

How far can you push the court over capacity evidence?

Matthew Hodson - Barrister

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Testamentary Capacity

Banks v Goodfellow (1870) LR 5 QB 549:

“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.”

Capacity for Lifetime Gifts

Re Beaney [1978] 1 WLR 770:

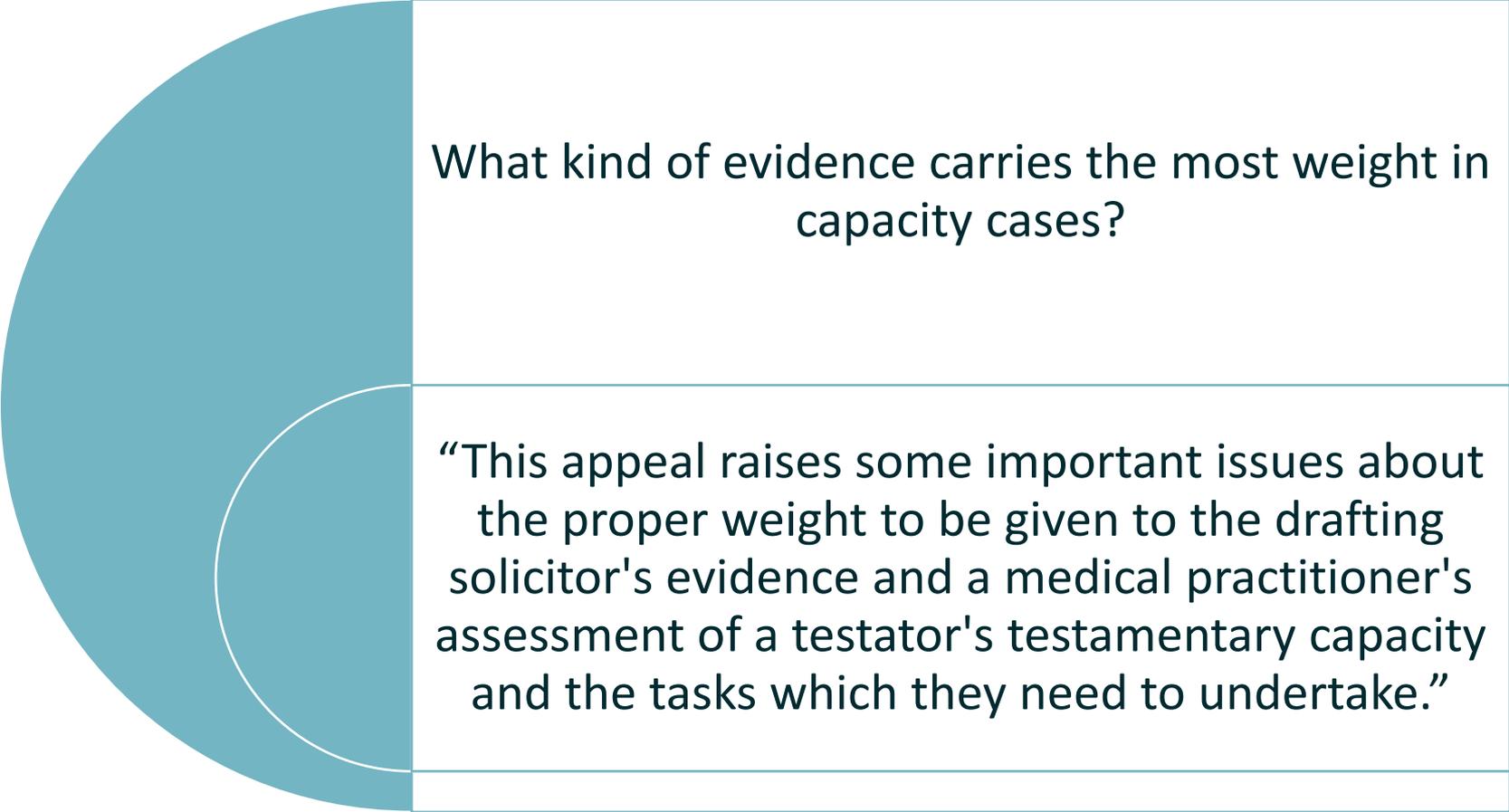
“The degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect. In the case of a will the degree required is always high. In the case of a contract, a deed made for consideration or a gift inter vivos, whether by deed or otherwise, the degree required varies with the circumstances of the transaction.”

Capacity for Lifetime Gifts

Re Beaney [1978] 1 WLR 770:

- The donor must understand
 - (1) that she was making a gift;
 - (2) what the subject matter of the gift was; and
 - (3) who the recipient of the gift was.
- In addition, depending on the particular transaction, it may be necessary to show that donor understood claims of all potential donees and the extent of the gift.

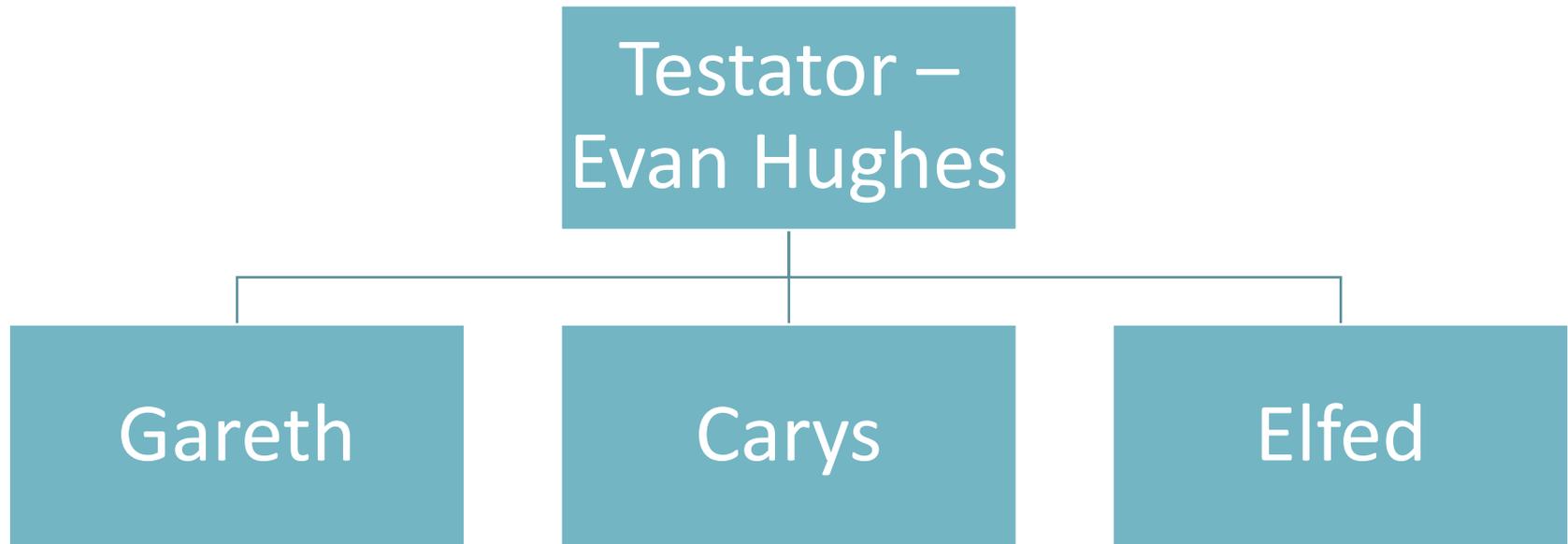
Hughes v Pritchard [2022] EWCA Civ 386



What kind of evidence carries the most weight in capacity cases?

“This appeal raises some important issues about the proper weight to be given to the drafting solicitor's evidence and a medical practitioner's assessment of a testator's testamentary capacity and the tasks which they need to undertake.”

Hughes v Pritchard – The Facts



Hughes v Pritchard – The Facts

- Testator died in 2017 aged 84
- Anecdotal Witness evidence from 2014:
 - Losing keys; forgetting to shut farm gates; confused about time of day; erratic driving.
 - Didn't recognise his cousin
 - Shouted at grandson



Hughes v Pritchard – The Facts



Hughes v Pritchard – The Facts



Hughes v Pritchard – The Facts

Elfed died in
September
2015

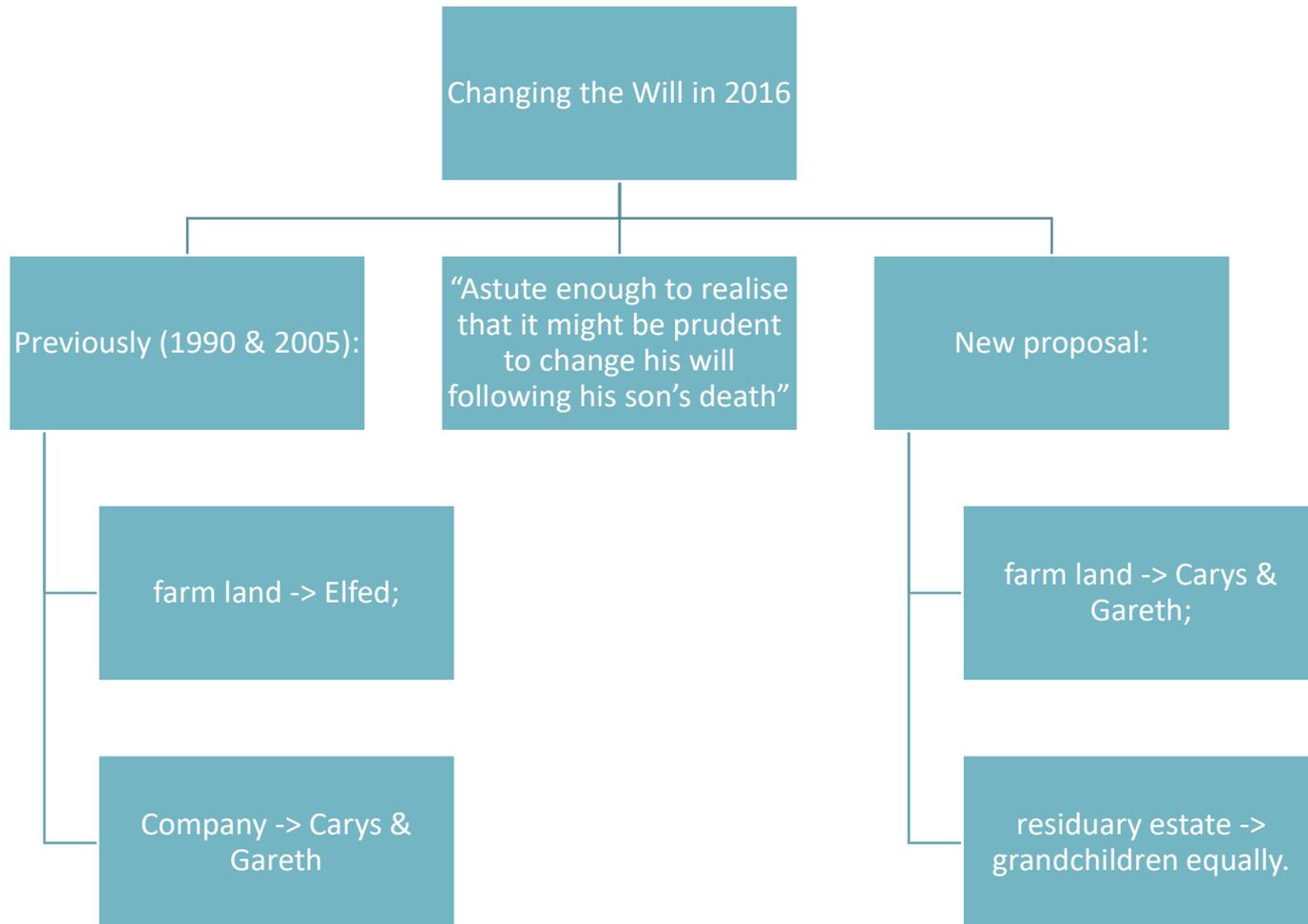
Hospitalised
in December
2015

Moderately
severe mental
impairment in
December
2015

CT Scan in
April 2016 –
evidence of a
stroke

Confusion
following
inquest in
June 2016

Hughes v Pritchard – The Facts



Hughes v Pritchard – The Facts

Solicitor's evidence (March 2016):

- “very detailed notes”
 - The Deceased knew of the existence and location of the 2005 will;
 - He wished to amend it as a result of the death of Elfed;
 - Knew who he wished to be his executors;
 - Knew exactly which parts of his estate were to go to which beneficiaries
 - Had sought accountancy advice already.
 - Able to identify the amount of cash he had on hand.

Hughes v Pritchard – The Facts

GP
Evidence
(June
2016)

- The Deceased knew exactly what he was there for.
- Not confused or distressed and was able to go through his will “bit by bit” “with very little prompting”.
- Clear understanding of the Will.

Hughes v Pritchard – The Facts

Will
Executed
(July
2016)

- Will read to the Deceased by the solicitor.
- GP present and witnessed.
- 55 minutes; detailed notes.
- Alert and lucid throughout.

Hughes v Pritchard – The Facts

Expert Evidence – Dr. Series

- Further low scoring Addenbrooke’s test November 2016
- Died May 2017
- Conclusions:
 - Moderately severe cognitive impairment but...
 - more likely than not that the Deceased would have been able to recall and appreciate the claims to which he ought to give effect;
 - low correlation between cognitive impairment and testamentary capacity

Hughes v Pritchard – The Trial

GP reversal of confidence

First instance judge concluded that testator did not understand that:

- he had continually promised Elfed the farm during his life;
- the extent of land in the farm;
- the 2016 changes were substantial.

Hughes v Pritchard – The Appeal

Hawes v Burgess [2013] EWCA Civ 74

- Not a ‘true legal presumption’ but...
- Evidence of solicitor of “very considerable importance”

Key v Key [2010] EWHC 408

- Burden of proof?
- Expert evidence not decisive

Hughes v Pritchard – The Appeal Judgment

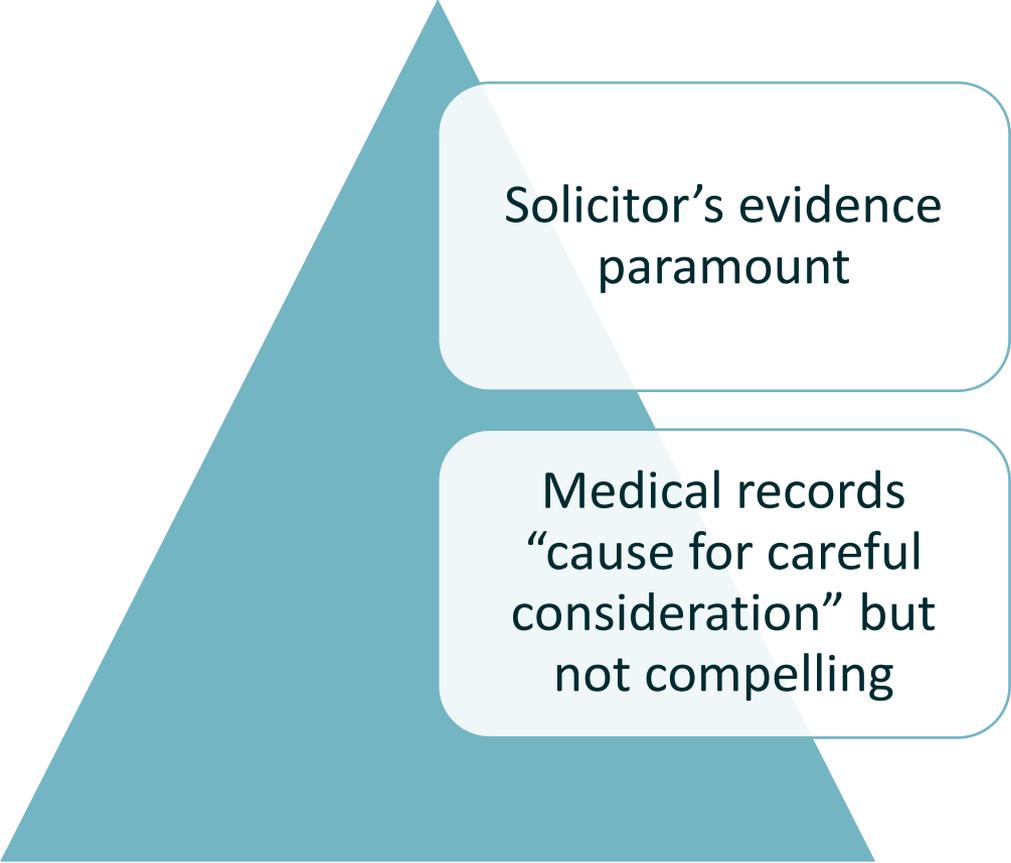
Wary of going behind an essentially factual conclusion but it was one that was 'not reasonably open' to the judge.



Judge failed to give adequate weight to:

- Evidence of the solicitor
- Evidence of the medical professionals

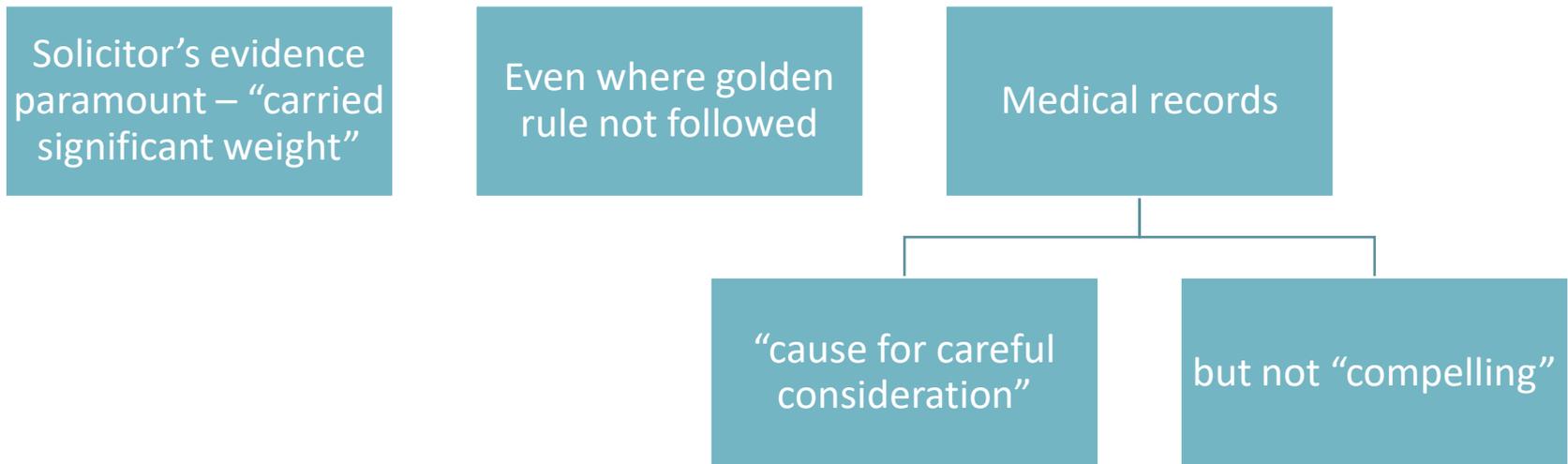
Re: Williams [2022] EWHC 1334



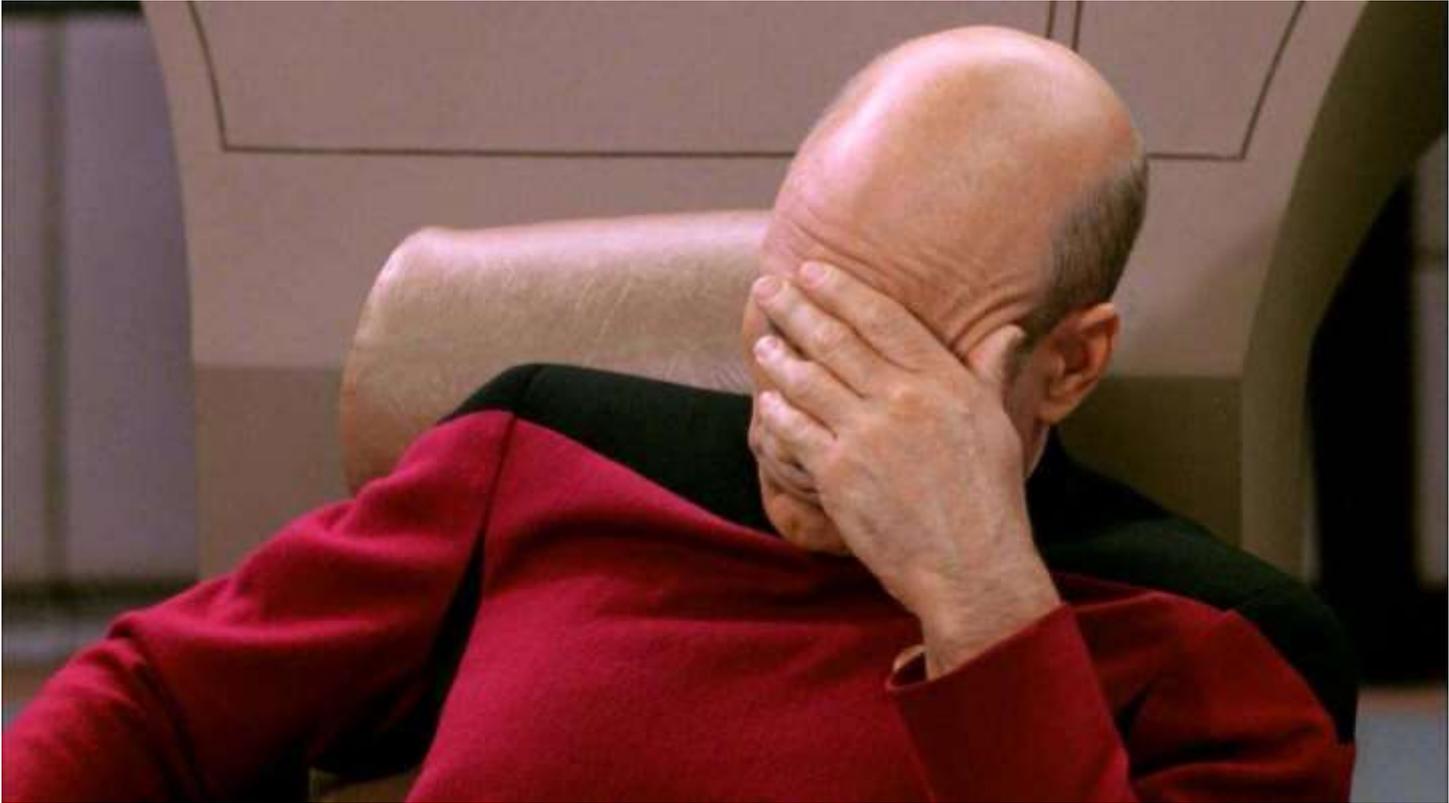
Solicitor's evidence
paramount

Medical records
“cause for careful
consideration” but
not compelling

Re: Williams [2022] EWHC 1334







Matthew Hodson

matthew.hodson@gatehouselaw.co.uk

+44 (0)207 242 2523