OUTER HOUSE, COURT OF SESSION

[2022] CSOH 84

F55/20

OPINION OF LADY CARMICHAEL

In the cause

MICHELLE MACDONALD

Pursuer

against

GARY MACDONALD

Defender

Pursuer: J Scott KC; SKO Family Law Specialists
Defender: Hayhow KC; Levy & McRae

25 November 2022

Introduction

[1] The parties were married on 9 August 2002. They separated on 27 May 2019 and have not lived together since. They agree that 27 May 2019 is the relevant date. I am satisfied that their marriage has broken down irretrievably. There is no dispute that I should in due course grant a decree divorcing them. The dispute between them relates to financial provision.

[2] Parties were agreed as to the values to be placed on a number of items of matrimonial property. A number of items remained the subject of dispute. Parties also led

evidence about factors which they contended should have a bearing on how the matrimonial property should be divided.

[3] The defender wished to retain his share of certain items of joint property, to have the pursuer's share transferred to him, and to assume responsibility for her share of the secured lending. At the time of the proof it was unclear whether or how he would be able to finance the capital payment necessary to achieve that. That depended in part on how much he required to pay. If he could not finance the capital payment, some or all of the items of joint property would have to be sold. Senior counsel were in agreement that I should reach conclusions about the disputed valuations and the division of matrimonial property, and then put the case out by order for submissions as to the orders that I ought to make. I did so in this case. It is in some cases convenient to hear submissions about the form of the orders that ought to be made at a by order hearing. I emphasise, however, that parties should be in a position at proof to provide the court with the information about resources that it requires in order to dispose of the case. A by order hearing is not an opportunity to address deficiencies in the evidence presented at proof.

[4] This opinion is structured principally by reference to the areas of dispute between the parties. The evidence of relevance to the areas of dispute is, subject to some limited exceptions, summarised under the headings which relate to those areas, rather than in a narrative of the evidence of each witness.

[5] The pursuer gave evidence in person. She led oral evidence from Mr Atholl Newlands and Dr Ben Lennon in relation to the valuation of land; from Mr Greig Rowand in relation to the value of the defender's interests in certain businesses; from Paul Campbell in relation to the value of some items of jewellery and her transactions with him; and from

Ms Laura Brown in relation to capital gains tax liability. She provided affidavit evidence from Chloe Macdonald in relation only to the grounds for divorce.

[6] The defender also gave evidence in person. He led oral evidence from Ms Philippa Cliff regarding the valuation of land; Mr Graham Cunning in relation to the valuation of his business interests; from Mr Lee Thomson, the director of Macdonald Groundworks Limited; and from Mr Paul Capewell, of A9 Accountancy Limited. He relied on affidavit evidence from Cole Macdonald and Gavin Sweeney.

Agreed matters

[7] The values of the following items of matrimonial property were agreed.

Matrimonial property	**Relevant date**	**Proof date**
Joint property		
"No Bother" (former matrimonial home) (INV22824)	£775,000	£812,500
Birchview Cottage and Lairgandour Farmhouse (INV23791)	£365,000	£382,500
Industrial units at Lairgandour (INV23791)	£605,000	£722,500
Joint bank account	£22,554	
Pursuer sole property		
Pension	£4,280	
Pension	£3,237	
Defender sole property		
Property at Ladystone	£152,500	£156,250
Birchwood House	£91,627/£102,592	

Sum due from MGL	£16,214	
Shares in GDM Properties	£481,000	
Pension	£4,280	
Pension	£15,727	
Sole trader business Daviot Farms	£353,000	

[8] It was also agreed that at the relevant date there were standard securities over "No Bother" in respect of debt totalling £521,249, and over land and buildings at Lairgandour and Scatraig totalling £1,258,671. It was agreed that there was a further matrimonial debt at the relevant date of £60,000 in respect of the defender's debt to GDM Properties.

[9] At the time of the proof the secured loans over "No Bother" amounted to £380,024, and the secured loan over the land and buildings at Lairgandour and Scatraig to £676,137.

Disputed matters

[10] Although the parties agreed that the following items were matrimonial property, the valuations of them were disputed.

(a) Jointly owned farms at Lairgandour and Scatraig (INV23791, INV23802 and INV23803), other than the valuations of the residential properties and industrial units there already mentioned.

(b) The pursuer's jewellery.

(c) The defender's:

(i) shareholding in Macdonald Groundworks Limited ("MGL");

(ii) shareholding in HRL Scrap and Waste Solutions Limited ("HRL")

(iii) interest in Café V8.

(d) The money in a black box or safe that the pursuer took from the former matrimonial home in September 2019.

(e) The contents of "No Bother".

[11] The defender contended that a Range Rover used by the pursuer should be treated as matrimonial property.

[12] The defender contended that there were two additional items of matrimonial debt to be taken into account, namely his debt to HMRC at the relevant date, and a standard security which he had granted in favour of Aqua Leisure.

[13] The defender contended that there should be an unequal sharing of the matrimonial property in his favour. The pursuer submitted that there were balancing advantages and disadvantages between the parties, and that on a "broad brush" basis there should be no adjustment. The parties agreed that the pursuer should receive a periodical allowance, at least until such time as she receives a capital payment, but disagree as to how much she requires.

Credibility and reliability

[14] There were some features of the evidence of both the pursuer and the defender that caused me to be cautious about relying on their evidence in the absence of some independent source of evidence. The pursuer had not troubled to produce a comprehensive list of the jewellery held by her. Her explanation for failing to return to her son his Rolex watch, despite requests over a period of two years, was unimpressive. She said, "He is my son. I thought he would ask himself, not through solicitors." The impression was of someone who did not take much care to provide accurate and complete information about her property, and who had not taken care to return an item that did not belong to her to its

owner. She gave conflicting accounts as to why she had taken her son's watch in the first place.

[15] The defender was disqualified from being a company director for eight years. Following a warning that he did not require to answer any question that might implicate him in criminal activity, he declined to answer questions about his role as the executor nominate on the estate of his late father, who died in February 2014. The context was his evidence that he had received a gift of £300,000 from his parents in order to buy a farm in 2008, and questions suggesting that he had not made HMRC aware of that in the context of liability for inheritance tax.

[16] The defender was evasive when asked about the circumstances which led to his being disqualified from acting as a company director in 2014. I discuss this more fully below. On a number of occasions he appeared to be confused as to what property or obligations were his, and what were the property and obligations of MGL.

[17] My overall impression of the pursuer and the defender is that they shared a tendency towards carelessness so far as the provision of accurate information relevant to financial provision is concerned.

Relevant background

[18] The pursuer and the defender formed a relationship in 1996. The pursuer was working part-time as a cleaner. She had a daughter, Chloe, who was then aged 2. The pursuer gave up her cleaning job in 1997. In 1998 she became pregnant with the parties' first child, Cole. Their daughter, Dana, was born in 1999. The defender already had a son, Stephen, from an earlier marriage.

[19] The defender trades in surfacing and construction. He has traded in those fields through a number of different companies during the course of the marriage. These included Highland Quality Construction (HQC). The pursuer started working in the accounts office of HCQ in 2008. Her work included invoicing, payroll and administration.

[20] HCQ went into receivership in 2010. As a result of matters connected with the failure of HCQ, the defender was disqualified from acting as a director for a period of eight years from 20 May 2014. He defended the proceedings and his evidence was that he spent £450,000 doing so. He said that he felt unable to bear the additional expense that would have been associated with a proof, and conceded the matter. A summary of the history of that matter contained in a decision of the Upper Tribunal (Administrative Appeals Chamber, Traffic Commissioner Appeals) dated 18 February 2019, was put to the defender in the course of his evidence. It narrates that the defender signed a form of company director disqualification admitting his unfit conduct. It narrates that he admitted misapplying company funds by arranging payments to connected parties and unlawfully disposing of assets subject to hire purchase. In his oral evidence the defender said that he had admitted these matters simply to put an end to the proceedings in 2014. He gave the impression of distancing himself from the admissions he had made in 2014.

[21] The defender acquired MGL. He owns all the shares in it. The pursuer was a director of MGL until 2016. Lee Thomson is currently the director of MGL. He is not an employee, but is paid on a consultancy basis.

[22] The pursuer worked part-time for MGL in an administrative role. In 2016 her dog became ill, and she required to spend time at home to administer medication to the dog. She remained on the payroll of MGL, and was paid £441.64 per week. Latterly that sum was increased to £776.68. She is still employed by MGL, but she does not do any work there.

The defender's bail conditions and latterly the terms of a non-harassment order make that impossible. She drives a car that is the property of MGL. It is a Land Rover. After the relevant date the pursuer initially moved in with her daughter, Chloe. She has been living in rented accommodation since March 2020.

[23] There was initially a suggestion that Birchwood, an earlier matrimonial home, contained furniture which was matrimonial property, and which the pursuer had removed. She denied having done so. In the course of the proof it became clear that any furniture in Birchwood was the property of MGL.

[24] During the marriage the parties enjoyed a high standard of living. Both Birchwood House and "No Bother" were substantial detached properties. The latter has a swimming pool. The parties took expensive holidays abroad.

Disputed valuations of matrimonial property

Lairgandour and Scatraig

[25] Lairgandour and Scatraig are two farms at Daviot, south of Inverness. The parties bought them together and farmed them together. Lairgandour and Scatraig were farmed together by the previous proprietors. Lairgandour comprises 382.68 hectares (945.60 acres). The lower lying ground is classified as predominantly grade 4.1 agricultural land, with some areas of grade 5.2 to 5. The higher ground is of lower quality. It includes two residential properties and industrial buildings (which are the subject of separate, agreed, valuations), and part of the land on the higher ground is subject to a forestry grant scheme contract. Scatraig comprises 65.7 hectares (162.3 acres). The land is of similar quality to the lower lying land at Lairgandour. It includes farm buildings and steadings and salmon fishing rights on the River Nairn.

[26] After the relevant date planning applications were made and approved in relation to the use of the steading at Scatraig as a farm shop and café, and for the construction of a fishing or tourist lodge at Scatraig.

[27] The pursuer had the property valued by Bowlts. Mr Atholl Newlands and Dr Ben Lennon gave evidence in relation to the valuation. Dr Lennon is a specialist in woodland and forestry matters. The defender instructed a valuation by Highland Rural, and Ms Philippa Cliff gave evidence about that. There is no dispute that all three witnesses are properly qualified to give the opinions that they did.

[28] Mr Newlands and Dr Lennon valued the property as at the relevant date, and as at 30 August 2021, and as at 28 March 2022. The proportion of value allocated to woodland is relevant in relation to current values, and the availability of resources, as disposal of woodland is subject to a lower rate of taxation for CGT purposes. In the course of evidence it became clear that there was a difference between the skilled witnesses in relation to the value of woodland at particular times, and the extent to which it had increased over time, and I therefore have detailed the valuations at all three points in time that Bowlts considered.

	Relevant date	30 August 2021	28 March 2022
Land and woodland, including sporting interest *Woodland element*	£1,480,000 £690,000	£1,665,000 *£795,000*	£1,810,000 *£825,000*
Agricultural buildings	£130,000	£158,000	£160,000
Telecoms masts	£57,500	£57,500	£56,500

Subtotal	**£1,666,500**	**£1,880,500**	**£2,026,500**
Marriage value 5%	£83,325	£94,025	£101,325
Total	**£1,749,825**	**£1,974,525**	**£2,127,825**

[29] At proof Mr Newlands indicated that he had been prepared to modify his relevant date valuation, exclusive of marriage value, to £1,601,000. The marriage value at that level would be £80,050.

[30] Ms Cliff valued the property as at the relevant date, and also as at the date of an inspection in late October 2021. In her opinion the value of the property, and the woodland element of it, had not increased between her inspection in 2021 and the date of the proof.

	Relevant date	October 2021
Land *Woodland element*	£1,291,000 *£592,000*	£1,470,000 *£790,000*
Steading	£75,000	£100,000
Telecoms masts	£34,000	£30,000
Total	£1,400,000	£1,600,000

[31] I leave aside for the moment the valuation of the woodland. The principal differences between Mr Newlands and Ms Cliff in relation to the non-woodland parts of the farms were in relation to the following.

(a) Mr Newlands had attributed some value to sporting interests, and Ms Cliff had attributed none.

(b) Mr Newlands had been more generous in his approach to a "hope" element prior to the grants of planning permission, and in relation to the value of the grants of planning permission at the current date than had Ms Cliff.

(c) Mr Newlands had attributed some value to farm buildings which in Ms Cliff's view had no value other than that already reflected in the per acre price of the land.

(d) The value to be attributed to leases in respect of telephone masts.

(e) Mr Newlands was willing to attribute a marriage value to L and S to the extent that a purchaser would pay 5% over and above his valuation in order to secure the purchase of L and S together.

[32] There was no material difference otherwise in their approaches to valuation. Both Mr Newlands and Ms Cliff had examined comparator transactions, and considered matters on the basis that there would never be a precisely similar comparator in relation to a property of the type in question. A number of the comparators were comparators that both of them considered. Both considered that the market for agricultural land was buoyant.

[33] In respect of each of the five points of difference identified above, I have preferred Ms Cliff's approach. There are no sporting interests of any value in relation to the land in question. The woodland area of Lairgandour is fenced off. There is presently no potential for deer stalking. Mr Newlands' own evidence was that in twenty years' time the woodland area would provide shelter for deer. There was no evidence that there was any shooting other than rough shooting for rabbits. Shooting on the lower ground would in any event be unsafe and too close to residential properties. It would not have any commercial potential.

[34] Although Scatraig has salmon fishing rights, the river in question does not provide prime salmon fishing. There is no recent track record of anyone successfully fishing for

salmon on the area of river concerned. The river bank at the property is difficult to access, and considerable work would be required to make it accessible for fishing.

[35] The use of the steading as a farm shop and café has relatively little appeal to a purchaser. Mr Newlands and Ms Cliff essentially agreed about that. If development were to take place on Scatraig it would be more likely to take the form of residential development. A significant disincentive to the developments for which planning permission had been granted was the need to improve the access to the site, and to build a suitable junction with the A9. That would be an expensive exercise. The defender, who has relevant construction experience, estimated the cost at £300,000. Neither Mr Newlands nor Ms Cliff was in a position to comment in detail on that estimate, but both appeared to accept that there would be a substantial cost. Even if the defender's estimate is an over estimate by 100%, it is still probable that a six figure investment in infrastructure would be required for these developments.

[36] The fishing lodge is a project with limited capacity to generate funds such as to pay for its development, or render it a profitable development. It is subject to planning restrictions which prevent occupants from residing there for more than three consecutive months, and from residing there for more than six months in a calendar year. The development for which permission had been granted was a six bedroom house. Construction costs would be substantial, perhaps, on Ms Cliff's admittedly very rough estimate, £750,000, and weekly rental in the summer, again on her estimate, in the region of £2,000.

[37] None of the agricultural buildings was modern or of particularly good quality. It was common ground that they fell within the range of ageing buildings that would normally occur on farms such as Lairgandour and Scatraig. On that basis, I accept that Ms Cliff's

approach of looking at the per acre price of similar farms, which would have included broadly comparable, but never precisely identical, buildings. There was no evidence to suggest that any of the agricultural buildings were of a nature or quality as positively to enhance the value of the land. Ms Cliff had checked transactions that had taken place since her report, and had learned nothing that caused her to alter her view of the land as at November 2021, or to think that the value had increased between then and the date of the proof.

[38] There is a telecommunications mast site at Lairgandour, and another at Scatraig. Each is currently leased out at a rental of £3,200 per year. The lease on the former is until 2036, and on the latter until 2026. Mr Newlands took into account offers to purchase in relation to comparator masts. He had no information about concluded sales. Ms Cliff assessed the value of the masts by reference to their income stream. There were two fewer years of income stream in 2021 than there were at the relevant date. The terms of the lease were relevant, as they gave the tenant a unilateral right to terminate on notice.
Mr Newlands attributed a residual value at the end of the lease. He had applied a lower discount rate than had Ms Cliff. Ms Cliff considered that there would be no residual value. The Telecommunications Code had come into force since the leases were entered into. Telecommunications providers could occupy land on the basis of powers akin to compulsory purchase in order to enable the rollout of 4G. There was now no incentive for a telecommunications provider to pay thousands of pounds to rent a mast. The reasons that Ms Cliff gave for taking a conservative approach to valuation were cogent and I accept her evidence on this point. Evidence about offers which did not lead to concluded transactions is of relatively little value in this context.

[39] I do not accept that there is a sound evidential basis for attributing a marriage value to the two sites. Mr Newlands' own evidence was that it was very difficult indeed to identify market evidence for a marriage value, or to assess it by reference to comparable transactions. It appears to me a matter of little more than speculation as to whether a purchaser might pay more to buy the two farms together, if they were marketed as separate lots. The farms have been owned and worked together by the parties, and also by the previous proprietors. It seems more likely than not that a purchaser would similarly see them effectively as a single unit, even if marketed in separate lots.

[40] So far as the evidence about the woodland is concerned, I prefer the evidence of Dr Lennon to that of Ms Cliff. Dr Lennon was an impressive witness. He is a chartered forester. He had expertise in forestry and the valuation of woodlands beyond that of Ms Cliff, who is not a specialist in that field. A difficulty in providing a relevant date value for the woodland that both he and Ms Cliff faced was that neither had seen it at the relevant date. Unlike the rest of the land, its condition at the relevant date would have been rather different from the time when each of them viewed it in, respectively, late summer and Autumn 2021. It was planted in 2018 and 2019. At the relevant date the trees were younger, and more vulnerable. They were at a stage when they required more management, including "beating up" (removing trees which have perished and replacing them).

[41] The woodland at Lairgandour was not registered against the UK Woodland Carbon Code, although it would have been eligible to be registered until July 2021. The scheme is no longer open to new registrations of woodland which has already been planted. Since July 2021 woodlands can only be registered before they are planted. The result is that the woodland cannot provide its proprietor with future income from carbon sales. Had it been

registered, the woodland would have been more valuable. The woodland has benefited from grants.

[42] It was common ground that woodland had increased in popularity as an investment in recent years, and that the value of woodland had increased. Timber is a sustainable product. Imports of timber have become more expensive. Woodland is attractive to "green" investors. There are tax advantages when the land comes to be sold.

[43] All the comparators identified related to larger woodlands than that at Lairgandour. Dr Lennon's evidence was, however, that the price difference between small and large woodlands had become less marked in the last two years. Established woodland had the highest value. Young woodland held the promise of growth.

[44] Dr Lennon's evidence was that between 2019 and 2021 the average value of younger woodlands had increased at a higher rate than the overall average. The overall average increase was 10% year on year. He had allowed a 4% increase from his valuation in August 2021 to the value current at the date of the proof. He accepted that there had been a degree of "hype" created by transactions regarding very large areas of woodland purchased by institutional investors, and accepted that he had no recent comparator sale of woodland of a similar size to that at Lairgandour. He said 4% was reasonable in a context where the year on year average increase over 20 years had been 10%, and the increase in the market over the short period in question had been significantly more than 10%.

[45] I have therefore accepted Ms Cliff's valuations, save in relation to the woodland. The consequence of that is that I have increased each of her figures to account for the difference between her valuation of woodland and that of Dr Lennon.

[46] On that basis I find that the relevant date and current values of Lairgandour and Scatraig are as follows:

	Relevant date	Current
Land *Woodland element*	£1,389,000 *£690,000*	£1,505,000 *£825,000*
Steading	£75,000	£100,000
Telecoms masts	£34,000	£30,000
Total	£1,498,000	£1,635,000

The pursuer's jewellery

[47] The pursuer produced a valuation for five pieces of jewellery as at the relevant date. The author is Paul Campbell, of Colin Campbell and Co Ltd ("Colin Campbell"), a jeweller trading in Inverness. The total value of those five pieces is £5,580. The valuation is not challenged. The pursuer's affidavit includes a list of 21 further items, at paragraph 5.2. She says she sold those to Colin Campbell to obtain money for legal fees. She produced a receipt showing Colin Campbell paid her £700 for a cocktail ring in December 2020, £8,885 for 16 listed items in November 2020, and £3,700 for a watch, also in November 2020. Her bank statement dated 4 December 2020 shows payments in of £8,885 and £3,700 from Colin Campbell with the reference "scrap buy in", and a payment of £1,500 with the reference "pendant". The pursuer's evidence was that the payment of £1,500 related to a green beryl pendant and chain, and that the £700 related to a green beryl ring. These are the first two items listed at paragraph 5.2 of her affidavit. The £3,700 related to the ladies' Rolex watch in the list.

[48] With the assistance of Paul Campbell's oral evidence, it was possible to reconcile some of the other 18 items listed by the pursuer with the list he had prepared of the items he purchased from her in November 2020. He confirmed that he had purchased items listed in

the affidavit which did not feature in his list from November 2020. He thought there were four or five of those, purchased for about £1,700.

[49] Mr Campbell had paid the pursuer only the scrap value of the jewellery she sold him, with the exception of the ladies' Rolex watch. The second hand retail for a similar watch at the time was £5,000, fully serviced and guaranteed. He had serviced the watch he purchased at a cost of £600, and considered £3,700 a reasonable price for the watch in the condition he received it.

[50] He did not trade in second hand jewellery himself, and was interested only in the value of the metal. He paid the pursuer for both the stones and the metal, but on the basis that he would have to "burst" the pieces in order to sell the metal, and would then be left with the stones. He had offered her the alternative that he return the stones to her and pay her only for the metal. Breaking up the jewellery depressed the price of the item. He would not be able to sell the stones unless a customer came in needing a replacement for a missing stone matching the cut and colour of one of those he had purchased. He had afforded the pursuer special treatment as a long-standing customer. He would normally have told a customer simply that he did not purchase stones.

[51] The parties had been customers of Colin Campbell for more than 20 years. Mr Campbell estimated that the defender had spent more than £40,000 buying jewellery for the pursuer from his company over the years.

[52] The pursuer lists at paragraph 5.4 of her affidavit items she has retained, including the five items which have been valued, and a number which have not. In her oral evidence she said that she had items in storage which she had not recovered from storage when asked to list the jewellery she held. She was unable to say precisely what items were still in storage. The list includes a watch belonging to her son, Cole. In oral evidence she

acknowledged that the defender had bought her jewellery often during the marriage. The defender's position was that he had bought jewellery during the marriage at a cost of more than £250,000. The pursuer did not know whether this was an accurate estimate.

[53] The pursuer submitted that the relevant date value of the jewellery was £22,065. The defender submitted that it was £50,000 (about a fifth of what he said he had spent purchasing it).

[54] It is necessary to take a very broad approach to the value of the jewellery the pursuer retained at separation. Five pieces she retained had a relevant date value of £5,580. She realised a combined scrap value of £12,785 for 19 items that she sold to Colin Campbell. Most, if not all, of these were sold in late 2020. I accept that £3,700 represents the value of the Rolex watch at the time she sold it. There is no evidence to suggest that any of the pursuer's jewellery would have depreciated significantly in value between the relevant date and late 2020. The pursuer sold 19 items for less than their second hand market value. Comparing the five valued items with the 19 sold items is necessarily a crude exercise. The average value of the former is £1,116, and the average value of the latter is £672. The former is 66% more than the latter. On a conservative basis, applying instead an increase of 50% to the scrap value achieved produces a figure of £19,177 for the 19 sold items. On that approach, the overall relevant date value for all the items of jewellery just mentioned would be £28,457.

[55] Paragraph 5.4 of the pursuer's affidavit discloses more retained items that have not been valued or sold (four watches and 15 other items). In her oral evidence she indicated that she has retained more jewellery which has not been identified or valued for these proceedings in a storage facility. On the basis of the available evidence about those items

which have been identified, and taking a conservative approach, I assess the relevant date value of all the jewellery that the pursuer retained to be £38,000.

The defender's interests in MGL, HRL and Café **V8**

[56] The values of the defender's interests in MGL, HRL and Café V8 were disputed. In relation to all of these matters the pursuer led evidence from Greig Rowand, who is a chartered accountant, and a director of GR Forensic Accounting Ltd. The defender led evidence from Graham Cunning, a chartered account and a partner in Azets Holdings Ltd.

MGL

[57] The difference between Mr Rowand and Mr Cunning had narrowed substantially by the time of the proof. The principal reason was that Mr Rowand had initially thought that MGL should be valued on an EBITDA basis (earnings before interest, taxes, depreciation and amortisation). He became persuaded, like Mr Cunning, that valuation should be approached on an EBIT basis (earnings before interest and taxes). It was common ground that an EBIT basis was appropriate because MGL regularly purchased and sold plant and equipment. The defender confirmed in his evidence that it did so because it was important to MGL's clients that MGL have new and reliable equipment of good quality.

[58] Counsel for the defender submitted that this change of approach, which made a significant difference to the pursuer's valuation, had been a significant error on the part of Mr Rowand. It should cause me to attach little weight to his evidence. I do not regard the matter in that light. Mr Rowand became aware of more information than he had had initially about the way in which MGL operated. This occurred at a relatively late stage, after he had met and had discussions with Mr Cunning. He amended his approach accordingly.

I take nothing adverse from his having done so. The dispute became more focused as a result of their having met. That is the point of experts meeting.

[59] Mr Rowand valued the pursuer's shareholding in MGL at £2,550,000. Mr Cunning valued it at £1,106,070.

[60] The witnesses agreed that the FME (future maintainable earnings) were £1,341,000. Their differences were in relation to the following:

(a) Mr Rowand applied a multiplier of 4, and Mr Cunning applied a multiplier of 3.25. Each accepted that the selection of a multiplier was not an exact science, and involved questions of professional judgment.

(b) Their approach to net debt differed in two respects.

(i) Mr Cunning took into account liability for corporation tax, and Mr Rowand did not.

(ii) Mr Cunning took into account the cost of equipment the purchase of which had not been completed at the relevant date.

(c) Mr Rowand considered it appropriate to take the value of the net tangible assets as a "backstop": the shares could not be worth less than the company's assets. Mr Cunning proceeded on the basis that the value of the shares might be less than the value of the assets.

[61] Both witnesses referred to comparable transactions involving companies (subject to one exception) with very much higher revenues than MGL. Apart from one company which had a revenue of £1.07m, the revenues were in the range £10.14m to £99.18m.

[62] In Mr Rowand's opinion, the defender's 100% shareholding in MGL was worth £2,550,000 at the relevant date. He arrived at his chosen multiplier in the following way. He considered eleven transactions and ten listed companies mentioned as comparable

in Mr Cunning's report. He did not discover independently of Mr Cunning any comparable transactions or companies. The publicly available information about the transactions did not show the relationship between the enterprise value and the EBIT of the company in question.

[63] Mr Rowand attempted to check the revenue and EBITDA figures by examining the financial statements of the acquired companies as they were lodged with Companies House. He also identified the EBIT figures for the acquired companies. He worked out the EV/EBIT and EV/EBITDA multipliers for each transaction. The average EBITDA multiplier was 8.3 and the average EBIT multiplier was 11.1. He saw that the average multiplier for companies with smaller enterprise values (less than £20m) and smaller EBITDA (less than £3m) was lower than the overall average, but not by much. He selected an EV/EBIT multiplier of 4, which represented a discount of 64% from the average EBIT multiplier of 11.1.

[64] As I have already indicated, it was Mr Cunning who identified the transactions that were said to be comparable. He considered that those with an enterprise value of less than £20m and an implied EBITDA of less than £5m were more suitable comparators for the purpose of valuing MGL. He discounted the range of multipliers by 50%, as the sums involved in the transactions were higher than MGL would achieve if sold. That then produced a range from 1.5 to 5.7 (EV/EBITDA). He regarded the lower end of that range as appropriate for the purpose of valuing MGL, settling on a range of 2 to 2.5.

[65] In order to identify an EV/EBIT multiplier, Mr Cunning first looked at the EBIT and EBITDA figures for MGL in the financial years from 2017 to 2020, and concluded that EBIT was about 66% of EBITDA. Applying that information to an EV/EBIDTA range of 2 to 2.5 produced an EV/EBIT range of 3 to 3.5. He selected a multiplier of 3.25. In doing so he took into account that while MGL had a high level of repeat business and relationships with blue

chip customers, a very significant proportion of its business was with its top three customers. It did not have long term contracts with its principal customers. It also relied strongly on the defender himself to secure customers and drive growth. A buyer would regard the customer concentration and central role of the defender as risks militating towards a low multiplier. The multiplier reflected the view a purchaser would take about the ongoing profitability of the company.

[66] Mr Rowand's view was that liability for corporation tax (£38,301) should not be taken into account in calculating net debt. If it were, then monies due from HMRC under the construction industry scheme would also have to be brought into account. He relied on earlier experience in practice, and accepted that his work for the last two years had been exclusively in litigation support. He maintained that he had seen corporation tax excluded from consideration in transactions within the last ten years. He also excluded from net debt about £500,000 which related to hire purchase liability for plant and machinery purchased on 20 June 2022, after the relevant date. Mr Cunning took a different view. In relation to corporation tax he said that ten or fifteen years ago there would have been an argument as to whether corporation tax should be treated as working capital or debt. Generally accepted modern practice was to treat it as a debt-like item. The seller had enjoyed the profit, and should bear the tax. He drew a distinction between corporation tax and monies retained by HMRC under the construction industry scheme. The latter should be treated as working capital.

[67] The hire purchase was capital expenditure to which MGL had been committed at the relevant date. A purchaser would have discovered that in the course of due diligence. He did not accept that the purchaser would simply regard it as part of the usual trading of the organisation. He said a purchaser might use it as a bargaining chip. Two of the three items

of plant had been delivered before the relevant date, and used before the hire purchase agreement was executed.

[68] Mr Rowand used the net asset value of MGL as a cross check. The plant and machinery was the principal asset of the business, and the market value of it might be higher than the value in the balance sheet. The value on the balance sheet was £2.186m on 31 March 2019 and £2.785m on 31 March 2020. Mr Cunning put the relevant date balance sheet value at £2.228m.

[69] Mr Cunning's evidence was that it was not uncommon for businesses to be worth less than their net assets. In "old economy" businesses, which he said included construction and printing, there was heavy capital expenditure. The fixed assets might produce a large balance sheet, but the real worth of the company was a multiple of its earnings. One could liquidate the company and get less than the value of the shares calculated on an earnings basis. If the company were to stop trading, even with an orderly winding down, there would be a risk of realising less than the net asset value. One risk was that when a company was about to cease trading, plant would be treated with less care than usual. The risks associated with a "fire sale" were of a greater magnitude. Mr Cunning prepared a net asset value on a break up basis. That did not involve valuing the assets on a commercial basis. The sale would be forced, resulting in price reductions because of the time-sensitive nature of the exercise, and the costs involved in closing down the business. He arrived at a figure of £317,000.

[70] Both accountants recognised that the purchase and sale of plant and machinery was part of MGL's business. It was for that reason that they came to agree that an EBIT, rather than an EBITDA, basis of valuation was appropriate.

[71] There was evidence from Lee Thomson and Paul Capewell, given after the evidence of Mr Rowand and Mr Cumming, to which I attach some weight in relation to the value of the plant and machinery. Mr Thomson said that MGL's transport manager, Mr Leslie, and the defender constantly assessed the needs of the business so far as plant and equipment were concerned. They considered what they needed to serve their market, the age of the existing equipment, and the specific requirements of the business at the time. His evidence was that in the five to ten years preceding the proof the lead in period from the point at which one might require plant until the hire purchase agreement was signed had increased. The equipment was not readily available. MGL identified with its key suppliers what they would need. Acquisitions were planned six months in advance. Discussions with key suppliers started six months in advance.

[72] Paul Capewell is a chartered accountant, and has been the auditor of MGL since 2019. He had considered how money might be raised to meet the defender's liabilities in this action. During the course of the proof AMC had confirmed in principle that it would advance £640,000 over the farm. It was possible that a different lender might advance more. Trading conditions were currently difficult. MGL might downsize, dispose of assets, in particular plant, and pay a dividend to the defender. That would be subject to tax. The market for plant and equipment was very strong. Vehicle axles and new plant and equipment were very hard to get hold of. Lead times were six months to a year for new items, and that gave rise to a strong second hand market.

[73] I accept that, as Mr Cunning said, a purchaser at the relevant date would have become aware during due diligence before the relevant date that there was a commitment to capital expenditure regarding the plant in respect of which MGL signed agreements in June 2019.

[74] I also accept that there will be situations in which a business will be worth less than the value of its assets, if those assets actually required to be sold and realised when the business ceased trading. The evidence of Mr Thomson and Mr Capewell, however, runs counter to the proposition that the value of the business will be so markedly below the value of its assets as Mr Cunning's valuation suggests. I recognise that Mr Capewell when speaking about the strong second hand market for plant and equipment was speaking about conditions at the time of proof, and not at the relevant date. His evidence about lead times for new equipment was, however, broadly in line with that of Mr Thomson. Mr Thomson said that lead times for new equipment had been increasing over a five to ten year period, and I accept his evidence about that. Mr Cunning himself noted that the sector in which MGL operates has high barriers to entry with large capital costs for necessary equipment for new entrants in the market. I am satisfied that MGL's assets are of a type for which there is currently a strong demand in the second hand market, and that that was probably the case at the relevant date as well. MGL is a business that turns over its plant and equipment frequently. It is likely that its equipment at any given time will be of a type and quality for which there is a demand, and that its value or a substantial proportion of it would be achieved on sale.

[75] I generally considered that Mr Cunning took a cogent and reasoned approach to valuation. He identified the comparators from which both witnesses derived their valuations. His approach to deriving an EV/EBIT multiplier tailored to MGL seemed, on balance, preferable to that of Mr Rowand. I took that view because of his examination of MGL's own EBIT/EBIDA ratio, and application of it to the multipliers he had derived from the information about comparator companies. Having regard in particular to the very substantial difference between the value of MGL's assets and the valuation of the shares at

which Mr Cunning arrived, I take the view that the multiplier he selected was too low. Taking all of that into account I have use the multiplier at the upper end of his selected range, namely one of 3.5. That produces an enterprise value of £4,693,000.

[76] The pursuer suggested that I should take the same approach to corporation tax as had Lord Tyre in *W* v *W* 2013 Fam LR 85, at paragraphs 24-25. In *W* the experts agreed about the methodology, but one suggested that an imminent liability for corporation tax would be a "haggle point" which would in a real transaction drive down the purchase price. Lord Tyre declined to take the liability into account in assessing the value of the company's shares. That is not the position here. There is a dispute as to whether, as a matter of normal methodology or practice in valuations of this sort, liability for corporation tax should form part of the net debt. Mr Cunning has considerably more recent experience in transactions than does Mr Rowand, and for that reason I prefer his evidence on this point.

[77] The suggestion of a "haggle point" has more force so far as the commitment to purchase the plant and equipment is concerned. There is no reason in principle to leave out of account a factor which would, on the evidence, be relevant to the price that would be achieved between a willing buyer and willing seller at the relevant date. It can, however, be difficult to assess what the effect of the "haggling" would be. Lord Tyre described the effect of a "haggle point" as introducing a subjective and unverifiable element. It was common ground that the buying and selling of plant and equipment was part of the normal business of MGL. Although the sums concerned are substantial, they are part of the normal trading of the business. Against that background I am not satisfied that the result of any negotiation between buyer and seller would be, as Mr Cunning asserted, the deduction from the price of the items for which hire purchase agreements were executed on 20 June 2019. With both

that background and Lord Tyre's approach in *W* in mind I have left this commitment out of account.

[78] Taking an enterprise value of £4,693,000, deducting £38,000 for corporation tax liability, and a further £2,814,000 which is the net debt figure identified by Mr Rowand, produces a figure of £1,841,500.

HRL

[79] HRL is a scrap metal merchant operating in Inverness. The defender has a 60% shareholding, with the remainder of the shares held by Ronald Dyce, the sole director of the company. Mr Rowand and Mr Cunning agreed that the appropriate basis for valuation was an EBITDA earnings basis. Mr Rowand valued the defender's shareholding at £366,000. Mr Cunning valued it at £135,000.

[80] The business was incorporated in 2010. The defender initially owned the whole share capital (100 shares). In 2014 he transferred 60 shares to the pursuer, and 40 to Mr Dyce. In September 2016 the pursuer transferred her 60 shares to the defender.

[81] The defender's evidence, which I accepted, was that he did not take any part in the day to day running of the business. That was done by Mr Dyce. Mr Dyce did not have a service contract with HRL. I accepted the defender's evidence that Mr Dyce's personal contacts, character and reputation were of significance in the continuing profitability of the company, although I also accepted, on the basis of Mr Rowand's evidence, that the business would derive some trade simply from being an available facility in the Inverness area.

[82] Mr Rowand and Mr Cunning arrived at broadly similar figures for future maintainable earnings (£248,000 and £256,000 respectively). The differences of substance between them were in relation to the multipliers that they selected (2.75 and 1.5

respectively), and whether to apply a discount for the level of shareholding. Both recognised that there was a dearth of directly comparable transactions. There was a difference between them so far as net debt was concerned. That was accounted for by their differing approaches to corporation tax, already discussed in relation to MGL.

[83] Mr Rowand used the BDO Private Company Price Index, which is not sector specific; the Damodaran database, which relates to metal and mining and precious metals sectors, but which does not include sector information for the scrap metal industry; and MarktoMarket, a report on UK transaction indices, focusing on the small and middle market. Those resources provided a range of multipliers for 4.72 to 10.4. Based on those and his experience in the market he derived a range of 2.5 to 3, and selected the midpoint in it. He did not think that the business was particularly dependent on the person conducting it. Its presence in the market in a particular location would attract custom. Mr Rowand explained that the market experience he relied on was six or seven years in the past, and in relation to a transaction or transactions the details of which he did not have a precise memory.

[84] Mr Cunning used a single transaction involving the acquisition of a scrap metal processing company in Yorkshire, which operated from ten facilities. The EV/EBIDTA multiplier was 4.9 in that transaction. Mr Cunning regarded a multiplier of between 1.25 and 1.75 as appropriate and selected the midpoint in that range, 1.5. He took into account that the market in scrap metal was a volatile and fluctuating market, the reliance of the business on Mr Dyce, and the location of the business.

[85] Mr Rowand's approach was influenced by a document entitled Put and Call Option Agreement. It bore to be between the defender and Mr Dyce. The document lodged in process was unexecuted and undated. The agreement provides Mr Dyce with an option to

acquire the defender's shares for £350,000 in exchange for 70 monthly payments of £5,000. Some monthly payments appear to have been made from HRL's bank account to the defender's account and to an account in the name of Daviot Farms. The defender's evidence was that there was a misunderstanding on Mr Dyce's part that he would be able to pay the defender out using HRL's money. The defender and Mr Dyce then agreed that the agreement was not viable and that they would treat it as void. The payments were then accounted for as a debt owed by the defender to HRL. The price in the agreement was broadly in line with the valuation that Mr Rowand came to.

[86] So far as the approach to the multiplier is concerned, I prefer the evidence of Mr Cunning. The comparator transaction he identified was sector specific, whereas Mr Rowand relied on resources which were not sector specific. The put and call agreement does not provide reliable support for the multiplier that Mr Rowand selected. I do not know the context in which the agreement came to be drafted, or the basis on which the sum of £350,000 was calculated. The defender's evidence cast little light on those matters. Mr Rowand's evidence about market experience in the relevant sector was vague, and related to a time before the relevant date.

[87] A 75% shareholding was required in order to pass a special resolution. Mr Cunning discounted the value of the defender's shareholding by 20% to take account of that factor. Mr Rowand declined to do so because the most likely buyers were the company itself and the other shareholder. He thought that the defender would be unlikely to accept a discount as he had not taken any financial return from the business, and he had seen no evidence of a discount being applied in relation to the put and call agreement. In similar vein, senior counsel for the pursuer suggested in submissions that a discount was inappropriate because HRL was a quasi-partnership. There was an understanding that the defender had rights

beyond those in the articles, and that he could withdraw his capital. She referred to *O'Neill* v *Phillips* [1999] 1 WLR 1092, Lord Hoffman, page 1101F-G.

[88] Lord Hoffman was discussing the possible significance of promises or undertakings between individuals to the assessment of whether a private company's affairs had been conducted in an unfairly prejudicial manner, in the context of section 459 of the Companies Act 1989. His remarks are not of assistance in determining whether a discount is appropriate in a valuation of a shareholding. Mr Rowand's approach to discount takes into account factors that relate to buyers with particular characteristics, who would gain a particular benefit from purchasing the defender's shares. That is not consistent with an arms-length transaction between a notional willing buyer and willing seller. It also expressly takes into account the put and call agreement, to which I afford little weight for the reasons already mentioned.

[89] I accept Mr Cunning's valuation and find that the defender's shareholding in HRL was worth £135,000 at the relevant date.

Café V8

[90] The defender and Mr Dyce formerly ran Café V8 in partnership. It was common ground that the defender sold his interest in the business to Mr Dyce, and that Mr Dyce made payments to the defender in respect of the purchase. The pursuer's evidence was that those payments were of £5,000 per month. The vouching provided by the defender discloses that the first 12 payments were of £2,000, with all the payments thereafter being £5,000.

[91] The defender's evidence was that it was agreed that Mr Dyce would pay £134,000 in instalments; that Mr Dyce's payments in respect of the defender's interest started in April 2017; and that by the relevant date £94,000 had been paid, leaving him with an

interest worth £40,000. Further payments were made after the relevant date. The last payment was made in March 2020. I accept that evidence. There is vouching of the payments. On the defender's bank statements they bear to come from Café V8, rather than Mr Dyce. The dates and amounts of the payments are consistent with the defender's position about the agreement between him and Mr Dyce.

[92] The dispute about this interest arose because the accounts of the partnership at the relevant date showed that the defender had a capital account which stood at £77,930 as at 31 March 2019. The pursuer submitted that the value of the defenders interest was that sum, less two payments totalling £10,000 made between 31 March 2019 and the relevant date. Senior counsel also submitted that it was possible both that the defender's capital account stood at £77,930 and that Mr Dyce owed him £40,000.

[93] On the face of the accounts, the partnership owed the defender more than £40,000 at the relevant date. In reality, the value of the defender's capital account was part of the interest that he had agreed to transfer to Mr Dyce. Had the defender demanded payment of £77,930 (or £67,930) on the relevant date, I consider that his entitlement to that would have been disputed in the light of the agreement that he had entered into, and the payments he had already accepted. I heard no evidence about how the arrangement between the defender and Mr Dyce ought to have been reflected in the partnership accounts. I am satisfied that the defender's only remaining interest in the partnership was properly valued at £40,000 at the relevant date.

The black box

[94] The pursuer said that in September or October 2019 she took a safe containing a black box from the house. The box contained £65,000 or £66,000. According to the pursuer,

the defender told her that the money in the box was his inheritance from his father. On her account, however, the defender's father gave him £60,000. The defender spent the money at the time, and a note in the black box, which she photographed, showed what he had done with it. The money that was in the box when she took it was cash that the defender derived from cash-in-hand jobs, likely laying driveways. The pursuer is unable to account for how she has disposed of all of the cash in the box. Very little is vouched. Her TSB account statements disclose cash payments into the account totalling about £29,500, which she says she used to pay legal fees. She says she used £750 to pay off a credit card, and estimates that she gave about £14,000 to her daughter, Chloe, with whom she was living for about seven months. She says that she paid for some furniture in cash. There is vouching for a cash payment of £3,913 to Blackridge Furnishings in February 2020. There is an invoice from DFS for £3019. A 10% deposit was paid by card, and there is no indication whether the balance was paid by cash or by card. The pursuer says that she spent £8,000 on weekends away.

[95] Photographs that the pursuer took of the contents of the box show an envelope marked "40K", and bundles of notes, including a bundle of one hundred pound notes and one of fifty pound notes, along with some handwritten notes on the blank side of postcards from Monaco. The handwritten notes list sums of money alongside what appear to be the names of payees.

[96] The defender's position is that the pursuer stole £90,000 in cash. In his affidavit he says he had been "left" approximately £130,000 in cash by his late father. The defender's father died in February 2014. The defender says that he did take cash out from time to time and sometimes put money in it. He had a "rough running total in [his] head", so he knew how much money was in the box. He knew that almost all of the money still in the box came from his parents.

[97] There is in process a handwritten letter from the defender's mother, to which the defender referred in his evidence. It reads:

> "My husband and I owned a family safe. When my husband passed away I gave the safe to [the defender] with the money therein amounting to one hundred and forty five thousand pounds (£145,000) as his inheritance".

[98] The defender said that the figure mentioned by his mother was incorrect. He accepted that the notes photographed by the pursuer were in the box when she took it. He said there would have been more notes, and that the pursuer had been selective. He would probably have put a note in the box if he put money in or took it out. The defender was his late father's executor nominate. The inventory provided for confirmation does not list any cash. The moveable estate was said to consist only of household contents and effects and the contents of two bank accounts. It totalled £53,002.24. The will attached to the confirmation disposed only of a single item of heritable estate, so any moveable estate will have fallen into intestacy.

[99] One of the two handwritten cards from the box includes a passage reading, "In total Grandas money was 2000 to GDM out of box £47000 left £19000 Total was 66000". On the same card are entries:

> "10K for discovery jeep
>
> 10 to Allison for GDM
>
> 15K to MM for farm + sisters
>
> 10K out today 28/4/14"

Those sums, added together, total £45,000, which when added to £2000, amount to £47,000, one of the sums mentioned elsewhere in the note. The defender's position was that there had been more than £66,000 to start with, and that he had already spent some of the money by the time he made this note.

[100] The other postcard is headed "Grandas Cash 27th April 2014". It reads:

"29K in box

2000 to GM

10000 to GDM properties

15000 to MM for sisters"

The entries may be duplicates of some of those on the other card. In a separate, delineated, section of the card is an entry A/C into farm 19K". The sums listed on the card total £75,000.

[101] The postcards are the only written record that has been produced relating to the contents of the box. It is not entirely easy to make sense of these entries. It is, however, reasonable to infer from them that at a point rather less than three months after the defender's father died, the sum in the box was not more than £75,000, and may have been £66,000. Either of those figures is much closer to the sum of £60,000 that the pursuer thought had been in the box when the defender received it, than to the sum he mentioned, namely £130,000. The notes indicate that substantial sums were distributed from the cash fairly shortly after the defender received it. At least £47,000 was distributed. It appears that a further sum of £19,000 may have been paid out in relation to the farm. Both the pursuer and the defender spoke to the defender's putting money into the box and taking it out. It is common ground that the pursuer took the box in September 2019.

[102] The defender conceded in submissions that the sum in the box should be accounted for as matrimonial property in the light of the evidence of both parties that monies were removed from the box and replaced from time to time.

[103] On the balance of probabilities I find that the pursuer's evidence that she took about £66,000 is broadly correct. That would be consistent with the defender's having tried to keep the sum in the box at about the level it was when he received it.

[104] The defender submitted that I should draw an inference adverse to the pursuer from the circumstances that Chloe Macdonald's affidavit did not touch on the contents of the safe, some of which were allegedly distributed to her by the pursuer, and that she was not available for cross-examination about the contents of the safe. He submitted that she had produced a soul and conscience certificate "to avoid having to answer her citation". He did not suggest any basis on which I ought to look behind the certificate, apparently produced by a medical professional. He did not challenge the authenticity of the certificate or its content during the proof. I draw no inference from the production of the certificate.

[105] Cole Macdonald's affidavit, which was unchallenged, relates that Dana Macdonald told him, shortly after the pursuer took the box, that there was £90,000 inside it.
Dana Macdonald did not give oral evidence. The defender had cited her. I was told that the defender could not send her a link to allow her to give evidence by Webex. The defender's agent had expected that the pursuer's agent would cooperate by providing contact details for her so that she could be sent a link, but that had not happened. When I became aware of this, I indicated that if it were impossible to secure that a cited witness appear via Webex, I would entertain a motion that she should give evidence in person (contrary to what was at the time the default position). The defender did not make any such motion. There is probably some force in the defender's submission that Dana Macdonald was not keen to give evidence. Cole Macdonald's account is, however, hearsay evidence of a statement by Dana Macdonald. Relations between him and Dana Macdonald and between him and the pursuer have broken down. I attach little weight to this part of his affidavit evidence.

The contents of "No Bother"

[106] It is common ground that the pursuer visited the matrimonial property on two occasions in Autumn 2019 with a van and removed certain items. Chloe Macdonald and her boyfriend attended with the pursuer. The visits were associated with conflict, which came to involve some of the adult children and stepchildren of the marriage. The police were called. According to Cole Macdonald, whose affidavit was produced by the defender, the pursuer took smaller items of furniture and crockery and cutlery. She left bulkier items and televisions attached to the wall.

[107] The defender contended that the pursuer removed about 80% of the value of the contents of the property. He estimated the cost of the furniture at £219,000, of art and antiques at £25,000 and of garage contents at £35,000. He accepted that these values would have been accepted by depreciation. He submitted that he was unable to provide vouching because the pursuer had taken the items, and that she had failed to provide valuations of what she had taken. He asked me to find that the relevant date value of the items was £56,000, of which the pursuer had retained £44,800.

[108] The pursuer's account is that she took only her and Dana Macdonald's personal possessions. She denies taking any furniture. She produced vouching in relation to furniture she had bought for her own use after the relevant date. The vouching relates to large items of furniture. The pursuer also produced screenshots dated 31 March 2021 which she said derived from a social media account of the defender's girlfriend bearing the message "Out with the old in with the new". The pursuer said they showed items of furniture which were matrimonial property in the former matrimonial home, and their replacements. I accept that the pursuer did not take large items of furniture from the property. The pursuer claims that the defender telephoned her and said he had burned

certain items she would have liked, but had been unable, to take. According to the pursuer much of the furniture had been purchased in 2011 or earlier.

[109] There is no credible and reliable evidence that enables me make a finding as to the relevant date value of the contents of "No Bother", or as to the proportions in which it has already been divided between the parties. In particular I am not prepared to accept the defender's estimates, given the views I have already expressed about his credibility and reliability in relation to financial matters affecting his own interest. I have therefore left the value of the contents of "No Bother" out of account for the purposes of making a decision about financial provision.

Range Rover

[110] The pursuer was driving a Range Rover car at the relevant date. It was a vehicle registered to MGL, and subject to finance for which the company was liable. The pursuer was asked to return the car, but refused to do so. The company met the finance payments, and those were then debited from the defender's shareholder's loan account. The defender said that it was a vehicle provided by him for the use of the pursuer. He proposed that he should continue to fund the monthly payments and to have MGL transfer the vehicle to the pursuer when that was done. He submitted that the value of the car at the relevant date was £48,000 and that the pursuer should be credited with that value as a matrimonial asset held by her at the relevant date.

[111] The car was not a matrimonial asset held by the pursuer at the relevant date. There is no dispute that it was, and remains, the property of MGL. I regard the defender's funding of the pursuer's possession and use of the car as alimentary in character.

Non-agreed matrimonial debts

[112] Aqua Leisure Ltd was a business belonging to a Brian Hepburn, who had on various occasions funded the defender and the defender's businesses. The pursuer submitted that it was difficult to work out whether loans were made to the businesses or to the defender. The defender's position was that he, personally, took out loans secured over a smallholding at Inshes (which is not matrimonial property) in order to inject funds into MGL.

[113] In his affidavit he referred to a standard security for all sums due and to become due to Aqua Leisure Ltd, dated 26 March 2015, and to a loan agreement (7/57) signed by the defender on 24 August 2018. Both are in his name personally. The loan agreement refers to the standard security. The potential source of confusion is a loan repayment schedule headed "GDM Properties Loan". The sum shown on that schedule as initially advanced, and the term at which it shows the loan was repaid, but for a balance of £16, are both consistent with the terms of the loan agreement to which the defender as an individual was party. I am satisfied that the debt of £72,928 at the relevant date was one incurred by him personally.

[114] The defender's liabilities to HMRC at the relevant date are vouched by production 7/56 in the sum of £5,326.25.

[115] I am satisfied that both these sums were matrimonial debts at the relevant date.

Contentions regarding unequal sharing

[116] The defender argued that there should be unequal division of the net value of matrimonial property. He submitted that there were a number of respects in which the pursuer had benefited from an economic advantage, with corresponding disadvantage to him: section 9(1)(b). He also submitted that there were special circumstances which

justified unequal division: section 10(1) and (6). The pursuer submitted that there were advantages and disadvantages to each party which could not be quantified mathematically, and which should be treated as balancing out, with no resulting adjustment to the division of net matrimonial property.

The defender's submissions

[117] The defender accepted that the pursuer would require to be credited with the increase that had occurred in the value of "No Bother": section 10(3) of the 1985 Act. The pursuer did not dispute that this was the correct approach. The defender submitted however that he should be given credit for the extent to which he had paid down the secured loan over "No Bother" since the relevant date. He had discharged a joint and several obligation without any intention to donate. The pursuer had made no contribution. One half of his payments, around £100,000, should be treated as having conferred an economic advantage on the pursuer. He had paid for maintenance and repairs. While he accepted that not all of the vouching that he had produced related to work on the house after the relevant date, on a conservative approach he had spent £75,000, of which half had conferred an economic advantage on the pursuer.

[118] Lairgandour and Scatraig had also increased in value since the relevant date, and, again, the defender had paid down the mortgage. Part of the increase in the value of the property arose because of work done by MGL. Two new industrial buildings had been constructed, and others maintained. The total cost was £354,000, not all of which was after separation, and not all of which related to the sheds. On a conservative approach the amount expended was £320,000. Half of that was expended by the defender, through his wholly owned company, for the benefit of the pursuer.

[119] The source of funds for Lairgandour and Scatraig included a gift of £300,000 from his parents. He should be credited with a proportion of the non-matrimonial fund contributed by his parents. The property had been purchased in 2008 in the parties' joint names. He submitted that he should be given credit for one third of the gift made to him, namely £100,000. That would give appropriate weight to the non-matrimonial source of the original purchase, which could not have been made without it.

[120] The pursuer had appropriated the funds in the parties' joint Santander account. Apart from her wages, which were paid into it, the funds in it came from the defender. The defender submitted that the pursuer had given Chloe funds from the account in order to conceal her appropriation of the jointly held capital in it. The defender was entitled to be credited with half the sum paid to Chloe, about £17,000. The pursuer had had the benefit of sharing £20,000 in the joint account which was payment from Mr Dyce in respect of the defender's interest in Café V8. They were monies to which the defender was contractually entitled, and he should be credited with one half. The pursuer should also be treated as having retained the whole agreed relevant date balance on the account.

[121] The pursuer had received the whole net proceeds of the sale of Birchwood House, and was credited with that in the division of matrimonial property. The defender had however met the costs of that sale. He alone had made mortgage payments and met the costs of utilities, insurance and repairs. He had sustained an economic disadvantage in the sum of £103,593.

[122] The defender asked me to infer that the pursuer had removed the entire contents of Birchwood with her boyfriend, Colin Thomson, in about May 2019. Mr Thomson had been residing at the property before May 2019. Both he and the pursuer had keys. She had concealed her relationship with Mr Thomson from the defender for a period, and she had

been motivated to ingather as much matrimonial property as possible. There was no evidence from Mr Thomson. A reasonable estimate of the second hand value of the property was £4,000.

[123] In total the defender sought adjustments amounting to £723,501 to the sum that would otherwise be due to the pursuer in respect of departures from equal sharing.

The pursuer's submissions

[124] The defender had had the use of "No Bother" throughout, while the pursuer had not. He had maintained it for his own use and occupation. He had used rent from the jointly owned telephone masts to do so. There had been no accounting for that rent, although the pursuer had been credited with it for tax purposes. MGL had not been charged a market rent (which was agreed to be £70,000) for its occupation of land at Lairgandour and Scatraig. Had MGL been charged rent and the pursuer received her share of it, she would have been in a position to contribute to the mortgage. There had been no accounting to her for the grant received in respect of the woodland at Lairgandour. The defender had failed to maximise the value of the woodland because he had failed to register it at the appropriate time.

[125] The building work at Lairgandour was done by MGL, not the defender. According to the defender's own evidence, some of it was funded by a bounce back loan to a company, Highland Machinery Dealers, which had not traded. The defender had accommodated friends and relatives rent free in buildings on land which was jointly owned by the pursuer.

[126] The defender did not support the pursuer from income until he started to pay aliment of £2,300 per month in December 2020. The pursuer used the Santander account for alimentary support until it was closed in September 2019.

[127] The property in Birchwood House was, on the defender's own account, the property of MGL.

[128] The defender had dissipated assets. By reason of his own unlawful conduct as a director he had faced disqualification proceedings. His evidence was that he had spent £450,000 on defending them. He had then admitted the conduct and accepted disqualification. In those circumstances his expenditure had dissipated matrimonial assets; it was conduct that had adversely affected the financial resources relevant to the decision of the court on the claim for financial provision: sections 10(6)(c), 11(7)(a); *McCallion* v *McCallion* 2021 Fam LR 30.

[129] The pursuer accepted that the defender's parents had provided funds toward the purchase of Lairgandour and Scatraig, but maintained that the sum was £150,000.

Conclusions – unequal sharing

"No Bother", Lairgandour and Scatraig

[130] Between the relevant date and the date of the proof the debt secured over "No Bother" reduced by £141,225 by reason of payments made by the defender alone. During the same period the debt secured over Lairgandour and Scatraig reduced by £582,534. On the face of matters, the pursuer has benefited to the extent of £361,879.

[131] I do not consider that the defender should simply be "credited" with the whole sum of £361,879. He has occupied "No Bother", which is on the evidence a well-appointed property, and has benefited from doing so. The pursuer has not. The defender has allowed other persons to live rent free on the jointly owned land at Lairgandour and Scatraig. MGL occupied the land and buildings at Lairgandour and Scatraig free of rent. As the defender had conceded in relation to the valuation of MGL, the market rent for MGL's occupation of

jointly owned land there was £70,000 per year. Had that rent been paid, the pursuer would have been entitled to half of it.

[132] The defender produced vouching for repairs and maintenance to "No Bother". They relate generally to repairs and maintenance of a swimming pool, hot tub and steam room (£30,693) and pest control, electrical and joinery work connected to a rodent infestation (£51,681). One of these, rendered by ANM Electrical works, for £27,120, was addressed to MGL rather than the defender. There is a further invoice to the defender for plumbing work in the sum of £2,020. While it is correct that the defender should have accounted to the pursuer for the rental from the phone masts, rent was received for only one of them during the period after the relevant date, and was only £2,300 per year. The rental for the other was paid in advance in 2016, with no further payment due until 2026.

[133] Two industrial buildings constructed at Lairgandour and Scatraig after the relevant date have contributed to the value of the matrimonial property. They were, however constructed at the expense of MGL, not the defender personally. I do not accept that because the defender is the only shareholder in MGL, the expenses incurred by MGL in connection with the industrial buildings should be treated as expenditure incurred by him personally. There is no lease between the parties and MGL. MGL paid no rent. There is no evidence about any contract requiring the parties to account to MGL for the extent to which the parties' heritable property has been enhanced by the money spent by MGL. I note also that there is no evidence before me that the value of the parties' heritable property increased to the extent of the costs incurred by MGL. I leave the expenditure by MGL out of account.

[134] I leave out of account the grant for woodland at Lairgandour. The planting and maintenance of the woodland has enhanced the value of the land both as at the date of separation, and quite markedly, after separation. There is no evidence to suggest that the

grant has been employed other than in relation to the woodland. Its existence does not justify a departure from equal sharing. Any disadvantage caused to the pursuer by the failure to register the woodland is a disadvantage which applies equally to the defender, so far as the value of the woodland is concerned.

[135] The pursuer has benefited from the payments that the defender has made in respect of secured debt regarding both "No Bother" and Lairgandour and Scatraig. He has also paid for maintenance of "No Bother" which I accept falls to be taken into account. For the reasons given above, I do not consider that the question of economic advantage or disadvantage is a matter of straightforward calculation. The defender has had the use of the properties. The pursuer has not had any use of them, and she has derived no rental income from them. On a very broad basis I have taken account of the economic advantage to the pursuer, and the corresponding disadvantage to the defender by deducting £200,000 from what would otherwise be due to the pursuer.

Source of funds, Lairgandour and Scatraig

[136] I do not accept the defender's evidence that he received £300,000 from his parents as a gift towards the purchase of Lairgandour and Scatraig. It is unvouched. For the reasons I have already explained I am cautious about accepting evidence from either party about contentious matters where there is no vouching, or that evidence is unsupported by the testimony of another witness or witnesses. The defender suggested that his evidence was supported by a letter from his mother, lodged in process. The letter in fact reads:

> "When Gary bought Lairgandour Farm my husband and I gave him three hundred thousand pounds (£300,000) which was our inheritance money (from my and my husband's family). Gary made a promise to repay it, as and when he could".

[137] The defender did not accept that he had promised to repay the money, or that it was a loan. The letter from his mother does not support the proposition that the money was an outright gift. Having been warned that he need not incriminate himself, the defender declined to answer questions directed at the absence of disclosure of the "gift" from the declaration that he made as his late father's executor. I give limited weight to the content of the letter, as its author did not give evidence. I accept that there was a gift to the defender from his parents, as both the defender and the pursuer gave evidence to that effect. I am not satisfied that it was any greater than the sum of £150,000, which was the evidence of the pursuer. That is a sum that was acquired by way of gift from a third party. The defender did not suggest that the gift should simply be subtracted from the value of the matrimonial property. It is a matter, however that is relevant to the source of funds used to acquire Lairgandour and Scatraig. I have taken account of this by deducting £50,000 from what would otherwise be due to the pursuer.

Birchwood House and contents

[138] Whether the pursuer took the contents of Birchwood House is irrelevant. The defender's oral evidence was that those contents belonged to MGL. They were not matrimonial property. I am not in any event satisfied that she did take them. There was no direct evidence that she did, and I do not draw that inference from the matters on which the defender relied.

[139] So far as the costs of sale, repairs and mortgage payments for Birchwood House are concerned, I accept that the defender has borne those. The sale generated a charge to capital gains tax, which he bore. The figure used for the value of Birchwood in the calculations in this opinion (and by both parties in submissions) is the net free proceeds, rather than the

relevant date value of the property less relevant date secured debt. The costs of sale (£39,057.98) and capital gains tax charge (£11,194.44) have to some extent therefore already been taken into account. Both parties have benefited from those. The defender has benefited to the extent that he has by reason of the sale already been able to discharge in part his obligations to the pursuer in respect of the division of matrimonial property. The use of the net proceeds of sale figure in calculations means that the "value" net of debt will have been inflated at least to some extent because the defender had paid down the mortgage by £64,355, and will make an adjustment in that sum.

Defender's legal fees

[140] The pursuer did not give any notice in the pleadings that she intended to characterise the defender's spending on legal fees as a special circumstance of the sort referred to in section 10(6)(c) (destruction, dissipation or alienation of property by either person). The defender's evidence about this was disclosed in his affidavit. If this line was to be pursued, the pleadings should have been amended, and proper vouching obtained of the sum said to be involved. I am in any event reluctant to take at face value the defender's assertion about the extent of the legal fees that he paid. I have already explained why I approach unvouched assertions by him about financial matters with some caution. In this context, as senior counsel for the pursuer pointed out, the defender was at pains to distance himself from the admissions that he made about his misconduct as a director. He was seeking to explain them by reference to financial pressure which prevented him from defending the proceedings as far as he might have wished to. Against that background I suspect that he may have overstated the extent of the legal fees that he incurred, perhaps significantly.

Santander joint account

[141] There is no dispute as to the credit balance in the parties' joint Santander bank account at the relevant date. What is in dispute is the nature and extent of the pursuer's intromissions with it after the relevant date. The pursuer's salary was paid into the account, and she is plainly entitled to that. Her evidence was that she received over £15,000 by way of salary into the account between the relevant date and 30 September, when the account was closed. That does not reconcile with her evidence that at separation her salary was £441.63, and that it increased to £498 in July 2019. There are payments in for those amounts (with a figure of around £498 appearing from 25 July 2019), although the descriptions of them in the statements vary, and not all are expressly recorded as wages. Payments for other amounts are expressly recorded as wages.

[142] On the basis of the pursuer's evidence about the amounts of her weekly wages she would have received £8,508 between the relevant date and 30 September 2019 (8 x £441 plus 10 x £498). Her affidavit evidence, however, incorporates a spreadsheet which includes a payment, said to be of wages, of £5,781.52 in a single week, on 19 July 2019 (paragraph 10.4 of her affidavit, and 6/39).

[143] According to my own calculations, payments totalling £76,108 were made into the account between the relevant date and 30 September 2019, when the account was closed. Even on the basis that the pursuer's wages during that period were in the region of £15,000, that leaves payments in of more than £60,000 that were not her wages.

[144] Among the payments made into the account were four payments of £5,000 in respect of the purchase of the defender's share in Café V8. Payments from Daviot Farms bearing to be rent for Birchwood also appear in the statements.

[145] According to the defender, the pursuer transferred a total of £34,280 to Chloe Macdonald. On the pursuer's account she transferred approximately that sum to Chloe Macdonald because, although she, the pursuer, had a dormant bank TSB account of her own at the time, she was not using it. In October and November 2020 Chloe Macdonald transferred £18,270 to the pursuer's TSB account. The pursuer claims that Chloe Macdonald paid for items for the pursuer and herself from the funds she retained, and that the funds were also used to support Chloe Macdonald, who was not working.

[146] The defender retained the closing balance of £994.33. Some of the sums drawn from the account are direct debits and transfers which do not relate to expenditure by the pursuer. These amount to £23,174 and include substantial payments to Shawbrook, one of the secured creditors in respect of "No Bother". I understand it to be common ground that it was the pursuer who was responsible for the remainder of the spending on the account from the relevant date until the account closed.

[147] It is not possible to make a very precise mathematical calculation in relation to the way in which the funds in the account at the relevant date and paid in thereafter were applied. Very broadly, the total of the balance at the relevant date plus the funds paid in thereafter is around £98,662. Accepting for present purposes as correct the pursuer's representation that £15,000 or thereby of that was her wages, and working on the basis that she was prima facie entitled to half of the balance at the relevant date, and taking into account the sums withdrawn other than by the pursuer leaves a figure of £49,211. I have treated £10,000 of that, on a broad basis, as alimentary spending during a period of just over four months.

[148] The defender's contention is that the pursuer should be regarded as having retained the whole of the relevant date balance, and that he has suffered economic disadvantage to

the extent of £27,000 by reason of the payments to Chloe Macdonald and the pursuer's retention of monies contractually due to him. Essentially that would result in an overall adjustment in his favour of just over £38,000. That appears to be reasonable, cross checked against the non-alimentary withdrawals by the pursuer as I have calculated them.

Resources

[149] Attached to the defender's affidavit were tables setting out a scheme for payment to the pursuer projected over a number of years. In his oral evidence, however, Mr Capewell suggested that the defender might obtain resources more swiftly than had been thought possible when he swore the affidavit. In particular, he had approval for £640,000 of further borrowing secured over the farm. In addition, it might be desirable, in response to the current trading environment, for MGL to downsize and to sell plant and machinery. That would provide cash for distribution to the defender as a dividend. After income tax and corporation tax, that would be between £260,000 and £270,000. The defender submitted that he would retain the ability to sell heritage if necessary in order to generate funds. He submitted (in the context of a submission by his counsel that he would be liable to pay a capital sum of £1,350,000) that he would have resources to fund the capital sum within a time period of about two years and four months, which was reasonable. He would be able to organise sales at times such as to maximise value, rather than on the basis of a timetable imposed by the court.

[150] I accept that Mr Capewell's evidence was given honestly and in good faith. I have no reason to doubt what he said about the approval for further borrowing, and accept it. I accept in general terms that there is a real potential to generate funds from the sale of plant and equipment. I regard the evidence about the extent of a potential dividend as to some

extent speculative. I was not provided with any detailed figures as to the basis for the dividend that he said might be generated.

[151] Mr Capewell's evidence about MGL's potential downsizing was in the context of oral evidence from Mr Thomson about adverse trading conditions. Senior counsel for the pursuer objected to the oral evidence of both these witnesses, on the basis of lack of fair notice in the pleadings. She withdrew her objection to the evidence of Mr Capewell, but not to the evidence of Mr Thomson.

[152] Mr Thomson gave evidence in fairly general terms about the difficulties in trading in a market where it was difficult to obtain certain essential supplies, including red diesel, because of the war in Ukraine. It did not consider that what he said about difficult trading conditions did not go beyond what is common knowledge and the subject of discussion in the media. He also gave evidence about the lead in times for the purchase of equipment, with a view, as I understand it, to supporting the proposition that a purchaser of MGL would have known about a forthcoming purchase of plant and insisted on a reduction in the purchase price. The significance of planned purchases of plant was in my view plainly in issue given the respective approaches of the forensic accountants. In any event, as will be apparent from earlier passages in this opinion, I accepted that there were significant lead in times, and that new plant was not readily available. Given the approach that I have taken to this information in the context of the valuation of MGL, I do not consider that there has been any prejudice to the pursuer by reason of the admission of Mr Thomson's evidence about this matter.

Capital gains tax

[153] The pursuer led evidence from Ms Laura Brown, director of tax at Murray Beith Murray. The defender objected on the basis that Ms Brown was speaking to matters of law. I heard her evidence subject to competency and relevancy. The rates of and circumstances in which liabilities arise for capital gains tax are matters of domestic law. Ms Brown's evidence was in part evidence setting out what the rates of capital gains tax were, and the calculation of liabilities on certain hypothetical valuations. That evidence is inadmissible. Matters of domestic law are for the court, as is the application of that law to the facts of the case. Part of her evidence was, however, in relation to HMRC practice, and that part of her evidence was admissible. In particular she gave evidence that HMRC would generally accept valuations which were the subject of findings by the court.

[154] Ms Brown's evidence was challenged on the basis that she had selected valuation figures which were unduly generous to the pursuer. I did not understand the defender to suggest that the calculations she carried out were inaccurate on the basis of the valuations she used, or that she had erred in any way as to the rates applicable to the transactions she was considering.

Periodical allowance

[155] The pursuer produced a schedule of estimated income and expenditure. She was receiving salary from MGL of £3,304.34, aliment of £2,300 and payments of £60 by way of a contribution from her daughter. She maintained that she could not live on an income at that level. She calculated her monthly outgoings at £9,441.70. Of that £1,920.23 went to repay loans incurred to cover legal fees. The costs listed for accommodation and associated utilities and other expenses is £1,641.40, which appears reasonable. Her monthly household

spending is £1,729.75, of which £1,475.06 is food, groceries and household purchases. The figure is relatively high for a single person. The pursuer's transport costs of £1,948.97 include a monthly rental cost of £1,276 for a BMW X5 series car. She is not in fact incurring that cost, and continues to drive the Range Rover already referred to, although it has at times been unavailable because it needed repairs. If the pursuer were to buy a car of her own, there is no obvious reason why she would require to incur a monthly finance or leasing cost as high as £1,276 per month. Her personal expenditure, including clothing, is £817.47. She estimates her leisure activities cost £383.88, and claims that she has been spending on average £400 a month on the birthdays of family members. She claims £1000 per month in respect of holidays and mini breaks, which is very generous for a single person.

[156] The pursuer aspires to work in retail. She has no formal qualifications. She is unlikely to earn as much working in retail as she is currently paid by MGL. Until such time as the pursuer receives a capital payment I consider that she should receive a periodical payment of £2,700 per month. That is on the basis that I am assuming that she continues to be employed by MGL and that she will continue to receive net pay at the level that she currently does. That will result in net income of around £6,000 per month. I consider that that sum will be sufficient to meet her reasonable needs until such time as she receives a capital payment.

Conclusions

[157] The values of all the items of matrimonial property at the relevant date are as follows:

"No Bother" (former matrimonial home)	£775,000
Birchview Cottage and Lairgandour Farmhouse	£365,000
Industrial units at Lairgandour	£605,000
Joint bank account	£22,554
Lairgandour and Scatraig	£1,498,000
Jewellery	£38,000
Pension (pursuer)	£4,280
Pension (pursuer)	£3,237
Property at Ladystone	£152,500
Birchwood House	£91,627
Sum due from MGL	£16,214
Shares in GDM Properties	£481,000
Pension (defender)	£4,280
Pension (defender)	£15,727
Sole trader business Daviot Farms	£353,500
100% interest in Macdonald Groundworks Limited	£1,841,500
Interest in V8 Café	£40,000
60% interest in HRL Scrap and Waste	£135,000
Contents of safe	£66,000
Total	**£6,508,419**

[158] The matrimonial debts at the relevant date were £1,918,174. The net value of the matrimonial property at the relevant date was, therefore, £4,590,245. An equal sharing of that would involve an allocation of £2,295,122 to each party. In respect of financial disadvantage to the defender, and corresponding financial advantage to the pursuer, I

adjust that sum downwards by £302,355 so far as the pursuer is concerned. I adjust it downwards by a further £50,000 in respect of the source of funds for the purchase of Lairgandour and Scatraig. That produces a figure of £1,942,767.

[159] The pursuer has retained jewellery and pensions, and has received the net proceeds of the sale of Birchwood House. These have a total value of £137,144. In addition, she retained the money in the parties' joint account at the relevant date, a sum of £22,554 and the £66,000 contained in the safe. These sums in total amount to £225,698.

[160] That means that the on the face of matters, the pursuer requires £1,717,069 in order to achieve fair sharing of the matrimonial property. She currently retains a half share in a number of jointly owned items of heritable property. I put the matter out by order so that parties might address me as to what orders ought to be made, and, in particular, whether the distribution of assets could be achieved in part in the context of transfers of the pursuer's shares of heritable property to the defender at current values, or whether at least some of the heritable property would have to be sold on the open market.

By order hearing

[161] At the by order hearing, the defender intimated that he had secured lending in principle with a view to having the pursuer's shares in the jointly owned properties transferred to him. As a result of a miscommunication for which he bore no responsibility, he had at that stage sought only to secure borrowing to the extent of £1.717m. Against that background I continued the by order for four weeks on the defender's opposed motion so that he could seek to secure lending to the full extent that would be required in order to enable the transfers to take place in the way he envisaged. The pursuer was in principle content that transfers should take place in the way proposed, if funding were available to

permit that to happen, although her motion at the by order had been for decree of divorce and for the court to make the orders for financial provision at the hearing.

[162] On the footing that matters were to be resolved by the court's making orders for transfer, the following are the relevant calculations. Both parties approached these calculations in the same way. The pursuer's interest in the joint property was worth £731,540 at the relevant date, and is worth £1,248,170 currently. Deducting the relevant date net value of the pursuer's interest in the heritable properties, and adding back in the current value produced a figure of £2,233,699. That is the sum that the defender will require to pay the pursuer on the basis that she transfers her shares in the heritable properties to him.