OUTER HOUSE, COURT OF SESSION

[2020] CSOH 63

F96/18

OPINION OF LADY WISE

In the cause

ASA

Pursuer

against

AZD

First Defender

and

UN BANK

Second Defender

Pursuer: Innes QC; BTO Solicitors LLP
First Defender: Party
Second Defender: No appearance

15 April 2020

Introduction

[1] This is an action of divorce at the incidence of the wife pursuer, ("ASA"). Her husband ("AZD") is the first defender. UN Bank has entered the process as a second defender with an interest as secured lender in relation to one of the properties that the pursuer contends should be the subject of a property transfer order in her favour. The second defender did not participate in the proof but it was agreed that the bank would have

an opportunity to make submissions on any proposed transfer of the relevant property before the final order stage.

[2] ASA and AZD were married on 19 September 1994. There are three children of their marriage all of whom are over the age of 16. Accordingly no orders are sought or required in respect of those children, the youngest of whom is approaching the end of her secondary school education and resides with the pursuer. The parties met when the pursuer was a third year medical student and the defender was a second year student of dentistry. They both have Pakistani heritage. Both parties have been educated and resident in the UK for either all or most of their lives, but the religious, cultural and familial backdrop is relevant to some of the issues in dispute in this case, including the date of the parties' separation ("the relevant date") and in relation to certain land owned by AZD in Pakistan. The couple were both brought up in the Muslim faith and continue to follow that religion. Theirs had been a love match of which the pursuer's family did not approve and with which her family sought to interfere. At one point during cross examination the pursuer stated to her husband "I chose to marry you against my brothers and family's advice … I choose to divorce you – my family wanted an easy settlement but I don't". Both parties demonstrated considerable emotion during their evidence and the family influence featured strongly during the evidence.

[3] So far as the merits of the divorce action are concerned, on the basis of the affidavit and oral evidence led I am satisfied that AZD has behaved in such a way that ASA cannot reasonably be expected to cohabit with him. The marriage has broken down irretrievably and there is no prospect of reconciliation. The proof in this matter took seven court days. In addition to affidavits lodged from all witnesses other than experts, most of those who had

sworn affidavits were presented for cross-examination. There were exceptions to that, although none on issues material to my determination. In essence the primary areas of dispute between the parties at proof included the following:

1. The relevant date
2. The value of the matrimonial home
3. The valuation of shareholdings in C D C Limited and the D S Limited
4. The valuation of two flats in Edinburgh
5. The nature and value of the defender's interest in a house in Pakistan and the distribution of the sale proceeds thereof
6. The instigation and consequences of proceedings against the defender in Pakistan
7. Calculation of matrimonial property and the proportions in which it should be divided
8. Resources and the orders to be made to give effect to the determination on division of the matrimonial property.

The legal framework within which the financial provision on divorce dispute operates is that contained in the Family Law (Scotland) Act 1985 ("the 1985 Act"). I will not reproduce it provisions but will refer to those applicable to each issue in the relevant section. I have taken all relevant provisions of the legislation into account in reaching my decision.

[4] During the course of the proceedings the parties entered into two separate joint minutes agreeing the nature and extent of nearly all of the matrimonial property and the value of all of the first defender's properties in Pakistan. That agreement is reflected in the schedule of matrimonial property that appears towards the end of this opinion. I should record that AZD, who represented himself, did so with unfailing courtesy to the court and displayed a reasonably high level of skill in conducting an adversarial process. For her part, senior counsel for the pursuer took considerable steps to adapt her presentation of the case to

take account of AZD's lack of legal representation. In particular, she ensured that he had fair notice of all of the arguments she sought to make and of her detailed submissions. She relied on very few authorities and set out her calculations in detail so that AZD could be very clear of the case he required to meet. I am grateful to all those involved for the flexible approach employed in this challenging case. I will address each of the issues of dispute in turn, summarising some of the material evidence, my decision and reasons in each section.

[5] So far as credibility and reliability are concerned, I have no adverse comment to make about any of the pursuer's lay witnesses and will comment on the reliability of the expert witnesses in the relevant sections. Issues arise in relation to the credibility and reliability of the principal parties. ASA came across generally as an honest and reliable witness, with one or two exceptions in relation to the proceedings against her husband in Pakistan and about her reasons for setting up a trust, both which I deal with in the relevant sections. I had some concerns about AZD's credibility and reliability. He was aware that his conviction on two charges of fraud in 2007 had been raised by his wife in the pleadings in this respect. In his affidavit (at para 27) and oral evidence he acknowledged that conviction (and other less relevant driving offences) saying he wanted the court to have the full picture from which he did not shirk. He had lived with the consequences of his dishonesty conviction having been disqualified from practising dentistry between 2010 and 2019, although from June 2019 onwards his name has been restored to the register, albeit under certain conditions (Decision of the GDC number 7/21 of process). Questions remain about the operation of the business he controlled prior to the relevant date and, as I explain later, he appears to have failed to lodge tax returns in recent years. In evidence he was inconsistent in his account of certain matters, particularly in relation to a house in Pakistan sold by him shortly after the relevant

date. Where their accounts differed I have tended to accept the pursuer's account other than on the one issue mentioned above. However, with the exception of the relevant date, my reservations on credibility and reliability have ultimately had relatively little impact on the decisions I have had to make. My primary task is to determine financial provision on divorce dispute in a way that is fair and in accordance with well-established principles and so I have relied on the issue of credibility only where clear inconsistencies have to be resolved.

The relevant date

[6] Section 10(3)(a) of the 1985 Act provides that the relevant date is the date upon which the parties ceased to cohabit as husband and wife. The issue is one of fact. In *Banks* v *Banks [2005] Fam LR 116,* Lord Carloway (in the Outer House) confirmed (at para 33) that as a generality the court must look at the issue objectively. It is for the court to assess all relevant factors. Further, while there is no absolute requirement for one of the parties to have decided that the marriage has run its course or to communicate that to the other party, the intention of the parties and any communication of them to each other may be relevant factors in the equation. The passage in Banks setting out this approach was cited with approval by the Second Division in *HS* v *FS [2015] SC 513* at para 16.

[7] In her affidavit and oral evidence ASA's position was that the parties finally separated on 12 August 2017. In response to her husband's assertion that the couple separated in June 2016, ASA explained that in 2016 she and AZD went on a pilgrimage to Mecca without the children who stayed behind in Scotland with their maternal grandmother. The marriage having been unhappy for some years before that, the pursuer

regarded 2016-2017 as one of the more peaceful times in her marriage. There were no aggressive incidents in the house and the defender was calmer. The trip to Mecca was in about May or June 2016 and the parties returned after it to the matrimonial home in Glasgow. She disputed that there had been even a period of separation in 2016. She said that the parties and their children had gone on holiday to Dubai and Malaysia in July/August 2016. While in Kuala Lumpur they met friends from Glasgow, NB and SB, who were also there on holiday. On 3 August 2016 the parties visited the main mosque together. When they returned from holiday they attended the wedding of the AZD's niece in Birmingham. Photographs and a video (numbers 6/114 and 6/115 of process) show the parties entering the wedding together doing what the pursuer referred to as "the couples' walk". In September 2016 a university friend of the pursuer stayed with the parties at their home in Glasgow so that he and ASA could attend a university reunion. AZD accompanied ASA to that reunion as her spouse.

[8] The pursuer's position was that over the whole period of the marriage AZD would often "come and go" but she stated that during the period 2016-2017 he was never away for more than a couple of weeks. In April or May 2017 in the period leading up to the older two children's SQA exams he did tell the children that he was going to leave but that was not an uncommon occurrence. By February/March 2017 the pursuer said that AZD was abstaining from everything physical. When she and her husband would perform ablution and ready themselves for prayer the defender would flinch if she accidentally touched his hand. He refused to take any liquid drinks from her but there appeared to be no religious basis for that. Apart from a complaint that when the pursuer's male university friend was staying at the home she had not covered her hair or had worn her head scarf loosely, AZD raised very

few issues during the period 2016-2017. ASA rejected the suggestion that he returned home only for a period to assist with the children's exams. The oldest child had not performed so well in his exams after his fourth year at secondary school and so the pursuer had tutored the children after that. She accepted that her husband had moved to Stourbridge in the West Midlands when the matrimonial home was being renovated in 2017 and that she had told third parties that he had so moved. The pursuer and the children also left the home at that time and stayed at the pursuer's mother home which is very close by. Although the defender took a lease of a property in Stourbridge the pursuer and the children went to see it. The pursuer contacted him while he was there to ask if he wanted to come on the proposed family holiday in 2017, which he said he did. She made clear to him that he should only come if they were going together as a family and he said he understood that. The family then went to Dubai and then to Pakistan on holiday in the summer of 2017. They stayed in the home of one of the pursuer's brothers and his wife. The pursuer was very clear that in Islamic culture a couple who have separated simply do not spend time together and she and AZD could not have stayed under the same roof if they had been separated. Further, during the stay at her brother's house her husband was introduced by the pursuer's family to various other people. She described AZD as being on his best behaviour while there and he had told the pursuer's sister-in-law that everything was going to be fine between the parties. It was when the family then went to Dubai that AZD changed. He gave the pursuer a key for a room for her and the children and did not tell her the number of the room in which he intended to stay. There was an incident involving the parties' daughter when AZD caused some upset to her. Subsequently, when the parties arrived at the airport to fly home the pursuer took her husband's mobile telephone and put it in her bag and so the parties argued.

They sat separately on the way home on the flight. On their return AZD apologised and put the pursuer's ring back on her finger and had photos of them as a couple sent to friends. Then 2 or 3 weeks later he left the family home again. That was on 12 August 2017 and the pursuer regarded it as the final straw. While previously he would always come back after 2 to 3 weeks he did not arrive at the home again until April 2018 and although he returned at that point for a short period there was no proper reconciliation. By that time the pursuer wanted the family to be involved in trying to resolve things as AZD had been away so long that she knew there was no way back for the marriage.

[9] Under cross-examination by her husband on this aspect of the case the pursuer agreed that there had been contact with Family Mediation West of Scotland and a letter from that organisation dated 20 July 2017 (number 7/14 of process) was put to her. It referred to the parties having separated. The pursuer said that she understood what a date of separation was Islamically but was less clear about what it meant in Scots law. AZD put to her that a couple can live under the same roof but be separated. To that she responded that so far as she was concerned he would have to tell her he was separating from her for it to constitute a separation and that it could not be just something that he thought individually. She said that the context of the letter inviting her to attend mediation was that she thought her husband was trying to take the children to Stourbridge and she regarded the offer of mediation as part of a manipulative measure to achieve that. Accordingly she had chosen not to contact mediation. When it was put to her that it was simply incredible that the parties would be still living together as husband and wife and starting a mediation process the pursuer said that she regarded it as all part of a process of separating. She was again adamant that if separated Islamically she would have to have had a chaperone and would not have been able

to travel together with her husband in the summer of 2017. A couple can only come together by way of reconciliation. So in the summer of 2017 she did not regard herself as separated Islamically because her husband had not told her that they were so separated. The physical separation in 2017 was primarily because the family home was being renovated. The pursuer disputed that AZD had moved out of the house in May 2017 after staying there for a few months only for the period of the oldest child's exams.

[10] SB also gave evidence on this matter in the pursuer's case. She is a 41 year old pharmacist and a friend of the pursuer who she has known for about 13 years. Her husband and AZD attended university together. Mrs B knew of some of the difficulties in the parties' marriage including AZD's infidelity. She recalled an occasion in early 2016 when the pursuer had become upset about that. She formed the impression at the time that the couple were working on their marriage and were still very much together. After early 2016 she and her husband went out on several occasions with the parties. In July or August 2016 Mrs B and her family were on holiday in Malaysia for about 2 weeks. ASA, AZD and the children were also there as part of their holiday and the two families spent about a week together. Mrs B did not observe any arguments or difficulties between the parties at that time. The following year Mrs B organised a 50th birthday party for her husband. It took place on 21 May 2017 and she recalled that ASA and AZD had attended as a couple. Shortly after that Mrs B and her husband attended at the parties' home for a meal to break the fast at Ramadan.

[11] Under cross examination Mrs B said that it had never crossed her mind that AZD might have arrived separately from his wife for the 50th birthday party, she had assumed that

they were together. About twenty people had attended and many photographs had been taken, although not of the parties embracing or standing close to each other.

[12] PS, the pursuer's sister in law also gave evidence on this issue. She recalled that the family had stayed with her and her husband in Pakistan in 2017. ASA had shared a room with her husband and they were operating very much as a family with their children. Mrs S knew of the couple's marital difficulties, which ASA had discussed with her. She recalled a conversation she had with AZD on 23 July 2017 when he said to her that he had made a mistake and that he wanted to spend the rest of his life with his wife. AZD put to the witness that she had been present at the parties' home in Glasgow in May 2017 when he was removing a bed, a bicycle and a sofa from the house in a van. Mrs S did recall that he was taking furniture to what she referred to as his "weekend flat" but said that there had been no mention of separation at that time. She knew that AZD had been down in the West Midlands for a while after his father died but thought it was to support his mother, not due to any separation from ASA. When reminded by AZD that his father had died in 2005 and he was asking about 2017 Mrs S repeated that when the family came to Pakistan in 2017 and stayed with her they were very much a couple. She recollected AZD stating to her at that time that he and his wife needed counselling but that their children came first. She did recall organising a driver for AZD to take him from Lahore to Islamabad during that visit and said it was later in the period 23 July-1 August 2017, after there had been a barbecue with family friends and some excursions. Mrs S said that ASA and the children had subsequently joined AZD in Islamabad. She could not recall specifically how many nights AZD stayed in her home but thought it was more than two nights. The children were given a separate room from the parties. When it was put to the witness that the parties were separated but not

divorced before the July 2017 trip Mrs S stated "She would never have travelled to Pakistan with you and share a room with you. Even separated she wouldn't – you know that." In re-examination she explained that she knew that ASA would never have shared a room with her husband had they been separated because she had moral standards. There was also unchallenged Affidavit evidence from AS, the pursuer's nephew, who said that both parties had confirmed to him that they had separated in about August 2017. There was a family meeting in around December 2017 at which AZD had indicated that the parties had recently separated.

[13] In his own evidence AZD stated that he and the pursuer separated in June 2016 when he left the matrimonial home and moved to accommodation in Glasgow in the lower level of premises from which one of his dental practices operated. He accepted that he returned to live in the family home between November 2016 and May 2017 but said that was to assist his son with preparation for examinations. In May 2017 he moved back to Stourbridge in the West Midlands, although when his wife contacted him to request that he join her and the children on a two week holiday in Dubai and Pakistan he agreed to that. AZD claimed that he went on holiday on the condition that his wife respected that they were separated and would remain so.

[14] Under cross examination AZD disputed that life had gone on as normal in the marriage after the trip to Mecca in 2016 although he accepted he may have gone back to the home on occasions prior to November 2016 when he moved back in to support his son. In relation to the family wedding in Birmingham in 2016 he claimed that although he and his wife had attended there had been separate male and female lines and they had not walked as a couple. He agreed that he may have stayed at the family home at the time of his wife's

university reunion, initially stating that both he and the pursuer had attended Glasgow university reunions in September 2016. He accepted that in September 2016 he formed a company (D S (Stirling) Limited) and organised for the pursuer to be the shareholder. He continued to assert that he had moved to the West Midlands in May 2017 and had taken a large van of his belongings and furniture with him. He disputed that he and his wife had attended Mrs B's husband's 50th birthday party as a couple and said they arrived separately. AZD agreed, however, that there had been a few occasions when the B's came over to the family home for a meal with him and ASA, including at Ramadan.

[15] In relation to the holiday in July 2017 AZD denied that he and his wife had shared a bedroom when staying at Mr and Mrs S's house. He claimed that Mr and Mrs S knew at that time that the parties had separated and were likely to divorce. He recalled attending one barbecue and going to a shopping centre in a group during the short period he recalled staying with the S's in Pakistan, but couldn't recall whether he visited the mosque. He agreed that he had taken his wife's passport at the airport in Dubai before the flight home but only because she had taken his phone. When it was put to him that Islamically he and ASA could not have lived under the same roof or spent time together if they were separated he said that in Islamic law it was grounds for divorce if a couple had lived separately for six months, but the act of separation does not negate the nikah (the marriage contract). He then said that there is no concept of separation in Islam. He stated that in any event, as far as he was aware the husband could still act as the wife's chaperone during any period of separation. Further, he said that in Islam a couple could go on holiday together even if separated, although it would not be acceptable for a wife to form a new relationship until after the nikah was dissolved. When pressed on living together after separation but before

the nikah was dissolved AZD said that this was possible if there was a prospect of reconciliation. He didn't dispute that a separated couple could not attend the mosque together but said it was "just a building". He said it was "arguable" that a separated couple could go on holiday together, but that if there were no marital relations they would not share a room.

[16] AZD's position was that his wife knew where he was after August 2017 but that she did not know that he had gone to Bulgaria at the end of that year. He entered a nikah with another woman in early 2018. Although Islamically it was not necessary for his nikah with ASA to dissolve before he entered into that new nikah he said that his nikah to ASA was in fact dissolved in May 2017 because they had agreed in about September/October 2016 that if there was no reconciliation in four months from then it would dissolve. He said that he had pronounced the dissolution and it became actual or final after four months.

[17] Taking all of the evidence into account I have concluded that the relevant date, the date on which the parties ceased to cohabit for the purposes of the 1985 Act, was 12 August 2017. While the marriage had been unhappy for some years and their relationship had been characterised by short periods of separation prior to that, the couple continued to live together as husband and wife between November 2016 and the summer of 2017. I accept ASA's evidence that, given her beliefs, she would not have gone on holiday with her husband and shared a bedroom with him in July 2017 had they been separated. AZD himself appeared to accept towards the end of his cross examination on this point that there were certain restrictions in Islam about what women can do if they are separated, particularly if there is no prospect of reconciliation. This is an important factor in the circumstances of this case because both parties follow the Islamic religion and seek to abide by its constraints. In

any event, there is extraneous evidence supportive of the pursuer's position that the couple did not cease to cohabit finally until after the holiday in July 2017. Mrs B and her husband were friendly with the couple and continued to socialise with them both on holiday and at home until well into 2017. In particular it was clear from Mrs B's evidence that she had no reason to regard the parties as anything other than a married couple living together when she invited them to her husband's birthday celebration in May 2017 and subsequently accepted their hospitality to break the fast at the end of Ramadan (which ended on 24 June in 2017). Mrs B knew of some of the difficulties in the parties' marriage and so she would have been alert to any noticeable change in how they presented themselves. I accept also the evidence of PS that the couple shared a bedroom in her home when they came to stay in July 2017. She was also clearly aware of the parties' marriage difficulties by then but spoke of AZD speaking positively about a future with his wife. It was abundantly clear that Mrs S, who indicated considerable respect for her sister in law, would not have countenanced a situation where this couple holidayed together and stayed together under her roof if they were separated. So there was ample evidence that the parties were socialising together as a couple and conducting family life as a couple in mid-2017.

[18] Further, Mr AZD's position on the date of separation was ultimately somewhat opaque. His initial position was that he and his wife separated in June 2016 and did not reconcile thereafter, albeit that he moved back into the matrimonial home between November 2016 and May 2017. Under cross examination however, he seemed to pinpoint May 2017 when he took some belongings to Stourbridge and effectively moved from the parties' home to a rental property there as the key event. He also relied on the invitation to the pursuer to attempt mediation in the summer of 2017 as inconsistent with their still living

together as it referred to separation. He then gave a new and confusing position on when he and his wife had on his account discussed dissolving the nikah. In my view, far from supporting AZD's position these facts lent considerable support to ASA's contention that this was a difficult relationship in which her husband had often departed the home for a period and then returned. She had always tried to accommodate that and always resumed cohabitation after any short period of AZD's absence until the end of the summer holiday in 2017. The slow and painful process of the ultimate separation was in a sense ongoing from 2016 but the date after which there was no effective cohabitation as husband and wife was 12 August 2017.

The value of the matrimonial home

[19] It was not ultimately in dispute that this asset was matrimonial property although the pursuer contended that there were relevant special circumstances justifying a slightly unequal division of its value, a point addressed later in the section on division of the matrimonial property. The only valuation evidence led in relation to this asset was from Paul Reilly an experienced surveyor and Director of DM Hall in Glasgow. In giving evidence in the pursuer's case, Mr Reilly explained that he specialises in residential property valuations and conducts as many as 20-25 of these every working week. He has been a qualified surveyor and Member of the RICS for almost 20 years. I am satisfied that he was a skilled witness and well qualified to give opinion evidence on the value of the matrimonial home.

[20] Mr Reilly spoke to his report number 6/283 of process. This was a desk top valuation of the property prepared in October 2019 but with a valuation date of 12 August 2017. In

preparing that valuation he had access to the report of a colleague at DM Hall who had inspected the property in 2018. His colleague had valued the property at £700,000. Mr Reilly considered that it would be worth less than that in August 2017 because he had information that there was unfinished building work going on in the property in 2017 that would have affected value had the property been sold on the relevant date. He had been shown the builder's quote for the works, number 6/213 of process, which confirmed a total estimated bill of £83,712. Mr Reilly explained that this was not particularly relevant as there is not a direct relationship between cost and added value. He had also spoken with the pursuer by telephone to gather information about the condition of the property before reaching a view on value. He was told that the accommodation in the attic, comprising a large master bedroom and two en suite bathrooms had not been formed by August 2017 and so he had stripped it out of the valuation. He also looked at comparable sales evidence. Taking all of these factors into account his opinion of value as at 12 August 2017 was £625,000. Subsequently he had seen the Affidavit of Michael Collins, the builder who undertook the extensive work on the property in 2017 but there was nothing in it that caused him to alter his opinion.

[21] Under cross examination Mr Reilly confirmed that he had not been asked to produce a current valuation just a retrospective one as at 12 August 2017. A desktop valuation was one reached using the skill of the surveyor, together with information from the client and access to professional sales online systems. He confirmed that a desktop appraisal would never be a sufficient basis for secured lending purposes. However, if the information provided to the surveyor was correct, a desktop appraisal should be accurate. Mr Reilly accepted that generally speaking visiting a property gives a better idea of its physical

condition. In the case of the matrimonial home however, he had a file from October 2018 which included site notes and a plan and access to retrospective data online, using a platform specifically for property professionals. He had working notes which he inputted into the system and which could have been provided on request. He did not consider the UK house prices index to be of particular use because it includes such a broad range of property, although it can provide information about how an area of the country is performing in terms of house sales.

[22] Mr Reilly agreed that changes to a property that increased floor space, such as an attic conversion, would affect value. He was aware that the attic space had been developed previously in the property but he had been advised that the builder's view was that it had not complied with building regulations and so couldn't be regarded as developed usable space prior to the 2017 works. When asked to describe the property he said it was a detached sandstone villa built in 1900 with four public rooms, four bedrooms, a conservatory and a garage. He agreed that Newlands is a popular area but disagreed with the assertion that £625,000 was a ridiculously low value and that such a property would sell for £800,000 - £900,000. He was content with his report as a desktop appraisal and as a cross check he knew that DM Hall had valued the property at £700,000 in 2018. He had not been asked to consider how much of the works undertaken in 2017 had been carried out by 12 August.

[23] While no other valuation evidence about this asset was led, the builder Michael Collins also gave evidence. In his Affidavit he confirmed that he is a joiner with his own business and was instructed by the pursuer to undertake a substantial renovation project at the property in 2017. He coordinated the building work together with a structural engineer. His recollection was that he started the job around May 2017 and completed the work in the

November of that year. He thought the total cost was about £70,000. The work carried out was that detailed in a quotation, number 6/213 of process, prepared not by him but by a different firm. Under cross examination Mr Collins agreed that the configuration of the property did not change through the works, at least on the ground floor. He accepted that the property was not completely overhauled in the sense that some parts were already in a reasonable condition, such as the kitchen. Some rooms such as the main lounge required only repair of wallpaper that had come loose from the wall. Much more of the work involved the first floor and attic space. A previous unsafe staircase had been put in to connect those floors and had to be removed and replaced. Some supporting lintels were put into load bearing walls. He confirmed that his bills had been paid partly in cash and partly by cheque, some of which went to builders' merchants.

[24] I am satisfied that as at the relevant date the matrimonial home was undergoing a significant renovation project and that such work does not usually translate into a direct increase in value of a property. However, on the basis that a valuation of £700,000 was arrived at for the property at the conclusion of the project and unconnected with this litigation, the value of £625,000 on a date when the renovation was about half way through seems reasonable and consistent with that subsequent higher figure. The property was in a far better state in 2018 than it was in August 2017, albeit that a purchaser might take into account that work could be completed before the conclusion of any sale. As AZD led no evidence to support his own contention that the property was worth £850,000 at the relevant date, I have no hesitation in accepting the evidence of Mr Reilly and fixing the value of the property at the relevant date at £625,000. There is a separate issue relating to funds provided

to the pursuer for the renovation project and I will return to that in considering the division of matrimonial property.

3. Valuation of CDC Limited and DY Limited

[25] The valuation of the shareholding in these companies was one of the major issues of contention at proof. The background to the ownership of the shares in each is as follows. A company known as The DS Limited was incorporated in 2006 by AZD. In 2007 he transferred the shares in the company to ASA. CDC Limited was incorporated in 2014. By the relevant date that company owned all of the shares in The DS Limited. Accordingly, as at the relevant date the pursuer held the relevant shareholding to be valued as a matrimonial asset. Notwithstanding his agreement recorded in a Joint Minute of Admissions that this was the position, AZD sought to raise a number of issues about the shareholding and appeared to have attempted to transfer the shares into his own name after the relevant date, something that was subsequently rectified by the company all as outlined by the pursuer in her Affidavit No 35 of process at paragraph 53. AZD's position seemed to be that in Muslim families it was quite common for assets to be owned by the wives even where the business was operated by male members of the family, a type of nominal ownership. Certainly AZD was the dentist in the family and ASA was working as a medical practitioner at all material times. However, as a matter of legal ownership, the shares were held by ASA at the relevant date and it is that shareholding which requires to be valued. The pursuer also owned 50% of the shares in a surgery (DY Limited) on the relevant date, the other 50% being owned by a Mr MO, a dentist working in the practice operated by that company in Aberdeen. I will summarise the valuation evidence and my decision on each of those companies separately.

Two witnesses gave evidence on valuation of these assets, Mr Greg Rowand in ASA's case and then Mr Wilkinson for AZD.

[26] First, evidence was led in the pursuer's case on the value of CDC Limited from Greg Rowand, CA, a 55 year old experienced chartered accountant with Henderson Loggie. He spoke to his report number 6/291 of process, appendix 1 to which contains his curriculum vitae. He has vast experience of preparing reports in forensic accountancy matters for both civil and criminal proceedings and has given evidence in this court on a number of occasions. He is a recognised expert in his field in this jurisdiction and well equipped to give independent evidence on company valuation. Mr Rowand was instructed to undertake a valuation of CDC Limited ("CD") as at 12 August 2017. The DS Limited ("DSL") was a wholly owned subsidiary of CD at the relevant date and so the value of that entity was included in the valuation of the parent company. Neither party was a Director of either CD or DSL at the relevant date, a Ms F being the sole Director of both companies at that time. DSL operated seven dental surgeries across Scotland by August 2017. A previous surgery it had operated in Edinburgh was sold in 2017 prior to August. Additionally there was a practice in Kilwinning, the heritable property of which was owned by AZD alone but it never operated fully and was closed in December 2017. AZD also owned the premises in Glasgow and owned 20% of the premises in Falkirk, with the other 80% being owned on the face of it by the second defender, the secured lender.

[27] In valuing the company, Mr Rowand's approach was to calculate maintainable earnings before interest, tax, depreciation and amortisation ("EBITDA"). He initially summarised the profit and loss accounts for four years up to 31 December 2017 and noted that the business had improved from being loss making to making a gross profit over time.

Despite undertaking a number of enquiries Mr Rowand was unable to make the sort of adjustments to EBITDA he would normally consider before arriving at a maintainable figure, such as to rent, rates and insurance, due to a lack of information about the detail behind the figures in the accounts. He used an average of three years EBITDA to estimate a maintainable EBITDA figure of £24,669. In the absence of budgets or projections that might have justified weighting the most recent year, he considered that a simple average was best. There were real concerns about the lack of reliable information about past results. To the average EBITDA figure he applied an EBITDA multiplier. He explained that the level of multiplier is a matter of professional judgement and experience. While he was not an expert in dental practice valuation as such, he was able to obtain information about the industry in the same way that he would when valuing a company in any sphere. He looked at a published review of the key trends, activity and pricing of the dental market by Christie & Co which included information on "current EBITDA multiples" and formed Appendix 7 to his report. His approach to assessing the EBITDA multiplier was explained fully in section 6 of his report. Ultimately he selected a multiplier of 4 and so valued the goodwill of DSL at £98,676 at the relevant date. Then he added that figure to his estimate of net assets at the relevant date using the balance sheet as adjusted to 12 August 2017 and including the relevant proportion of post-tax profit. He deducted tax on the uplift representing the value of goodwill and rounded up slightly to produce a value for the company of £239,000. He provided a "sense check" on his valuation by calculating an Enterprise Value (multiple of EBITDA/ earnings based valuation) by taking his goodwill plus net assets valuation and working backwards. This gave an implied multiplier of 12.3 which was at the top end of any reasonable range. The cross check suggested that the value arrived

at through applying a multiplier to maintainable EBITDA was if anything slightly high but he was prepared to adhere to it. He had used this cross check method of an EBITDA multiple/ earnings multiple because he understood that was the approach taken in the dental practice sales industry. Further, Mr Rowand had looked at the sale price of ASA's shareholding in DY Limited and had access to some financial information for that company. Using the sale price and the information about assets he had calculated that the EBIDA multiple in the sale had been between 1.22 and 2. He set out his calculation on this in Appendix 9 of his report. He confirmed he had not been instructed to value DY Limited as at the relevant date.

[28] Mr Rowand had also examined something described as a Directors Loan account in the DSL company balance sheet, but which did not relate to Ms F. He had produced details of all payments made from that account during 2017 at Appendix 6 of his report. The opening balance was £134,965.51 at 31 December 2016. Various payments were made during 2017, nearly all to ASA. In particular she received four payments of £25,000 each in May 2017. The closing balance on the Directors Loan account was £26,266.23 as at 31 December 2017.

[29] The witness had had sight of a valuation produced by AZD from a Ted Johnston of Dental Elite which appeared to value DSL at £1.4 million. While it was not clear from the report, he thought that this was intended to be a valuation of goodwill. The main thrust of AZD's cross examination of Mr Rowand was that as he was not a specialist dental practice valuer his valuation should not be accepted. Mr Rowand explained that his expertise was in company valuation and that involved him taking into account sector considerations for numerous companies. He had looked at about half a dozen dental practice business over the

last 20 years and had conducted an information gathering exercise to assist his understanding of the sector in preparing the valuation in this case. The principles of valuation were similar. For example if an owner operates a business and leaves it on sale that owner will have to be replaced. He was aware that some dental practices might be associate led and others owner led as Christie & Co gave different multiples for those different types of business, with the owner led business having lower multipliers.
Mr Rowand accepted that Christie & Co and Dental Elite specialised in the field of dental practices. He could not accept an assertion that there were fundamental differences in methodology between such valuers and his own approach, which was to add a figure for goodwill to net assets. He accepted that different considerations would apply to, for example, veterinary practices, but that would simply involve taking account of information of that particular sector. Of course those specialising in a sector would have knowledge of industry practices, regulations and so on and he would take account of that if provided. However, having seen the Dental Elite report there were two things that didn't make sense. The first was a Future Maintainable Trading (" FMT") figure of £937,639 which appeared to be based on half of the 2016 turnover figure. Secondly, there was a difference of £150,000 in the EBITDA figure between Dental Elite and his own report. As Mr Rowand had taken his figures from the company accounts, he could not comment on the credibility or otherwise of the Dental Elite report without knowing where the figures came from.

[30] Mr Rowand's approach was the accepted one of hypothesising a willing buyer and willing seller on the relevant date. AZD asserted that it was all about what the purchaser would pay, but Mr Rowand pointed out that a purchaser may not be willing to give the seller the value that the purchaser will bring to the business. Various figures of what might have

been offered for certain practices within the business were put to the witness but he had no details of these that would give content to the assertions made. He reiterated that he had valued the company based on the financial results (and so the actual trading performance) of the "group", as he had not been given the figures for individual practices. Mr Rowand accepted that if he had those figures he would have been able to look at the trading of each individual practice and see whether there would be an impact on maintainable EBITDA. There had been information missing that had never been provided.

[31] Mr Paul Wilkinson was called in AZD's case. Mr Wilkinson had not been on any witness list and produced a brief report with accompanying figures (number 7/40 of process) a day or two before giving evidence. He explained that he was a co-owner of Dental Elite, a business set up in about 2010, which is involved primarily in the sale of dental practices. Of the 500 or so dental practices that change hands each year in the UK he thought his business would be involved in about 130 of them. Until about 2017 when he had changed his focus to concentrate on business strategy he had carried out about 12 valuations of such businesses per week. Mr Wilkinson has no formal professional qualifications.

[32] In preparing his report Mr Wilkinson used the accounts of DSL for the year ended 31 December 2016. He was asked to value the business as at the end of 2016. Although his working of the figures differed, he supported the valuation of £1.4 million suggested by his colleague Ted Johnston in an earlier report, number 7/39 of process. In essence Mr Wilkinson applied a multiplier of 5.25 to an EBITDA figure of £266,000 and rounded up from £1,396,500 to £1,400,000. The method he used was that employed by him in the course of his business daily. He took the figure for total revenue or turnover for the relevant year (£1,795,790) and deducted the costs, including materials, lab fees, payments to dentists and lab recharges to

arrive at a gross profit figure of £965,644. Then he took account of "establishment costs" of maintaining the various business premises and deducted both those and the general running cots of administrative staff, IT costs bank charges and so on. The figure arrived at after stripping out all of those costs was an EBITDA of £266,313. An alternative approach was to calculate FMT and apply a multiplier to that, but that assumed that the incumbent dentist would be an owner operator.

[33] Under cross examination Mr Wilkinson said that his business did not do as much business in Scotland as they would like, but since Ted Johnston joined he has been building that up. He agreed that he had been instructed to attend court to speak to Mr Johnston's valuation but when he reviewed it he saw that it was based on 2018 gross revenue and so was inaccurate and should be ignored. He agreed also that what he had done was essentially value goodwill without factoring in assets or tax. In the deals he was involved in accountants were brought in towards the end to sort such matters out. His valuations are not accepted by the bank for lending purposes because he is not RICS qualified. His role was to fix a "pitching point". For the exercise he had carried out in this case he had not looked at any previous years' performance because he had only a very short time to carry out the exercise and used what he had. In relation to his EBITDA figure of £266,313 Mr Wilkinson referred to this as "normalised EBITDA" which assumed that a purchaser would change the business operation completely. He eliminated costs (by adding them to the initial EBITDA) that would normally be incurred in running such a business such as hire of equipment, professional indemnity and so on. A list was provided of these "add backs" as he called them in his report. Mr Wilkinson said this was standard practice. Those "add backs" explained at least £102,115 of the difference between his EBITDA figure and that of Mr

Rowand. Another significant difference was in the approach to Associate Fees, i.e. payments to the dentists working in the business. While Mr Rowand accepted the figure in the accounts for this, Mr Wilkinson, using a spreadsheet provided by AZD had recalculated this figure based on the Associates receiving 50% of gross revenue under deduction of various costs and then deducting 50% of the lab costs from that. Accordingly he had a figure for payments to Associates of £435,971 as opposed to the figure of actual payments in the accounts of £584,018. This made a difference of £130,047 on the gross profit figure. He sought to correct the figure in his workings on this from £584,018 to £564,405. He agreed that if the lab cost were only half the figure he had included those would have to reduce as well and this would affect the figure used for payments to Associates which would reduce to £454,000 or so. His explanation for not using the actual figures in the accounts for these costs was that the accounts wouldn't reflect when each dentist came into the practice and so a rule of thumb of 50% of revenue was used. Finally Mr Wilkinson had proceeded on the basis that the Associates did not share in the Capitation and Continuing Care payments form the NHS, while Mr Rowand had understood that they did. He agreed that if his information was wrong on that his figures would have to be adjusted. An additional spreadsheet produced by AZD (number 7/41 of process) was put to the witness who agreed that it looked as if all the dentists in this business were receiving such payments. These differences explained nearly all of the differences on EBITDA. Mr Wilkinson also explained why he considered the purchaser would not " inherit" the various add backs like accountancy fees, training costs, equipment hire and so on, although he accepted that some purchasers would then have to incur these costs of new in order to run the business and so it could be a matter for negotiation in any given case.

[34] On the multiplier Mr Wilkinson had used 5.25 as against Mr Rowand's multiple of 4. Mr Wilkinson agreed that the factors adverse to this particular business taken into account by Mr Rowand such as the competitive nature of the market, difficulties with dental recruitment, issues with certain of the premises and allegations of fraud in relation to the defender's previous running of the business were all relevant. On profitability, while there Mr Wilkinson accepted the level of profit was low although turnover was going up and placed more reliance on that. He adhered to his multiplier of 5.25.

[35] In re-examination Mr Wilkinson confirmed that over 90% of the businesses he values sell for at least the valuation he has placed on them. His approach was to make assumptions based on what he is told.

[36] Mr Rowand was recalled to give further evidence so that he could comment on aspects of Mr Wilkinson's figures that had not been put to him due to the lodging of the spreadsheet (number 7/41 of process) after his earlier evidence. In addition the accountant Mr Khokar and practice manager Miss Chaudry provided further Affidavits correcting the lab fees figures in the accounts, something not noticed until after the late spreadsheet was produced by AZD. Having heard Mr Wilkinson's evidence Mr Rowand remained of the view that Mr Wilkinson had valued the goodwill of the business and not the company. He had based his view on a single set of accounts and a pay sheet. The concept of normalised EBITDA used by Mr Wilkinson makes the assumption that a purchaser will bring in efficiencies to the business. While this was not a typical approach in business valuation for divorce in this jurisdiction it might be a question of negotiation if it is a feature of a particular industry. Mr Rowand was clear that the figure for Associates Fees and lab recharges he had used was taken from the accounts. He did not seek to alter his own valuation having heard

Mr Wilkinson's evidence although he too would have preferred to understand some of the detail in the accounts. That might have helped him understand how Mr Wilkinson could assume that a purchaser could readily achieve such an increase in gross profit.

[37] On the add backs included in Mr Wilkinson's analysis, Mr Rowand would not make those assumptions without having more detailed information. For example a purchaser would either acquire the dental chairs that came with the business or have to buy or hire their own. An expensive car for a Director would be in a different category but there was none in this case. Professional and accountancy fees would be incurred going forward. Mr Rowand so no reason to alter his view on either EBITDA or the multiplier he had selected.

[38] I have concluded that Mr Rowand's valuation is to be preferred. The difference between the two valuations provided in relation to this company was significant. However only one of those, Mr Rowand's, was a valuation of the company at the relevant date. Mr Wilkinson was asked to produce a valuation as at 31 December 2016, which neither party had contended as a possible relevant date. Accordingly, even if I had been willing to accept Mr Wilkinson's approach, it would be difficult to accept his valuation as one apt for the purpose of my determination. More importantly, it seemed to me that the business in which Mr Wilkinson is engaged is in brokering deals to sell dental practices. The valuations he is engaged in are prepared with a view to marketing. He accepted that accountants would have to be involved at a later stage to resolve the detail of what would be taken into account. I have no doubt that Mr Wilkinson is extremely successful at achieving sales at prices he has tendered. However, the approach of this court in relation to valuation of shares in a company as at the relevant date is a different exercise. It requires consideration of the price a

hypothetical purchaser might have paid and a hypothetical seller might have accepted for the company on the relevant date following a negotiation where each party was willing but not anxious. It is an attempt to assess the end point of such a negotiation not a starting point. Mr Wilkinson freely admitted that he used the same approach in all of his valuations. The same assumptions are made regardless of what the accounts reveal has in fact happened.

[39] One of the matters illustrative of the significant difference to the two valuations was the approach to Associates Fees. Mr Rowand used the actual figures paid to Associates. Mr Wilkinson used a rule of thumb of 50% of recalculated gross revenue and then deducted 50% of the lab costs. This made a difference of £130,000 to the gross profit figure and on a multiplier of 5.25 accounted for £682,747 of Mr Wilkinson's final valuation. It seems to me that this is exactly the sort of issue that would have to be resolved by accountants in a sale transaction even if Mr Wilkinson's headline figure was accepted as a starting point. Mr Wilkinson himself accepted that if the Associates were to remain with the business after sale they would expect to be paid at the same rate as previously. The lab costs differed as between 2016 and 2017 and so Mr Wilkinson's figure on that could never have been accepted as at the relevant date. On the Capitation and Continuing Care Payments, the spreadsheet provided by the defender illustrated that Mr Wilkinson was wrong to work on the basis that the Associates in the company did not receive these. In fairness to the witness, this was one of the issues on which he may have erred because of payment differences between those working in Scotland and England, Mr Wilkinson's personal experience being exclusively in the latter jurisdiction. For all these reasons I accept Mr Rowand's approach of using the costs actually incurred down to the relevant date. Similarly, the "add backs", which assume that the purchaser will not take on costs of equipment, professional fees, travel expenses and so

on, comprised £563,103 of Mr Wilkinson's final valuation (by adding £102,115 to EBITDA multiplied by 5.25) and so, it seems to me, inflated the value beyond that a hypothetical purchaser would reasonably pay for the company as a whole. Regardless of whether the costs change form, they are likely to be incurred by the purchaser. Of course, it may be that larger players in the dental market are able to buy up smaller entities and make efficiencies, but no detail of the level of such costs that could truly be added back to profit was ever given. Finally, it is significant that when asked why he had used only the accounts to 31 December 2016 to carry out the exercise Mr Wilkinson stated that it was because he had insufficient time to do anything else.

[40] I have considered carefully whether Mr Rowand's multiplier of 4 was too low. Mr Wilkinson's knowledge of the sector means that he is well placed to make a judgement on multipliers. However, Mr Rowand's figure was not out of line with those supplied by Christie & Co, being the average Scottish multiplier published by Christie & Co. Mr Wilkinson accepted that the considerations Mr Rowand had taken into account were relevant. It would be open to me to accept Mr Rowand's approach but to use a higher multiplier and recalculate the valuation and I have considered that. On balance, however, I consider that he was entitled to take a conservative approach to this, standing the problems faced by the business all as explained in his report and in evidence. I conclude that Mr Rowand's valuation of the company can be accepted as it stands. Had Mr Wilkinson been given more detailed information and the time to examine it, he may well have been in a position to assist the court more than he did on this issue and I intend no criticism of him. He made clear that his report was as close as he might get to a "back of an envelope

calculation" and clearly had not been informed of the requirement in this jurisdiction to value at a specified date or what that date was.

[41] Turning to DY Limited, there was an absence of any independent valuation evidence as at the relevant date. The pursuer gave evidence in her affidavit (at paras 57-58) that she was in urgent need of funds during 2019 and so sold her 50% interest in this company to SS Limited. That company is owned, or partly owned by Mr MO who held the other 50% shareholding in DY Limited. ASA stated that she did advertise her interest through Christies at their recommended price of £250,000 (£500,000 for the whole business). One possible purchaser was interested but only at a level of £325,000 for the whole business. Ultimately SS Limited paid ASA £165,000 for her interest in September 2019.

[42] AZD contended that his wife had sold her interest in Dyce for lower than valuation and so the sale price should not be used. Her own evidence was that she needed money and was desperate to sell and so she will not have achieved best price. AZD also sought to elicit from Mr Wilkinson that the value of £500,000 for DY Limited as a whole was fair, but of course Mr Wilkinson had no involvement whatsoever in valuing that entity. AZD pointed out also that the pursuer had lodged no documents to support her contention that the only other interest had been at the level of £325,000 for the whole business. He sought to rely on a letter from Dental Elite (number 7/39 of process) supporting a value of £500,000 in total for DY Limited but the author of that letter did not give evidence.

[43] It is regrettable that neither side sought to have ASA's interest in DY Limited valued as at the relevant date in the absence of agreement as to that value. Mr Rowand looked at the figures for DY as a cross check to his work on DSL and found that working backwards the sale price achieved by ASA represented a multiplier of 1.22-2, depending on whether the

2018 results were taken into account. That is significantly lower than the average multiplier being used in Scotland in 2017 according to Christie & Co and relied on by Mr Rowand for DSL/CD. Appendix 9 to Mr Rowand's report indicates that DY made a very healthy profit for the year ended 31 July 2017, immediately before the relevant date. It is not for the court to value assets of this type, where specialist valuation is normally tendered. That said it was agreed to be a significant asset and competing submissions were made on valuation – the pursuer wanted to take the 2019 sale price of £165,000, with the marketing price of £250,000 (half of £500,000) being AZD's position and so I must do what I can to assess the relevant date value. I cannot estimate what multiplier would have been appropriate but I have the EBITDA figure of £183,364 for the year to 31 July 2017 from Appendix 9 of Mr Rowand's report and the average Scottish multiplier information referred to in his valuation of CD section. I note that in Mr Rowand's summary of the DY figures, EBITDA dropped from £183,364 for the year to 31 July 2017 to £92,259 at 31 July 2018. I conclude that on balance, whether or not the pursuer sold her shares in DY for below their value in 2019, the financial results for that year not having been produced, the shares were worth more than £165,000 at the relevant date in August 2017. The pursuer herself accepted that she was very anxious to sell the shares in 2019 and so that sale may not represent a realistic willing buyer willing seller transaction at that time as one party was not able to hold out for the best reasonable price and the other being in a strong position to offer a lower than market price. Doing the best I can on the information provided and taking a broad view I will place a value of £200,000 on ASA's shares in DY at the relevant date of 12 August 2017.

The valuation of two flats in Edinburgh.

[44] AZD purchased the upper two floors of the property from which the Edinburgh practice operated and developed the premises into two flats. In evidence he maintained that he had encountered considerable difficulties with the project. While planning permission was obtained he said he had been unable to obtain a completion certificate. The windows are not regulation compliant and he stated that they will have to be replaced with double glazed sash and case units. The electricity provision as between the two flats has still not been divided and there remains some soundproofing work to be done. AZD also claimed in evidence that monies were due to a Mr WH in terms of an agreement (number 7/19 of process) entered into between the two men when Mr WH lent money to AZD. The agreement was dated July 2016 and it records that the project is anticipated to take about 6-9 months. Although the agreement indicates that Mr WH will receive a return on sale of the finished project, in May 2017 DSL made payments of £100,000 to him. In giving evidence AZD acknowledged that he had repaid the £100,000 due under the agreement but claimed that there had been ongoing informal further loans to Mr WH and he still owed him considerable sums of money, perhaps as much as £70,000. He produced no vouching of any such additional sums and no evidence, affidavit or otherwise, from Mr WH. There is no secured loan over the properties and AZD was living in one of the flats from time to time by the date of proof. In the absence of any acceptable evidence to contradict that the £100,000 advanced by Mr WH was duly repaid in 2017 I take no account of any further unspecified loans absent proof of dates, terms or details of partial repayment, all of which could have been provided easily.

[45] Again neither side produced any independent valuation of these properties either at the relevant date or at the current time. The pursuer sought to rely on schedules prepared by the selling agent lodged at numbers 6/10 and 6/11 of process. These illustrate two modernised and renovated apartments, one with a larger public room than the other and both having two bedrooms. AZD accepted in evidence that the smaller one had been marketed at offers over £290,000 and the larger at offers over £310,000. He said that they had not sold at that price and had been removed from the market after a year. They were so removed after the pursuer raised these proceedings at the end of November 2018 and secured an inhibition.

[46] The absence of valuation evidence is unsatisfactory in relation to these properties just as it is in relation to DY Limited. Evidence of an estate agent's upset price for marketing is not evidence of value, particularly as it seems that the properties did not sell at all when advertised at that price. That said, if the properties had been on the market for over a year prior to November 2018 as AZD stated, they must have been effectively completed by August 2017. No quantification of any work still to be undertaken was produced and a firm of reputable estate agents appears to have prepared property schedules showing fully renovated apartments on the open market shortly after the relevant date. Again doing the best I can and taking a broad view, I place a value on these properties of £550,000 (£265,000 and £285,000) a reduction of £50,000 on the marketing price to reflect the absence of evidence that a willing buyer would have paid the full purchase price at the relevant date, or that there was any interest at all when they were marketed at a total price of £600,000. In submissions AZD suggested that £550,000 would be the value of the flats "once renovated", which the available property schedule photographs suggest was the position. The schedules describe

the property as "fully renovated and modernised" and on the only information available I am unable to accept AZD's suggestion that such a statement was inaccurate.

The nature and value of the defender's interest in a house in Pakistan and the distribution of the sale proceeds thereof

[47] AZD owns a number of properties in Pakistan that he had acquired by the relevant date. He and Mrs Innes agreed, very helpfully, all of the valuations in relation to those assets. What remained was a dispute about the nature of AZD's interest in a property described as House F, Islamabad ("the F house") and the extent to which it was matrimonial property. There was evidence that the property had been sold for an agreed price of 80 million PKR, the sterling equivalent of which is £583,561. It was proposed on behalf of the pursuer that the full amount should be included in the matrimonial balance sheet on ASA's side. ASA's position was that he inherited a 2/13th share of the property following the death of his parents. The property had been transferred to him in order to sell it but he claimed he had distributed the proceeds in accordance with his parents' wishes. In essence he sought to exclude it from the ambit of matrimonial property.

[48] In her affidavit and oral evidence the pursuer said that the house had belonged to ASA's father and that following her father in law's death ASA had begun purchasing his siblings' interests in the property by instalments and that this began long after her father in law's death in 2003. ASA also began building a mansion (B House) on his father's land in the same village as the F house and the pursuer said it was part of the agreement that he was doing so in part exchange for F being transferred to him. She said she had been present in 2015 at a meeting of her husband's family in Stourbridge when they had all signed a power of attorney agreeing to transfer the F house to her husband, a transaction that was completed

in November 2016. She said that everyone knew that the F house was to be a family home for her, her husband and children in Pakistan. They had ID cards for Pakistan and the plan was to spend time there. ASA recalled that her husband was always anxious about whether his siblings would honour the agreement and transfer the house to him in return for the money he had paid and the construction work on B House. AZD sold the house shortly after the parties separated. During cross examination the pursuer commented to her husband that the F house had been almost ready for them when they went over in 2009 and agreed with an assertion put to her by her husband that he had sent money to Pakistan which his family had agreed was part payment for their shares in the F house. She recalled also that when she had spoken to her husband's sister in law after the sale she had been told that the family were upset because ASA had purchased their shares in the property for a low price and then sold the property for a high price.

[49] In contrast, AZD's position in at least his affidavit (number 45 of process) was that after he inherited 2/13ths of the F house he undertook to sell it and then pay each of his siblings their share from the sale proceeds. Under cross examination by Mrs Innes, however, he seemed to acknowledge that he was buying his siblings shares in the property and even mentioned a price of 35,000,000 PKR for his three brothers' shares, each brother having had a 2/13th shares also, with women apparently receiving half of what male children do under the succession law of Pakistan. He agreed that his wife had been happy with the idea that they retain the F house as a family home. Then he said that every rupee from the sale had been paid into the Bank Alfalah in which he had an account. The bank statements for that account were lodged (number 6/282 of process) and AZD was asked about these. He accepted that the entries did not quite correlate with the sale price, nor was there any vouching of sums

then being transferred to his siblings for the sums he mentioned being due to them. He contended that funds had been put in a dollar account and cheques appear to have been written on that account but those produced (at number 6/300 of process) were addressed to the Bank Alfalah and not to any individual or individuals. There was some documentation suggesting that monies had been transferred to three of AZD's siblings from DSL prior to the relevant date. AZD suggested that these related to the F house and had to be repaid but again the amounts did not coincide with what he said were the shares held by those siblings and the date of the sums stated to be loans, all in 2017, did not fit with the earlier account and the transfer of the house to him in 2015.

[50] AZD then reverted to his original position that he had owned the F house only in order to simplify the sale procedure. He said that he had been interested in buying the property from his siblings but that property prices had increased and he couldn't afford it and so it was sold. He agreed that he had acquired a farmhouse plot and a number of packages of other land after the sale of the F house but said that was at least in part from his share of the proceeds. Then he stated that "… the money for these plots came from the sale of F... which in turn came from the B House investment." No evidence was tendered by affidavit or otherwise from any of AZD's siblings supporting either his account that the transfer to him was merely to sell the property and that their shares had been paid from the proceeds or that they had borrowed money from him in advance of receiving such proceeds. In light of AZD's inconsistent evidence in relation to this valuable asset, the lack of supporting documentation and the undisputed evidence that as at the relevant date on 12 August 2017 he owned the property and sold it shortly afterwards, I prefer the account given by the pursuer. Her account is consistent with such documentation as there is before

the court. I conclude that AZD acquired his siblings' shares in the property by making instalment payments and by paying for the construction of the B House. However, the pursuer's suggested computation of matrimonial property takes no account of AZD's direct inheritance of 2/13ths of the F house during the marriage, something that was not disputed. As property inherited by a spouse does not constitute matrimonial property (section 10(4) of the 1985 Act) and as he continued to hold his share of the title in the form inherited at the relevant date, I consider that the value of the portion of the title directly inherited by AZD should be deducted from the inclusion of this asset in the matrimonial balance sheet. Accordingly, the value of the F house insofar as representing matrimonial property was £493,783.

The instigation and consequences of proceedings against AZD in Pakistan

[51] There was a considerable amount of evidence in relation to proceedings raised against AZD in Pakistan. In his pleadings AZD raised the fact that the pursuer's brother is an important man in that country. He averred that the pursuer has taken unfair advantage of the considerable influence that her brother has in Pakistan and in evidence he contended that the system there was sufficiently corrupt that he is unlikely to secure a fair hearing and that he will be unable to retain his property in that jurisdiction. The pursuer's evidence was that when she discovered that her husband had sold the F house without telling her she made a complaint to the Federal Investigation Agency ("FIA") and raised a first action against her husband in Pakistan. The writ and relative affidavit from that first action was lodged by AZD at number 7/4 of process. The writ alleges that it is in fact the pursuer who owns a number of properties in Pakistan that she is the "real and beneficial owner" of them and that

AZD's interest was merely to hold them for her. The "verification" at the end of the writ purports to be signed by the pursuer as plaintiff in that action. In evidence the pursuer denied having signed or authorised the signature of that writ. Her position in evidence was that she had panicked when she saw the writ, knowing as she did that she had not bought and did not own the properties listed as hers therein. She said that she had not sworn the first affidavit and that she had withdrawn those proceedings as soon as she became aware of the errors in it. She appointed a new attorney and instructed fresh proceedings.

[52] In both sets of proceedings allegations are made against AZD. The second suit (number 7/5 of process) includes a claim that the accountant of DSL informed the pursuer (plaintiff in Pakistan) about his having undertaken what is averred to be a series of "dubious and unauthorised" transactions for approximately £278,025.77. The accountant referred to, Mr Zeeshan Khokhar, gave affidavit and oral evidence. He had dealt with the pursuer since she took over running DSL in December 2017. On 8 October 2018 he had signed a letter on his headed notepaper, number 6/3 of process stating that "as per information received from the client" the sum of £278,025.77 had been withdrawn by AZD from the company without authorisation. Mr Khokhar was clear that he had not made any allegation against AZD, but had simply appended a schedule given to him and narrated in the letter what he had been told by the pursuer and an employee of the company who had prepared the schedule.

[53] Under cross examination by AZD, ASA said that she wasn't in Pakistan when the first action was raised against him. She said that her brother in Pakistan had a power of attorney to conduct her affairs there but that he hadn't even seen the writ before the action was raised. She accepted that both of her brothers, including the one of influence, were involved in assisting her with the complaint to the FIA. She said that her brother had taken her to the

FIA offices but had not been able to enter and had waited outside. She denied that she had signed the affidavit at page 24 of 7/4 of process. She said it was neither her signature nor that of her brother. When asked whether she was then claiming it was a forged signature she said "I don't understand the legal system in Pakistan". She then stated that she thought the lawyer who lodged the action had signed it. ASA accepted also that the first action in the Islamabad court had not been withdrawn until after her husband produced the writ as a production in these proceedings. She acknowledged that it had been a mistake also to include a Mr MJ as a second defendant in the first action and that he had wrongly also been included in the second action, the writ for which was put to her. She now knows that MJ is the legitimate owner of certain land mentioned in the proceedings. She said she had followed advice to include him and now knew it had been wrong. ASA confirmed that she was content with the second action and that she was hoping for an investigation into her husband's land and money in Pakistan. The affidavit relative to the second action had been deponed by her brother MR who had power of attorney for her. As a result of the proceedings in Pakistan AZD's ID card (Nicop) had been frozen and ASA accepted that the Nicop card is a particularly important document in that country.

[54] The lawyer in Pakistan currently instructed by the pursuer, a Mr Rashid Hanif gave evidence through a live link. He is an experienced litigator in Islamabad. He had been instructed to raise the second action against AZD which is ongoing. He confirmed that there is a protective order in place which would prevent AZD disposing of any property during the course of proceedings. If ASA withdrew the proceedings there would be no basis for such a restriction. However, the FIA had power to investigate matters and to take action such as freezing bank accounts and place restrictions on property transfer pending

investigation. In any event an active ID card is required to transact with property in Pakistan. His understanding was that orders made by a Scottish court could be directly enforced in Pakistan.

[55] Under cross examination by AZD Mr Hanif agreed that the purpose of an Affidavit in the writ of proceedings in Pakistan was that the deponent is confirming that the assertions as to fact made in the writ are true, a position he understood was uniform in common law jurisdictions on which the law in his country was based. The affidavit requires to be sworn before an Oath Commissioner, who is a state recognised person of standing. It is for the lawyer representing the plaintiff to check the identity of the deponent. Mr Hanif had undertaken that task for the second action, which had been deponed by a relative of the pursuer who had power of attorney for her. He agreed that had he been presented with an ID card that did not match the person deponing he would not have proceeded with the action. It would be a serious matter for someone other than the litigant or someone to whom they had given power of attorney to attempt to depone such an affidavit and criminal proceedings could ensue. When the affidavit in the writ of the first action, 7/4 of process was put to him, Mr Hanif agreed that on the narrative given there he would expect the signature to be that of MR as holding power of attorney for ASA. For the second action Mr Hanif had relied on the allegations made by ASA and the detail within the complaint she had lodged with the FIA. He considered that it was within ASA's ability to cease proceedings and have the properties released. Mr Hanif had also been involved in withdrawing Mr MJ's name from the second action when it became apparent that he had been included, inadvertently as a defendant. He had no reason to doubt the integrity of the lawyer previously instructed on behalf of the pursuer for the first action, he knew of him although had no association with

him. He agreed that there were considerable differences between the assertions made in the first action and those in the second. Finally, he agreed that the pursuer's influential brother would be shown due deference by all officials who came in contact with him, who would stand and salute him. If he visited the FIA office that would be public knowledge.

[56] I conclude that AZD's apprehension that, whatever the outcome of these proceedings, there is a risk that the pursuer will continue to litigate against him in Pakistan and pursue the FIA investigation into his affairs such that he will be unable to transact with his property there is reasonable. The current proceedings (number 7/5 of process) claim that AZD bought most of the plots of land in Pakistan with monies " fraudulently withdrawn" from DSL and seeks a declarator that the pursuer is the "rightful owner" of those properties. I am satisfied that if those proceedings are not withdrawn the pursuer may receive both the financial provision to which she is entitled here and orders relating to land that has been taken into account in the calculation as being retained by her husband. ASA's evidence in relation to the first action was unsatisfactory. In light of Mr Hanif's clear evidence of the procedure adopted for affidavits in such proceedings, her denial that the relative affidavit had been signed by her or her brother and that she did not know who was responsible was particularly unsatisfactory. She instructed the raising of those proceedings. The writ (number 7/4 of process) contains a number of direct assertions that ASA accepted were simply not true. The first action was not withdrawn until AZD produced the writ as part of his defence to these proceedings. This is significant because, although there are fewer difficulties with the second proceedings, the effect of the suspension of AZD's Nicop card and bank accounts in Pakistan and his fear that he could be detained if he enters that country has a bearing on the division of matrimonial property in this case. The pursuer was of course entitled to take steps to

secure protective orders in Pakistan as a holding measure as she has done in this jurisdiction. However, no indication was given to me that the pursuer would drop the Pakistan proceedings and send a clear message that she no longer sought the FIA investigation once orders for financial provision are made and the orders she seeks in Pakistan go far beyond the seeking of protective orders. In fairness, Mrs Innes did suggest that only a decision in principle could be made at this stage, but that was primarily because of the position of the second defender and not to give ASA an opportunity to resolve the Pakistan proceedings. While I am not convinced that ASA has at any stage sought to use her brother's influence in Pakistan, I do consider it best that the orders for financial provision in her favour should not be effected until all proceedings against AZD in Pakistan have been withdrawn. That will permit him to transact with the property he is to retain as his share of the matrimonial wealth and avoid any question of the pursuer receiving land that is agreed in these proceedings will be retained by her husband.

Calculation of matrimonial property and the proportions in which it should be divided

[57] I have dealt with the matrimonial property where the extent or value of it was the subject of dispute at proof. Nearly all other valuations were agreed, including individual values for 13 separate plots of land in Pakistan owned by AZD, which were listed with agreed values in a Supplementary Joint Minute of Admissions lodged prior to the close of the pursuer's case. I have used a single figure for these plots in the schedule below. The value of AZD's interest in B House was accepted to be matrimonial property and the value agreed. Pensions and bank account figures had all been agreed in the first Joint Minute of Admissions, save for a small amount held by AZD in a UBL account and vouched by a

document, number 6/295 of process. There remained one issue of relatively low value and that was any sum due to AZD by a Mr MA. AZD accepted that he had made a loan of £10,000 to a Mr MA prior to the acquisition of the dental practice in Edinburgh. Any sum due to him and outstanding at the relevant date represents an asset to be included in the matrimonial property held by him. There was no vouching of any amount outstanding at the relevant date but AZD said that £5,000 was still due. No evidence was offered to contradict that position and so I have inserted the sum of £5,000 as a debt due to AZD under this heading.

[58] I have included that sum in the schedule below, which represents both agreed figures and those on which I have made a determination on the evidence :

	ASA	AZD
CDC Ltd	£239,000	
DSL Directors Loan	£16,966	
DY Ltd	£200,000	
Pursuer's SPPA pension	£170,427	
Flats in Edinburgh		£550,000
Falkirk Premises		£105,000
Glasgow Premises		£325,000
Kilwinning Clinic		£95,000
¼ share B House		£43,767
11/13ths F House		£493,783
13 other Pakistan plots		£768,841
TSB accounts (2)	£ 43,529	
Bank of Scotland a/cs (2)	£5,269	
Bank Alfalah a/c + UBL		£2,088
Porsche		£16,500
NHS Pension		£339,367
Matrimonial Home	£625,000	
Loan to MA		£5,000
		£ 2,744,346
Less UBL Loan		(£ 35,208)
Total Net	£1,300,191	£ 2,709,138

[59] On the basis of these figures, the total net value of the matrimonial property as at 12 August 2017 was just over £4 million pounds, £4,009,329. There was a dispute about the proportions in which the matrimonial property should be divided. AZD's position was that Mr Wilkinson's valuation of the company should be preferred and so his submissions on what a fair division of matrimonial property would look like were very different. There was evidence and/or submissions in relation to five main aspects that could affect the proportions in which the matrimonial property should be divided. First, the pursuer contended that the source of funds used for the purchase of the matrimonial home should be reflected in the division. She had paid a £25,000 deposit for the property from her pre marriage savings. In response, AZD had initially suggested that he paid the deposit but later claimed that he had repaid ASA her initial outlay in that respect. However, he emphasised also that he had made payment of the secured loan taken out so that the parties could afford the property, albeit that will have been from earnings during the marriage. The parties and their children lived in this home for 23 years until the separation. The pursuer continues to have the benefit of living in the home, considerably improved as it is with extensive work carried out with matrimonial funds. In all the circumstances I do not consider it would be fair or appropriate to reimburse the pursuer for her initial contribution from pre marriage savings in 1994.

[60] Secondly the pursuer claimed that AZD had dissipated matrimonial property by withdrawing significant sums from DSL in 2017 leaving her with significant bills when she took over running the business. Thirdly, the pursuer submitted that as she was likely to be the one taking on financial responsibility for the parties children in future, albeit that all three are over the age of 16, an overall departure from the norm of equal sharing was justified. Fourthly AZD raised two issues relevant to this matter. He highlighted in evidence that the

pursuer had received payments of at least £100,000 from the business during 2017, which he thought had been used in connection with the renovation of the matrimonial home and Mr Rowand's report had a schedule detailing those payments, which were not disputed. Fifthly in submissions it became apparent that AZD had not submitted tax returns for the last three tax years. I will address the issues arising from the second, fourth and fifth points together as they all relate to sums taken from the business and then look at the issue of support for the parties' young adult children.

[61] In the pursuer's case evidence was led about sums of money AZD had taken out of the company DSL, particularly in 2017. Miss Nadya Chaudhary is 24 years old and is a Director of DSL and practice manager for the seven dental surgeries. She gave affidavit and oral evidence. She was previously a dental nurse in the business and had been employed by AZD. In December 2017 ASA took over the running of DSL and asked Miss Chaudhary to work in the business in an administrative capacity. Miss Chaudhary's position was that AZD had taken significant amounts of money "… from DSL and from [ASA} that he should not have", although she knew that AZD was running the business at that time. She said she had been alerted to a problem by Mr Khokhar of Khokar McAdam, accountants who were preparing DSL's 2017 accounts. She referred to a letter number 6/3 of process with a schedule of "unrecognised transactions" attached. The analysis was said to indicate that AZD removed sums totalling £278,025 from the business account that year and the schedule had been prepared by Miss Chaudhary from the bank statements of the relevant business account. She narrated in detail in her Affidavit the destination of some of these sums. One payment (£26,000) related to settlement of a claim made against AZD, one was for refurbishing the Edinburgh and Glasgow flats owned by him (£10,157), payments to his

siblings totalling £45,404 were made and she said Mr WH received a payment of £90,000. Payments to AZD himself using his previous name totalling £78,750 were made and payments to a Mr U of £6,939 were said to be for " staff" although that individual had never been an employee of DSL. That left a balance of £20,775 paid to other accounts.

[62] Miss Chaudhary had also examined previous years' figures for DSL from 2014 onwards and said that she had found payments made to AZD personally. She had detailed these in her Affidavit. However in submissions Mrs Innes, correctly in my view, did not seek to have those payments taken into account in the division of matrimonial property. Any such withdrawals pre date the relevant date by a considerable period and some may well have been used to acquire assets already accounted for in the matrimonial balance sheet or have been used to pay matrimonial debts. I consider that the same could be said for some of the 2017 withdrawals. The payment to Russel & Aitken related to a sheriff court action raised against AZD in early 2016 in connection with outstanding finance on a vehicle he had purchased in 2013. While the action had initially been defended, ultimately decree by default was granted in the sum of £15,000 plus interest and expenses on 29 April 2016. By the time payment was made a total sum of £26,000 was required. This was a matrimonial debt settled before the relevant date and regardless of fault on the part of AZD in delaying to meet it, I consider it would be inappropriate to adjust the division of matrimonial property to reflect that.

[63] I have accepted that sums paid to WH related to the repayment of monies advanced by him for the refurbishment of the Edinburgh flats. Had I not done so, I would have regarded those properties as subject to an unsecured loan in favour of Mr Hamid. AZD raised this with the pursuer in cross examination, putting number 6/286 of process to her,

which lists the funds paid to Mr WH (and some received) during 2017. The sums paid to him that year totalled £123,475 and sums received were £12,500. AZD challenged the accuracy of the £90,000 figure and that the idea that it somehow represented monies taken out of the company that should then be awarded to the pursuer even in part. In submissions Mrs Innes accepted that position. She sought a credit in the pursuer's favour of 50% of the monies paid to Russell & Aitken (dealt with above) and to AZD's siblings. She also sought such a credit in respect of the monies paid to AZD himself and to Mr U. Again, however, the difficulty with payments made from the company direct to AZD is that, at least for money taken before 12 August 2017 that money will either have been transmuted into assets already taken into account or spent on living expenses. This is where the difficulty arising from AZD's failure to lodge tax returns arises. In submissions he indicated that he was aware that he had failed to do so and was attending to the matter. Of course he will have to bear the consequences of meeting any unpaid tax due together with any penalties imposed and will have to do so from the wealth that he will retain following these proceedings or from future earnings. Failure to meet payments of tax timeously cannot be condoned, but I acknowledge that the pursuer will not, in fact, require to meet even indirectly the consequences of that failure, despite it having arisen prior to the relevant date. Insofar as it appears that AZD seems to have used monies earned within the company as his personal funds during a period when he was running the business, the pursuer will have benefitted from that, at least up to 12 August 2017. It was submitted on her behalf that had the monies not been taken out of the company Mr Rowand's calculation of EBITDA would have been higher as he had excluded them as an exceptional item. However, the company is an asset being retained by the pursuer and had Mr Rowand contended for a higher value by adding these sums back in as

part of an EBITDA calculation that would have served only to reduce the vast difference between his valuation and that of Mr Wilkinson. AZD appears to have sent money to his siblings in Pakistan at various times and the basis of the 2017 transfers was unclear although suggested by him at one stage to relate to the F house. It is difficult to know what to make of this sum and I regard it as unexplained and therefore to be taken into account, at least in a broad sense. The sum to Mr U is similar. If he worked in any capacity he was not properly employed and there is no clarity on why he would be paid from company funds. All of the sums taken from the company illustrate a casual approach on AZD's part that failed to acknowledge that the company was a separate legal entity when he was operating it.

[64] That leads to the issue of the sums taken out of the company and paid to the pursuer which are not accounted for in the pursuer's calculations. As already indicated it was not in dispute that she had received such sums. The Directors Loan account (see 6/291 of process, Appendix 6) was depleted from £134,965 in January 2017 to £26, 266 on 31 December 2017. There were both debits and credits and in submissions it accepted that a figure of £16,966 as at 12 August 2017 should be taken as the pursuer's asset in the form of money due to her by the company, as calculated by Mr Rowand at paras 4.3.7 – 4.3.10 of his report. I have included that in the schedule, but it ignores a large sum of money – in particular four payments of £25,000 each paid to ASA on 9 May 2017. The matrimonial home has been valued on the basis that at the relevant date the renovations and improvements were far from complete and there was evidence that the value in 2018 shortly after the works were effectively finished was £700,000. It was submitted on the pursuer's behalf that the removal by the defender of large sums of money prior to her taking control of the business has left her in a difficult financial situation. The pursuer was under no obligation to take over running

the business, although she said that she did so to try to salvage the situation for fear that everything that had been built up during the marriage might be lost. I conclude that the otherwise unaccounted for benefit to the pursuer in relation to the sums paid to her and not otherwise taken into account in the sum due to her by the company at the relevant date must be balanced against the arguments in her favour on the issue of the removal of monies from the company to AZD personally.

[65] Finally there is the issue of ongoing financial responsibility for the children. As all are over the age of 16, the pursuer is unable to utilise the principle enunciated in section 9(1)(c) of the 1985 Act to ask the court to reflect the taking on such an economic burden. There was disagreement between the parties about who would pay the school fees following divorce. In her evidence ASA agreed that after an initial difficult period, the rent due to AZD as landlord of the Bridge Street property were now being used to pay school fees. The pursuer seeks transfer of that property to her on divorce. AZD said that it was important for him to pay the school fees and would wish to do so after divorce. As there is little more than a year of school fees still to be paid, it seems to me that the rent due for the Glasgow premises could continue to be used for that purpose, regardless of which of the parties owns the property. Thereafter, all of the children will have attained the age of 18 years and all are or will be involved in tertiary education. As a matter of law they can look to both parents for alimentary support while they remain in education and are under the age of 25 and both parties have on the face of it sufficient resources to make suitable arrangements in that respect.

[66] However, the pursuer's position went much further. She contended that a departure from equal sharing to reflect that she would have the economic burden of caring for the

young adult children should be achieved by leaving the value of the dental surgery business out of account in calculating the financial provision due to her. There was contested evidence about the pursuer having set up a trust in about September 2018, with her children as beneficiaries, into which she had transferred her shareholding. In her affidavit (at para 54) and in her oral evidcne the pursuer said initially that she had done so as a result of pressure from her husband in negotiations. Under cross examination however she conceded this was not the case and she had done so of her own volition, albeit that at an earlier stage AZD had raised the issue of a trust. She had received legal advice before setting up the trust. I have decided to reject the pursuer's claim in this respect. She retained the company as her own property after separation. She then chose to put that property out of her legal reach by placing it in a trust for her children, but she still seeks a transfer into her sole name of two of the heritable properties of the business and it appears she intends to continue running the business. To remove this asset from a division of matrimonial property would be tantamount to condoning a transaction which had the effect of defeating the other party's claim to financial provision on divorce, something that can be challenged under section 18 of the 1985 Act. There are competing claims for a capital sum in this case, AZD's being based on a much higher value of the company than I have ultimately accepted. At the time of the transfer of her interest in the company to a trust these proceedings had not been raised and so the nature and extent of each party's claims was unknown. I am satisfied that ASA's intention is to protect family assets for the parties' children and I do not suggest that she made the transfer to defeat, albeit indirectly, any claims by her husband. On the value of the company that I have now accepted, AZD has no direct claims against his wife as he has retained assets to a greater value than those she retains. However, it would unfair to leave

one of those assets out of account in the task of dividing the value of the matrimonial property between them.

[67] Section 10 (1) of the 1985 Act, read with section 9, provides a norm of equal sharing of the net value of the matrimonial property. Where special circumstances, such as those included in the non-exhaustive list in section 10(6), are proved to exist the court can decide whether or not to depart from the norm – *Jacques* v *Jacques* 1997 SC (HL) 20. I have considered the evidence and arguments for and against an unequal division of the matrimonial property above. The matter is one for the exercise of my discretion and it is rarely best determined by a process of accounting. This marriage subsisted for 23 years prior to the relevant date. Both parties and their children benefitted from the fruits of the company, particularly in the last three years or so. AZD took significant sums out of the company but has acquired valuable property interests in Pakistan that have been taken into account. I am not satisfied that he has dissipated matrimonial property in a way that justifies an unequal division of its value, particularly when the sums received by the pursuer in 2017 are balanced against any sums taken by her husband that are not fully explained. In all the circumstances I have decided that an equal division of the net value of the matrimonial property held at the relevant date would be fair.

[68] I acknowledge that there were other issues raised by the parties but I have placed no weight on them and they have not affected my conclusion. For example AZD was exercised about a property investment in London (Webber Street) that had realised a decent gain which he had used to acquire assets for the parties. That all took place during the marriage and prior to the relevant date and does not alter the matrimonial balance sheet. There was evidence about the Glasgow premises and whether part of it could not be occupied by the

dental practice with a related issue about rent payable to AZD. Miss Chaudhary had prepared a calculation (number 6/226 of process). It illustrated that monies over and above those paid to AZD were due to him but that the amount was almost identical to school fees due for 2018 and 2019 and the parties had ultimately agreed that the school fees could be paid that source. The parties now need to move on and apportion any ongoing responsibility for their children's education fairly between them. In making no adjustment in respect of this matter I acknowledge that the effect is that AZD has been solely responsible for the school fees to date. The pursuer also expressed concern that her husband had not disclosed all of his assets and it was submitted that a recovery of documents procedure had been required. As against that AZD pointed out that when he had initially raised divorce proceedings in the sheriff court he had volunteered information about assets held by him that the pursuer may not have known about. I cannot conclude with any confidence that details of any assets have been withheld in these proceedings.

Resources and the orders for financial provision to be made

[69] Section 8(2) of the 1985 Act requires that I make orders for financial provision only if these are both justified by the principles of the Act and reasonable having regard to the parties' respective resources. Resources are defined in section 27 as present and foreseeable resources. There were few details of the value of each party's assets at the current time. ASA is a medical practitioner and a partner in a practice in Glasgow. During the marriage she worked part time and her income was lower than that of her husband. Currently she works part time but also operates DSL, albeit that the day to day running is delegated. The current profitability of that company is unknown. AZD's income is also unknown, but neither party

seeks as award of periodical allowance and each will retain assets that are sufficiently valuable that no question of ongoing dependence arises. ASA has inherited her father's house, a reasonably substantial property in Glasgow. For reasons that are not clear but seem to be related to family matters on her side, it has not yet been conveyed to her, but she is entitled to it in terms of his will. AZD has significant wealth tied up in land in Pakistan. As he will be the payer in the orders that I will make in due course, I must give particular consideration to his ability to meet those. He will have relatively few realisable assets in this jurisdiction and I have already indicated that the proceedings raised against him in Pakistan require to be resolved before he can raise money there. He may need some time to do that. However, as there was no suggestion that he could not raise funds by realising some of those interests and as the schedule attached to the supplementary joint minute suggests that most of the land had risen in value since the relevant date, I do not consider that any reduction in the sum that would otherwise be due should be made to reflect any resources difficulty. I conclude that it remains reasonable to effect an equal division of value as at the relevant date.

[70] As calculated above, the total net value of the matrimonial property at the relevant date was £4,009,329, of which the pursuer held £1,300,191. To achieve equal sharing, each party should receive assets to the value of £2 million (£2,004.664) and so payments or transfers to a value of £704,473 require to be made to the pursuer. She seeks a transfer of AZD's interest in the properties in Glasgow and Falkirk to her. A transfer of the Falkirk property would reduce the sum due to her by £325,000 on the basis that the Joint Minute (at para 5 f) iii) agrees that the value " was and is £325,000" and no issue arises from the requirement to use current value for transfer of property orders absent exceptional circumstances. That leaves £379,473 due to the pursuer. It was submitted on her behalf that

the title to the business premises in Falkirk should also be transferred to her. It was agreed (para 5f)(ii)) that the value of that property was and remains £105,000. There is a sum outstanding to the UN Bank of £30,501. As I understand it, if that sum is repaid the bank would be in a position to transfer the property to ASA unencumbered. The type of security the bank holds is, as I understand it, one where (at least to the extent of 80% in this case) the lender has an *ex facie* valid title but holds that only as security against the loan. The bank's interest in these proceedings as second defender is in respect of this matter. My understanding is that they are likely to be able to comply with an order for transfer if the outstanding debt is first repaid. The mechanics of that will require to be discussed at a By Order hearing, but for present purposes I have assumed that AZD will take on the debt to the bank and that ASA will receive the property unencumbered by any loan. If so she will still be due to receive the sum of £274,473 from AZD by way of a balancing capital payment. As it was agreed that I would allow submissions from parties before pronouncing final orders, I will allow AZD to include any arguments he may have about the timescale for payment. I have already indicated that I do not consider that the financial provision I will order should be enforceable until it is clear that all proceedings against AZD in Pakistan have been withdrawn. The fair division that I have sought to achieve would be disrupted were AZD to be deprived of any of his assets in Pakistan as a result of the proceedings taken against him there.

[71] For the reasons given above I will fix a By Order hearing for submissions to be made on behalf of all parties, including the second defender, in relation to the precise form of orders to be made to give effect to my decision. I will also expect submissions at that hearing

on the question of expenses, which I reserve meantime and on confidentiality and anonymisation should that be considered appropriate.