



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 29

F90/22

OPINION OF LADY CARMICHAEL

In the cause

JOHN ARNOLD CLARK

Pursuer

against

JILLANN STEWART OR CLARK

Defender

Pursuer: Malcolm KC; Brodies LLP
Defender: Party

22 February 2024

Introduction

[1] This is an action for divorce. The parties were married on 18 November 2005 and separated on 27 January 2022. I am satisfied that they have not lived together since then.

The defender has signed a form of consent. Mr Clark has established to my satisfaction that the marriage has broken down irretrievably. There is no dispute that 27 January 2022 is the relevant date for the purposes of the Family Law (Scotland) Act 1985. As that is the only statute to which I refer in this opinion, further references to it are by section number only.

[2] There are three children of the marriage, two of whom are currently under the age of 16. Neither party now seeks any order in relation to the children.

[3] The issue in dispute is what orders for financial provision I ought to make. In the course of the proof Mrs Clark departed from her conclusions that I ought to order Mr Clark to transfer title to the matrimonial home (which is in his name alone) to her, and order him to pay off the mortgage over that property. She made it clear that she wished to receive a capital sum which would put her in a position to buy a house. I would not in any event have been satisfied on the evidence that I could achieve a fair sharing of matrimonial property by making an order that title be transferred and the mortgage cleared as concluded for.

[4] Mrs Clark had, at various stages of the action, professional representation. By the time of the proof she was representing herself. At a number of points in the course of case management I encouraged Mrs Clark strongly to try to find and retain legal advisers. During the first period when she did not have professional representation she said that it was because she could not afford it. Mr Clark thereafter made advances of capital and Mrs Clark was represented briefly by Fleming and Reid, and for a period by Turcan Connell, but both firms withdrew from acting before the proof.

[5] I deal with the evidence under the headings for the issues to which it relates, rather than setting out a comprehensive summary of the evidence of each witness. Mr Clark gave affidavit and oral evidence, and led affidavit and oral evidence from Mr David Moore, Mr Allan Barr, Mr James Millar, and Mr Scott Willies. Mr Keith Denholm, surveyor, and Mrs Sandra Terras, actuary, gave oral evidence. Mr Clark also relied on the unchallenged affidavit evidence of Ms Caroline Clark (regarding the grounds of divorce and care of the children only), Mr Eddie Hawthorne and Mr Kenneth McLean. Mrs Clark gave oral evidence.

Issues

[6] The value of the matrimonial property was not agreed. There was no joint minute of admissions in this case. Although some time was taken in case management in trying to ascertain areas of agreement, Mrs Clark did not sign a joint minute. She did not offer any positive evidence to contradict the evidence provided by Mr Clark regarding the values of assets and liabilities at the relevant date.

[7] There were two items of property in relation to which there was a dispute as to whether they were matrimonial property. These were a flat at 2/2, 105 Hyndland Road, Glasgow, and Mr Clark's 25,000 C Class shares in Arnold Clark Automobiles Limited (ACAL).

[8] There was an item which did not feature in the pleadings of either party, but which Mr Clark had disclosed and to which he referred in his affidavit, namely his debenture at the Loch Lomond Golf Club. His evidence was that it was a gift from his mother. That is supported by the contents of 6/50 of process. I am satisfied that it is not matrimonial property.

[9] Mr Clark submitted that I should take into account special circumstances in two respects. He submitted that £187,497.87 of the proceeds of sale of 87 Hyndland Road had been used to fund the purchase of the matrimonial home at Ledcameroch Road. There was no dispute that he acquired 87 Hyndland Road before the marriage, and that it was not matrimonial property. He also submitted that his pre-marriage pension contributions, should be taken into account, and that £88,191.51 of the CETV of his pension derived from those contributions.

[10] In 2021 Brewin Dolphin issued a letter to the parties following a client advice review. The letter contained a number of material inaccuracies as to the parties' assets and liabilities. Mr David Moore, formerly of Brewin Dolphin, gave evidence about that.

[11] Mrs Clark's case on record regarding section 9(b), (c), (d) and (e) of the 1985 Act was, in summary, as follows. If the C Class ACAL shares were not matrimonial property, their value had increased during the course of the marriage to the economic advantage of Mr Clark. His career had progressed during the marriage and his income and earning capacity had increased. Mrs Clark had suffered corresponding economic disadvantage. She would not share in any entitlement to dividends declared after the relevant date. She enabled him to progress in his career by giving up her own career and looking after the parties' children. She would find it difficult to obtain full time employment, and impossible to find employment that would provide sufficient income for her reasonable needs. She would bear the financial burden of caring for the children after divorce. She alleged that Mr Clark operated and controlled the parties' finances during the marriage and that he has continued to exercise control over her in financial matters since the parties separated.

[12] Mrs Clark pled that she would require periodical allowance, and was likely to suffer serious financial hardship in retirement.

[13] Mrs Clark also averred that she would be unable to participate in the lifestyle of her children after divorce, and that they would be much wealthier than she would. That was a special circumstance in terms of section 10(6) which ought to justify a departure from equal sharing. Her case on record also raises an issue about a restructuring of companies related to ACAL, which she avers took place in 2021 with a view to protecting Mr Clark's interest in ACAL on divorce.

Summary of decision

[14] For the reasons set out in detail below I decided that the flat at 105 Hyndland Road and Mr Clark's C Class shares were not matrimonial property.

[15] I assessed the net value of the matrimonial property at the relevant date as £3,019,582. Although I was satisfied that some of the matrimonial property derived from property belonging to Mr Clark which was not matrimonial property, or from contributions made by him before the marriage, I was satisfied that I should depart from equal sharing only to the extent of making an adjustment in Mr Clark's favour to the extent of £88,000. As a result, Mrs Clark's share of the property was worth £1,465,791.32. Mrs Clark had, however, retained £102,230.43, and she had also received £200,000 as advance payments of capital. I will therefore make an order for Mr Clark to pay a capital sum of £1,163,561 to Mrs Clark. I will also make an order for periodical allowance of £5,500 per month for a period of 6 months following decree or until payment of the capital sum, if that is more than six months. I will thereafter award £4,000 per month for a further period of 6 months (or the remainder of the first calendar year following divorce, after payment of the capital sum if that period is less than six months), £3,000 per month in the following year, and £2,500 per month in the year after that. There will be a further short hearing to deal with the precise terms of the orders necessary to put this arrangement into effect.

The matrimonial property

[16] The net value of the matrimonial property is £3,019,582.64. The following table sets out the various assets and liabilities at the relevant date, and the party to whom they belonged. I explain in the following paragraphs why I am satisfied that the values in the table are the correct values, and why I have concluded the flat at 105 Hyndland Road and

Mr Clark's C shares were not matrimonial property. The table does not include any figure for the contents of the matrimonial home. Parties expressed their positions in the course of evidence as to how that ought to be distributed.

Asset		John Clark	Jillann Clark
Heritable			
Matrimonial home, Ledcameroch Road		£2,000,000.00	
Flat, St Vincent Crescent, Glasgow		£ 265,000.00	
Flat, Dumbarton Road, Glasgow		£ 145,000.00	
Contents of family home		*	*
Banks			
Handelsbanken current offset account 5576		£ 119,163.88	
Handelsbanken current account 0088		£ 7,766.98	
Handelsbanken account 4578 (rental and tax)		£ 404,406.39	
Handelsbanken account 0529		£ 303,008.21	
RBS account 5600			£ 35,058.88
RBS account 8882			£ 2,025.97
Handelsbanken account 3280 (joint)		£ 12,353.00	£ 12,353.00
Brewin Dolphin ISA 6938		£ 351,291.46	
Brewin Dolphin GIA 2316		£ 33,522.78	
Brewin Dolphin ISA 2224			£ 52,792.58
HSBC 3406		£ 714.32	
Cars			
Alfa Romeo Giulia 2.9 V6 BiTurbo Quadrifoglio		£ 58,700.00	
Client account re car shareholder scheme		£ 44,010.46	
Pensions			
Legal & General pension 6501		£ 577,594.17	
Liabilities			
Handelsbanken mortgage ****7902		£ (654,970.85)	
Handelsbanken property loan a/c 2695		£ (335,000.00)	
HMRC (balancing payment for 2020-21)		£ (31,903.61)	
HMRC (2021-22 apportioned to relevant date)		£ (361,912.53)	
Dow - invoice debt house renovations		£ (14,701.20)	

Handelsbanken chargecard ****1703		£ (6,692.25)	
Sub Totals		<u>£2,917,351.21</u>	<u>£ 102,230.43</u>
Total net matrimonial property		<u>£ 3,019,582.64</u>	

Extent and valuation of matrimonial property

Heritable property

[17] The value of the three items of heritable property in the table was spoken to by Mr Keith Denholm of Allied Surveyors. His report is 6/6 of process. Mrs Clark led no evidence to contradict that of Mr Denholm. She suggested that his valuation of the property at Ledcameroch Road might not be accurate because he had assumed that all appropriate planning and building permissions were in place in respect of alterations to the property. It was common ground between parties that some of those matters in fact remained outstanding. I accept Mr Denholm's evidence in the absence of any evidence to the contrary, and in the absence of any basis in the evidence for identifying a discount that ought to be applied to his valuation of Ledcameroch Road to take account of the absence of certain permissions or certificates. Mr Clark owns all of these properties.

[18] Mrs Clark has continued to live in the property at Ledcameroch Road since the parties separated.

Contents of matrimonial home

[19] In the course being cross-examined Mrs Clark indicated that she would be content for Mr Clark to retain a number of items which he enumerated at paragraph 48.3 of his affidavit, with the exception of the sofa, chair and TV in the front TV room. Neither party sought that the contents required to be divided in any other way, or their value taken into

account in determining a fair division of the matrimonial property. I proceed on the basis that the parties will divide the contents on the basis that Mr Clark will retain the items enumerated in his affidavit with the exception of the sofa, chair and TV in the front TV room, and that Mrs Clark will receive the remainder of the contents.

Handelsbanken accounts (including mortgage, property loan and charge card)

[20] The balances on these are vouched in a letter from the bank, number 6/15, to which Mr Clark refers in his affidavit. In cross-examination Mrs Clark did accept that the bank had provided the figures, and that they were correct, although she said she did not know “where the money came from”.

[21] It was Mr Clark’s evidence that Mrs Clark had continued to use the funds in the joint account after separation for personal expenditure and work on the property at Ledcameroch Road, but senior counsel’s position was, with a view to pragmatism, that the balance at separation should simply be regarded as having been retained by each party in equal shares. Mrs Clark did not suggest a different approach. I accept the approach proposed by Ms Malcolm.

RBS accounts

[22] The balances are vouched in 6/57 and 6/58 of process, and referred to in Mr Clark’s affidavit. One of the references in Mr Clark’s affidavit misquotes the vouched balance. The balance disclosed in 6/57 of process is £35,058.88, not £30,058.88.

HSBC account

[23] The balance is vouched at £714.32 in 6/18 of process, to which Mr Clark referred in his affidavit.

Brewin Dolphin investment accounts

[24] The values of these are vouched in 6/16, 6/17 and 6/55 of process which are referred to in the affidavits of Mr Clark, and of Mr David Moore, formerly of Brewin Dolphin.

Mr Moore confirmed the values of these accounts. His evidence was not directed primarily to the values of the investments, but to explaining the content of a letter dated 18 August 2021 issued by Brewin Dolphin to Mr and Mrs Clark following a client advice review. The contents of the letter were inaccurate and have caused Mrs Clark concern in the context of the present proceedings, not least as to whether Mr Clark had disclosed his assets. She was also concerned that a mortgage liability might wrongly be attributed to her.

The Brewin Dolphin letter

[25] The letter (7/2) is addressed to both parties. Mr Moore's evidence was that it was generated from material that he collected during a client review meeting with Mr Clark (6/172). Meetings of that sort were required for regulatory purposes to ensure that the investments proposed for a client were suitable for the client's circumstances. Mr Moore's file note was produced. Its contents were not consistent with the financial summary that accompanied the letter. Some of the contents of the file note were also incorrect, although Mr Moore was confident that he had noted correctly what he had been told by Mr Clark.

[26] The file note recorded that the parties held heritable property worth a total of £2.6 million, of which £1.8 was the value of the matrimonial home. The file note records, wrongly, that it was in joint names. The financial summary recorded that the parties held a total of £9,800,000 by way of property. The figure of £800,000 attributed in the file note to Mr Clark's three rental properties appears to have been multiplied by ten, and then a further £1.8 million added to account for the matrimonial home. It wrongly attributes £900,000 of heritable property to Mrs Clark. The financial summary also wrongly attributes a share of the mortgage over Ledcameroch Road to Mrs Clark.

[27] According to the financial summary, Mr Clark's discretionary expenditure was £622,000 each year. The total of the sums noted in the file note was £82,000, an annual total of £60,000 for school fees, plus £22,000 for holidays. Again it appeared that one of those figures had been inflated by a factor of ten, and the other figure added to it.

[28] Mr Moore's evidence was that he had failed to check the financial summary before it left his firm, and he was extremely embarrassed by the erroneous information in relation to heritable property and discretionary expenditure. The fault was his for allowing the letter to be sent in that form. I accept that the figures in the financial summary relating to heritable property and discretionary spending were wrong and did not reflect what Mr Clark told Mr Moore.

[29] The financial summary also recorded, as did the file note, that Mr Clark had other assets of £400,561,960. Of that £561,960 is obviously accounted for by the value of his pension at the time. Mr Clark's evidence was that that was the value that Brewin Dolphin had attributed to his interest in ACAL, but he had no idea where the figure had come from. According to Mr Moore, the sum of £400 million would have related to what he understood might have been the value of Mr Clark's interest in ACAL. As far as he could recall it was

a “guesstimate”. He had no personal knowledge of what Mr Clark’s ownership of the business was. Mr Clark may have been being flippant in offering the figure. Mr Moore had no basis on which to suggest that the figure was accurate. It was irrelevant to his task, which was to ascertain whether the client had sufficient cash reserves to permit them responsibly to devote funds to investment.

[30] Mr Clark’s evidence about the letter was that he had probably not read it, or read it in detail when it was delivered, as it was simply the outcome of a routine meeting carried out for regulatory purposes. He said that he had no idea where the figure of £400 million for his other assets (excluding pension) had come from. I was not satisfied that that part of his evidence was credible and reliable. He appeared glib and slightly dismissive when asked about the matter. I cannot, however, be confident that Mr Moore’s file note was based entirely on information he had noted accurately from Mr Clark. The information that the matrimonial home was in joint names was based on his “understanding”, or assumption. I do not need to resolve the question of where this information came from. It is not evidence on which I could properly rely as to the value of Mr Clark’s shareholding in ACAL.

Alfa Romeo Giulia car

[31] Mr Clark owns this car, which was registered in May 2021. He purchased it using a benefit available to him as a shareholder in ACAL. The relevant date value proposed by senior counsel for the car in submissions, and put in cross-examination to Mrs Clark is £48,000. That is the value given by Mr Clark as an estimate in his affidavit. He refers to numbers 6/45 to 6/48 of process which are documents relating to the car. Number 6/47 is an email from Mr Derren Martin, described as “Director of Valuations, cap hpi” responding to an inquiry from a member of staff at Arnold Clark. Mr Martin provides a range of relevant

date values from £54,700 to £58,700 depending on the condition of the car, from “below average” to “clean”. Number 6/48 is headed “Valuation anywhere” and values the car at £46,100 as at 4 August 2023 on the basis of its being “clean” and “appraised” and having travelled 16,000 miles.

[32] The invoice for the car discloses a purchase price, including VAT and accessories, of £52,499.39. That is lower than the range of relevant date values in Mr Martin’s email, although the car was new when purchased and one would normally expect an asset of this sort to depreciate. On the basis of the email from Mr Martin, the estimate of £48,000 does not reflect the relevant date value of the car, which I assess, again on the basis of that email, at £58,700.

[33] Mrs Clark in cross-examination said that she had not had the car valued herself, so had to accept that it was correctly valued at £48,000. I did not consider that I was bound to accept that it was, where a range of values were referred to in Mr Clark’s affidavit, and the estimate proposed by him was not consistent with the relevant date valuation to which he referred.

[34] Mrs Clark has driven the car since the parties separated. Mr Clark proposed that he might transfer it to her so that she could retain it and keep driving it. Mrs Clark made it clear in the course of her evidence that she wished to return the car to Mr Clark and to purchase a car of her own choice in due course. In submissions senior counsel accordingly treated the car as if retained by Mr Clark.

Car shareholder scheme

[35] The balance is vouched in 6/19 of process, to which Mr Clark refers in his affidavit. I have added £14.40 to the figure shown as the quarter 3 2021/22 balance because the

statement of account discloses that £14.40 had been charged in error and would be credited only in the following quarter.

Legal and General pension

[36] The cash equivalent transfer value (CETV) at the relevant date is vouched in 6/20 of process. Funds from other pensions had been transferred over the years, and the source of some of the Legal and General pension was contributions made before the parties were married. In particular, Mr Clark made contributions to an Aegon plan ending 0890 from 30 December 1996. Funds from that plan were transferred to an AXA (later Aviva) plan, from there to an AJ Bell SIPP, from there to Scottish Widows, and ultimately to the Legal and General plan, which commenced in July 2021. Mrs Sandra Terras provided a report, which she adopted in her evidence. She calculated that £489,403.20 of the CETV derived from post-marriage contributions. There was no evidence to the contrary, and I accepted Mrs Terras' evidence.

[37] Senior counsel approached the matter on the basis that the Legal and General Plan was matrimonial property, and invited me to take account of the pre-marriage contributions deriving from the Aegon plan in dealing with special circumstances under section 10(6) of the 1985 Act.

Liabilities to HMRC

[38] Mr Clark's evidence was that at the relevant date he owed HMRC £31,903 in respect of the year to April 2021. That is vouched in 6/32 and 6/33 of process, a tax calculation and tax return. The sum is the balancing payment for year 2020-21. His total liability for the tax year 2021-22 was £444,744.66, vouched again by a tax return and tax calculation.

[39] Mr David Cooper, an accountant who works as chief finance and leasing officer at Arnold Clark, gave evidence that he prepared Mr Clark's tax returns. He had made a calculation that the liability for the tax year 2021-22 apportioned to the relevant date was £361,912.53.

Liability to Dow Group Ltd

[40] Mr Clark referred to a notice issued by Dow Group Limited (6/51) in respect of invoices totalling £29,402.39 dating from 2019 and still outstanding at the relevant date.

According to the notice, the creditor was prepared to accept the sum of £19,402.32.

Mr Clark's evidence was that he agreed a settlement figure of £14,701.20, which he paid.

A payment from Mr Clark's Handelsbanken account 5776 to Dow Group was made on

22 June 2022 (6/52).

Disputes as to whether assets are matrimonial property

[41] Mrs Clark's cross-examination of witnesses, evidence and submissions did not engage directly with the concept of matrimonial property as it is defined in section 10(4) of the 1985 Act:

"10(4) ... 'the matrimonial property' means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party) –

- (a) before the marriage for use by them as a family home or as furnishings or plenishings for such home; or
- (b) during the marriage but before the relevant date."

[42] She referred to her "right to share in the Clark family wealth". She also submitted that "there was no evidence of a spouse (ie her) being exempt from shares". It was difficult

to get her to elucidate any further as to what she meant by that. At times she compared her position unfavourably with that of Mr Clark's mother, who is a shareholder in ACAL.

Flat 2/2, 105 Hyndland Road, Glasgow

[43] The title sheet shows that Mr Clark acquired the property in 2003. The date of entry was 18 July 2003. Mr Clark's evidence was at the time he purchased the property, he was not planning to live in it with Mrs Clark. They were in a relationship at the time he purchased it, but they were not living together. Mrs Clark had her own accommodation at the time. He lived in the flat alone initially, and his mother helped with redecorating. The flat did not require any major renovations.

[44] Mrs Clark's position was that Mr Clark had purchased the flat as a family home. She had given him an ultimatum that she would end their relationship unless he bought a home in which they would both live. Mr Clark's response to that suggestion was that Mrs Clark had indeed given him an ultimatum about their relationship. It was that unless they married, she would end the relationship. It came some time after he purchased the flat. They became engaged in December 2004. Mr Clark thought that Mrs Clark moved into the flat in June 2004, 6 months before they became engaged. Mrs Clark's own evidence was that she did not move in until December 2004, but that she assisted in furnishing the flat. Before she moved in she had her own accommodation, but "stayed [at the flat] a lot".

[45] I am satisfied that the flat in question was acquired before the marriage, and that it was not acquired for use by the parties as a family home. At the time it was acquired the parties were in a relationship, but were not living together. Mr Clark initially lived in it alone, and Mrs Clark moved in only at a later stage. I accepted Mr Clark's account of the circumstances in which the parties came to be engaged. The flat was purchased before

parties had agreed to be married. That does not, of course, preclude its having been purchased to be a family home. I did not accept Mrs Clark's evidence that the flat was purchased in response to an ultimatum from her. I accepted Mr Clark's evidence that he bought the flat to reside in himself, and not with a view to Mrs Clark's living there, and that he did live there alone initially. I am satisfied that it was not purchased to be a family home. Had I considered that the flat was matrimonial property, I would have accepted the valuation provided by Mr Denholm (£320,000).

Mr Clark's C Class shares in ACAL

[46] Mr Clark's evidence was that he received 250 C shares in 1989. That was vouched by 6/21 of process, which is a share certificate numbered 6. The holder is Mr Clark's mother as his *curatrix*. It bears to have been exchanged for certificate number 25. It is dated 8 August 1989. He then received 24,750 shares as a result of a rights issue on 15 December 1994. At the same time share certificate number 6 was exchanged for share certificate number 25. An extract from the register of ACAL records those holdings. It shows a number of changes of address, beside which appeared a handwritten date, 2 February 2010. His position was that he had received no further shares since 1994.

[47] Mr Alan Barr who is a solicitor and a partner in Brodies, and Mr James Millar, who is also a solicitor, and who has provided legal services to ACAL since the late 1990s, were both asked about the significance of the date. Both speculated, because of the position of the date on the document, that it was the date when a change of address was noted. Both confirmed that it was not a date on which Mr Clark acquired any shares in ACAL. Mr Millar gave evidence that Mr Clark still held 25,000 C Class shares, and had not acquired any more since 1994. He did not hold any other shares as an individual. The C Class shares were held

by the ten children of Sir Arnold Clark. One son predeceased Sir Arnold. ACAL purchased back some of that son's shares to enable his estate to meet IHT liabilities, and Lady Clark acquired the balance to provide cash to the estate for the benefit of the daughter of the deceased. Those were the only changes in the ownership of C Class shares that had occurred since 1994.

[48] I am satisfied on the basis of the evidence set out above that the C Class shares in ACAL were all acquired before marriage and that they are not matrimonial property.

Ownership of ACAL; related trusts; restructuring of companies related to ACAL

[49] Mr Clark led evidence about a restructuring exercise relative to the ownership of ACAL, and about trusts related to the company, in response to issues raised in Mrs Clark's pleadings regarding those matters. Mrs Clark averred that the restructuring took place in 2021. She submitted that it had been undertaken with a view to protecting Mr Clark's financial interests in the event of divorce.

[50] Mr Barr gave evidence about these matters. As I have already noted, he is a solicitor. He advises Mr Clark personally, and also other members of the Clark family. He advises ACAL in relation to some commercial matters. He is a trustee of the JAC Trust and the 1989 Inter Vivos Trust, to which he referred in his evidence.

[51] He described the ownership of ACAL for many years before 2019. The trustees of what is now called the JAC Trust (formerly the John Arnold Gollan Clark Discretionary Trust, and sometimes referred to as the A Class Trust) held 400,200 A shares. The trustees of the Sir Arnold Clark 1989 Inter Vivos Trust (or B Class Trust) owned 349,169 B shares. The beneficiaries of both trusts are the surviving spouse and nine surviving adult children of Sir Arnold Clark. There are 249,800 C shares owned by Lady Clark and Sir Arnold's

nine adult children. Each of the children has 25,000 shares. All the shares derived from transfers by Sir Arnold. The shares in the A Class trust were transferred to it in 2010 and the shares in the B Class Trust were transferred to it in 1989.

[52] The A Class Trust is fully discretionary and the class of possible beneficiaries is nine of Sir Arnold's children, their descendants, and Lady Clark. No spouses of Sir Arnold's descendants are included in the class of beneficiaries.

[53] A restructuring exercise took place in 2018 and 2019. It affected only the A shares owned by the A Class Trust. An investment company, JAGC Holdings (JAGC) was established. One hundred per cent of its share capital was issued to the A Class Trust. The A shares were reclassified into two categories, one with full voting and capital rights (A1), and the other without (A2). Both categories had a right to dividends. JAGC acquired all the A2 shares in exchange for the issue of shares in JAGC to the A Class Trust.

[54] Before the restructuring, the trust held shares only in ACAL. After it, it owned 150,200 A1 shares in ACAL, and also one hundred per cent of JAGC, which owned the A2 shares. The main aim of restructuring was to allow for diversification of the assets of the trust. There had been a concern that it was undesirable to concentrate the assets of the trust in a single industry, namely the motor trade; risk should be spread across other types of assets. It enabled investment in a broader range of assets which could be funded by ACAL dividends declared on each class of shares. Mr Barr detailed certain tax advantages associated with the arrangement. The arrangement maintained the protections already in place from attacks on assets which could arise on personal ownership but not in relation to assets held in trust. Those included protection from legal rights claims, individual insolvencies and matrimonial claims. Mr Clark had never been entitled to A shares as an

individual. It was not and could not be the aim of restructuring to protect his personal interest in the company on divorce. The restructuring provided no additional protection.

[55] Since restructuring the vast majority of dividends had been retained by JAGC for investment. It paid a total dividend of £700,000 to some beneficiaries of the JAC/A Class Trust in July 2020. Mr Clark received a share. Mr Clark had no entitlement to dividends.

[56] The trustees of the JAC/A Class Trust are Lady Clark, Mr Millar, Mr Barr and Mr Clark. The trust is, as noted above, discretionary. Mr Clark is entitled to be considered along with all other beneficiaries when distributions of income and capital are being considered. He is not entitled to demand payments. Mr Barr is also a trustee of the 1989 Inter Vivos Trust. The life interest trust is held in equal funds for the benefit of the children of Sir Arnold. No income has ever arisen to or been paid from the trust fund. On the death of Lady Clark the fund is to be paid in equal shares to each of the surviving life renters. Mr Clark has an expectation of receiving a share of the fund if he survives his mother. No interest has vested in Mr Clark. The trust deed precludes the assignment of the interest of any beneficiary.

[57] Mr James Millar, who is a solicitor and a part-time consultant with ACAL, gave evidence about the earlier history of ACAL and associated matters. He had worked with the late Sir Arnold Clark and the company since the late 1990s. He was the principal solicitor involved at the time when the JAC/A Class trust was set up in October 2010. Before then it was Sir Arnold who owned the A shares personally. Those were transferred to the trust. Mr Millar said that Sir Arnold wanted the company to remain a family company, and that it not be taken over. Mr Millar worked with Mr Barr in the lead up to the restructuring that took place in 2018/9. His evidence was that the restructuring was to transfer part of the value of the business into a separate investment vehicle so that the family was no longer

dependent only on the motor trade. His evidence about the nature and timing of the restructuring exercise was entirely consistent with that of Mr Barr.

[58] Cross-examined by Mrs Clark he confirmed that in the course of restructuring one relevant consideration was the desirability of using a trust to protect family assets in the event of the bankruptcy, death or divorce of an individual. The restructuring was finalised at the end of 2018 and start of 2019.

[59] I accept the evidence of Mr Barr and Mr Millar as credible and reliable. There was no evidence that contradicted their evidence about these matters. I am satisfied that the restructuring exercise took place in 2018/9, and not in 2021 as averred by Mrs Clark. I am also satisfied that nothing in the restructuring exercise meant that any item previously personally owned by Mr Clark was removed from his personal ownership.

Proceeds of sale of 87 Hyndland Road

[60] Mrs Clark accepted in cross-examination that Mr Clark applied part of the proceeds of sale of 87 Hyndland Road to the purchase of the property at Ledcameroch Road. It was common ground that 87 Hyndland Road was not matrimonial property. For the sake of clarity, I set out briefly the evidence that demonstrates that Mr Clark did indeed apply part of the proceeds of sale of 87 Hyndland Road in that way.

[61] Mr Clark acquired the property in 1993, and that is vouched by 6/38, which is the disposition in his favour. He sold it in June 2013 for £430,000, again vouched by the relevant disposition (6/39). He received free proceeds of £427,930.39, and has produced a bank statement showing the payment in. He closed that bank account in December 2013, and the only other payments in of substance between June and December obviously relate to his work (wages, expenses, and a dividend). The final withdrawal that closed the account

was £323,829.90, which was transferred to Handelsbanken account 5776. Mr Clark moved the money to a savings account from which it was taken in 2015, as vouched in numbers 6/42 and 6/43 of process. There is a payment out of the savings account in February 2015 in the sum of £176,497.51, back to the Handelsbanken account. In the following days payments are made from that account to Giusti Martin, solicitors. The state for settlement of the purchase of Ledcameroch Road from Giusti Martin discloses that Mr Clark provided £191,756.03 to fund the costs of purchase which were not met by the sale price of the previous matrimonial home and the mortgage from Handelsbanken.

Mrs Clark's case under section 9(1)(b)(c)(d) and (e)

Mr Clark's evidence

[62] Mr Clark studied town and country planning as an undergraduate, and then achieved a master's degree in marketing. He began working with ACAL in 1996, when he was 23 years old, doing service and parts jobs. In the late 1990s he ran a dealership in Helensburgh. In the early 2000s he was moved to a large dealership at Crow Road in Glasgow. At that time he earned £60,000 to £70,000 annually including bonuses. He worked long hours, and sales tended to be made at weekends. He was appointed to the operational board in 2012, but became a director on 22 January 2016. In 2023 he was appointed group franchise director.

[63] He met Mrs Clark in 1999 or 2000. She was self-employed, and worked part-time from a small office in Glasgow where she had a sewing machine and facilities for screen printing. She made cushions and bedspreads, having studied fine arts and textiles at Glasgow School of Art. Her work was featured in Vogue, and she supplied goods to a shop in Sauchiehall Street, and to the prestigious Dublin store Brown Thomas, but her business

was not particularly profitable and she was not particularly committed to it. Shortly before the parties married, Mrs Clark became employed as a sales person with a company that dealt in office furnishings. She worked there for a number of years but did not enjoy the job and left. She worked doing interior design for a period on a self-employed basis, and for a time with a friend called Jo Mickel. She did not earn much from this work. She retained her own earnings, and probably spent some of it on holidays for the parties, but did not put money aside for tax, and Mr Clark met her tax bills.

[64] There was a period when Mr Clark had a sustained period of ill health and had extended time off work, although he was paid in full throughout. He did not identify precisely when that was. It fell within the time the parties lived in Drymen, which was between 2009 and 2015.

[65] After the parties moved to the Ledcameroch Road property in 2015, Mrs Clark had access to two credit cards, one with a limit of £8,000 per month and the other with a limit of £12,000 per month. Mr Clark paid off the balances in full every month. The parties sometimes had disagreements if Mrs Clark exceeded the limits before Mr Clark had paid off the balance. According to Mr Clark, that situation was one in which Mrs Clark accused him of controlling her. Towards the end of their marriage their respective attitudes to money came to differ markedly, with Mr Clark wishing to save, and Mrs Clark wishing to spend money, particularly on renovating the property at Ledcameroch Road. She would have preferred Mr Clark to spend more on holidays, and to use private air travel, which he did not want to do.

[66] From 2009 until their youngest child went to school, the parties had a live-in au pair. They had a cleaner and various babysitters who assisted with school collection and drop offs.

[67] Only towards the end of the marriage had the parties had a joint bank account, at Mrs Clark's insistence. Mr Clark had paid the bills and managed the finances. That had been in accordance with Mrs Clark's wishes.

[68] Mr Clark's intention was to pay £1,000 per month to Mrs Clark voluntarily in respect of the maintenance of each child until the child in question was aged 18. He would continue to pay school fees and associated expenses and would support each child through university. He was willing to have the children with him for fifty per cent of the time. Since about March 2022 he had been paying Mrs Clark a total of £8,500 per month. He had also paid all expenses associated with the property at Ledcameroch Road. His total outgoings in respect of the family, the property and the children's education were about £24,596 each month.

Mr Hawthorne, Mr McLean, Mr Willies

[69] Mr Clark called Mr Hawthorne, Mr McLean and Mr Willies to speak to his role in the business. That was with a view to answering Mrs Clark's case on record that the value of his shareholding had increased during the marriage as a result of his economic activity during the marriage, which she had enabled and facilitated at the expense of her own economic interests.

[70] Mrs Clark had not confirmed that she would agree the evidence of any of the witnesses on whose evidence the pursuer proposed to rely. When senior counsel called Mr Hawthorne as a witness, however, Mrs Clark indicated that she did not wish to cross-examine him. I asked whether that meant that she accepted as correct the evidence in his affidavit, and that I should accept his evidence. She confirmed that that was the position. That was also her position in relation to Mr McLean. Accordingly, neither gave

oral evidence. Mrs Clark indicated that she did not take the same position in relation to Mr Willies, and required that he be made available for cross-examination.

[71] Mr Edward Hawthorne, known as Eddie, is the group CEO of ACAL. He is an accountant, and formerly worked as an auditor with Ernst and Young. He was appointed as financial controller in Arnold Clark Finance in 1990 but shortly afterwards began working with Sir Arnold in a group role. At the time ACAL was overtrading and had a cash flow problem. The company's overdraft facility was exhausted because of slow payment from public sector customers. Mr Hawthorne worked with Sir Arnold to change the company's accounting models. Mr McLean joined about a year after Mr Hawthorne did, also from Ernst and Young. The ethos of the business was that the company must always have sufficient cash to fund its growth, and it would not undertake activities where funds were not readily available from "cash in the bank".

[72] From about 2006 to 2013 Sir Arnold was CEO and chairman. Mr Hawthorne was managing director. Hugh Wallace was managing director of Arnold Clark Finance, Scott Willies was Group Sales Director, and Mr McLean was group finance director. In 2012 or 2013 they decided to create a further tier of management, in the form of an operational board. The operational board was responsible for day to day aspects of the business and had no directorial responsibility. The board of directors decided on strategy. The aim of the operational board was to assist the board of directors and to develop talent with a view to their becoming directors in the future. Mr Clark joined the operational board, representing, along with a Mr Borrie, the sales department. In 2016 he joined the board as a company director.

[73] Mr Hawthorne's evidence was that the growth in the business derived from its geographical range. He said that he, Sir Arnold, Hugh Wallace, Mr McLean and Mr Willes

decided that the business needed to grow in order to have significant influence with manufacturers, and in order to achieve economies of scale. They pursued that aim for the following 20 years. Growth was funded from distributable reserves, and had been reinvested to fund expansion. Two particularly significant acquisitions were made in 2005 and 2012. Mr Hawthorne's evidence was that by 2017 the company had a net asset value of £938 million, annual turnover of £4 billion and an annual profit of £117 million. The figures in 1998 were respectively £79.3 million, £702 million and £15.7 million. Mr Clark, other than in his role as a branch manager, had no part to play in the growth of the company. He had no strategic input until he became a member of the main board in 2016. He now had direct responsibility for property acquisitions, auctions, car buying, manufacturer relations and estates. There had been a period when Mr Clark had been unwell, during which other directors covered his duties.

[74] Mr McLean and Mr Hawthorne were the "driving force" behind the declaration of dividends. They required to persuade Sir Arnold that dividends should be issued, and that that was not inconsistent with the notion that growth should be funded from profits. They also introduced the car shareholder scheme, which provided cars for shareholders even if they did not work in the business. They had been about to pay a dividend in March 2020, but did not do so because of the Covid pandemic. The directors took no money for 6 months and no dividends were paid. The business did well in 2021 and made between £250 and £260 million in profit. The profit in 2022 was £173 million. Mr Clark had no influence on the decisions to declare dividends, although as board member he had to approve them.

[75] Mr Kenneth McLean joined ACAL in 1991. He became finance director in 1998 when he was appointed to the board. His evidence was generally consistent with that of

Mr Hawthorne. The approach of the business to borrowing was very conservative. With regard to family involvement in the business, his evidence was that family members were given jobs in the company commensurate with their abilities. Mr Clark was appointed as manager at a branch in Crow Road in 2005, having previously worked in service departments. Mr Clark and his brother, Adam, were treated like management trainees. They attended board meetings as observers from about 2011. By then Mr Clark was a franchise manager. Mr McLean described Mr Clark as “a capable guy”, but said that it would be nonsense to suggest that the growth in the business was attributable mainly to him or his efforts. Mr Clark had been a part of the group making strategic decisions since 2016. The size and scale of the company meant that it was not the “plaything” of any individual. The business was akin to a small plc and had to meet onerous reporting requirements.

[76] It was Mr Hawthorne who had advocated, with Mr McLean’s support, for C Class shareholders to be paid dividends. Sir Arnold and Lady Clark had not wished their children to have access to a great deal of money, and could not understand why they would need or want it. So far as the transfer of Sir Arnold’s shares to the A Class Trust is concerned, Mr McLean had been concerned about risk in relation to IHT on Sir Arnold’s death, and in particular with the risk that business property relief might be reduced or abolished, and he regarded that as a significant factor in persuading Sir Arnold to seek advice about transferring his shareholding.

[77] Although no dividend had been paid in 2020, a double dividend had been paid in 2021.

[78] Mr Scott Willies joined ACAL in 1981. He was appointed to the board in 1998 at the same time as Mr Hawthorne. His evidence was generally consistent with that of

Mr Hawthorne and Mr McLean as to the organisation of the business, Mr Clark's roles in it over the years and Sir Arnold's concern that growth should not be funded from borrowing. He emphasised that for many years Sir Arnold took important strategic decisions personally.

[79] The portions of his evidence which Mrs Clark challenged related principally to descriptions that he gave of her behaviour. Those matters are not relevant to the disputed matters I have to resolve, and I do not record them in detail. She asked questions about precisely when Mr Willies stepped down from the board. He indicated that he had stepped down from his role as a senior sales director in 2020, but that Mr Hawthorne had asked him and Mr McLean to stay on for 3 days a week, initially until the end of 2020, because they anticipated that Covid would be at an end by then. In the event he ceased to be a board member only in 2022. He confirmed that he was not involved in the restructuring exercise about which Mr Barr and Mr Millar had given evidence.

Mrs Clark's evidence

[80] Mrs Clark did not produce a detailed affidavit or unsworn statement setting out her evidence in detail about matters that might be relevant to financial provision. She gave evidence orally. I encouraged her to reflect in particular on the content of answer 5 in her defences (which contained the averments potentially relevant to financial provision), and to consider what evidence she might wish to give about the matters set out there.

[81] So far as her own career was concerned, she said that she had at one point been engaged in a concern that had exported products to the United States, but which had failed financially. Her evidence was consistent with that of Mr Clark in relation to her work as an employee for a company dealing with office interiors. She said that she had not liked

“working for a boss”, and had otherwise been self-employed. She said she had worked at times during the marriage. The most recent occasion she described working in self-employment was after the birth of the parties’ youngest child (who was born in late 2010). She had made £4,000 in a 2 week period working for a client in Australia. There was no vouching of what her income from employment or self-employment had been at any stage.

[82] Mrs Clark said that she would have to work in the future. She might move to Edinburgh and develop property. At one point in her evidence she suggested that she might keep the house at Ledcameroch Road and use it as a studio, although she came firmly to express the view that it would be impractical for her to do so, and that she would purchase a property of her own. She would need a home for her sons. Referred to schedules of particulars for a number of Glasgow properties, (6/162-168) with prices ranging from £634,996 to £850,000, she said that she would not wish to live in any of them, but that they were properties of a suitable type for herself and her sons. Each was a substantial property with four or five bedrooms. The lowest and highest priced properties were both new build properties with a fixed asking price. One of the other properties, priced at £675,000 was also being sold at a fixed price.

[83] Mrs Clark said that before the parties separated she was receiving £10,000 per month from Mr Clark. She was currently receiving £8,500 each month from Mr Clark. She estimated her grocery bill at £1,000 per week. That was unvouched, and there was no vouching of any other regular outgoings. She estimated the cost of her clothing at £2,000 per month. She would need to pay for a car, with the associated costs of fuel, road tax and insurance. She asserted that the car she was currently driving (the Alfa Romeo already referred to) cost £80,000. Mrs Clark reiterated her preference for self-employment, saying

that getting a job on an employed basis was something that other people did. At the time of the proof she did not have any developed business plan so far as self-employment was concerned. She would wish to have a lump sum of money with which to set herself up in business. Mrs Clark was worried that Mr Clark would provide for their sons in such a way that she would be unable to keep up with them and participate in their lifestyle in the future. She did not provide any evidence as to the level of financial provision which she expected he might make for them.

[84] Cross-examined by Ms Malcolm she accepted that her two elder sons were at boarding school Monday to Friday, and that her youngest son was in senior school at an independent day school. Mrs Clark welcomed in principle the notion that Mr Clark would share care of their sons equally with her, but was concerned that some aspects of his working life might make that difficult. She agreed that there was no need for the court to regulate arrangements for their care. She accepted that since separation Mr Clark had paid her £8,500 per month as a combination of aliment for herself and financial support for the children, and that she had not at any time enrolled a motion to seek more aliment, although she said she had explored the matter with solicitors and decided that an application would be too expensive to pursue. She compared that provision unfavourably with what he had provided for her each month before separation, which she described as, “£10,000 in my hand, on top of a car and credit cards”.

[85] Senior counsel put to Mrs Clark that she had worked only on Tuesdays and Thursdays when she was self-employed at the start of the parties’ relationship. She did not respond directly, but said she worked the hours that she had to. Mrs Clark accepted that during the marriage the parties had an au pair between 2009 and 2015, and that she had also had the assistance of a cleaner and babysitters. She said that Mr Clark “paid for a

little bit of help”, but that she did “everything and worked too”. Senior counsel suggested that with that level of paid help, there had been nothing to stop Mrs Clark from working in employment or self-employment if she had chosen to do so. Mrs Clark responded that she had worked during the marriage, and referred again to the project from which she had made £4,000 in 2 weeks, and said she had “[done] multiple during the marriage”. I took that to mean that she had engaged in other, similar, projects at times. She explained that the au pair provided some assistance at relatively little cost, and received pocket money rather than pay.

[86] Mrs Clark maintained that she had renovated the various homes in which she and Mr Clark lived during the marriage so that their values had increased. She accepted that the tradespeople who worked on the properties were paid by Mr Clark using his pay, bonuses and dividends from ACAL, and that the work she did was recovered when each property was sold. Mrs Clark suggested that her efforts had increased the value of the property at Ledcameroch Road by about £500,000. She accepted that Mr Clark had expended money on work there, but not that it was as much as £500,000. She accepted generally that Mr Clark had used his salary, bonus and dividends to fund savings, family expenditure, and the costs of private education for the parties’ children.

[87] In relation to the standard of living enjoyed by the parties during the marriage, Mrs Clark’s evidence was to some extent internally inconsistent. Senior counsel suggested to her that they had had a comfortable but not extravagant standard of living. Mrs Clark initially disagreed and said that she had “been in a private jet”, and had five holidays a year, with a single holiday costing £20,000. She also, however, accepted that she had at times been unhappy that Mr Clark would not spend enough money. She accepted that there had been a dispute between them as to whether he should buy for her a watch costing £30,000.

She accepted also that Mr Clark did not wish to use private jets, although some other members of his family did so, and that he preferred to use scheduled flights for holidays. Both in relation to the watch and the flights she described him as “very tight with his money”. She said that he kept telling her how much things cost, and that “he controlled everything”.

Advances of capital

[88] Mr Clark made advances of capital to Mrs Clark totalling £200,000 to account of her entitlement to financial provision on divorce. That is vouched by 6/158 and 159 of process, which are the executions in counterpart by the parties of the minute of agreement dealing with those advances. Mrs Clark acknowledged in cross-examination that she had received the advances by way of payment to two different firms of solicitors. She said that £103,000 of the £200,000 had been spent on legal fees. She suggested both (a) that she had questioned her solicitor about the terms of the minute of agreement and (b) that she had not had legal representation at the time that she executed the minute of agreement dealing with the advance of capital. Mrs Clark’s signature was witnessed by a solicitor, Ciara Wilson, who is employed by Turcan Connell. The obvious inference from that is that Mrs Clark was instructing that firm at the time. The minute of agreement contains an acknowledgement that the parties have separately obtained legal advice about it.

Credibility and reliability of witnesses

[89] I have already indicated that I have reservations about the credibility and reliability of Mr Clark’s evidence about the Brewin Dolphin letter, and about the reliability of part of

Mr Moore's evidence about it. Otherwise I accepted Mr Clark's evidence, and that of the witnesses he led, as credible and reliable.

[90] A number of factors made me cautious about accepting Mrs Clark's evidence as reliable where it was not supported by other evidence in the case. The following are some examples of matters that informed my view that arose in the course of her evidence and her conduct of the case.

- (i) The passage of evidence to which I refer at paragraph 88.
- (ii) The inconsistencies to which I refer in paragraph 87.
- (iii) Senior counsel put a state for settlement from Giusti Martin, solicitors, to Mrs Clark in the course of cross-examination. It bore to relate to the purchase of the property at Ledcameroch Road, and the context was Mr Clark's argument that some of the funds from the sale of 87 Hyndland Road, which was not matrimonial property, had been used to fund the purchase. Mrs Clark sought to argue with senior counsel about a number of matters that the document bore to record, rather than answering the questions she was asked. These matters included the name of the firm in question.
- (iv) Even making allowances for the fact that Mrs Clark did not have legal representation, it became clear that it was at times difficult to rely on representations that she made to the court. Some time was taken on Thursday 11 January 2024 because Mrs Clark appeared to be indicating that she wished to amend her case, but was having difficulty sending documents to the clerk of court. It was unclear whether she meant that she wished to amend, or to submit some additional documents. She said that she did not have the documents in hard copy, and only in electronic format. I explained

to her, to try to avoid any risk of confusion arising from the use of technical language, that amendment meant changing her defences by deleting and/or inserting words in them. She said that she did not intend to make any changes of that sort to her defences. Later on the same day, it became clear that contrary to what she had said earlier, she did have hard copies of documents she wished to submit. The following day she submitted an electronic copy of the record bearing some proposed amendments, and claimed that it was the document she had tried to submit to the clerk the previous day. She acknowledged that she had said that she had no intention of trying to change the terms of her defences, and said that she had made a mistake when she said that.

Disclosure of assets

[91] Mrs Clark asserted on a number of occasions that Mr Clark had not disclosed his assets fully. There is nothing in the evidence to suggest that he has not disclosed his assets. So far as heritable property is concerned, Mr Clark confirmed in his affidavit that he owned none other than the properties in the table and the flat at 105 Hyndland Road. His affidavit refers to numbers 6/59 to 6/92 of process which show the results of searches of the Land Register for any titles associated with his name in each county. They disclose no properties other than those already mentioned. In cross-examination Mrs Clark accepted that Mr Clark owned no heritable property other than that already mentioned. I have already set out my findings as to the incorrect and misleading entries in the Brewin Dolphin letter. I am satisfied that Mr Clark has disclosed his shareholding in ACAL and the nature of his interest in the trusts which are related to ACAL.

Summary of submissions – sharing of matrimonial property

Pursuer

[92] Mr Clark asked me to depart from equal sharing, by reference to section 10(6), in relation to the funds deriving from the sale of 87 Hyndland Road, and in relation to pre-marriage pension contributions. Senior counsel suggested that I should take account of those matters by deducting £264,688.48 from the net matrimonial property for distribution, while recognising that the question was one for the discretion of the court. The occurrence of an event specified in section 10(6)(a) to (e) would not necessarily amount to special circumstances. The mere existence of special circumstances would not necessarily justify a departure from equal sharing: *Jacques v Jacques* 1997 SC (HL) 20.

[93] Mrs Clark had retained an ISA in her own name, and some bank balances. She had also received advances of capital that would have to be taken into account in determining what capital payment ought to be made.

[94] Mr Clark did not dispute that his career, income and earning capacity had increased during the marriage. He had used his remuneration to fund the acquisition of the matrimonial property and to fund the lifestyle of the parties and their children. The parties would have accumulated more if Mrs Clark had also been earning. There had been nothing to stop her working during the marriage, and childcare had been in place. Her own evidence was that she had done some paid work during the marriage. Her career before marriage had never delivered a significant income. If she had suffered an economic disadvantage through giving up work that was balanced by her sharing in the wealth accumulated through Mr Clark's income from employment and dividends that he received from shares which were not themselves matrimonial property. The work that Mrs Clark

might have done to add value to family homes was reflected in their values on sale, culminating in the purchase of Ledcameroch Road, in the value of which she would share.

[95] There was no evidence as to the extent to which Mr Clark's shares might have increased during the marriage. Even if there had been such evidence, it was not the case that any increase could properly be attributed to the efforts of Mr Clark, supported by Mrs Clark. The unchallenged evidence of Mr Hawthorn, Mr McLean and Mr Willies was that ACAL was a sizeable concern and no one individual was responsible for its growth during the marriage. Mr Clark's late father and those witnesses were responsible for the business decisions that caused the concern to grow. The situation was quite different from one where a company was owned and operated by an individual who was a party to the marriage.

[96] There was no need for Mrs Clark to engage childcare for any of the children to enable her to work. Two of them were at boarding school Monday to Friday. Mr Clark paid all school fees and associated costs, and would continue to do so. He wished to share school holidays equally. He wished to spend more time with the youngest child during the working week. The burden of care would not fall unequally on Mrs Clark. Mr Clark would continue to pay Mrs Clark £1,000 each month for each child until the child turned 18.

[97] In relation to periodical allowance, Mr Clark's primary position was that none was required. Even if all of his arguments for unequal division succeeded, she would receive a sum in excess of £1 million. After the purchase of a home for a sum in the region of £700,000 she would still have significant capital to use while establishing herself in business. He proposed to continue to pay £5,500 plus £3,000 child maintenance until payment of a capital sum. Alternatively, if the court were minded to make an award of periodical allowance it should be for a restricted period only. Mrs Clark had been receiving £8,500 per month since

early 2022 and had done nothing to put herself in a position to start work. The purpose of an award of periodical allowance was to allow for a period of adjustment, rather than to ensure that Mrs Clark could maintain the standard of living that she enjoyed while married: *G v G* 2016 Fam LR 30, paragraph 137.

[98] Mr Clark raised no issue as to his resources. Senior counsel submitted that he had been accumulating capital in anticipation of the need to meet Mrs Clark's claim for financial provision. He did not immediately have the funds to make a payment of the order that would be required. He would need time to organise additional funds through borrowing. That could be co-ordinated with the period within which Mrs Clark would require to vacate the former matrimonial home.

Defender

[99] Mrs Clark accepted that Mr Clark had used funds deriving from 87 Hyndland Road towards the purchase of the property at Ledcameroch Road, and that the evidence of Ms Terras regarding the respectively pre- and post-marriage contributions to the CETV of the Legal and General Pension was correct. She asked me, however, not to depart in Mr Clark's favour from equal sharing by reference to those matters. She remained apprehensive that Mr Clark had not disclosed his assets, and submitted that Mr Moore's evidence had not resolved that matter.

[100] In submissions Mrs Clark emphasised that she would need a home in which she and all three of the parties' children could reside. She could not acquire a home without a capital sum to enable her to do so. She did not identify a particular capital sum that I should award, or provide any detailed analysis of the evidence that would support an order at any

particular level, but pointed to the terms of her conclusion for a capital payment in the sum of £5 million.

[101] I should take into account that she had been out of the labour market for a period and would now need to find work, while Mr Clark's career had developed over the years. She also reiterated the position advanced in her evidence that she had worked during the marriage.

[102] She accepted that she had not vouched a need for a monthly payment of £20,000, but indicated that she wished to ensure that she had asked for a sum that would be sufficient to meet her needs. She would need a period to adjust to her changed circumstances.

Mrs Clark asked me to take into account the lifestyle she had enjoyed during the marriage. She was concerned that Mr Clark would provide for their sons in a way that would mean that she could not keep up with them financially and could come to be excluded from their lives in the future.

Decision

[103] Mrs Clark did not ask me to make the orders sought in her conclusions for transfer to her of the Ledcameroch Road property and an ancillary order requiring Mr Clark to pay off the mortgage. The total value of those orders would have been £2,654,970. That is without accounting for the funds that Mrs Clark retained, and the advances of capital already made to her. It would not have been possible to justify making those orders by reference to the principles in the 1985 Act. I am not satisfied that Mrs Clark would have been able to meet the ongoing costs associated with the property if I had made an order of that sort in her favour. It would not have been a practicable arrangement.

[104] As senior counsel acknowledged, the division of matrimonial property is a matter for the discretion of the court and is aimed at achieving a fair and practicable result: *Little v Little* 1990 SLT 785, at pages 786L to 787D. It is for the court to determine whether an event specified in section 10(6) amounts to special circumstances, and whether it justified unequal division: *Jacques*. In general, the wealth acquired by the parties or generated by their activity and efforts during the course of their life together is, in the absence of special circumstances, to be shared equally. They should share equally the fruits of their economic efforts during the marriage: *Whittome v Whittome* 1994 SLT 114; *Robertson v Robertson* 2000 Fam LR 43. In order to satisfy the principle in section 9(1)(b) it must be established that there has been an identifiable economic advantage which derives from an identifiable contribution by the other spouse, and it must appear fair to the court to take account of it: *Coyle v Coyle* 2004 Fam LR 2.

Factors relevant to the sharing of property and orders for financial provision

[105] I have taken into account the following matters in applying the principles in the 1985 Act.

Section 10(1) and (6) – special circumstances

[106] The sums identified by counsel as potentially relevant to unequal sharing by reference to section 10(6) represent a relatively small proportion of the net matrimonial property. Even in cases where the value of matrimonial property, or a particular matrimonial asset, has derived very substantially from non-matrimonial property, the approach of the courts has not tended to be simply to make an arithmetical deduction, but rather to take account of the matter in balancing a variety of relevant factors in seeking to

achieve a fair division of matrimonial property: see, for example *Robertson v Robertson* 2000 Fam LR 43; *JA v WA* 2018 SCLR 157, and authorities referred to therein. Mr and Mrs Clark's marriage is not a short one. By the relevant date they had been married for more than 16 years.

Section 9(1)(b)

[107] Mrs Clark's case on record was that she had given up work to look after the children. Her evidence was that she had been engaged in "multiple" projects during the marriage. I accept Mr Clark's evidence as broadly reliable. Mrs Clark has talent, training and experience in the field of interior design. She has worked in the past in that area both in employment and in self-employment, though predominantly the latter. She has no very recent track record of sustained employment or self-employment, although at times during the marriage, most recently probably in about 2011, she has undertaken self-employed projects from which she has made some money. Mr Clark's evidence was that Mrs Clark had made sufficient profit, at least at some times during the marriage, to require him to assist her in meeting a tax liability. There is no evidence as to the actual extent of her earnings from employment or self-employment, or that she gave up a career from which she would have been likely to make a lot of money. This is not a case in which one party wished the other not to work, or discouraged her from doing so.

[108] I accept that the parties had, at least until their youngest child started school, an au pair and babysitters available to provide some assistance with childcare, and that Mrs Clark probably could have, had she chosen, engaged in more economic activity than she did. That said, however, it is plain from Mr Clark's own evidence that he required to work extended hours in order to pursue his career, and that it was Mrs Clark and not he

who was predominantly available to deal with the parties' childcare responsibilities. Had Mrs Clark engaged in substantial economic activity during the marriage, it is likely that the parties would have had to spend more money than they did on paid childcare, if only to cover matters such as after-school care, in order to enable both her and him to work. If she had engaged in substantial economic activity, it is also likely that the value of the matrimonial property would have been enhanced, at least to some extent, which would have benefitted both parties. I regard the economic advantage derived by Mr Clark from Mrs Clark's availability to carry out the parties' childcare responsibilities as resulting in some economic disadvantage to Mrs Clark. I take the view that Mrs Clark's economic disadvantage is largely, but not entirely balanced by the circumstance that she will share in the matrimonial property derived from Mr Clark's economic activity during the marriage. I take into account that Mr Clark remains employed as he has been throughout the marriage, and earning substantial remuneration, whereas Mrs Clark is not immediately in a position to support herself financially. I have taken that into account in approaching the fair division of matrimonial property.

Section 9(1)(c)

[109] So far as the economic burden of caring for the two children of the marriage who are under the age of 16 is concerned, one of them is at boarding school during the working week. The eldest child, who is aged more than 16, is also at boarding school. The costs of providing him with food during the working week, during school terms, are met by his school fees. Mr Clark pays all the school fees and associated expenses. Both parties were content in principle that they should share equally the care for the children. Mr Clark makes, and I accept his evidence that he will continue to make, payments to Mrs Clark

of £1,000 per month in relation to each of the parties' three children. The payments will continue until the child in question reaches the age of 18. Insofar as the economic burden of caring falls on Mrs Clark, those payments in respect of the children will assist in meeting those. The capital payment which I will order will enable Mrs Clark to purchase a home in which she and the children can live, but that will of course be associated with ongoing costs such as utilities, council tax and insurance. There will be one-off expenses associated with the purchase. Similarly, she will be in a position to purchase a family-sized car, but again, that will be associated with ongoing costs.

[110] There was no evidence to support Mrs Clark's contention that I should take into account any increase in the value of Mr Clark's C shares during the marriage. There was no evidence that any increase in their value was attributable to his efforts during the marriage, as opposed to the strategic decisions taken by others over many years contributing to the growth of ACAL. There was no evidence as to the extent to which they had increased in value during the marriage.

Section 9(1)(d)

[111] Mrs Clark is not currently in a position to earn enough from self-employment to support herself. She is disinclined to seek employment. It would be possible for her to find employment of some sort in the short to medium term. There is nothing in the evidence to suggest that she would be in a position in the short term to obtain employment requiring particular skills, qualifications or recent experience, and her earnings were she to be employed in the near future would probably be very modest. She is now aged 53 years. It is common ground both that she is talented in relation to interior design and has in the past made money in pursuing that, and that she has no recent experience of running a business

on a sustained basis in that or any other field. My impression of Mrs Clark is that she is likely to struggle with the more mundane, but highly necessary, tasks of planning and organisation that are part of running any business. In forming that impression I took into account Mr Clark's evidence to the effect that her self-employment had in the past been of the nature of a lifestyle business. Mrs Clark did not dispute that she had worked limited hours, and gave evidence to the effect that she had worked as much as she had need to. I noted also that Mrs Clark had at times failed to set aside enough money from her earnings to meet her liabilities to HMRC, and had relied on Mr Clark to meet those. I placed some weight on her presentation in giving evidence and conducting these proceedings. She did not display either willingness or aptitude in engaging with the procedures of the court, despite a number of discussions in which I encouraged her to do so. While those procedures are not straightforward for any unrepresented party, many unrepresented parties make substantial, conscientious and successful efforts to work with them in a way that Mrs Clark did not. Mrs Clark has not just been used for many years to the financial support of Mr Clark in the sense of having ready access to funds. A by-product of that is that she has been relieved of the need to operate in situations in which the requirements or expectations or others, or the sorts of strictures imposed by regulatory requirements in a business setting have had any impact on her. I have no doubt that it will take her considerable time to adjust and to establish herself in self-employed work or, possibly, employment.

[112] Mrs Clark said that she had enjoyed a luxurious lifestyle, and that she would require a substantial periodical allowance to enable her to adjust to loss of financial support on divorce. Her evidence was that Mr Clark at times provided her with £10,000 in cash per month, and that she had access to credit cards. That was generally in accordance with Mr Clark's evidence. She said the parties had spent up to £20,000 on a single holiday. She

also described Mr Clark as “very tight with his money”, and said that he exerted control over her by virtue of his decisions about spending. She acknowledged that she had been unhappy because he was unwilling to spend money. She referred to him as “tight” in relation to his decisions to take scheduled flights rather than using private jets, and to decline to buy her a watch that cost £30,000. I entirely accept that financial control and abuse can and do occur in contexts of significant wealth. One party may earn and control funds and unreasonably limit the access of the other party to those funds in order to keep them in a position of subjection, to coerce them into tolerating other forms of abuse, or into behaving in particular ways. The evidence does not support the proposition that that occurred in this case. While I accept that Mrs Clark would have liked Mr Clark to spend more money than he did, Mrs Clark’s own evidence demonstrates that this is not a situation in which Mr Clark sought to control or coerce her to behave in a particular way, by restricting her access to funds, or placing conditions, particularly unreasonable conditions, on her access to funds. Mrs Clark also gave evidence and submitted that the sums paid in relation to aliment since separation were a means by which Mr Clark exercised financial control over her. The provision has in fact been reasonably generous. The total aliment directed to Mrs Clark and to the support of the children while in her care has been £8,500 per month.

Orders for financial provision

[113] The total net value of the matrimonial property is £3,019,582.64. I am not persuaded that I should depart from equal sharing in this case, other than to the limited extent of making an adjustment, on a broad basis, of £88,000 in favour of Mr Clark, which is about one third of the sum that senior counsel identified as deriving other than from the economic

activity of the parties during the marriage in relation to her submission regarding special circumstances. I have taken that approach taking into account the evidence I have already identified as relevant to the section 9(b) and (c) and section 10(1) and (6), and have also considered what is reasonable having regard to the present and foreseeable resources of the parties.

[114] I have deducted £88,000 from the net value of the matrimonial property, which I have thereafter divided equally. That results in an allocation of £1,465,791.32 to each party. Mrs Clark has received £200,000 in advances of capital, and retained £102,230.43. She should therefore receive a capital sum of £1,163,561. She accepted in evidence that properties of the types for which particulars had been produced would be suitable for her and the children. I am satisfied that she will be able to find a suitable property priced in the region of £700,000. After doing that she will have capital of more than £463,000 leaving out of account the sums retained and paid to account. The only evidence that Mrs Clark offered about those latter sums was that she had expended £103,000 of the capital advanced on legal fees.

[115] For the reasons I have already given, I am satisfied that Mrs Clark is not in a position immediately to support her ongoing expenses from employment or self-employment, and that the process of adjustment will take some time. In the first instance there is likely to be a period during which she remains in the former matrimonial home, until she receives a capital sum to permit her to acquire a property of her own. Mr Clark accepted that until a capital sum was paid, Mrs Clark should continue to receive the sum of £5,500 monthly by way of periodical allowance.

[116] Mrs Clark will require a periodical allowance to permit her to adjust to the loss of what has been substantial financial support from Mr Clark, during a marriage of significant length, and both before the relevant date and since. Although she will receive a substantial

sum of capital, I am satisfied that it will not be sufficient to satisfy the requirements of section 8(2): see section 13(2). In the absence of a periodical allowance, Mrs Clark would require to meet ongoing revenue needs from capital. Given the duration and extent of the financial support from which she has benefitted during the marriage, there is a risk that the capital, which will be the only immediate resource available to Mrs Clark, will be depleted if she requires to meet regular expenses from it in the short to medium term.

[117] Mrs Clark did not vouch a need for support greater than the payments she has received since the relevant date. I consider it is appropriate for there to be a staged approach with reducing levels of support over time. I will award periodical allowance of £5,500 per month for a period of 6 months following decree or until payment of the capital sum, if that is more than six months. I will thereafter award £4,000 per month for a further period of 6 months (or the remainder of the first calendar year following divorce, after payment of the capital sum if that period is less than six months), £3,000 per month in the following year, and £2,500 per month in the year after that. I bear in mind that she will have been able to purchase significant assets outright without the ongoing costs of finance that would otherwise give rise to significant monthly outlays.

[118] In the light of these orders for financial provision, I am satisfied that Mrs Clark will not suffer serious financial hardship as a result of divorce: section 9(1)(e).

[119] I will put the case out by order so I can be addressed as to the detail of the orders I will require to make in order to put this arrangement into effect, including the timing of payment of capital, and an order regulating the occupation of the former matrimonial home.