and Mrs Taylor. The relevant part of the diary entry relates to the house at Gleneagles:

“In the house I found that Zoran is in the SECT – Satans = Jupiter lot of herbs, oil etc and books of satanic brotherhood – Reg [Wigmore] was not shocked – probably he is one of them. Daggers, Crystal Ball etc. Ronnie [Taylor] arranged visit to Dr Robert Wood – blood test ...”

Zoran agreed in cross-examination that he kept a lot of books on the occult at Airlie Court, and this must be what his father was referring to. He added that the occult philosophy of Rudolph Steiner had been a special interest of his since his university days. However, it appears from the diary entry that Bane may have seen these books as evidence of something rather more sinister than a mere interest in the occult; and, typically for someone suffering from paranoid delusions, he regarded the fact that Mr Wigmore was not shocked as evidence that he too was probably one of the satanic brotherhood.

84. As the diary entry indicates, Mr Taylor arranged for Bane to visit a Dr Robert Wood during his stay at Gleneagles. A witness statement has been obtained by the CPA from Dr Wood, who is a retired consultant physician and professor of clinical medicine. In 1984 he was a consultant general physician attending at Perth Royal Infirmary, and employed by Tayside Health Board. He has no specific recollection of the consultation or the tests that he carried out upon Bane, but he confirms that Mr Taylor was the father of a friend of his and he presumes that he agreed to see Bane as a favour to Mr Taylor. The consultation was a private one, outside Dr Wood's NHS responsibilities. On 25 July 1984 Dr Wood wrote to Bane, after most of the test results had been obtained. On the basis of this letter, and a shorter one following it up after the final test results had been obtained in September, Dr Wood today draws the conclusion that Bane believed he had been poisoned, and says that he evidently projected his suspicions “in a somewhat paranoid way”. Factors contributing to paranoia, in Dr Wood's view, may have included his son expressing an interest in the occult, and the probability of his wife having an extra-marital affair. The letter of 25 July makes it reasonably clear that Bane had complained of his suspicions of having been poisoned while he was in Lugano, and suspicions that he had contracted a serious venereal illness from Mirjana. On the latter point, Dr Wood was able to reassure Bane that he had no serious sexually transmitted diseases. I should also add, for the avoidance of doubt, that although Zoran was indeed interested in the occult, there is no evidence whatever that Mirjana ever had an extra-marital affair.

85. The third diary entry is dated 24 July 1985, and reads as follows:

“Arrived at Westmead – they changed the lock – I couldn’t open the house. Zoran arrived and open [ed] the door and said that they changed the lock months ago. What the monsters – that was last time I saw Zoran – the bastard!!!!”

The natural reading of this entry, in my view, is that when Bane arrived at Westmead House he found that the locks had been changed and he was therefore unable to let himself in. When Zoran opened the door, he said that “they”, which in this context must I think mean he and his mother, had changed the lock some months earlier. In his witness statement Zoran says, and I readily accept, that he was never involved in changing the locks of the family home. His evidence is that the locks were changed by his mother after Bane had moved out. The reason for this was that Bane was in the habit of appearing at unpredictable times to collect clothes and other possessions. He would come in when he felt like it, even though he was no longer living there. Mirjana did not want him to do this, and after a while she changed the lock to make herself feel more secure.

86. The diary entry suggests that the date of this episode, 24 July 1985, was the last time when Bane saw Zoran, whereas Zoran’s own evidence is that they saw each other for the last time in September. On this point too I accept Zoran’s evidence. I do not doubt that the diary accurately records the date when Bane arrived at Westmead House to find the locks had been changed, but the comment that this was the last time when he saw Zoran is self-evidently a later addition and may well not be strictly accurate. The important points, to my mind, are, first, that Bane evidently regarded Zoran as at least partly to blame for the changing of the locks (for why else would he refer to him so emphatically in this entry as a bastard?), and secondly, that Zoran and his father never met again after the summer of 1985.
87. That is not to say, however, that Bane forgot about Zoran, or that he always harboured hostile feelings towards him. On the contrary, Zoran’s evidence is that he never fell out with his father, but just stopped having contact with him, and there was never any animosity between them. While this may be true so far as Zoran is concerned, it cannot be wholly true from Bane’s point of view as the diary entries testify. Nevertheless, even after the lock-changing incident Bane was still at times capable of both feeling and expressing affection for his son. For example, on 16 March 1986 he wrote to Zoran saying that he should be very grateful to his aunt and mother (in connection with the gift of the Gleneagles property) and ending:

“With a God wish, not Lucifer, maybe one day our hearts will meet somewhere in that universe!”

Later that year he sent £50 to Zoran on his birthday, and a further £50 to Zoran’s girlfriend, Ann, whose birthday also fell in early July. Some years later, in 1992, a diary entry dated 31 May records “Zoran accident. Fall from the cliff during climbing. God save you!”, and a further entry dated 1 July of that year records that on a holiday at the hotel Moresca in Ischia, near Naples, he played tennis at the same club where he had played 20 years before with Zoran, who was then a boy of 15. The diary entry concludes: “Very down – nostalgia – crying!!!”, and a further entry dated 9 July, Zoran’s birthday, reads as follows:

“ZORAN 35 years of age – in spite of everything I am very nostalgic – sad!!!”

88. By way of contrast, the next diary entry relating to Zoran is dated 27 May 1993. It reads as follows:

“Spoke with Zoran – he lives now in [Edinburgh] alone – he bought a flat for Ann – they are good friends – he has SECONDHAND BOOKSHOP called ORPHEUS!!! What a future!! He said – we meet – he will buy me beer – Bloody BASTARD.”

According to Zoran, this telephone conversation took place when Jovanka visited him in Scotland in 1993. She rang Bane, and he then spoke to his father for a few minutes. They had a very brief conversation, in which Bane asked how he was. This seems to have been the only occasion on which Zoran and his father spoke between September 1985 and his death. Zoran’s recollection is that Bane seemed coherent during the conversation, but Bane’s diary entry evidences a strong feeling of disappointment. Incidentally, Zoran’s unchallenged evidence was that the years during which he ran the Orpheus Bookshop were 1987 to 1989, so it appears that Bane must have got the mistaken impression from their conversation that the shop was still operating.

89. The question of what financial provision Bane made for Zoran is one to which I will need to return later. For now, it is enough to record, in addition to matters I have already mentioned, that:
- (a) in July 1985 Bane evidently intended to transfer £100,000 to Zoran to enable him to be independent, but was unable to do this, at least directly, because Mirjana obtained a court order freezing his English bank accounts in the context of the matrimonial proceedings; and
  - (b) in October 1996 Bane sent £12,000 to Mirjana, to be paid by her in monthly instalments to Zoran.

### **Mr Rinaldi**

90. Mr Rinaldi is currently Diplomat in Residence at Florida Atlantic University, an academic chair which he has held since 1998. Prior to that, he had a distinguished career in the United States public service, both as a politician and as a diplomat. From 1972 to 1980 he was Director of Regional Education Offices for the US Department of Education, and from 1980 to 1988 he worked at the US State Department as a diplomat with responsibility for Europe and Latin America. I found him an impressive witness, and his testimony is again of particular value because he knew Bane well before the onset of his illness.
91. Mr Rinaldi first met Bane in 1967, and from then on they remained in regular contact. Mr Rinaldi visited Bane in London a number of times, particularly when he was posted at the State Department. He says that from the outset he found Bane to be “gregarious, intelligent, forthcoming, diplomatic, pleasant and an excellent business man”. He was also “the best host you could have”. In 1980, Bane visited the United

States for a month with his wife to celebrate their silver wedding. During this visit Mr Rinaldi spent time with them in a number of different places. Bane was still warm, friendly and very hospitable, but there were already early indications of a change in his personality which became more pronounced over the next few years. Mr Rinaldi summarised the change by saying that in 1980 he would describe Bane's behaviour as eccentric, and 2 out of 10 on a scale of oddness, but by 1985 it was 10 out of 10.

92. Mr Rinaldi also says that the early changes in Bane's personality were apparent even to people who did not know him as well as he did. He gives as an example two lavish black-tie dinner parties hosted by Bane in Washington DC during the 1980 trip, at which the guests included a number of doctors. Mr Rinaldi says he spoke to some of those doctors, including in particular Dr Joseph Demko MD, who made clear to him privately that they thought there was something wrong with Bane mentally, as his behaviour was manifestly strange.
93. It is only fair to add that, in cross-examination, Mr Rinaldi accepted that even in the 1970s Bane had on occasion behaved eccentrically. He instanced an occasion when he and Bane were in the Oyster Bar at the Plaza Hotel in New York City, and Mrs Jacqueline Kennedy, the widow of President Kennedy, was at another table. Bane sent a bottle of champagne over to her, although he did not know her at all. She was, however, known to Mr Rinaldi, who described this behaviour as "very, very eccentric".
94. From about 1983 onwards, Mr Rinaldi received a total of about 30 letters from Bane which he described as being "rambling, incoherent and peculiar". He was unable to produce these letters, although he had them as recently as two years ago when he cleared his house. His comment, that "anyone reading them would instantly see how bizarre Bane had become", will be readily understood by anybody who has seen surviving examples of Bane's correspondence from this period.
95. As I have already mentioned, it was Mr Rinaldi who made arrangements in 1984 for Bane to come to America and have a consultation with a doctor whom he knew in Washington, Dr Richard Hart. Mr Rinaldi made these arrangements without discussing the matter with Bane, but Bane subsequently telephoned him to talk about his illness, and Mr Rinaldi told him he was convinced of his need for treatment. Bane agreed to come to Washington for a consultation, but eventually decided not to come. Mr Rinaldi's belief is that "he simply did not want to see any doctors".
96. Between 1985 and 1989 Mr Rinaldi saw Bane in the course of visits to London on at least three occasions. He was slightly confused about the dates of these visits in his witness statement, but agreed in cross-examination that the dates shown for the visits in Bane's diary were likely to be correct. The fact that he took the trouble, without any prompting, to apologise to the Court for these minor inaccuracies reflects the care that he clearly took to give his evidence as accurately as possible. During his visits, they would play golf together – Bane was an enthusiastic sportsman with a particular interest in golf and tennis – and for much of the time Bane's behaviour was normal. Mr Rinaldi's recollection is that his mind would be clear and they would have good discussions in the mornings, but later in the day he would often move into paranoid tirades. Mr Rinaldi relied on his diplomatic training to listen patiently until Bane was ready to move on to a fresh subject.

97. Mr Rinaldi was also able to provide vivid corroboration of Bane's nomadic existence when he lived in his office. Mr Rinaldi says that the owners of the office building became aware of this, and put locks on the bathroom doors to discourage Bane from living there. However, he was not discouraged, and at night would defecate and urinate into a bucket on the office floor which he would empty in the toilets the following day. He also used to cook in his office, on a one-ring stove on his desk. In 1988 Bane was still living in the office, and Mr Rinaldi tried unsuccessfully to persuade him to buy a property of his own. They used to joke that he could not continue to live like a fugitive (there had been a TV series called "The Fugitive"). In 1989 Transtrade UK was put into liquidation and the office was closed. After that, Bane had to live in hotels. Mr Rinaldi kept pressing him to buy a home, and eventually he agreed to do so, purchasing 5 Audley Road at the end of the year.
98. In his witness statement Mr Rinaldi described Bane's relations with his family after the onset of his illness as follows:
- "20. With the onset of this serious illness in the mid-1980s, Bane began to deny that members of his family were actually members of his family. When I referred to his mother, I remember him saying "she is not my mother". Also, when referring to Zoran, he would say "he is not my son". I believe he made these statements because of his mental state. However, during a visit I made to see him in [1989], Bane twice suddenly said that he had made a mistake with regard to his family and his behaviour towards them and he wished he had not left them and divorced his wife. He said this suddenly after lunch one day and then also at Heathrow as I was leaving for the US, but in both cases it was a throwaway remark ...
21. I believe that he loved his son, Zoran. This is because he told me so. Although, as I have stated above, he used to undergo behavioural swings. Soon after saying he loved his son he would make the statements I referred to in the previous paragraph. He never communicated with Zoran ..."
99. In cross-examination Mr Rinaldi confirmed that he did not understand the statements that Bane's mother was not his mother, or that Zoran was not his son, literally. He also added that Bane never "said one ill word to me about Zoran". There were two occasions when Bane sought to enlist Mr Rinaldi's assistance in getting Zoran to come to study at Princeton, first in 1979/80 when Zoran was on his four month visit to the United States (when he stayed with Mr Rinaldi and his family in Maryland, and Mr Rinaldi arranged a Greyhound Bus trip for him), and again in about 1986.
100. Finally, I should mention that Mr Rinaldi confirmed that Bane was a great admirer of Mrs Thatcher, and "became very infatuated with her" after the recapture of the Falkland Islands. However, Mr Rinaldi was not aware that Bane had become a member of the Conservative Party in 1982.

## **Mr Kaczmarski**

101. Mr Kaczmarski is a dentist who practises in West London. He says in his witness statement that he first met Bane in 1988, but Bane's diary shows (and he agreed in his oral evidence) that the date was in fact in October 1989, when Bane came to his dental surgery with an existing patient of his, Father Milun Kostic. It is important to note, therefore, that Mr Kaczmarski met Bane for the first time after his mental illness had been fully established for a number of years, and after the execution of the 1989 Will.
102. I will not rehearse Mr Kaczmarski's evidence in detail, although it helps in building up the picture of Bane's character and behaviour in the later years of his life. Mr Kaczmarski remained Bane's dentist until the end of his life, and they also became close friends. Mr Kaczmarski is one of the three people who gave an address at his funeral.
103. At the outset, Mr Kaczmarski found Bane to be "very suspicious of everyone and everything", although this attitude gradually lessened over time. He would never let Mr Kaczmarski take any of his personal details, and when he required antibiotics he would phone him and ask him to prescribe them for him, rather than go to a doctor. He would blame his wife and his sister, whom he referred to as "Barracuda number 1 and Barracuda number 2" respectively, for the car crash in which his brother-in-law had been killed, and also for a skiing accident in which he believed that his skis had been tampered with. His great interests were wine and history, and he also took a keen interest in mythology, the Templars, the Masons and other secret societies. His knowledge was encyclopaedic, and he would often make unexpected associations or jump from one thought to another. He often used to show his diary to Mr Kaczmarski, who says that "it made interesting reading". He often expressed himself in highly uncomplimentary terms about people, and what he wrote in his diary did not maintain a single train of thought: it would jump around various topics in an erratic manner, as did his letters. He spoke in exactly the same way as he wrote – like a stream of consciousness. He would often address very embarrassing remarks to complete strangers.
104. With regard to the Conservative Party, Mr Kaczmarski said that Bane was very interested in it at one time, and used to go to all the Party Conferences when Margaret Thatcher was leader, as well as giving them significant sums of money, but he later became disillusioned and would tear up donation letters sent to him, regularly referring to the Conservative Party as "bastards" or in other derogatory terms.
105. Like Mr Rinaldi, Mr Kaczmarski remembers Bane using phrases like "if he was my son" of Zoran, and similar expressions in relation to his sister and his mother, but not his father (except perhaps occasionally). In cross-examination Mr Kaczmarski said he did not take these expressions seriously.
106. When Zoran came up in conversation, Mr Kaczmarski's impression was that it was a very painful subject for Bane, and he would normally change the subject quickly with a wave of his hand as though to indicate that he did not wish to talk about it. Bane never criticised Zoran individually when speaking to Mr Kaczmarski. However, when asked in re-examination whether Bane ever said what the relationship was between Zoran and his wife or his sister, he answered:

“He said he was too close, but exactly how too close, again, I couldn’t – I couldn’t say. But he felt it was too close.”

I infer that one reason why Bane found the subject a painful one was that, at least at times, he considered Zoran to have too close a relationship with the “barracudas” who had twice tried to kill him, first in the car accident and again in the skiing accident.

### **Mr Sulmoni**

107. Mr Sulmoni is a banker, and is currently an executive director of UBS Wealth Management. He first met Bane in March 1989. Bane was an existing customer of UBS, and Mr Sulmoni was introduced to him by his predecessor as Bane’s account manager. He continued to act as Bane’s account manager until his death. Their relationship was purely professional to start with, but after about a year it developed into a personal friendship which proved to be close and long-lasting. It was Mr Sulmoni who made the funeral arrangements when Bane died, and he too gave an address at his funeral. As their friendship developed, Mr Sulmoni would visit Bane weekly and would help him with personal administrative tasks. Between 1990 and 2000 they used to go on holiday together once a year, usually to France and for a maximum of four nights.
108. For most of the time, Mr Sulmoni found Bane to be coherent and rational. He made his own investment decisions – he insisted on investing in cash rather than shares or bonds – and always appeared to understand the investments which he discussed with Mr Sulmoni. However, his behaviour was often erratic, and even the use of one wrong word could lead him to react unexpectedly and with fury. Mr Sulmoni gives examples of the kinds of unusual behaviour or thoughts that Bane displayed in his presence or to his knowledge. Most of these will by now be familiar: an unusual preoccupation with people’s sexuality, anti-Semitism, the belief that people were trying to poison him, a deep suspicion of doctors, and suspicion that people were after his money. Nevertheless, he could also be very generous, although on an erratic or random basis, and was prone to quixotic gestures such as buying all the plants in a travelling salesman’s lorry. He then employed the salesman as a gardener, and later lent him £5,000 to buy a car.
109. As early as 1992, Bane told Mr Sulmoni that he was the only person he trusted, and that he considered him as his son. When Mr Sulmoni mentioned Bane’s actual son, Zoran, his reaction was to say “he is not my son”. According to Mr Sulmoni’s witness statement, Bane “continually claimed that Zoran had a different father”. In his oral evidence he amplified and modified this statement. In his evidence in chief, he said that what Bane meant by these statements depended upon what mood he was in. In his more aggressive moods, he would say or imply that Zoran was not his biological son, because his wife slept with so many men that he could not be sure of his paternity. In calmer situations, he would use the expression figuratively to indicate that Zoran was not his son because he was not economically successful as he had been himself. In cross-examination, Mr Sulmoni confirmed that in his more aggressive moods Bane would say in so many words that Zoran was not his son because Mirjana slept with other men. However, he only began to make these extreme statements from about 1992 onwards. Before then (that is to say between 1989 and 1992) when Bane talked about Zoran to Mr Sulmoni he just said that he had a son, and nothing more.

110. In his witness statement, Mr Sulmoni says this about Bane's attitude towards the Conservative Party:

“When I first knew him, he made numerous donations to the Conservative Party. These donations ranged from £10,000 to £30,000 a year and began in the early 1980s. The payments were made until shortly before the Conservative election defeat in 1997. He felt that he had a special connection to Margaret Thatcher as she was eight days older than him. It would not be wrong to say that Bane was “obsessed” in the sense that his personal attachment to the Conservative Party under her leadership did not appear rational or proportionate, and went far beyond mere (or even strong) political affiliation. In 2000, the Ealing branch of the Conservative Party offered Bane the honorary presidency of their association. He refused, as he believed they were only after his money. In later years, he came to dislike the Conservative Party at least as intensely as he had previously been drawn to it, although he did not replace it in his affections with any other political party.”

111. In cross-examination, Mr Sulmoni at first sought to explain Bane's substantial donations to the Party in the 1980s on the basis that he was a very lonely man, who always said that he needed the help of people in the establishment; the Conservatives were in power at the time, so he considered them to represent the establishment. However, he also agreed that Bane's allegiance to the Conservative Party was based on the fact that it stood for values in which he very strongly believed. He also agreed that the values of love, truth and freedom were ones that had always been important to Bane, and remained so until the end of his life. Indeed, in his funeral address Mr Sulmoni said “What was important to him was love, truth and freedom”. Those are of course the very three qualities which Bane singled out in the 1989 Will as being the “Christian democratic values and virtues” which his projected cultural institution was to promote.
112. Mr Sulmoni accepted in cross-examination that he was disappointed that Bane had not left him anything in his will, especially since he had visited him almost daily during a period of three months in 2001 when he was in hospital. This disappointment may, I think, have contributed to the very jaundiced view that Mr Sulmoni expresses in his witness statement about Bane's attitude towards the Conservative Party. It would have been entirely characteristic of Bane to speak in derogatory terms of the Party from time to time, as he did of almost everybody. However, I am very doubtful whether Bane really refused the honorary presidency of the Ealing branch of the Party in 2000, even though Mr Sulmoni claimed to remember typing out a letter from Bane's dictation declining the honour. I say this because no such letter has ever been produced, whereas the bundles do include a letter from Bane to the Ealing association in February 2001 applying to be a vice president and enclosing a curriculum vitae, a subsequent letter in March from the association expressing delight that Bane had agreed to be one of the association's vice presidents, and a further letter from the association a year later in May 2002 informing him of his unanimous election as an honorary life vice president. These documents were put to Mr Sulmoni in cross-



examination, and he was unable to explain the apparent discrepancy between them and his own evidence.

113. I am, however, prepared to accept the evidence which Mr Sulmoni gave in re-examination about discussions he had with Bane in 2001 after his stay in hospital. According to Mr Sulmoni, Bane said a few times “My family will not get a penny”, and when asked to explain why, he said “they want to destroy me or liquidate me”. When he was asked who “they” were, he would sometimes say “My family”, and sometimes “Don’t ask stupid questions”.

### **Mr Brown**

114. Mr Brown is the general manager of the Valderrama Golf Club in Cadiz, Spain. He first met Bane in about 1972, when he was a young professional at Gleneagles Golf Club and taught him how to play golf. When Zoran was studying at Dundee University, between 1974 and 1978, Bane would often come to Gleneagles to visit Zoran, and used to bring friends from Switzerland with him, or other friends such as Mr Rinaldi. Mr Brown’s impression of Bane at that time was of a man who was a little eccentric, but no more. He recollects one occasion when Bane bought all ten cashmere sweaters which they had in his size in the club shop, so that he had all the colours.
115. In 1983, Mr Brown moved to Spain but he continued to see Bane regularly. Bane would come to Spain to see him and play golf, usually coming twice a year for a total of about ten days. In common with many other witnesses, Mr Brown noted a marked change in Bane’s behaviour in around 1985. In Mr Brown’s words, “Whereas previously he had been a little eccentric, at that point he became what I can only describe as really weird”. He began to make very aggressive comments of a misogynist nature, he began to claim that his wife was having affairs, and he lost a lot of his friends. He became a rather sad character. During his visits to Spain, Mr Brown and his wife would take care of him. He would visit them at home, and dine with them on most nights. He began to claim that his wife and others were plotting against him, and would often fabricate stories.
116. In his oral evidence in chief, Mr Brown was asked whether Bane ever specified who the “others” were who were plotting against him. He replied:

“He referred to his sister, his wife and his mother, and then later on he brought Zoran into the equation.”

In cross examination, it was put to Mr Brown that this reference to Zoran was entirely new, and if it were true he would surely have mentioned it when he gave his statement to Zoran’s solicitors, Allen & Overy, in January 2007. Mr Brown’s response to this was that since giving his statement he had searched his memory more carefully. There was a great deal to remember, because apart from Bane’s regular visits to Spain, Mr Brown would also stay with him every year at his house in Ealing five or six times a year, and in addition they spoke regularly on the telephone. He then amplified his evidence about Zoran’s alleged involvement, as follows:

“Q. What you said to Miss Montgomery was the others were his sister, his wife and his mother, and you said later on Zoran came into the equation?

A. Yes, because he talked about Zoran afterwards.

Q. When is later on?

A. It has to be after I went to Spain. It has to be between 1984 and 1986. But I can't honestly put a month or a time on that at all.

Q. Are you suggesting, because I don't think anybody else has, that [Bane] thought that his son was plotting to harm him?

A. That's what he said.

Q. You are saying that he actually said that?

A. I knew him. That's what he said to me.

Q. He said that in so many words?

A. He said that to me.”

I regret that I am unable to accept this evidence, because it appears to be in total conflict with what Mr Brown said earlier in his cross-examination, and repeated in re-examination, to the effect that after his move to Spain in 1983 Bane never mentioned Zoran and never wanted to talk about him at all. Mr Brown gave his oral evidence with expansive self-confidence, but I think that on this occasion he allowed himself to embellish his recollection. I cannot believe that if Bane had ever said to him, in so many words, that Zoran was plotting to harm him, he would not have remembered this and included it in the statement which he gave to Zoran's solicitors in January of this year.

117. I now move on to the witnesses of fact who gave evidence for the CPA. They were as follows:

- (a) Peter Evans;
- (b) Barbara Yerolemou;
- (c) Wioletta Trojanowska;
- (d) Ivor Thomas Gabe;
- (e) Raymond Seeley;
- (f) General Stuart Watson;
- (g) Robert Anderson Wood;
- (h) Archpriest Milun Kostic; and

- (i) David Hughes.

### **Dr Wood and Dr Gabe**

118. I have already dealt with the evidence of Dr Wood, the consultant physician who examined Bane in July 1984. It appears from the documentary record that Bane was also examined by another doctor, Dr Gabe, at King Edward VII Hospital in Midhurst, West Sussex, in or about August 1984. A letter dated 12 September 1984 from Dr Gabe to Bane records the results of various tests, including for venereal disease. With one minor exception, the results were all excellent and well within normal limits. In his witness statement Dr Gabe says that in 1984 he was senior physician at King Edward VII Hospital. He has no recollection of seeing Bane, and despite making the appropriate enquiries has been unable to trace the relevant clinical records. He is unable to say how Bane came to see him in Midhurst, some 50 miles from his home, but plausibly suggests that it might have been on the recommendation of Father Nicolich of the Serbian Orthodox Church in Lancaster Road, London W11, who was a patient of his. He confirms, on the basis of his letter of 12 September 1984, that all the blood and urine tests were normal, with the exception of the mean red cell volume which was slightly abnormal.
119. The fact that Bane consulted both Dr Wood in Scotland and Dr Gabe in Sussex about wholly illusory threats to his health in the summer of 1984 is an indication of the extent to which he was by then in the grip of delusions. It seems that he was also examined by yet another physician, Dr Toszeghi, in July 1984 in London, and had another series of tests. On 25 July 1984 Dr Toszeghi wrote to him, to say that the results were all “very normal indeed”, which raised the question “where are all your complaints coming from?” He suggested they should sit down together to discuss the way forward. Finally, it appears that in September 1984 Bane had a bottle of Taylor’s 1963 Vintage Port sent for analysis at a laboratory in Zug in Switzerland, presumably fearing that it was poisoned. The report dated 11 September solemnly records that it was tasted by many tasters, without any after-effects.

### **Mr Evans**

120. Mr Evans is a retired chartered accountant. Before his retirement in 2002 he practised under the firm name of Thomas & Howe in Wimbledon. I have already explained how in April 1988 Bane retained him to deal with his business and personal financial affairs, when he became mistrustful of his former accountant, Mr Homburger, and believed him to be engaged in a conspiracy against him. Mr Evans was unable to recollect whether Bane discussed the supposed conspiracy with him at the time, but thought that the subject might well have come up. Apart from that, Bane also felt that he was being overcharged, and as a suburban firm Thomas & Howe were able to offer their services at a lower fee than Blick Rothenburg.
121. Mr Evans acted as the auditor of Transtrade UK Ltd until it was put into members’ voluntary liquidation in 1989. He confirmed that the company was fully solvent, and funds of about £200,000 were distributed to Bane. He also confirmed that the company had undertaken no significant trading activity since about 1984, and had been losing money for some years before its liquidation.

122. Mr Evans also acted as Bane's personal accountant, and prepared his personal tax returns for him until his retirement in 2002. In his oral evidence Mr Evans was asked to comment on Bane's attitude to the payment of tax in the UK, bearing in mind his voluntary decision to become domiciled in England and the recent agreement which he had reached with the Inland Revenue to that effect. Mr Evans said to Bane that this was a pity from a tax point of view, because there would have been substantial tax advantages to him in remaining non-UK domiciled. However, Bane's reply had been "I have come to this country, I love this country and I will pay my taxes just like an ordinary person", a reaction which Mr Evans says he was quite amazed and gratified to hear.
123. Mr Evans gave evidence in cross-examination about Bane's love for this country, and his regard and admiration for Mrs Thatcher. Bane had told him that he was known at school as "Bane English" because of his obsession with England, and had read many of Dickens' novels, possibly in Serbo-Croat. When he came to England, his childhood dreams had come to fruition and it had been a natural thing for him to wish to become a British citizen, which he did in 1975.
124. In the 18 months between his initial appointment and the liquidation of Transtrade UK Ltd Mr Evans was in regular contact with Bane. Their offices were nearby, and they frequently met at Bane's office or for lunch. After the liquidation of Transtrade, their meetings became less frequent but their relationship had already developed into a firm personal friendship which continued until Bane's death. Mr Evans and his wife first went on holiday with Bane to Burgundy in the summer of 1989, and thereafter they went on holiday together about another ten times in France, Italy and Spain. They would also often meet at weekends, sometimes playing golf together. Mr Evans' evidence, which was not shaken in cross-examination, was that when Bane gave him instructions relating to financial matters he did so lucidly and was fully able to understand his advice and its implications. He agreed that Bane would at times use extravagant language and rant about dark forces, but said this was something that Bane could "switch on and off", and as soon as he had finished his rant, he would carry on as normal. In a vivid simile, he said it was like a bird being let out of a cage: when the outburst was over, the bird would go back again and carry on as before. He also used the term "encapsulated" to describe this behaviour, saying that it did not really affect anything that he (Mr Evans) was ever concerned with. I suspect that Mr Evans found the word "encapsulated" in one of the expert reports, although he denied this in cross-examination and said that the word had occurred to him independently and he had looked it up in the dictionary on the eve of giving his evidence. Whatever the source of the phrase, however, it aptly describes a feature noted by several of the witnesses, namely how Bane would suddenly switch from normal behaviour and language to delusional ranting and vice versa. When the bird was out of the cage, Mr Evans would not seek to argue with Bane but would remain silent until normality had returned. He described the dark forces listed by Bane as being "banks, accountants, solicitors, pharmaceutical companies and others, and I think family", and said that Bane quite often saw himself as a Greek hero fighting against them, such as Ajax or Hercules. Mr Evans regarded this self-identification by Bane with heroes such as Ajax as purely figurative, and did not think for a moment that Bane actually thought he was Ajax. In a similar vein he would often refer to his Bentley car as "Pegasus".

125. There was one occasion, early in their relationship, when Bane showed his 1988 Will to Mr Evans, and told him that it had been prepared by Trowers & Hamlins. There was some discussion between them about the terms of the 1988 Will, in the course of which Bane explained that he had left his estate to the Conservative Party, and Mr Evans mentioned to him that he might wish to consider setting up a foundation to promote his very strong ideas about how society and people should behave. Mr Evans was unable to recall the context in which this conversation took place, or why Bane wished to show him his will. I agree with Mr Evans that the likeliest explanation is that Bane showed him the 1988 Will because he was his accountant, and he wanted to keep him up to date with his affairs. The conversation probably took place in late 1988 or early 1989, but before the execution of the 1989 Will of which Mr Evans was never shown a copy.
126. During the course of their friendship Bane would occasionally mention his family, but not often. The subject would usually arise if he had been telephoned by Jovanka or Mirjana. Bane would tell Mr Evans that he had fallen out with his family before they met, and that he had decided to cut his ties with them. He would occasionally refer to Zoran, and gave Mr Evans to understand that he was very disappointed with Zoran because he had no work and no career. He would say that Zoran “had never done a day’s work”, and would also sometimes refer to him as “homosexual” – a term of abuse which Bane would frequently use when being derogatory about people. Nevertheless, it was clear to Mr Evans that the rift between Bane and his family was painful for him, and he remembered the incident (also described by Bane in his diary) when they were on holiday together in Ischia in July 1992 and Bane wept when he showed him and his wife a beach where he and Zoran had played games together in the past.
127. In cross-examination Mr Evans said he remembered Bane mentioning the occasion when the locks were changed on his house and blaming Zoran for it. Mr Evans recalled that Bane was angry when he described this incident to him, and agreed that it was an important event which Bane took as a clear sign that Zoran had taken his wife’s side. Mr Evans qualified his agreement by going on to say that he did not believe Bane held this incident against Zoran. However, while I do not question Mr Evans’ personal belief, I do not agree with his view on this point. It seems to me that the changing of the locks, for which Bane wrongly blamed Zoran, was a very significant stage in his estrangement from his son and one that for ever after coloured Bane’s attitude towards him.
128. Mr Evans also gave evidence that on one occasion Bane said to him that Zoran would benefit from the divorce settlement paid to Mirjana, on the basis that she would use some of the money for Zoran. However, he was unable to recall the date or circumstances in which this was said, and he confirmed in re-examination that he did not mean to suggest that any specific funds were earmarked for Zoran. His understanding was simply that Zoran would benefit in some way, but he had no idea what the mechanics would be. In my judgment this evidence is too vague to establish any clear intention on Bane’s part to benefit Zoran through his divorce settlement with Mirjana, and there is anyway no evidence at all that the divorce settlement was negotiated with this object in view.
129. Finally, I should mention that Mr Evans was on more than one occasion the beneficiary of considerable financial generosity by Bane. The details are set out in his

second witness statement, and I need not repeat them. It is enough for me to say that this generosity was typical of Bane's behaviour to many of his friends, that it did not involve any impropriety, and that it did not in my judgment influence Mr Evans' evidence. Subject to the slight reservations which I have already mentioned, I found him to be a reliable witness.

### **Barbara Yerolemou**

130. Mrs Yerolemou has been a local councillor for the Hanger Hill Ward of Ealing since 1994. She is also a member of the Ealing Conservative Party Association. She first met Bane in 1996 or 1997, and a friendship developed between them. She says that Bane became a paid up member of the Association, and was generous with his donations, particularly when she stood as a Parliamentary candidate for the local constituency.
131. Mrs Yerolemou's impression of Bane was that he was always very hospitable, and was a man of very strong character with very strong opinions. He told her that he had previously given financial support to David Mellor and the Putney Conservative Party Association, but had become disenchanted with Mr Mellor after his marital difficulties had become public knowledge. He had then withdrawn his support for the Putney Association, but he nevertheless continued his support for the Ealing Association. In 2000 the Ealing Association created the new honour of life vice-president, and decided to bestow it on Bane and one other substantial supporter. Mrs Yerolemou telephoned him to ask if he would accept this honour, and he gratefully accepted.
132. Mrs Yerolemou's last meeting with Bane was in July 2004, when he asked her to call on him to assist in filling out an insurance form. In the course of their discussion, Bane mentioned his family and said he had a son in Scotland from whom he had become estranged and whom he had not seen for a long time. He told Mrs Yerolemou that his former wife had turned his son against him. He said that his son made no effort to see him, and did not do anything for him.
133. Mrs Yerolemou said that she would describe some of Bane's views, particularly on religion and history, as eccentric, but many of her constituents had stranger ideas. She was impressed by his lively mind and charisma, and said that he displayed great interest in history, sport, his garden and politics. She had no doubt that he could organise himself and manage his affairs. However, it became clear in cross-examination that she had never seen any of Bane's more extreme writings, and when she was taken to them she said that "this is not the Mr Kostic I knew".
134. She attended Bane's funeral on 3 November 2005, and wrote in her diary at the time:

“(At the crematorium)... Mostly the people were from 1980 onwards as if he had cast pre 1980 aside. He divorced from his wife and his life. We were his retirement friends almost ...”

This was in my judgment a perceptive comment, and reflected the fact that after the onset of his mental illness in the 1980s Bane's personality underwent a major change and nearly all of his former friends were rejected by him.

### **Wioletta Trojanowska**

135. Ms Trojanowska is a young Polish woman who kept house for Bane from the summer of 2001 until his death. She was introduced to him by his dentist, Mr Kaczmarek. At first she would come to help Bane twice a week, but after a month she began to come daily apart from a few Sundays. Bane was a generous employer. Apart from paying her £50 a day, he agreed to pay the cost of building a house for her in Poland, and also gave her money for holidays and a car.
136. From time to time Bane would talk to Ms Trojanowska about his family. He told her that he had once been happy with his wife, his sister and his son, but that all finished when he got divorced. He said that he had wanted to give his son the best education, but his son had not wanted that and had told Bane on one occasion that he did not want to be like his father. Bane told her that he had not seen Zoran or spoken to him for 15 years, and saw no reason to speak with Zoran if Zoran did not wish to speak to him. On another occasion he said that, as his son had forgotten him, he would forget his son; and as Zoran had not treated him as a father, so Bane would not treat him as a son.
137. Bane never spoke to Ms Trojanowska about the terms of his will, but on one occasion he did tell her that he did not want to leave anything to his son, his sister or “the priest”. She explained in cross-examination that the priest was Archpriest Kostic, and that Bane said he had changed his mind about leaving money to him, although he did not explain to her the reason for his change of mind. So far as his son and his sister were concerned, he said that he no longer had any family; after his divorce he had lost the family, they had broken his heart, and he had no further relationship with them. In talking about his family, Bane did not differentiate between his sister and his son, but it was obvious to Ms Trojanowska that he included both of them in that term, although not his wife whom he regarded as having no relationship with him at all after their divorce. He would sometimes show her albums with photographs of his family, and say “It was good time, but everything is finished”. Although Bane did not talk with her often about the past, and although he did not wish to go into detail when he did, this theme of a happy past, after which “everything finished”, was one to which he returned more than once, and which impressed itself on Ms Trojanowska strongly enough for her to remember it specifically.

### **Raymond Seeley**

138. Mr Seeley is an accountant, who was involved in the liquidation of Transtrade UK Ltd. Having been a manager with Moores Rowland, he entered into a two-man partnership with a Mr Richard Floyd at the end of 1989. The liquidation of Transtrade was referred to them by Mr Evans, and in the course of it Mr Seeley met Bane on two occasions. He recalls him as being a larger than life character, who entertained him and Mr Evans on each of the two occasions to lunch at Simpsons in the Strand. He was a generous and ebullient host, with a fund of interesting anecdotes.
139. Mr Seeley’s impression was that Bane always seemed in control of his affairs, and was certainly competent to instruct his firm, to arrange for the transfer of his Bentley

car in specie in the liquidation, and to attend and deal with the business of the final meeting of the company. To the best of his recollection, it was a totally straightforward liquidation, and the subject of a conspiracy of dark forces was not raised at either of their meetings.

### **General Watson**

140. General Watson joined the Conservative Party Treasurer's Department in 1989, and was its director between 1992 and 1994. He left the Department in about 1996. The deputy director of the Department from 1992 was the late Mr Randle Cooke. Bane was one of the donors for whom Mr Cooke had responsibility.
141. General Watson produced a "Constituent Profile" for Bane, which lists the donations he made to central funds between May 1988 and January 2004. The total amount of these donations is £88,660, and the most substantial gifts were made in the early 1990s. The largest gift was of £20,000 in 1992. There was also a gift of £13,000 in 1991, and two gifts of £10,000 in 1992 and 1993. None of the other gifts exceeded £5,000; and after 1995 none of them exceeded £1,000, with the exception of a gift of £3,000 in June 2001 to the campaign fund set up for the general election in that year. General Watson confirmed that the profile only contains details of Bane's donations to central funds, and therefore does not mention his other gifts to the Putney and Ealing Conservative Party Associations.
142. General Watson's evidence was that, as a matter of principle, the Treasurer's Department had to be very careful about accepting donations, and if Mr Cooke had had any doubts about Bane's capacity to deal with his affairs and make donations he would have made them known to him as director, and the Department would then have declined to accept the donations. General Watson said that he did not remember Mr Cooke having ever raised any doubts on this subject. He was, however, constrained to admit in cross-examination that some of Bane's letters which accompanied his donations and which happen to survive (the Department's own file is apparently no longer extant) were on the face of it incoherent and bizarre, and he was unable to explain whether any investigation had in fact taken place. General Watson himself barely knew Bane personally, having met him only once at a reception when his behaviour was apparently normal.

### **Archpriest Kostic**

143. Archpriest Kostic is a priest of the Serbian Orthodox Church, and is based at the church of that denomination in Lancaster Road, London W11. He first met Bane in the early 1980s, through his predecessor Father Miloje Nikolic, who was retired and living in Sussex, and Bane's family priest in Switzerland, Father Drasko Toderovic. He spent time with Bane in their company, and got to know him very well. Their friendship was particularly close between 1985 and 1990, and they continued to see each other fairly regularly until 1999 when contact between them virtually came to an end for reasons which Archpriest Kostic was unable to explain.
144. In the early years of their friendship, Bane would often stay with Archpriest Kostic at his home, first in Wembley and then at his present home in West London. At this time Bane did not appear to have many possessions, and would leave a few bags with him. He was an extremely keen sportsman, and always had a set of golf clubs and



tennis racquets in the boot of his Bentley. Archpriest Kostic played tennis with him. Bane also tried to teach him golf, but without success. In 1989 he accompanied Bane on a holiday for a few days in Burgundy. Like many others, Archpriest Kostic was impressed by Bane's excellent memory and his wide-ranging knowledge about topics such as wine, literature, history and business. The Conservative Party was evidently important to him, and whenever any reference was made to Margaret Thatcher he would say "That's my girl". He gave a jubilee bowl and statue to Archpriest Kostic's wife to mark Mrs Thatcher's ten years as leader of the Party, saying that he had bought one for himself and one for them. He loved the Conservative Party, and talked about it very often.

145. In the early years of their friendship Bane would say to Archpriest Kostic that he did not need a house of his own, because he could afford to stay in a hotel or in clubs where he could play tennis and golf whenever he wanted. Bane did not explain to him the reasons for his peripatetic existence, and would become angry if questioned in detail about his family. Archpriest Kostic would encourage him from time to time to buy a home of his own, and eventually these suggestions bore fruit when Archpriest Kostic found 5 Audley Road for Bane through an estate agent in 1989.
146. It will be remembered that Archpriest Kostic is one of the three executors of the 1989 Will. Bane had never previously discussed his money or business affairs with him, and when Bane asked him to be his executor he said "You are the only one that I can trust but you are still part of the establishment". Bane explained this by saying that in his view it was not good to be part of any establishment, but he recognised that Archpriest Kostic had to be; for his part, he did not have to be part of any establishment, and was proud to be a free man. Archpriest Kostic agreed to accept appointment as an executor, but there was no discussion between them about the contents of the 1989 Will and Archpriest Kostic was unaware of them until after Bane's death.
147. On one occasion Bane mentioned to Archpriest Kostic that he had a son, who lived in Scotland. Bane said that his son had enough for a living, and that he had a good home. Bane seemed disappointed in his son, but did not explain why.

### **David Hughes**

148. Mr Hughes is a solicitor, and is now a partner in Berwin Leighton Paisner LLP where he is head of the firm's banking and finance litigation practice. He was admitted as a solicitor in January 1981, and in 1984 he joined Oppenheimers, originally as an articled clerk. He then remained with the firm until its dissolution in October 1988. In 1986 or 1987, when he was a member of the firm's litigation department, he acted for Bane in connection with some Swiss commercial litigation in which he was involved. Bane had apparently become mistrustful of his Swiss lawyer acting on the case, and Mr Hughes was asked to travel to Switzerland in order to meet the Swiss lawyer and check that he was doing his job properly. Mr Hughes undertook this delicate task, met the Swiss lawyer first in Switzerland and later in England, and formed the view that his performance was not open to any criticism. He advised Bane accordingly, and recalls that Bane was displeased to be told this. Indeed, he thought that his disagreement with Bane's assessment of his Swiss lawyer might explain Bane's subsequent disenchantment with Oppenheimers, although when he was shown letters in which Bane accused Oppenheimers of being involved in a conspiracy

against him he accepted, I think, that Bane's distrust of the firm and eventual decision to dispense with its services had a much deeper and irrational foundation.

149. In his witness statement Mr Hughes described Bane as "eccentric", and recalled that he had very strong political views, which he expressed forcefully. He was a staunch supporter of Mrs Thatcher and the Conservative Party. Mr Hughes did not share his political views, and for that reason tried to avoid having political conversations with him. He says that the instructions which Bane gave to him were always clear and precise, and he has no doubt that the advice which he gave to Bane (usually face to face at meetings) was clearly understood by him. Bane impressed him as having a very quick mind, and as being astute and commercially aware. Like several other witnesses, Mr Hughes was impressed by Bane's passion for the arts and his wide interests in cultural matters and current affairs. He also recalls that Bane had a very high regard for Ian Airey, his colleague at Oppenheimers, who acted for him in relation to his divorce, and whom Bane regarded as his "guardian angel" in that connection – an accolade which Mr Airey probably found rather less embarrassing than Mr Trower must have found his subsequent identification with Saint Anthony.
150. Mr Hughes made it clear in his oral evidence that he has always been a litigation solicitor, and never advised Bane in relation to either his matrimonial or his testamentary affairs. Nevertheless, in the course of acting for him, and also from discussions with Mr Airey whom he knew very well, Mr Hughes was left in no doubt that Bane intensely disliked both his sister and his wife. Indeed, Mr Hughes said that Bane made it absolutely clear that he loathed them both. The reasons that Bane gave for this antipathy included a belief that they had been involved in the death of his father, a belief that they were in collusion together and stealing from him, a belief that Mirjana had been unfaithful to him, and a belief that they were plotting together and his life was in danger from them. Mr Hughes did not, however, agree with the proposition, confidently put to him in cross-examination, that Bane regarded Zoran as being in his wife's camp. He said that Bane spoke very little of his son, and when he did so it was in neutral terms, or as he put it in answer to another question "with sadness more than with loathing".
151. One document upon which Mr Hughes was asked to comment, and which I have not so far mentioned, is a domicile questionnaire which Bane completed and sent to the Inspector of Taxes on 4 February 1988. There were 12 questions on the form, with space left for brief answers which Bane filled in providing additional information on a separate sheet. In answer to question 4 ("If your father is dead, what was his full name and the date and place of his death?"), Bane gave brief details on the questionnaire itself, but also enclosed a photograph of his father's grave and added the following additional information:

"Even today, I can't get the cause of his death. I suspect, that he was poisoned by Family. Last year I wanted to visit his grave and pay my respect to this great man, but my solicitor ... Mr David Hughes, warned me that I could be killed. On my question: did I do anything wrong? he replied No – they have done wrong. No explanation who they are or what they have done wrong. MI5 or MI6 answer ..."

Unsurprisingly, Mr Hughes had no recollection of this, and agreed that it was impossible he could ever have advised Bane in such terms.

152. Question 8 on the form asked “If you are married, where do your wife and children (if any) reside?” In answering this question, Bane provided the following additional information:

“I despised them totally. They are part of the conspiracy against me, which wanted to destroy me financially, socially and physically. They don’t exist any more for me. My solicitor Oppenheimers – Mr David Hughes and Mr Ian Airey could furnish you with information.”

It should be noted that in this answer “them” must refer to Mirjana and Zoran, because the question related only to his wife and children. Unless Bane had misread the question, he could not have answered in these terms if he regarded only his wife and sister as conspirators against him. It is again hardly necessary to add that Mr Hughes was never contacted by the Inspector to provide further information under this head.

153. It is also interesting to note, before leaving the domicile questionnaire, that in answer to question 11 (“What is the reason for your residence in the United Kingdom?”) Bane gave a brief resume of his life history, recording that from the age of eight Great Britain was his ideal and everybody in Belgrade used to call him “Bane – English”. He said that he had taught himself English language, literature, history and politics, and was a convinced royalist devoted to the Royal Family. He said that he had become a British citizen in May 1975, and although he had dual citizenship he had not renewed his Yugoslav passport in 1988. He had last been in Yugoslavia in September 1972, “and I shall never ever visit that country”. He continued:

“I appreciate very much the way of life in Great Britain, the most tolerant society in the World.”

I suspect that some minor details of this self-portrait may be exaggerated, or even fictional, but the document is nevertheless of value as showing how Bane perceived himself, and his relationship with his family, early in 1988.

### **The Expert Evidence**

154. As I have already said, the Court had the benefit of expert evidence, both written and oral, from two distinguished psychiatrists, Dr Adrienne Reveley instructed on behalf of Zoran and Professor Robert Howard instructed on behalf of the CPA.
155. Dr Reveley is an experienced psychiatrist, who specialises in general adult psychiatry. After qualifying in medicine in 1972, she trained in psychiatry in the USA. From 1979 to 2003 she worked at the Maudsley Hospital, the Bethlem Royal Hospital and the Institute of Psychiatry, collectively known as “the Maudsley”, and from 1983 to 2003 she was a consultant psychiatrist at the Bethlem Royal Hospital and a lead consultant within the National Directorate of the South London & Maudsley NHS Trust. She also engaged in psychiatric research in the Institute of Psychiatry and published widely in the fields of psychiatric diagnosis, neuropsychiatry and

schizophrenia. Since July 2003 she has been in private practice in London, and sees a wide range of patients for diagnostic opinion and review from all over the UK and Europe. She lectures about psychiatric illness for the general public, other mental health professionals, solicitors and members of the Bar. She is a Fellow of the Royal College of Psychiatrists, and also an Examiner for the College.

156. Professor Howard has held the Chair of Old Age Psychiatry and Psychopathology at the Institute of Psychiatry since 2002, and is also a consultant old age psychiatrist at the Maudsley Hospital. He has spent most of his professional life working in one capacity or another at the Maudsley, which he first joined as a registrar in psychiatry in 1988. He received his training at London University and the Royal College of Psychiatry, after reading zoology at Cambridge. He has impressive academic credentials, and describes himself as a “world authority on paranoid psychoses that have their first onset in middle age or late life”. His list of publications is even more extensive than Dr Reveley’s. However, he also has wide experience of clinical work, and since 1994 he has worked as the catchment area consultant old age psychiatrist for the Peckham sector of the South London and Maudsley Mental Health Trust. He has also been an expert witness in a number of notable criminal cases, including the Pinochet extradition proceedings.
157. In their joint psychiatric statement dated 1 May 2007, Dr Reveley and Professor Howard set out their areas of agreement and disagreement. Their main areas of agreement are as follows:
  - (a) Bane suffered from Delusional Disorder in accordance with the description DSM-IV-TR in the Diagnostic Statistical Manual of Mental Disorders, 4<sup>th</sup> edition text revision, 2000.
  - (b) Part of Bane’s delusional belief system appears to have included a conspiracy against him, which Professor Howard notes was a “sinister and highly organised international conspiracy”.
  - (c) Bane’s wife, sister and mother were significant figures in the conspiracy.
  - (d) Zoran was implicated in the conspiracy, apparently as a victim of his grandmother, mother and aunt.
  - (e) Many of Bane’s abnormal ideas and beliefs appear to have been “encapsulated”. He appears to have been capable of communicating rationally and accurately in areas of his life untouched by his delusions.
  - (f) Bane was capable of establishing and maintaining some normal social and business relationships, and it was possible for him to hold ordinary conversations with people unaffected by the delusional system and to have ordinary relationships with them, without his delusions becoming apparent.
  - (g) It is likely that Bane suffered from a delusional disorder from the mid 1980s until his death.

- (h) The degree to which his thinking was dominated by the delusional beliefs is likely to have fluctuated, as is the degree to which his behaviour was motivated by them.
  - (i) Bane did not have insight into his delusions.
  - (j) Bane was capable of holding and expressing loving feelings, at times, towards individuals, even if those individuals featured in his delusional belief system.
  - (k) Bane would not have been able to assess and understand the impact that the expression of his delusional system would have had on his relationship with his family, including Zoran.
158. I can say at once that, on the basis of all the evidence I have heard, and the rich documentary record, I accept all of the jointly expressed views of Dr Reveley and Professor Howard. However, their joint views are briefly stated, and I will of course need to examine in greater detail some of the questions to which they allude, including in particular the extent and nature of Zoran's implication in the international conspiracy, and the extent to which Bane's behaviour was motivated by his delusional beliefs.
159. I will not set out the areas of disagreement between the experts as recorded in their joint statement, but they include the questions:
- (a) whether Bane believed that Zoran was not his biological son;
  - (b) whether Bane's delusional disorder affected his business dealings with his wife and sister;
  - (c) the precise significance of Bane's references to "Ajax"; and
  - (d) the nature of his attitude towards the Conservative Party.

### **The Evidence of Dr Reveley**

160. The written evidence of Dr Reveley is contained in two reports dated 20 June 2006 and 20 February 2007, and in a letter dated 23 March 2007 in which she comments on Professor Howard's report dated 26 February 2007. Dr Reveley's first report was prepared at a fairly early stage in the proceedings, before she had seen much of the documentary evidence and before receipt of the defendants' witness statements. By the date of her second report she had seen those statements and also a considerable amount of further documents, although still by no means the full range of the documentation contained in the Court bundles.
161. Dr Reveley's first report includes the following statement of opinion:

"58. I have never met Mr Kostic, nor seen any medical records other than those described above. However, in my opinion there is considerable evidence, from the papers that I have seen, that Mr Kostic had a psychotic disorder with delusions

concerning his family and other matters, from 1984 or thereabouts.

59. Delusional ideas are fixed or unshakeable beliefs formed on the basis of the altered internal reality of the mentally ill, psychotic, individual, and may not correspond at all to the world as other people see it. ... Delusional ideas are not open to reassurance or rational argument and may exert an undue influence on the person's life.

60. In my opinion, based on the material that I have seen, it is very likely indeed that Mr Kostic suffered from a mental disorder, namely Delusional Disorder according to DSM-IV-TR ... The essence of Delusional Disorder is a highly organised delusional system, largely encapsulated from normal aspects of the personality."

162. Dr Reveley goes on to describe the diagnostic criteria for DSM-IV-TR Delusional Disorder. She points out that the delusions may be highly variable in content, and that other symptoms of psychopathology are characteristically absent. The onset of Delusional Disorder is variable, but commonly occurs in middle age. Little is known about its causes, but its onset may be provoked by influences such as head injury, alcohol abuse, or the ill effects of drugs, as well as hereditary factors. She refers to the diagnosis of paranoia by Dr Radivojevic, who saw Bane in 1984, and confirms that "paranoia" is the old term for Delusional Disorder: the underlying condition described by both terms is the same. The drug which Dr Radivojevic prescribed for Bane, Hemineurine, is a sedative which would have had little effect on his underlying condition.

163. With regard to Bane's testamentary capacity, Dr Reveley says this in paragraph 71 of her first report:

"Concerning his testamentary capacity, however, Mr Kostic was mentally impaired, in my opinion. Mr Kostic had delusions particularly in relation to his family, and did not even consider that his family were, in fact, related to him. In my opinion it is likely that his capacity to make rational decisions regarding the disposal of his property was grossly impaired."

She says that in her opinion it is likely that Bane's testamentary capacity was affected by the time he made the 1984 Codicil, and it certainly was by the time when he made the 1988 and 1989 Wills. She considers that Bane remained deluded from the early 1980s onwards, and although his condition may have waxed and waned in intensity, his delusions would have been apparent to any interviewing psychiatrist.

164. In her second report Dr Reveley gives details of the further documents she has seen, and quotes extensively from them. They include Bane's letters to Mr Trower, Mrs Thatcher and Mr Mellor, and a long letter to "Otmar" describing his "escape" from Switzerland in 1984. They also include Bane's diary. She then refers to the defendants' witness statements, and in paragraph 73 says that the additional material confirms the view expressed in her first report. She refers to the DSM-IV-DR

diagnostic criterion of suffering from “non-bizarre delusions”, i.e. delusions involving situations that occur in real life such as being followed, poisoned or infected, and says that the additional material strongly suggests that this criterion is amply fulfilled. She then cites a number of the documentary references to a conspiracy against Bane involving his sister, mother and wife. She goes on to cite material evidencing Bane’s views about Zoran and the Conservative Party, and in paragraph 78 concludes as follows:

“The additional material also confirms my view that [Bane’s] testamentary capacity was impaired. He had delusions relating to his family, whom he felt were evil, and plotting against him, and also had delusional ideas about the world in general, seeing the Conservative Party, and Margaret Thatcher in particular, as forces in the fight of good against evil.”

165. In her letter of 23 March 2007 Dr Reveley amplified her reasons for reaching this conclusion, with further detailed references to the documentary record. In paragraph 8 of her letter she said this:

“Delusions may be held at the same time as loving feelings towards the same person. In my experience, in individuals who are deluded towards loved ones, there are nearly always islands of affection breaking through at particular times or in particular circumstances. This process is also apparent in [Bane’s] attitude towards his sister, towards whom he held strong delusional beliefs, but towards whom he was also able to be loving, at times.”

166. Mr Simmonds QC’s cross-examination of Dr Reveley was mainly devoted to an exploration of three of her principal conclusions: that Bane suffered from a delusion that Zoran was not his natural son, that he suffered from a delusion that Zoran was implicated in a conspiracy against him, and that he was deluded about the role and powers of the Conservative Party. I will take these three topics in turn.

#### **(a) Zoran’s paternity**

167. The evidence that Bane may have doubted that Zoran was his natural son is scanty. It consists of little more than an allegation in Mirjana’s petition for judicial separation in May 1985 (“On or about 16 May 1984 ... he further falsely and unjustifiably alleged he was not the father of the said child Zoran”) and passages in the evidence of three witnesses, Mr Rinaldi, Mr Kaczmarek and Mr Sulmoni. Furthermore, of those witnesses Mr Rinaldi made it clear in his oral evidence that he never believed Bane’s statements to this effect, which he understood in a figurative sense only; and Mr Kaczmarek said that he never took these expressions seriously. On the other hand, there is a wealth of evidence in the documentary record which indicates that Bane recognised Zoran as his natural son, including notably the terms of the 1984 Codicil (leaving his residuary estate to Zoran upon attaining the age of 35), numerous references in the diary, and Mr Trower’s attendance note of his first meeting with Bane. When confronted with this material, Dr Reveley accepted that most of it suggested that Bane was under no illusion about his paternity of Zoran, and that for most of the time he really believed Zoran was his son. Nevertheless, she maintained

the view that he did at times suffer from the delusion that Zoran was not his son, although the delusion was likely to have waxed and waned. In her opinion it would have been entirely consistent with Bane's delusional disorder that at times he should have thought Zoran was his son, and at other times that he was not. Furthermore, with regard to the oral evidence she warned against the danger for a layman of underestimating or downplaying what is said by a person suffering from a delusion in a misguided attempt to impose normality upon that person's utterances and to interpret them if at all possible in a rational manner.

168. In my judgment Dr Reveley's warning about the dangers of seeking to impose a rational construction on the utterances of a disordered mind is an important and valuable one, which I have done my best to keep in mind. On balance, however, I am unable to agree with her modified conclusion that there were at least some occasions when Bane really believed Zoran not to be his son. Two reasons in particular lead me to this conclusion. First, it was Professor Howard's evidence that the content of a delusion, once it has become established, is usually constant. Accordingly, if Bane had really believed Zoran not to be his son, one would expect to find repeated evidence of this delusion from the mid 1980s onwards, particularly given the wealth of documentary material that survives. Dr Reveley agreed with Professor Howard that the content of delusions is usually constant, and although she sought to draw a distinction between constancy over a period of weeks or months on the one hand and over a period of years on the other hand, suggesting that in the longer term delusions may in fact change as other things intrude, I did not find this a convincing explanation for the paucity of the evidence in the present case if Bane did indeed suffer from this particular delusion.
169. My second reason is that, in Professor Howard's experience, when a person holds delusional ideas about not being the biological parent of his children, such ideas tend to be persistent, vigorously expressed, and to cause enormous distress within the family. As Professor Howard put it in cross-examination:

"I think believing that your children are not yours is one of the most fundamentally biologically upsetting things anyone could imagine ... I have had experience of families where people have believed that with delusional intensity, and it is the kind of thing that is very difficult to keep suppressed ... So I ... believe very strongly that had [Bane] had a delusion that his son wasn't his, he would have expressed that very, very vigorously and angrily and repetitively in his writings, and he doesn't."

I accept that evidence, and prefer it to Dr Reveley's more tentatively expressed opinion that delusional ideas about paternity may fluctuate over time.

170. In fairness to Dr Reveley, I should also add that she did not regard this particular supposed delusion as a major peg for her diagnosis, and made it clear that she would have reached the same conclusions about Bane's testamentary capacity even if she was wrong on this particular point. Nevertheless, the question is an important one, even if only to eliminate it, because if Bane had truly been labouring under the delusion that Zoran was not his son when he made the 1988 and 1989 Wills it is hard to see how he could possibly have had testamentary capacity.



**(b) Zoran's implication in the conspiracy**

171. Mr Simmonds began this part of his cross-examination by referring Dr Reveley to a number of the documents which make it crystal clear that he regarded his wife, sister and mother as being engaged in a conspiracy against him. He also referred her to the key document which appears to cast Zoran in the role of a victim. This document is a list of 93 names typed out by Bane and dated 5 December 1984. The list is headed "Angel", which I take to be one of his typical self-identifications with figures from mythology or religion, and is prefaced with the words "The following persons are involved in criminal activities, sex-vice, drug taking, trafficking and perhaps in some other activities". The third name on the list is Jovanka, and the thirty-seventh is his mother. Number eighty-eight is Mirjana, described as "My wife. Sexually ill person"; and number eighty-nine is Zoran, described as "My son. Destroyed by his Mother, Grandmother and Aunt Dr J Kovacevic." The list does not itself refer to a conspiracy, but two days later, on 7 December 1984, Bane prepared a "Report No. 1" for Detective Superintendent Roy Penrose, Head of the Drug Squad at Scotland Yard, in which he said he had discovered an international sex-vice ring, that attempts had been made to poison or drug him with the result that he had been living as a fugitive for the last few months, and that there were over 100 persons in the ring, all of them very highly educated – bankers, lawyers, directors of major pharmaceutical companies, and so on. It is reasonably clear, in my view, that this must be a reference to the list of 5 December, even though it contains only ninety-three names.
172. Dr Reveley accepted, rightly in my view, that nothing in these two documents directly implicates Zoran in a conspiracy to harm Bane. However, it is I think equally clear that the list of 5 December 1984 does implicate Zoran in supposed criminal activities, even though the explanation for his involvement is that he has been destroyed by Bane's wife, mother and sister. Dr Reveley went on to explain her view that Bane was certainly ill by December 1984, and his illness then varied and progressed over the years to such an extent that his testamentary capacity must have been affected. She agreed that her approach to the question was a broad brush one, and said that you have to look at the entirety of the picture "to form a fuzzy view" about how the illness appears to have come on him and how it manifested itself over time. She explained that it was not possible to form a detailed view, because Bane was never interviewed during his lifetime. Her assessment of the evidence was that Zoran was "a victim or a lesser figure", and not one of the initial conspirators, but Bane felt that Zoran had been influenced by his aunt, his mother and his grandmother, and his mind had been poisoned by them. As she put it in answer to one question:

"I think the information that I have seen suggests that he saw Zoran rather more as a victim; that he saw him as a victim of the other members of the family. And he also saw this as a tragedy, and was very upset about it. That's the view I formed."

And in answer to another question she said:

"I think the theme is that his family were implicated to a greater or lesser extent in what he considered a plot against him. I think, as I have said, that his son was in the second tier, as it were, of people involved."

173. I am bound to say that I have some reservations about Dr Reveley's "broad brush" approach, and the need to "form a fuzzy view". If all she is saying is that, after identifying all the relevant evidence, one has to stand back and view it as a whole, I would respectfully agree. She is also right, in my view, to emphasise the difficulty of trying to reconstruct the precise mental state of a person who is now dead and who never underwent a serious psychiatric investigation during his lifetime. However, there are obvious dangers in yielding too readily to the temptations of a soft-edged approach and losing sight of the precise issue that has to be addressed. In terms of Banks v Goodfellow, that issue is whether Bane's admitted delusional disorder influenced his will in disposing of his property in such a way as to bring about a disposal of it which he would not have made if of sound mind. Professor Howard was in my judgment right to say, in his oral evidence in chief, that one does not have to be fuzzy in the present case, because there is a wealth of written material illustrating the content of Bane's delusional thinking. He said that in his view this was a highly unusual case in terms of the quantity and detail of material that had been made available to him, and he was very struck how detailed and consistent the delusional system was that Bane expressed in his writings.
174. In the course of his cross-examination Mr Simmonds took Dr Reveley through the evidence apparently showing continuing affection for Zoran on the part of Bane, or a desire to make provision for him. In chronological order, this evidence is briefly as follows:
- (a) The 1984 Codicil.
  - (b) A gift of smoked salmon to Zoran in November 1984.
  - (c) A bank transfer of £500 to Zoran in December 1984.
  - (d) Jovanka's evidence that Bane wanted Zoran to take over Transtrade UK Ltd following his retirement.
  - (e) Bane's desire to transfer £100,000 in trust for Zoran in July 1985 (although it is common ground that he was unable to implement this intention because his UK bank accounts were frozen in the matrimonial proceedings).
  - (f) An affectionate birthday note in July 1985.
  - (g) Correspondence in early 1986 showing that Bane was anxious to see that the Gleneagles house was safely transferred into Zoran's name.
  - (h) Bane's letter to Zoran dated 16 March 1986, ending "... maybe, one day, our hearts will meet somewhere in that universe!"
  - (i) A gift of £50 to Zoran on his birthday in 1986.
  - (j) Two diary entries in 1992, one referring to an accident when Zoran fell from a cliff while climbing, with the comment "God save you!!!", and the other referring to the incident on the holiday in Italy when Bane broke down and cried at the tennis club where he had played 20 years before with Zoran.
  - (k) Bane's gift of £12,000 to Zoran via Mirjana in 1996.

175. Dr Reveley did not dispute this evidence, as far as it goes, but pointed out that it is perfectly possible for a person to be in the grip of a delusion involving a member of his family and at the same time to retain normal family feelings.

**(c) Bane's attitude to the Conservative Party**

176. Mr Simmonds took Dr Reveley through the relevant documents referred to in her second report, beginning with Bane's letter to the Prime Minister dated 10 December 1984 enclosing a donation of £5,000. I have not referred to this letter before, and will quote a few extracts from it:

“Dear Prime Minister

I am living as a fugitive for the last 5 months. I am 8 days younger than you and I graduated B.Sc. of chemistry.

I believe you are the only person in Free World who can save us of the bestial Monsters! It seems to me that somebody not Gaddafi, IRA, Palestinian or Mafia, they are only the marionettes, organised many years ago a type of International University to study human weaknesses and to exploit them in a very sophisticated and for us Free World devastating way ...

You are the only hope for our party dignified, decent and honest future!

Please rehabilitate Mr Cecil Parkinson he is a victim of organised crime ...

I am enclosing £5,000 – to fight the evil-wicked Demons – SATANS and I am fully on your disposal.”

177. Dr Reveley's evidence was that this letter displayed delusions about the role and powers of the Conservative Party and Mrs Thatcher, particularly because of Bane's stated belief that only Mrs Thatcher could save the country from the bestial monsters by whom he was being pursued. When it was put to her that it was perfectly natural for Bane to write to the Prime Minister, in the light of his deluded beliefs about an international conspiracy, she said that her experience of receiving similar letters herself from patients was that

“they don't make me feel that I am in some way a special person, and the only person that can help; I think that that person is unwell, and that is overwhelmingly what that letter means.”

She then went on to say:

“[Bane] had a lot of floating, free form delusional ideas which he picked up out of various places, he had a long-standing association with the Conservative Party, and I think they were implicated in his delusional system, because of letters like this. I don't think you can say it is quite separate. He had a

delusional disorder and it affected many aspects of his thinking.”

178. Dr Reveley went on to express similar views in relation to letters written by Bane to David Mellor MP and to Mr Trower, and summarised her views in the following terms:

“A normal person who has a mistaken belief is different to someone who has a delusional disorder. And once someone has a psychotic problem, their brain cannot be taken to behave in normal ways, and they can’t be taken to think in normal ways, and you can’t pick out this bit and say, well, that bit’s OK, and pick out that bit, that bit’s OK. Their decision-making in so far as it impacts on their delusions is unsafe.”

179. I approach the passage from Dr Reveley’s evidence that I have just quoted with some caution, because Professor Howard said that it differed from the approach that he would take, and also probably differed from the approach outlined in BMA guidelines. He said, and I would agree, that it is dangerous to assume that just because someone has a diagnosis of Delusional Disorder, it must somehow affect all their thinking. Professor Howard explained that there is a huge amount of research literature dealing with the thinking processes of people who suffer from persecutory delusions, and the general conclusion of that literature is that the thinking of such people is exactly like the thinking of healthy people except specifically in relation to the areas where they have delusions. Here again, Dr Reveley may in my view have been a little too ready to adopt a broad brush, impressionistic approach. Nevertheless, that criticism does not necessarily invalidate her basic point that the terms in which Bane wrote to the Prime Minister, Mr Mellor and Mr Trower, among others, show that his support for the Conservative Party and the leadership of Mrs Thatcher had become inextricably entangled with his deluded beliefs about an international conspiracy. Indeed, as will appear later that is in my judgment the right conclusion to reach, and from late 1984 onwards, if not earlier, it is impossible to keep Bane’s support for the Conservatives and his delusional belief systems in separate water-tight compartments.

### **Bane’s identification with Ajax**

180. Before leaving Dr Reveley’s evidence, I should say a little about one minor, but intriguing, question, namely the extent to which Bane identified himself with Ajax, or regarded himself as having conversations with Ajax. In paragraph 67 of her first report Dr Reveley referred to some of the material in which Ajax features, including the Bernard Levin article and Bane’s letter of 19 December 1988 to Mr Trower in which he referred to Ajax having dictated over 50 pages to him. Dr Reveley’s comment was that the content of this letter, and the suggestion that Bane had been hearing the voice of Ajax, and having a conversation with him, made a diagnosis of some form of psychosis almost inevitable. In cross-examination it was put to her that there are several documents where Bane clearly seems to have identified himself with Ajax, and that it was against the weight of the evidence to suppose that Bane ever saw Ajax as a separate person with whom he was having a conversation. It was suggested that it would be over-literal to interpret his references to conversations with Ajax in such terms, and that they were no more than a metaphor for a man debating ideas with

himself. Dr Reveley readily accepted that in many contexts Bane was obviously seeing Ajax as somebody with great similarities to himself, or even as himself, but nevertheless remained of the opinion that at certain times he did think Ajax was a separate person who communicated to him. She said that it is quite common for a deluded person to take dictation from an imaginary interlocutor, and she repeated the warning she had given earlier in her evidence about the risks of placing an overly rational interpretation on the products of a deluded mind. I agree with Dr Reveley on this point, and I find that there were a few occasions when Bane did actually believe himself to be in conversation with Ajax or taking dictation from him. The issue is ultimately one of little importance, but it does show, to my mind, that Bane's extravagantly metaphorical and colourful language did at times go beyond mere figures of speech and reflect true auditory hallucinations.

### **The evidence of Professor Howard**

181. Professor Howard prepared a single report which is dated 26 February 2007. The report was based upon his reading of 15 volumes of documents, the witness statements on each side, and Dr Reveley's first report.

182. In paragraph 11 of his report Professor Howard says:

"I believe that it is important to say that the majority of the letters and diary entries written by Mr Kostic ... show that he was capable of writing very rational and factually accurate accounts of his social and business activities. Within these documents there is no evidence to suggest psychopathology and this absence reflects the encapsulated nature of his abnormal ideas and beliefs."

183. He then goes on to list, and quote from, the main items of documentary evidence which throw light on Bane's abnormal mental state, to set out much of the evidence relating to Bane's relationship with Zoran, and to refer to the very limited medical evidence that is available. He then states his opinion in the form of answers to specific questions that he has been asked to consider. He says that in his opinion Bane was suffering from delusional disorder at the dates of the 1988 and 1989 Wills, and refers to the definition of Delusional Disorder in the International Classification of Disease (ICD-10) Classification of Mental and Behavioural Disorders as being

"... characterised by the development either of a single delusion or of a set of related delusions which are usually persistent and sometimes lifelong. The delusions are highly variable in content. Often they are persecutory ... Other psychopathology is characteristically absent ... Onset is commonly in middle age ... The content of the delusion, and the timing of its emergence, can often be related to the individual's life situation ... Apart from actions and attitudes directly related to the delusion or delusional system, affect, speech and behaviour are normal."

184. Professor Howard goes on to say in paragraph 89 of his report that in his opinion Bane's personality "was a highly unusual one":

“He was a man of strong likes and dislikes who thought of himself as being totally loyal to his family and friends and expected to be treated in the same way. His enduring affection for the UK and for the Conservative Party as represented by individuals such as Winston Churchill and Margaret Thatcher was very much a feature of his personality. He enjoyed demonstrating his extensive knowledge and appreciation of history and culture ... To people who were unfamiliar with [his] personality he could appear extremely eccentric and rude. Friends who had grown familiar with his way of speaking and behaving would understand that – in the context of his background and consistent personal philosophy – some of the extraordinary things that he would say or write were understandable and not an indication of mental illness.”

185. In paragraph 91 of his report Professor Howard says that the aetiology of delusional disorder is unknown, but people who have been subject to particularly traumatic early lives or who have sustained head trauma are statistically more likely to develop psychotic disorders in general. In paragraph 92 he says that without treatment almost all patients with delusional disorder will continue to hold their delusions for the remainder of their lives. In paragraph 93 he says that the content of the delusions, and the certainty with which the patient believes them to be true, is usually constant. As I have already said, Dr Reveley expressly agreed with this proposition. Professor Howard adds that, because Bane did not receive treatment with antipsychotic medication, if he had been seen by a psychiatrist at any time between 1984 and his death “it would have been straightforward for that psychiatrist to elicit the details of [his] delusional system which would not have changed”. However, what does change over time in these patients is the degree to which their thinking is dominated by the delusions, the distress they express in relation to them, and the degree to which their behaviour is motivated by the delusional beliefs.
186. In paragraph 96 of his report Professor Howard describes the core beliefs of Bane’s delusional system as being laid out in a series of three reports which he wrote in December 1984, and in the list of people whom he believed to be involved in the international conspiracy. I have already referred to Bane’s first report to the police dated 7 December 1984, and to his list of persons involved in criminal activities dated 5 December 1984. He produced two further reports under his code name of “Angel” dated 14 and 24 December 1984, detailing the background and alleged involvement of a large number of businessmen, mainly in the pharmaceutical industry. For present purposes, nothing turns on these two further reports and I need say no more about them. Professor Howard goes on to say in paragraph 96 of his report that Bane believed his sister to be a significant figure in the conspiracy, and to represent a real risk to his physical safety. He seems to have viewed his wife’s involvement in any plot against him as being at least partly due to the fact that she was “a sexually ill person”, and he seems to have regarded Zoran as a victim of the activities of his wife and sister rather than as an active member of any persecutory conspiracy.
187. So far as Zoran is concerned, Professor Howard expresses the view in paragraph 102 of his report (with which it will now be apparent I agree) that Bane never suffered from the delusion that he was not Zoran’s natural father. In paragraph 104 he lists the

evidence of Bane's enduring goodwill towards his son, and in paragraph 105 he says that the question whether or not there is a probable rational explanation for Zoran's exclusion from the 1988 and 1989 Wills needs to be taken into account. He suggests that the picture which emerges from the evidence is one of gradual estrangement between Zoran and his father, with Bane appearing to make more of an effort to stay in contact than his son through 1985 and 1986 but then settling into a sad acceptance of the breakdown of their relationship. Professor Howard adds that Bane was also clearly disappointed that Zoran had not chosen a more business-orientated career.

188. In paragraphs 106 and 107 Professor Howard states his conclusions in relation to the 1988 and 1989 Wills:

“106. It is my opinion that, on the balance of probabilities, [Bane's] decision to exclude his son Zoran from his 1988 and 1989 Wills was not made because of the presence of delusions that [he] harboured about his son. This decision was more likely to be motivated by the understandable estrangement that was developing between [Bane] and his son – an estrangement that appears to have been brought about more by Zoran than by his father – combined with [Bane's] knowledge that he had already given Zoran the house in Gleneagles and £100,000 and could continue to make gifts to him during his lifetime.

107. ... [Bane's] support for the kind of Conservative politics that were represented by the views of Margaret Thatcher and his admiration for Mrs Thatcher were long-standing and are documented in his letters. [*He then refers to the donations made by Bane to the Conservative Party between 1988 and 2004.*] From the material which I have been able to review it would be my opinion that [his] support of the [CPA] in his Will was not motivated by any insane delusions. Rather, this appears to have been motivated by a long-standing and strong affection for the [CPA] reflected in his personal identification with the ideals that they stood for and his pattern of financial support for the Party.”

189. At the start of his oral evidence Professor Howard was asked by Mr Simmonds QC to comment on some of the views expressed by Dr Reveley in her cross-examination. I have already referred to some of Professor Howard's comments and criticisms of Dr Reveley's evidence, and indicated where I prefer his approach. One further point that Professor Howard stressed was that in his view delusions do not wax and wane, but are characterised by their stability in a patient like Bane. However, he then qualified this general principle in two respects. The first qualification was that at the beginning of the illness, when the system of delusions is developing, one can see fluctuations with delusional material coming in and out of focus in a patient's mind. The second qualification, which is for present purposes immaterial, is that when a patient has been successfully treated and the delusions are disappearing as a result of treatment the delusions become unstable. Those exceptions apart, however, Professor Howard's own experience, and the teaching of the relevant literature, is that delusions do not wax and wane within an established untreated delusional system.

190. In cross-examination Professor Howard was asked to explain how a delusional system of beliefs develops once the initial delusions have become established. He agreed that the primary delusions may give rise to a series of secondary beliefs, which are not in themselves irrational but depend on the existence of the primary delusion. So, for example, a person who suffers from the delusion that he is being persecuted by a particular person may take entirely rational steps to avoid coming into contact with him. As Professor Howard put it:

“... the way in which delusional systems become elaborated is ... a mixture of the kind of primary, completely inexplicable ... delusional material, and then a series of other things that are put together by the patient, sometimes in a rational, sometimes in an irrational way, to make the whole system.”

191. Professor Howard was then asked by Miss Montgomery QC to consider how this type of secondary effect might have worked in relation to various people with whom Bane had been in contact. She referred him to correspondence between Bane and his uncle Spiro, and between Bane and a priest, Father Todovoric. In each case Bane had fallen out with them, because of their refusal to accept various grotesquely unfounded accusations. Professor Howard agreed that Bane’s rejection of them as corrupt people was a secondary reaction, premised upon Bane’s primary deluded belief in the threat posed by his mother and sister. Professor Howard also agreed that the reason why Bane was upset and angry with them was because of his perception that they were connected with his delusions and with people whom he thought were trying to kill him. He agreed that Bane would not have had testamentary capacity if they were people who might have been expected to benefit from his will, on the assumption that he had no other reason, unconnected with his delusions, for rejecting them.
192. It was then put to Professor Howard that Zoran was in essentially the same position, but Professor Howard disagreed. He was, however, constrained to accept that this was at least a possible interpretation to place upon some of the key documents. For example, in December 1987 Bane wrote to David Mellor asking him to be a trustee of his will, because he no longer trusted his solicitor or accountant (who were at that stage two of the executors named in the 1984 Codicil). In this letter Bane said that he had worked for over 35 years, and created substantial wealth. He then said:

“It is important for me, that these [sic] wealth doesn’t finish in the hands of destructive people – Satanic Monsters.”

As Zoran was at that stage the primary beneficiary under the 1984 Codicil, it is natural to read this sentence as expressing a fear on Bane’s part that his wealth would end up in the hands of Zoran unless he was able to make a fresh will with trusted executors and with the assistance of a trustworthy solicitor. Professor Howard was asked whether he could suggest any other plausible explanation, but in my view none of his suggestions carried conviction. For example, the suggestion that Bane might have decided not to leave any money to his son for rational reasons, based on Zoran’s interest in the occult and Bane’s disappointment that Zoran had not followed him into business, runs into the obvious objection that both these factors were well-known to Bane when he made the 1984 Codicil leaving everything to Zoran. Professor Howard then suggested that Bane’s fear might have been that Zoran would not be able to use his fortune wisely and protect it from other people whom Bane did not wish to get



hold of it. However, this answer leads straight back to the problem of Bane's thinking being influenced by his deluded beliefs about others who might influence his son. The examination then continued:

“Q. ... They [*i.e. such beliefs*] are all the product of delusion, aren't they?

A. Well, I think that is a possibility that is sort of in the background, yes.

Q. It is the overwhelming probability, isn't it, Professor Howard, that when he wrote this letter, he believed by one route or another that if he left his money to his son that it would fall into the hands of people about whom he had a deluded belief that they were trying to threaten and kill him.

A. Well, I think that's an interpretation ...”

193. Professor Howard accepted in cross-examination that he had been wrong to assume in his report that Bane gave Zoran the house in Gleneagles and £100,000. The true position, as I have explained, is that the house was given to Zoran by his grandmother and his aunt, and that the proposed gift of £100,000 was never implemented because of the freezing of Bane's bank accounts. Professor Howard agreed that Bane's belief that Zoran had been responsible for changing the locks at Westmead House might have been the explanation for the estrangement between them, and was unable to point to anything else in the documentary record of 1984 or 1985 which might explain why Bane's long-standing dissatisfaction with Zoran had then become so severe as to cause Bane to cease speaking to him. Professor Howard also agreed that Zoran's inclusion in the December 1984 list of criminals might well have affected Bane's assessment whether or not Zoran should be left all his money, and that this was so whether Bane regarded Zoran as a criminal himself or merely as having become involved in the criminal activity of others. This point is well brought out in the following passage of cross-examination:

“Q. Whether he is merely involved or whether he is actively criminal, that involvement would affect, wouldn't it, [Bane's] assessment as to whether or not Zoran ought to be left all his money?

A. It certainly might have, yes.

Q. It would have done, wouldn't it? It's obviously relevant to a father's consideration as to whether or not to leave a great deal of money to his son that he has been involved in a conspiracy, or involved in crimes, which are on any view, even if he hasn't committed them, very serious. That is relevant to a father's consideration of his son's entitlement to money?

A. Yes, I am sure – yes, if that's what [Bane] believed.

Q. You have just told me that that is what [Bane] believed.

A. No, I do not believe that [Bane] thought that his son was a kind of callous criminal.

Q. No, but involved with criminals. People who were being manipulated by criminals.

A. Those criminals were his mother and his aunt. He was an object of pity, I think, rather than hatred.

Q. It also means that he was an object who [Bane] would have thought long and hard before he gave money to him because he was being manipulated by ... his mother and his aunt, therefore money to him was effectively giving money to the mother or the aunt. Don't you agree with that?

A. I mean I think that's possible, but then it's difficult to understand why he would have wanted to give him money at other times ...

Q. It is one thing to give him – and the very most we see him give him is £12,000. It is another to give him the very great wealth that [Bane] had created, given the danger that that would fall into the hands of other people that [Bane] thought were satans and demons out to harm him, isn't it?

A. Yes.”

194. Finally, Professor Howard was asked to comment on the diary entries relating to Zoran's invitation to Bane to walk with him on the links at St Andrews in April 1984. Professor Howard agreed that the probable explanation for these diary entries was that Bane thought Zoran had tried to drown him. He also said he would “have to agree” that throughout the period from the onset of his illness the probability is that Bane had this deluded belief, and it would probably have affected his assessment of Zoran's claim to receive benefits under his will. Professor Howard then added:

“But I would also have to say that, you know, this is quite a sort of stark note, and we are putting the most sort of psychotic persecutory interpretation upon it. I acknowledge that that's probably right ...”

195. Miss Montgomery QC's cross-examination of Professor Howard in relation to Bane's support for the Conservative Party was designed to help make good the proposition that his support could not be divorced from his delusions, but was to a considerable extent a secondary product of them. She started with Bane's letter of 10 December 1984 to the Prime Minister, from which I have already quoted extracts in paragraph 176 above. She also referred to an earlier, unsent draft of this letter, in similar but not identical terms, which Bane had filed in a separate file including other draft letters to the Conservative Party and a series of notes on people who later featured in his delusional system as part of the pharmaceutical drugs ring. Professor Howard was disinclined to attach any significance to the fact that Bane had filed all these documents together, but to my mind this fact supports the inference that I would

anyway draw from the terms of the letter itself (with its reference to enclosing £5,000 to fight demons and Satans) that Bane's appeal to the Prime Minister, and his donation, were in large measure predicated upon his delusional beliefs. Indeed, Professor Howard went on to say that Bane's appeal to the Prime Minister and gift of money were perfectly logical secondary consequences of his delusions. I agree, but that only goes to reinforce the point that Bane's support for the Conservatives and his delusions were inseparably connected. Similarly, Professor Howard accepted that a letter written by Bane to David Mellor on 24 March 1987, referring to "dark forces", was clearly prompted by Bane's deluded belief system and not by any desire to communicate normal pro-Conservative views.

196. Again, after Bane had written to Mr Mellor asking him to be his trustee and Mr Mellor had politely declined, Bane wrote to him again on 11 January 1988. In this letter he said:

"My intention was to create a TRUST FUND for Mrs Thatcher's Revolution – the only world's SAVIOUR of human Dignity, Creativity and Freedom."

Professor Howard accepted, in my view rightly, that the reference to creation of a trust fund in this letter reflects the views expressed in his letter of December 1984 to the Prime Minister. The connection may not be explicit in this letter, but it is in a letter which Bane wrote a few months later on 18 May 1988 to the Conservative Board of Finance, enclosing a donation of £5,000. This letter is typical in that it begins in a way which appears entirely rational, referring to the transformation in the British economy and saying that reform of education is the next task, but then veers off into obvious irrationality:

"My MP David Mellor, QC, knows my Saga against Dark Forces and it is a pity that I have to waste my energy and my time on it, nearly alone.

I am enclosing herewith a cheque in amount of £5,000 – for the cause of my Maggie Mrs Margaret Thatcher's Revolution."

Professor Howard pointed out, quite rightly, that in this same letter Bane expressly associated Mrs Thatcher's Revolution with the "CHEMISTRY OF LOVE – morality, ethics, decency and care for our society", and was inclined to read the letter as reflecting Bane's own personal philosophy regardless of his delusions. However, he also agreed that the virtues listed by Bane could be seen as the antidote to the dark forces, and in my view that is the natural way to interpret this letter.

## **Discussion**

197. I have already set out the basic formulation of testamentary capacity in Banks v Goodfellow in paragraph 14 above. The Court of Appeal has recently described Banks v Goodfellow as a "decision which has stood the test of time", and expressed the view that the test does not need to be reformulated in more modern language: see Sharp v Adam [2006] EWCA Civ 449, [2006] WTLR 1059 at paragraphs [66] and [82]. It is, however, helpful, for the purposes of exposition, to sub-divide the test into four elements, as the Court of Appeal did in Sharp v Adam at paragraph [68], viz:

“It is essential to the exercise of such a power that a testator,

(a) shall understand the nature of the act and its effects;

(b) shall understand the extent of the property of which he is disposing;

(c) shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object,

(d) that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”

198. I should add that the four elements are in my judgment separate requirements, and element (d) is not, as Miss Montgomery at one point submitted, a mere sub-set of element (c). This is shown by the decision in Sharp v Adam itself, where the Court of Appeal upheld the decision of the trial judge that when the testator made the relevant will elements (a), (b) and (c) were satisfied, but element (d) was not: see paragraph [69], where the Court added that the judge could equally well have asked, with reference to the cited passage in Banks v Goodfellow,

“whether [the testator’s] human instinct and affections, or his moral sense, had been perverted by mental disease.”

199. The question that the Court of Queen’s Bench had to decide in Banks v Goodfellow, broadly stated, was whether the trial judge had correctly directed the jury in terms which allowed for the existence of testamentary capacity in circumstances where the testator suffered from latent delusions which did not affect his general mental faculties and did not operate on his mind in relation to the testamentary disposition which was challenged. The case was a striking one, because the testator, who made the relevant will in 1863, had been confined for some months as a lunatic in 1841, and had remained from then until his death in 1865 subject to delusions that he was personally molested by a man who had long been dead, and that he was pursued by evil spirits whom he believed to be visibly present. The jury nevertheless held that his 1863 will was valid, and this conclusion was upheld by the Court of Queen’s Bench which held that the judge’s direction to the jury had been correct.
200. The judgment in Banks v Goodfellow is a remarkable one, which repays reading in full. It is, apart from anything else, a masterpiece of English prose. I will not cite from it at length in this judgment, but I should mention two passages which I have found of particular assistance.
201. The first passage is at 568-70 where Sir Alexander Cockburn CJ refers with approval to the decision of the Judicial Committee of the Privy Council in Harwood v Baker (1840) 3Moo.P.C.282 at 291, where Erskine J had delivered the judgment of the Court in the following terms:

“Their Lordships are of opinion that, in order to constitute a sound disposing mind, a testator must not only be able to understand that he is by his will giving the whole of his property to one object of his regard, but he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom by his will he is excluding from all participation in that property; and that the protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one; and more especially, when that one object may be so forced upon the attention of the invalid as to shut out all others that might require consideration. And, therefore, the question which their Lordships propose to decide in this case is, not whether Mr Baker knew, when he executed this will, that he was giving all his property to his wife, and excluding all his other relations from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property. If he had not the capacity required, the propriety of the disposition made by the will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice of the disposition might cast down some light upon the question as to his capacity.”

202. Harwood v Baker was a case of “impaired mental power”, but Cockburn CJ went on to say that the same standard should be applied in cases of “mental unsoundness produced by mental disease”:

“It may be said that the analogy between the two cases is imperfect; that there is an essential difference between unsoundness of mind arising from congenital defect, or supervening infirmity, and the perversion of thought and feeling produced by mental disease, the latter being far more likely to give rise to an inofficious will than the mere deficiency of mental power. This is, no doubt, true, but it becomes immaterial on the hypothesis that the disorder of the mind has left the faculties, on which the proper exercise of the testamentary power depends, unaffected, and that a rational will, uninfluenced by the mental disorder, has been the result.”

203. The second passage which I have found of particular assistance is at 570, where Cockburn CJ gave his reasons for rejecting the view that any degree of unsoundness of mind should suffice to take away testamentary capacity, and said this:

“It seems unreasonable to deny testamentary capacity on the speculative possibility of unsoundness which has failed to display itself, and which, if existing in a latent and undiscovered form, would be little likely to have any influence on the disposition of the will. No doubt, where the fact that the

testator has been subject to any insane delusion is established, a will should be regarded with great distrust, and every presumption should in the first instance be made against it. Where insane delusion has once been shown to have existed, it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form or instance in which it has manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property. And the presumption against a will made under such circumstances becomes additionally strong where the will is, to use the term of the civilians, an inofficious one, that is to say, one in which natural affection and the claims of near relationship have been disregarded. But where in the result a jury are satisfied that the delusion has not affected the general faculties of the mind, and can have had no effect upon the will, we see no sufficient reason why the testator should be held to have lost his right to make a will, or why a will made under such circumstances should not be upheld.”

204. The relevance of this passage to the present case is obvious. It is common ground that Bane suffered from delusions from at least the end of 1984 until his death. The 1988 and 1989 Wills should therefore “be regarded with great distrust”, and it may be difficult for the Court to be satisfied that the delusions did not influence the dispositions made in those Wills. Furthermore, the presumption against the 1988 and 1989 Wills is all the stronger, because they are “inofficious” in the sense explained by Cockburn CJ. On any view, by leaving all his fortune to the CPA Bane disregarded the claims of his sister and his only son and the natural affection one would normally expect a person in his position to have for such close relations. It is also worth noting that on page 571 Cockburn CJ went on to comment that neither of the delusions from which the testator suffered had, or could have had, any influence upon him in disposing of his property, because the dead man by whom he believed himself to be molested had not been in any way connected with him. Again, the contrast with the facts of the present case could hardly be more stark, because the three central figures in Bane’s delusional belief system were his wife, his sister and his mother.
205. It appeared at one stage that there might be some dispute whether elements (a) and (b) in the Banks v Goodfellow test were satisfied in the present case, notwithstanding the absence of any pleaded case to that effect. In particular, although Dr Reveley in her first report had said that in her opinion Bane was likely to have had a good understanding of the nature of the testamentary act and of the extent of the property of which he was disposing, the areas of disagreement set out in the experts’ joint report suggested that she had resiled from this view. Paragraph 14 of the joint report records Dr Reveley’s opinion as being that Bane “would only have been capable of understanding in the abstract the nature of the act of making a will and its effects”, because any will made by him in 1988 or 1989 is likely to have been subject to delusional disorder. In paragraph 15 she is recorded as considering that, given Bane’s delusions involving conspiracy, “it is possible that [he] may have formed judgments on the basis of what he considered to be rightfully his, rather than what was actually his”.

206. In cross-examination, however, both these points evaporated. As to the first point, Dr Reveley accepted that the first element of testamentary capacity needs to be considered in the abstract, and that Bane's delusions did not impact on this. In relation to the second point, she confirmed that she was not aware of any specific evidence to support the possibility to which she referred. The possibility is therefore a purely speculative one, to which the Court can attach no weight.
207. The crucial issue in the case therefore resolves itself into the question whether elements (c) and (d) in the Banks v Goodfellow test were satisfied when Bane made the 1988 and 1989 Wills. I shall begin by considering the position of Zoran, who was of course the sole residuary beneficiary (subject to attaining the specified age, and subject to Mirjana's life interest) in the 1971 and 1974 Wills. He was also the sole beneficiary of the 1984 Codicil, subject to attaining the age of 35. As Bane's only son, he was prima facie the natural and obvious person for Bane to leave his estate to once his clean-break divorce from Mirjana had been finalised. Can it therefore be said that, in deciding to disinherit him entirely in favour of the CPA, and the projected establishment of a foundation in his father's memory, Bane was nevertheless able fully to comprehend and appreciate Zoran's claims to benefit from his estate? And can it be said that the delusions from which Bane admittedly suffered had no influence on the dispositions of Bane's property effected by the 1988 or 1989 Wills?
208. In the light of all the evidence which I have heard, and the very full documentary record, I am left in no doubt that these questions must be answered in the negative. It is abundantly clear, in my judgment, that in 1988 and 1989 Bane was unable to form a proper appreciation of Zoran's claims upon his estate, and that his natural affection for Zoran had been poisoned or distorted by his delusions to such an extent that he was wholly unable to dispose of his property in the way which he would have done if of sound mind.
209. In considering these questions it is important to begin by looking at Bane's life before his illness struck him. All the evidence is that until 1984 Bane was a devoted family man, who had a happy relationship with his wife, was very close to his mother and sister, and displayed the normal affection of a father towards his son, Zoran. Jovanka described the family in her evidence as being "very, very close", and said that "Bane was fantastic, you know, with mother, with all of us. This illness changed him completely". This evidence was not challenged, and was confirmed by the testimony of other witnesses who had known Bane before his illness, notably Mr Rinaldi and Mr Brown, the latter of whom painted a vivid picture of family life at Gleneagles in the 1970s. It is true that, as Zoran grew older, Bane became increasingly disappointed with his lifestyle and his evident disinclination to follow his father into business. Indeed, Mr Brown's impression was that by the late 1970s Bane and Zoran were no longer particularly close. However, there was no question of a rift between them, or of Bane in any way disowning his son. He continued to support him financially until 1984, and took no steps to revoke his 1974 Will. Furthermore, several entries in Bane's diary testify to his underlying affection for his son, even after he was in the grip of delusions.
210. This picture of a happy and normal family life was subverted, and then completely overturned, by the onset of Bane's illness. His increasingly strange behaviour was noticed by friends such as Mr Rinaldi, and the documentary record contains several examples of friendships or family contacts which were abruptly terminated by Bane

as his delusions developed. The primary focus of Bane's delusions was initially on his wife, Mirjana, whom he groundlessly suspected of infidelity and attempting to harm him. The focus then widened to encompass the other two close female members of his family, his mother and his sister, and then grew in both scope and intensity until by the end of 1984, as we have seen, he prepared a list of supposed criminals with no fewer than 93 names upon it, including Zoran's, and thought that he was the victim of "an international sex-vice ring" which was trying to poison or drug him. His home life collapsed, and he began to live as a fugitive. His writings became more and more obviously deranged. I have quoted several examples in the course of this judgment, but hundreds more could easily be added.

211. The conspiracy by which Bane believed he was threatened was a worldwide one, and its members included (apart from members of his family) his bankers, colleagues in the pharmaceutical industry, solicitors and accountants. Bane believed that the conspirators were responsible for events throughout the world, and that organisations such as the IRA and the Mafia were their puppets. As Professor Howard put it, "he sees a sort of huge international conspiracy on a ginormous scale". That Bane took the worldwide nature of the threat to his personal safety entirely seriously is shown by the fact that he did not think it was safe to visit Switzerland or Yugoslavia, and the fact that he adopted a peripatetic existence, living in hotels and changing his address frequently. The intensity of his delusions about the female members of his family is vividly illustrated by Jovanka's uncontradicted evidence that Bane refused to attend his mother's funeral in 1992, or to visit her after she had a heart attack; while Mr Hughes confirmed that he made his loathing for his former wife and his sister absolutely clear. There was no rational explanation for any of this hatred, and one of the most poignant features of the case is the contrast between Bane's vitriolic statements about his mother and sister and their enduring affection for him.
212. I have emphasised the huge size and comprehensive scope of the supposed conspiracy, and the fact that Bane regarded Zoran as being implicated in it, albeit as a victim, from at least the end of 1984 onwards, because in the light of this evidence alone I find it quite impossible to see how the Court could be satisfied that Bane's delusions had no effect upon his decision to disinherit Zoran in his 1988 and 1989 Wills. After all, if Bane believed that his son was a criminal, and that he was under the malign influence of the three original arch-conspirators, how could he possibly have appreciated and given proper weight to Zoran's claims upon his estate? At the very least he might well have supposed, as a rational or semi-rational consequence of his primary delusions, that his fortune would not be safe in Zoran's hands because of the risk that his wife and sister, or indeed other conspirators, might get their hands on it. Moreover, in the light of the evidence from both experts that untreated delusions will normally persist once they have become established, there is no basis for supposing that Bane may have had lucid intervals when he was free from his delusions and able to "comprehend and appreciate the claims to which he ought to give effect" in a rational manner.
213. However, the evidence does not of course stop there, and I accept the submission of Miss Montgomery QC that the evidence has established a number of compelling links between Bane's delusions and his decision to disinherit Zoran. The most important of those links seem to me to be as follows.



214. First, Bane clearly identified Zoran as being on the side of his wife and sister. For example, Mr Kaczmariski said that Bane regarded the relationship between Zoran and his wife and sister as being “too close”; Mr Evans said he remembered Bane saying that Zoran had taken his wife’s side over the divorce; and Barbara Yerolemou said Bane told her that his wife had turned Zoran against him. This evidence, from witnesses called on behalf of the CPA, confirms Zoran’s own testimony about the reason for his father’s decision to stop speaking to him:

“I think he just thought that I had taken the side of my mother, and she had had the locks changed, and I was in league with her, so he decided to cut contact with me.”

215. Secondly, there was the incident of the changing of the locks at Westmead House. All the evidence indicates that Bane believed, quite wrongly, that Zoran was partly responsible for this, or at the very least had failed to warn him that Mirjana had changed the locks. Mr Evans confirmed that Bane saw this as an extremely important event, which signalled to him that his son had taken his wife’s side. Dr Reveley also agreed that this was a significant event, saying in cross-examination “I think it looks as if something negative happened in his dealings with Zoran, and I think the lock changing is a likely candidate”. Further support for this view is of course provided by Bane’s diary entry for 24 July 1985, which I have already discussed in paragraphs 85 and 86 above. Bane also returned to the incident in an undated document which he wrote (in more than one version) called the “History of Westmead House”:

“I explained [*to Zoran and his girlfriend Ann*] the problems and my recent arrangement to transfer £100,000 to be in trust for him. I said I shall be at Westmead tomorrow ... but when I arrived I used my key to enter the house but the locks had been changed. Zoran opened the door he mentioned he forgot to tell about the lock last night. I took some things shirt etc and I was shocked. That was the last time I saw Zoran.”

216. Thirdly, there is the evidence of the Inland Revenue domicile questionnaire in February 1988, where in answer to the question where his wife and children resided Bane said “I despised them totally. They are part of the conspiracy against me, which wanted to destroy me financially, socially and physically. They don’t exist any more for me” (see further paragraph 152 above.)
217. Fourthly, there is the evidence that Bane believed Zoran had tried to drown him on the links at St Andrews in April 1984: see paragraph 82 above. While these diary entries may look comparatively innocuous if read in isolation, the fact that Bane chose to record the incident on two separate occasions is in itself significant, and in the light of all the other evidence I am inclined to agree with the sinister interpretation that Professor Howard placed upon them. Plainly, if Bane suffered from the deluded belief that Zoran had tried to drown him, and if that belief persisted until his 1996 diary entry, the conclusion that this belief may have affected Bane’s assessment of Zoran’s claim to benefit under the 1988 and 1989 Wills is inescapable.
218. Finally, although I have rejected the submission that Bane ever believed Zoran not to be his son, the mere fact that he often used figurative language to the effect that Zoran

was not his son is in itself a strong indication that Bane's relationship with Zoran had been poisoned by his delusions.

219. On behalf of the CPA, Mr Simmonds QC submitted that Bane's decision to disinherit Zoran was explicable on the basis that Bane had become disillusioned with his son, and realised that he was never going to change. By 1988 they had not seen each other for over two years, and were becoming estranged. Mr Simmonds suggested that Bane was a disappointed father, who did not wish Zoran to inherit any part of his estate if he was not going to make anything of his life. He suggested that this decision was a natural progression from the 1984 Codicil, by which Bane had postponed the age at which Zoran would take his estate from 25 to 35. At that stage, Bane had not yet finally given up his hopes for his son, but the postponement of the vesting age is a clear indication that he was concerned, and wished to give him a final opportunity to prove himself. He had no wish to leave Zoran destitute, as is shown by his intention to give him £100,000 to establish himself in 1985, and his arrangement with his sister and mother that the Gleneagles property should be transferred to Zoran.
220. These submissions were skilfully advanced by Mr Simmonds, but I am unable to accept them. Bane's disappointment with Zoran's lifestyle and failure to embark upon a career was already well established by the date of the 1984 Codicil, but Bane's reaction to it, assuming that he then had testamentary capacity, was merely to postpone the age at which Zoran would become absolutely entitled to his estate by 10 years. This was a natural and measured step for a father in Bane's position to take, and it was no doubt primarily prompted by the removal of Mirjana's life interest which meant that the gift to Zoran was no longer a gift in remainder but would take effect immediately following his own death. It is, however, one thing to postpone the age of vesting by 10 years. It is quite another thing to cut out one's only child from any share in one's estate. I do not for a moment believe that Bane would have taken this extreme step if he had not been under the influence of his deluded beliefs. Furthermore, the suggestion that Bane had somehow made adequate provision for Zoran outside his will is in my judgment unsustainable. The Gleneagles property was not Bane's to give away, and although he was no doubt glad to see Zoran provided for in this way, he made it clear in his letter to Zoran dated 16 March 1986 that Zoran had to be "very thankful, grateful and devoted" to his aunt and mother. This may have been meant by Bane ironically – he was by now firmly in the grip of his delusions - but it certainly provides no foundation for any suggestion that Bane consciously engineered the transfer of the property to Zoran. Indeed, Jovanka's evidence was that Bane's desire to have confirmation of the transfer was no more than a device for holding up the process of settlement with her. As to the £100,000, I have already said more than once that Bane never translated his intention to give £100,000 to Zoran into action, and one reason for this may well have been that he associated it with the incident when the locks were changed. Certainly the "History of Westmead House" suggests some kind of causal connection between the projected gift, the changing of the locks and Bane's final estrangement from Zoran. Finally, and in any event, even if Bane had given the Gleneagles property and £100,000 to Zoran, this would have represented meagre provision indeed in the context of Bane's personal wealth which must have amounted to several million pounds by the mid 1980s.
221. The suggestion was also made that, even though Bane's wish to give £100,000 to Zoran was thwarted by the freezing of his bank accounts, he nevertheless achieved the

same object indirectly through his divorce settlement with Mirjana. This settlement included the payment of a lump sum of £135,000 when the accounts were unfrozen, and it was suggested that Bane may have relied upon Mirjana using some of this money to support Zoran. However, as I have already said (see paragraph 128 above) there was no solid evidence to support this suggestion, and I think I must proceed on the footing that the settlement with Mirjana was intended to deal exclusively with her claims in the divorce proceedings. The evidence is that she received the matrimonial home and cash of between £150,000 and £160,000 on a clean-break basis. That does not strike me as particularly generous, and certainly not so generous as to ground an inference that part of the lump sum was intended to be used for Zoran's benefit.

222. To conclude, I am fully satisfied on the basis of all the evidence that Bane's decision to disinherit Zoran in the 1988 and 1989 Wills was heavily influenced by his delusions, and in particular by his belief that Zoran was implicated in the global conspiracy he saw around him. In the language of Banks v Goodfellow, his natural affection for Zoran had been poisoned by the disorder of his mind, and his insane delusions brought about a disposal of his property which would not have been made if he had been of sound mind. In saying that I am fully satisfied, I wish to make it clear that my decision does not turn on the burden of proof. In my judgment the cumulative weight of the evidence on this question is very considerable, and it leaves me in no real doubt about the answer. Furthermore, my decision does not turn in any way on the fine distinction noted in paragraph 15 above. I am satisfied that Bane's delusions did in fact influence his decision to exclude Zoran, and not just that they were likely to do so.
223. The conclusion which I have reached means that Bane inevitably lacked testamentary capacity when he made the 1988 and 1989 Wills. It is therefore not strictly necessary for me to go on to consider whether Bane's choice of the CPA as the beneficiary under those wills was itself influenced by his delusions. However, as the matter was fully argued, and as it is very much the other side of the same coin as the decision to exclude Zoran, I will state my conclusions on it.
224. As a self-made man, who had fought against fascism and suffered under communism in his youth, and then made a personal fortune through his own skill and hard work, Bane was a natural supporter of the Conservative Party and its values. He became a member of the Party in 1982, and many witnesses attested to his great admiration for Mrs Thatcher. I have no hesitation in accepting this evidence, and I am sure that Bane would have remained a life-long supporter of the Conservative Party even if his illness had not supervened. However, recognition of this fact does not of itself answer the question whether Bane's decision to leave the whole of his estate to the CPA, with the aim of establishing a foundation in honour of his late father, was influenced by his delusions; and as I have already indicated, I am satisfied that his delusions must indeed have had a considerable influence upon that decision. From at least December 1984 onwards, when Bane first wrote to Mrs Thatcher, his correspondence with prominent figures in the Conservative Party betrays a fixation with the dark forces conspiracy and a desire to enlist help in the fight against it. Given the nature and extent of his delusions, it was a natural thing for him to turn to the Conservatives, both as the party of government and because of the values represented by the "Thatcher revolution", in order to combat the conspiracy, and for him to make donations to the Party for that purpose. However, there is no evidence that Bane had

made any donations to the Conservatives before his delusions began to take hold in 1984, and the pattern of giving which began thereafter cannot in my judgment be dismissed as no more than a reflection of his long-standing support for the party and his admiration for Mrs Thatcher.

225. The surviving letters which he sent to Mrs Thatcher, David Mellor and others make it clear, in my view, that there was a definite connection between Bane's deluded beliefs and his relationship with the Conservative Party. Bane no doubt continued to espouse conventional Conservative values as he had before his illness, but with the difference that he now saw them as having a particular virtue in helping to defend the world, and himself, against the conspiracy of dark forces. The link is made clear as early as Bane's first letter to Mrs Thatcher in December 1984, when he sent a cheque for £5,000 "to fight the evil wicked Demons - SATANS and I am fully on your disposal". A similar attitude can be seen three years later, in his letter of 13 December 1987 to David Mellor, where he refers to his nomadic existence and the dark forces conspiracy, asks Mr Mellor to be his trustee and to recommend a trustworthy solicitor, and says how important it is for him that his substantial wealth should not finish "in the hands of destructive people – Satanic Monsters". The same letter then goes on to reaffirm, in extravagant language, Bane's attachment to this country and his admiration for Mrs Thatcher: "Our Prime Minister is the greatest Leader of the Free World in the human [peacetime] history ... God knows when we shall have again such a unique and genius person". The importance of these letters, and others like them, is that they make explicit the link in Bane's mind between his delusions and his support for the Conservative Party and its values. In the light of this link, and the expert evidence on the fixed nature of untreated delusions, I find it impossible to attach much, if any, weight to other letters which, read in isolation, appear to endorse traditional Conservative values and do not refer to the dark forces. An example of such a letter is Bane's letter of 18 April 1987 to the Right Hon. Norman Tebbit MP at Conservative Central Office enclosing a donation of £3,000 for the next general election, saying,

"Our Maggie is not only our dear PM – she is really today the Leader of the Free World and we must support her unconditionally to enable her Vision and Charisma to save and protect our dignity, decency, democracy and freedom."

226. A similar point may be made in relation to Bane's instructions to Mr Trower, and the preparation of the 1988 and 1989 Wills. To judge from Mr Trower's attendance note, Bane's original instructions to him at their first meeting were on the face of it entirely rational. However, Mr Trower can have been in no doubt that Bane suffered from some form of mental illness once he saw some of the letters enclosed with Bane's letter to him of 16 June 1988; and some of Bane's subsequent letters to Mr Trower, including in particular his letter of 19 December 1988, can only be described as totally deranged. Mr Trower's reaction to these letters seems to have been one of embarrassed silence. There is no indication that he advised Bane to seek psychiatric help, nor did he suggest that the 1988 and 1989 Wills should be witnessed and approved by a medical practitioner who had satisfied himself as to Bane's capacity and understanding and made a record of his examination and findings (the so-called "golden rule" referred to by the Court of Appeal in Sharp v Adam at paragraph [27]). My strong impression is that Mr Trower turned a blind eye to the problem, and

concentrated instead on advising Bane about the technical problems associated with the establishment of a purpose trust. However, I do not wish to be unduly critical of Mr Trower, because his death means that he has been unable to give his own account of the matter, and it is also possible that Bane's instructions left him with no option but to act as he did (although I have to say that, in that case, one would expect to find a clear record of those instructions on the file). The important point, for present purposes, is that the circumstances in which the 1988 and 1989 Wills were executed, and the fact that Bane had the assistance of a very experienced solicitor, cannot weigh significantly in the balance against the evidence that Bane's wish to leave his estate to the CPA was influenced by his delusions.

227. Mr Simmonds QC submitted that it would be wrong to focus too much on Bane's decision to leave his estate to the CPA, because the 1988 Will was only intended to be a stop-gap, and the purpose of the 1989 Will was to establish a foundation in honour of Bane's father rather than to benefit the CPA. Indeed, Bane had expressly instructed Mr Trower to revoke the 1988 Will, even at the price of possibly dying intestate. There is some force in this submission, although it does lead me again to doubt whether the alterations to Bane's own draft of the 1989 Will were ever properly explained to him. However, even on the assumption that Bane fully understood the changes, and thought that he could safely rely on the CPA to establish his desired foundation, the problem in my judgment remains essentially the same. I agree with the submission of Miss Montgomery QC that by 1989 Bane's concern for his father and his memory was inextricably linked to his delusions. For example, as early as November 1984, in his letter to "Otmar", Bane had linked his mother, sister and wife with the deaths of his father and brother-in-law, saying "They have tried everything to disable and destroy me. My poor father and Zdenko Kovacevic. The group of conspirators is infinite". A similar link is apparent in his letter to his uncle Spiro dated 25 December 1984; and in an earlier note written by Bane and dated 26 October 1984 he had said:

"Hidden dark forces lured him into a hellish plot, and my father Milan, noble and blessed, naively and innocently fell into the trap. It seems to me that a monstrous secret had to be hidden at all costs. Let the good Lord justly reward the brutish plotters and their aides."

228. Moreover, it is clear that this link was still present to Bane's mind at the time when the 1988 and 1989 Wills were made. When Bane sent the domicile questionnaire to the Inspector of Taxes in February 1988, he enclosed with it a photograph of his father's grave saying "Even today, I cannot get the cause of his death. I suspect, that he was poisoned by family." Again, when Bane wrote to Mr Trower on 29 June 1989, instructing him to revoke the 1988 Will, his proposal to establish a foundation in the name of his father was associated with some obviously delusional language: "I love LEGENDS but not the LEGENDS created for BLACKMAILS (hocus, pocus, preperandus' way of living)". As I have already noted, Professor Howard agreed that Bane's delusional belief system included the belief that his father had probably been murdered by his mother and sister, and he accepted there was a real possibility that, when Bane decided to leave his estate to establish an institution in his father's name, those delusional beliefs would have been present to his mind. I would go further, and

say that it was not merely a real possibility, but much more probably the case than not.

229. For all these reasons I have come to the conclusion that the 1988 and 1989 Wills cannot stand, because Bane lacked testamentary capacity when he made them. It only remains for me to consider the validity of the 1984 Codicil, which as I have explained is in issue although it makes no difference to the outcome of the case. For that reason, I shall do so briefly.
230. The 1984 Codicil was evidently drafted for Bane by Oppenheimers, whom he had consulted when he left the matrimonial home. The pressing need, as he was no doubt advised, was to remove Mirjana as an executor and beneficiary of the 1974 Will. In view of their separation, this is what any competent solicitor would have advised pending resolution of Mirjana's financial claims. This objective was duly achieved by clauses 1 and 2 of the 1984 Codicil. However, the provisions of clause 2 had the additional effects of postponing the age of Zoran's entitlement from 25 to 35, and introducing an ultimate trust for Mr Wigmore (who was also appointed an executor). It is these two features of the 1984 Codicil which are said to lead to the conclusion that Bane lacked capacity when he executed it. It is submitted that the only sensible explanation for the change in vesting age is that it reflected a change in Bane's feelings for his son brought on by his developing delusions, and that there was no rational reason for the introduction of Mr Wigmore as the residual beneficiary of the entire estate in the event of Zoran's death without children under the age of 35. In particular, it is suggested that if Bane had been able to weigh up the claims of his family in an appropriate way, he would at the very least have made Jovanka rather than Mr Wigmore his default beneficiary.
231. As to the first point, I do not agree that the change in vesting age reflects Bane's developing delusions. In my judgment the change was a perfectly rational and understandable reaction to the removal of Mirjana's life interest and Bane's increasing disappointment with his son's lifestyle and lack of career. I find further support for this view in the provisions of clause 3 of the 1984 Codicil, which gave his Trustees power to pay or apply the whole or any part of the residuary estate to or for the benefit of Zoran while he was still under the age of 35. This clearly indicates that Bane still wished Zoran to inherit the whole of his estate, but that he did not wish him to have the capital at his unfettered disposal until he was 35. I should add that at the date of the 1984 Codicil Zoran was already 27 years old, so if there had been no change in the vesting age, and if Bane had died unexpectedly, Zoran would have inherited the entire estate immediately.
232. The second point I have found more difficult. On the one hand, Jovanka had not been a beneficiary under the 1971 and 1974 Wills, and she was evidently a wealthy woman in her own right. On the other hand, the decision by Bane to make Mr Wigmore his sole default beneficiary seems a very strange one, even allowing for the fact that he had provided support and friendship to Bane while his marriage was disintegrating in 1984. I ask myself on what rational basis could Bane have decided to prefer the claims of Mr Wigmore to those of his own sister in the event of Zoran dying under 35 without issue. On the evidence before me I am unable to find a satisfactory answer to that question, and I think it is distinctly more probable than not that Bane's decision to exclude Jovanka was indeed influenced by his growing delusions. There is no doubt that Bane's delusions concerning his wife were already well-established, because they

were the reason for the breakdown of his marriage. It is equally clear that the next objects of Bane's delusions were his sister and his mother, and by the end of 1984 it is common ground that his delusional belief system was fully established. In those circumstances I am not satisfied, on the balance of probabilities, that Bane's decision to exclude Jovanka in favour of Mr Wigmore was uninfluenced by his delusions. Indeed, I think, on balance, that it probably was so influenced. Accordingly, I must conclude that Bane already lacked testamentary capacity when he made the 1984 Codicil, with the consequence that it too cannot stand.

233. I return finally to the question of law which I identified at the start of this judgment in paragraph 15. In view of the conclusions which I have reached, it is unnecessary for me to resolve it because it would make no difference to the result. The question is one of some interest, and I heard full argument on it; but anything I said on the subject would be obiter, and I think it better to leave its resolution to a case where it would make a difference to the outcome. I would only say that the point is very seldom likely to be of any practical significance, because it must be a rare case indeed where the Court is satisfied, on the balance of probabilities, that a testator's delusions did not in fact influence the dispositions in his will, but nevertheless considers that the delusions were likely to influence them. It is perhaps for this reason that the question does not seem to have troubled the Courts over the 137 years since Banks v Goodfellow was decided in July 1870.

### **Conclusion**

234. For the reasons which I have given, this action succeeds and I will pronounce against the 1989 Will, the 1988 Will and 1984 Codicil. It follows that probate must be granted of the 1974 Will. It also follows that none of the questions of construction which would need to be decided if the 1989 Will were valid need to be decided.