**OUTER HOUSE, COURT OF SESSION**

**[2025] CSOH 73**

**F51/24**

OPINION OF LADY CARMICHAEL

In the cause

NATALIE COIA HAMILTON OR WALLACE

Pursuer

against

ANTHONY PAUL WALLACE

Defender

**Pursuer: Brabender KC; Morton Fraser MacRoberts LLP**
**Defender: Hayhow KC; Brodies LLP**

8 August 2025

**Introduction**

[1] This is an action for divorce, in which the only dispute is in relation to financial provision.

[2] The parties were married on 22 August 2003. The relevant date for the purposes of the Family Law (Scotland) Act 1985 is 21 June 2024. I am satisfied on the basis of the affidavit evidence of the pursuer, Carol Hogg and Shona Drewett, that the marriage has broken down irretrievably.

[3] There are three children of the marriage two of whom were under the age of 16 at the time that the action was raised. By the start of the proof there was no longer any dispute

between the parties about the arrangements for their care. One of those two children turned 16 in July 2025 while this case was at avizandum. There is no dispute that I should make a residence order in the terms agreed between parties in their second joint minute so far as the parties' youngest child is concerned. I am satisfied that it is appropriate that I should do so.

[4] Parties agreed that the court should order the transfer of the defender's interest in the former matrimonial home to the pursuer, and that the value of the matrimonial home both at the relevant date and for the purposes of transfer, is £1,275,000. The pursuer had continued to live there. The defender had purchased another property.

[5] The central dispute between the parties was as to the approach the court should take to the division of matrimonial property. The most significant asset, the value of which is not disputed, was the defender's 100% shareholding in Building Law Practice Holdings Limited ("BLPH"). The shares were worth, at the relevant date, £3,638,693. The pursuer sought equal division of the matrimonial property. The defender argued for unequal division of the property.

[6] Both the parties are solicitors. The pursuer works for Ashurst LLP, as general counsel with responsibility for Europe, the Middle East and the United States. The defender is in private practice in the Building Law Practice Limited ("BLP").

**Matrimonial property - identification and valuation**

[7] There were a number of relatively minor differences between the parties in relation to the identification of valuation of matrimonial assets and liabilities.

*The defender's National Savings and Investment Account*

[8] The defender gave an account in one of his affidavits to the effect that he had held the account for many years and had made no contributions to it since he was a teenager. That would suggest that the sum held at credit was not matrimonial property. Notwithstanding that, the parties agreed by joint minute that the sum at credit at the relevant date was matrimonial property. The balance at 20 August 2023 was £2,207, and £2,247 on 2 January and 25 March 2025. The defender submitted that any increase in the balance since 20 August 2023 resulted from the accrual of interest on a fund which pre-dated the marriage. It would therefore be appropriate to use the balance at 20 August 2023 as the relevant date value. I do not accept that. It is inconsistent with the agreed position, which is that the relevant date balance is matrimonial property. I estimate the relevant date balance at £2,228 on the very broad assumption of a "straight-line" increase in balance between 20 August 2023 and 25 March 2025.

*Identification of matrimonial assets and liabilities*

[9] By the close of proof, three formerly disputed matters had been resolved. The pursuer conceded that there was insufficient evidence to establish that the pursuer had a specified cherished number plate at the relevant date.

[10] The defender conceded that at the relevant date he had an entitlement to be refunded £1,458 by HMRC although he received the payment after the relevant date. I consider that this falls to be treated as matrimonial property retained by him. Senior counsel for the defender accepted that it required to be brought into account in the division of matrimonial property, but suggested that it should be brought into account by reference to special circumstances.

[11] The defender conceded that he required to repay to the pursuer half of the liability to EDF that was outstanding when he left the property. It is not strictly a matrimonial debt. There is no dispute that until the defender left the property the parties paid EDF from their joint resources, or that the liability for £966 at the point he left attached to the pursuer, who has required to meet it.

***The contents of the former matrimonial home***

[12] The jointly owned contents of the former matrimonial home were agreed to be worth, in total, £12,290 at the relevant date. In his affidavit evidence, the defender asked to retain a number of items namely tools, a barbecue, art supplies, cookery books, a painting he had created himself, a painting by Phil Pierre, and some gym equipment. There was no agreement as to the value of those items. The defender estimated, in his affidavit, the value of those items at £1,000. Having heard the pursuer's oral evidence, the defender did not insist on retaining the Phil Pierre painting which was valued at £150. The pursuer's evidence was that she did not object to his retaining any of the items he had identified, other than the Phil Pierre painting, but that she would need a list of the tools that he wanted to have.

[13] The pursuer in her oral evidence in chief suggested that the defender's estimated value of £1,000 for the items he wanted to keep was too high. She thought the Phil Pierre painting was the most valuable of those items. Later in the course of cross-examination senior counsel suggested to the pursuer that the value of the items that she was proposing to provide him with was in the region of £200. She responded that she was unable to confirm that by reference to the "valuation schedule", and would need to consider the matter. The

defender in the course of his examination in chief appeared to accept a suggestion from senior counsel that the value of the items he sought to retain was £250.

[14] There is no real basis in the evidence for the suggestion that the items the defender wishes to retain are worth £200 or £250. Those figures were figures put by senior counsel for the defender to the pursuer and to the defender, without reference to any vouching. The pursuer herself volunteered the suggestion that the figure of £1,000 for the items, including the Phil Pierre painting, was too high. I note that the items include some gym equipment, which the pursuer described as a TRX device that was put over a door and employed with the user's body weight, a medicine ball, dumbbells, exercise mats and exercise gloves. On a pragmatic basis I have assessed the value of the items at the midpoint between £850 and £250, namely £550.

[15] The defender will require to provide a list of the tools that he wishes to have. I will make financial provision on the basis that he is retaining property worth £550 and that the pursuer is retaining the remainder of the contents of the former matrimonial home. I will order that the pursuer is to deliver to the defender those items specified in paragraph 33 of the defender's affidavit, under exception of the Phil Pierre painting, within 7 days of receipt from the defender of a list of the tools and cookery books that he wishes to retain.

***Matrimonial property - summary***

[16] The total value of the matrimonial assets at the relevant date was £9,253,880, as set out in the table below.

| | Pursuer | Defender |
|---|---|---|
| *Home and contents* | | |
| Matrimonial home | £637,500 | £637,500 |
| Contents | £11,740 | £550 |

| | | |
|---|---|---|
| *Companies* | | |
| Interest in BLPH | | £3,638,693 |
| Interest in BLP | | £33 |
| Director's Loan BLPH | | £74,001 |
| Director's Loan BLP | | £2,813 |
| *Pensions* | | |
| Willis Towers Watson 4190 | £176,049 | |
| Standard Life 9000 | £554,483 | |
| Aviva 9799 | £252,891 | |
| Aviva 0422 | £37,430 | |
| Aviva 3132 | £124,203 | |
| Stocktrade | | £957,432 |
| Metrobank 8209 | | £76,237 |
| Aegon 545 | | £167,780 |
| Interactive investor 5008 | | £359,068 |
| *Bank accounts* | | |
| Halifax (joint) 4873 | £912 | £912 |
| Halifax (joint) 3615 | £29 | £29 |
| RBS 1307 | £2,950 | |
| RBS 2483 | £1,851 | |
| RBS 4958 | £31,403 | |
| RBS 2572 | £5,238 | |
| RBS 5296 | £26,133 | |
| BoS 5244 | £209 | |
| Halifax 6094 | £57,027 | |
| Halifax 4367 | £22,400 | |
| Halifax 4268 | £3,250 | |
| Halifax 5767 | £40,000 | |
| Virgin 5615 | £3,315 | |
| RBS 4255 | | £199,636 |
| RBS 3961 | | £714 |
| NS&I | | £2,228 |
| *Investments* | | |
| BoS ISA 5067 | £28,205 | |
| Aegon/Cavendish ISA | £59,690 | |
| Hargreaves Lansdown ISA 7788 | £353,668 | |
| Interactive Investor ISA | £44,755 | |
| Fidelity Japan Tracker ISA | £841 | |
| Hargreaves Lansdown ISA 7796 | | £92,689 |
| Hargreaves Lansdown Fund and Share acc. | | £25,046 |
| Halifax ISA 3664 | | £408,326 |
| Janus Henderson investment acc. 5783 | | £31,693 |
| Fundsmith acc. | | £10,102 |
| Proceeds of Standard Life endowment | | £21,408 |

| | | |
|---|---|---|
| *Other assets* | | |
| Volvo CX90 | £21,825 | |
| Porsche Cayman | | £44,165 |
| Jewellery and watch | £2,520 | |
| Watches | | £350 |
| Cherished number plate | £500 | |
| Refund from HMRC | | £1,458 |
| | | |
| Totals | £2,501,017 | £6,752,863 |
| Total assets | £9,253,880 | |

[17] The matrimonial liabilities amounted to a Tesco credit card bill of £595, which was a liability of the pursuer. The net value of the matrimonial property was £9,253,285. Of that the pursuer retained £2,500,422, and the defender £6,752,863.

**Summary of issues for determination**

[18] Half of the net matrimonial property would amount to £4,626,642.50. From that, so far as the pursuer is concerned, the sum of £637,500 falls to be deducted in respect of the transfer value of the defender's share of the former matrimonial home. A sum of £483 is to be added for the defender's share of the post-separation liability to EDF. The pursuer has retained £2,500,422. She also received a payment to account of capital of £10,704 from the proceeds of the Standard Life Endowment policy.

[19] Without any further adjustment, that would suggest that the defender requires to make a balancing payment of capital of £1,478,499.50. That was the basis on which the pursuer sought a capital sum.

[20] The pursuer pleaded that because of her working in in-house legal services, working part-time, and taking maternity leave and a career break in the interests of the defender and the children, she had sustained economic disadvantage, and that the defender had sustained

economic advantage. That could, however, be corrected by equal sharing of the matrimonial property.

[21] The defender submitted (a) that his claim for economic disadvantage should result in a deduction of £67,050; (b) that a special circumstance arises in respect of an irrecoverable debt of BLP arising after the relevant date, and that should result in a deduction of £15,096; and (c) that the costs of realising his interest in BLPH were so significant that the balancing payment to the pursuer should be no more than £862,785. The defender submitted that the only way in which he could fund a balancing payment was by BLPH declaring a dividend, which would give rise to significant tax liabilities.

[22] The defender submitted that he sustained economic disadvantage because of the extent to which he required to provide the pursuer with emotional support in the context of difficulties she experienced in her professional life, and in respect of organising financial matters for her. He contended that those factors inhibited his ability to work, and were detrimental to his mental health.

**The evidence**

[23] It is against that background that I summarise the evidence.

[24] The pursuer gave evidence and led oral evidence from Mr John Maxwell. She relied on the affidavit evidence already referred to so far as the merits were concerned, and on a report by Mr Matt Smith.

[25] The defender gave evidence and led oral evidence, to which objection was taken, from Mr Alan Barr. The defender relied on the affidavit evidence of Derek Wallace, and on the report of Mr Greig Rowand (7/103) to the extent to which the defender relied on it in his affidavit. Neither of those witnesses was required for cross-examination.

[26] Before turning to the evidence of the parties and their witnesses in more detail, it is convenient to set out my findings in relation to BLP and BLPH, and the defender's dealings with it after the relevant date. Those findings derive largely from agreed evidence, but also in relation to evidence given by the defender which I accepted.

***BLP and BLPH***

[27] BLP was incorporated on 26 March 2015, and the defender was the sole shareholder. BLPH is a non-trading holding company. It was incorporated on 15 July 2019. The defender holds 100% of the issued shares in BLPH. BLP is a subsidiary of BLPH. The defender exchanged shares in BLP for shares in BLPH following the incorporation of the latter in 2019. At the relevant date, the defender held one ordinary share in BLP, and BLPH held 999 ordinary shares in BLP.

[28] The defender's evidence, which I accepted, was that the purpose of incorporating it was to provide protection in the event of a catastrophic claim against his legal practice, the Building Law Practice ("BLP"). He intended BLPH to be a "family investment vehicle". He received advice that setting up a holding company would be tax efficient. In 2019 the Law Society of Scotland changed its policy on holding companies. The defender's accountant obtained tax clearances for a transaction that permitted him to swap shares in BLP for shares in BLPH, and he thereafter started to "hive up" retained profits from BLP to BLPH.

[29] On 31 July 2024 BLPH held the following assets, totalling £3,680,366:

(a) £1,278,861 in a Hargreaves Lansdown investment account;

(b) £1,722,575 in an RBS bank account; and

(c) £678,930 owed to it by BLP.

[30] On 17 October 2024 the defender borrowed £1,076,934 from BLPH to fund the purchase of a property in his sole name.

[31] Between 27 February and 7 March 2025 the defender made withdrawals from various bank accounts and investments held by him. Those withdrawals amounted in total to £736,027.60. The defender transferred that sum to BLPH on 7 March 2025 in part repayment of the sum that he borrowed from BLPH.

***The pursuer's case***

*The pursuer*

[32] The pursuer is 50 years of age, and works as a solicitor. She worked as a trainee solicitor from 1997-1999, and then spent 4 years as a qualified solicitor with a large firm, providing advice in relation to corporate transactions, with a short period of secondment to a bank. From 2003 to 2008 she worked first as a director, and then senior director, commercial and regulatory counsel in the legal department of the Bank of Scotland. She required to commute to Edinburgh from Glasgow. After the parties' first child was born, she returned to work part-time. Her evidence was that it was always the parties' intention that she be the primary carer for their children.

[33] Between 2008 and 2017, the pursuer worked for Hymans Robertson LLP, a firm of actuaries, and at the end of her time there, she was a partner, general counsel, and director of risk and compliance. She became a partner in 2015. The work was based in Glasgow. The pursuer had found the commute to the Bank of Scotland in Edinburgh, and increasing requirements that she travel to London, challenging in the context of her caring responsibilities. The pursuer worked for Hymans Robertson initially for 4 days each week. After the parties' second child was born in 2009, she returned to work for 3 days each week,

and then changed back to working 4 days each week. Their third child was born in 2012. Before she became pregnant with him, the pursuer was about to go "on partner track". That was paused while she was on maternity leave. She returned to work 4 days a week, and increased that to 4½ days a week. She resumed the partner track process shortly after her return to work. The pursuer said that the defender did not take any paternity leave for any of the three children.

[34] In 2008 the parties lived in Burnside and in 2014 moved to Giffnock. They lived in a rental property in Bothwell for a period after they had sold their house in Burnside and before their home in Giffnock became available. The pursuer was responsible for school and nursery runs between Bothwell and Burnside. After they moved to Giffnock, the pursuer required to take one child to nursery in Burnside and another to school in Newton Mearns. She undertook most of those responsibilities, although the defender undertook some, and both sets of grandparents looked after the children 1 day each week until the pursuer was able to get home from work. The pursuer worked in Glasgow City Centre.

[35] The defender at the time ran his business, Wallace Dispute Resolution Limited ("WDR") from a serviced office in the city centre and sometimes worked from home. When he was a partner in Simpson and Marwick, he worked in Glasgow City Centre. BLP initially operated from an office in Bath Street in central Glasgow.

[36] In 2017 and 2018, the pursuer provided legal services on a self-employed basis, through Direct LRC Limited. Her evidence was that she did so to retain her skills while taking a career break before the parties' youngest child started school.

[37] The pursuer said that she made placing requests for the parties' two younger children; the second, in 2017, had been a particularly stressful process. At about the same time the parties' home had been affected by a flood of sewage.

[38] In late autumn 2017 the pursuer worked on a part-time fixed-term contract with the Clydesdale Bank. In June 2018 she took up a role as European Privacy Officer for Cigna European Services (UK) Limited, having initially worked for them on a part-time contract from March 2018. The hours were very long, and international travel was expected on very short notice. The culture was not supportive, and it was difficult to combine with family responsibilities. The pursuer left in August 2019, and joined Ashurst LLP as General Counsel, EMEA and United States. She continues to work in that role. She became unwell with Covid in March 2020 and developed long Covid. She continued to work as well as she could from home. Although the defender helped a little with the children's school work during lock down, it was primarily the pursuer who dealt with it.

[39] The pursuer believed that she would have progressed further and gone on to work in London if she had not had children, and had had support to do so. She would have accrued more pension. She is qualified to work as a solicitor both in Scotland and in England and Wales. She had taken maternity leave three times, and had worked part-time. From the birth of the parties' eldest child in 2008 until joining Cigna in 2018, the pursuer worked part-time. She found that working full-time for Cigna was too much in association with her childcare responsibilities, and initially worked 4 days each week when she joined Ashurst. After a year she took up full-time work there. At no time did the defender work part-time, or take time off to cover school holidays.

[40] In year ending 5 April 2023 her gross income was £134,101. In that year she received a bonus of £35,000. In oral evidence the pursuer said that the payment of a bonus was discretionary, and unusual. She benefited from an employer's contribution of 8% of her gross salary. In her oral evidence she said that she had earned about £155,000 by way of salary in year ending April 2024. Her bonus had been "halved" to £15,000 or £16,000

because she had been absent from work as a result of stress-related illness. Her salary to April 2025 was £163,000, and she was not expecting to receive a bonus. Her performance had been impaired by her involvement in the present proceedings.

[41] In November 2021, the pursuer was offered a position with Dentons with a basic salary of £200,000. A head hunter had approached her. The pursuer said that she had turned down the role because it involved significant travel to Russia and Ukraine. Her children needed her at home, and she was not attracted by the culture of the workplace. The pursuer had been unable to gain a clear picture from her prospective employer of exactly how much travel abroad would be required. That had concerned her and so she had chosen not to proceed.

[42] The pursuer said that she was the main carer for the children throughout the marriage. She accepted that the defender did some food shopping and cooking.

[43] The pursuer was referred to email and text communications between the parties about financial matters. The first example referred to in the evidence was an email dated 3 February 2016 from the defender to the pursuer. It begins:

> "I need you to have a think about this to see what your view's are:-
>
> Plan is for WDR Limited to go into Members Voluntary Liquidation at the end of this month. To avoid the usual questions, I have prepared the following factsheet (for members of MENSA).
>
> **Natalie's factsheet**
>
> **Why?**
>
> I can get all of the assets out and pay 10% tax. This exemption is coming to an end on 6th April 2016 because the government changed the rules in December 2015.
>
> **Implications**
>
> It means the coach house is unified with the main house once more and we will have a large amount of cash tax free forever. Probably around £5-600k.

**How much tax will I pay**

Probably about £130k."

[44] It goes on to set out in some detail the potential tax consequences of particular courses of action, and of the risks associated with the exercise contemplated by the pursuer. The pursuer's evidence was that she did not understand the communication. She said that on occasion he would send her long emails she barely understood. They would argue afterwards. She would ask him questions or suggest taking independent advice. The defender did not want to pay for advice, because he "knew better himself". The messages were long and technical, and dealt with matters that were not within her skill set. The pursuer said that she would ask the defender what his income was, and that he told her very little about that. He would mock her lack of experience in financial matters.

[45] Another example was an email dated 6 June 2016 about investment strategies, including a proposal that the defender increase withdrawals from BLP by putting the pursuer on the payroll, and putting a sum into her pension by way of salary sacrifice. He was unsure whether the pursuer's employer would need to consent to that arrangement. The email also mentioned a proposal to move £500,000 of cash from BLP to a holding company, "hive up" the cash every year, and then invested in the market "per the retirement income strategy above" (investment in a "worldwide low cost passive range of funds").

[46] The pursuer's evidence was that she was not at any time on the payroll of BLP. As at 2016 the defender had never suggested that the pursuer become a shareholder in a holding company. In relation to the information that the defender was using or proposed to use a holding company, she assumed that he was acting on the basis of advice. She did

not really understand what he meant when he referred to "dripping [cash] into the market". The defender would write to her seeking her view when he had already decided what he wanted to do.

[47] On 18 June 2018 the defender emailed the pursuer under the heading "Your proposed DBSSAS". I understand DBSSAS to mean defined benefit small self-administered scheme. The email was sent at a point when the pursuer was stopping providing services through Direct LRC and moving to work for Cigna. The pursuer did not understand the reference to "DBSSAS"; she had to her knowledge never been a member of a BLP defined benefits SSAS. The email included the following:

> "As an aside, I am in the process of setting up a family investment company. The plan is to extract c. £1m from BLP by way of loan which is then immediately written off. There are no consequences for us. However, it does reduce our exposure to BLP ever going under, etc. I am taking advice from Adam and Mazars on this. It is my plan to make you an equal shareholder in the company. Will that create a problem for you at Cigna before I do it?"

[48] The pursuer had never asked Cigna about the matter. At the time of the email her role at Cigna was a new one, and it was "not the kind of thing you go in and ask straightaway … when you don't know what you are asking."

[49] The defender sent a further email, dated 23 August 2019, at about the time the pursuer moved to work for Ashurst. There was an exchange between the parties in which the pursuer asked the defender what he wanted her to send to Ashurst, and he provided her with text to send. It referred to the pursuer's "continued membership" of BLP's pension scheme, and her being an employee of BLP for that purpose. In evidence the pursuer reiterated that she had never been a member of BLP's pension scheme. She did not recall sending any communication to Ashurst. Again, she would have been reluctant to make

such an inquiry, when the role with Ashurst was one on which she was just embarking. She would not have misled Ashurst had she communicated with them.

[50] Number 7/160 of process was an undated four-page memo headed "The Family Finances", and containing a graph. It contained a reference to a "the holding company" in the context of a section of the document dealing with retirement planning. The defender produced it with document properties suggesting that it was both created and last modified on 12 February 2020. The pursuer said that the defender did not send documents of that sort regularly, or annually. It began:

> "I wanted to try and speak to you regarding the family finances.
>
> • The good news is that in early middle age we have 'won the game'. We also both have another 20 years of earning potential ahead of us and, with a fair wind, I doubt I will ever fully retire. So the hope is that there is more to come. However, the 'heavy lifting' has been done over the last decade.
>
> • We have around £4.5m of liquid assets (i.e. excluding the house). Of that, just over a third is invested in equities (mainly the world index). The balance is in cash earning no real return which has to change. This does not include the kids' investments which I will come onto.
>
> • The bad news is that we could lose it all which is why I have spent much of my time for the last few years trying to put us in as good a position as I can muster."

[51] The document went on to discuss tolerance for risk, diversification, retirement planning, and the children. The pursuer had been annoyed by the document and had felt patronised.

[52] A text message dated 13 February 2020 appeared to be a response from the pursuer to the document. It began: "Thanks for the note. Believe it or not, I understand all of this. You could have spoken to me about it." The response went on to indicate that diversification was required, and to suggest possible areas for investment. The pursuer said she had not in fact understood the document from the defender. She said that the defender

was so overwhelming and patronising that she thought she had sent the text message to get him to stop. She had googled some of the matters the defender had raised in the message.

[53] The defender had responded further by email dated 13 February (7/158). It included the following passage:

> "…using post tax income in the form of savings to put into a pension is spectacularly dumb. The better plan is to shelter the money in the Holding Company. Dividends from investments are tax free and can accumulate. When the kids are old enough we will set up a NEWCO and give them non-voting shares in that. We will transfer wealth to them on that basis - as long as we survive 7 years we will be fine. Trusts no longer work."

[54] The pursuer's emailed response to that email was: "Why are you emailing me instead of talking to me about this? It is very strange."

[55] The pursuer accepted that there was a period when she became very anxious about opening new accounts, and financial matters, such as the operation of ISAs, but explained that this was at a difficult time when the defender had been in a relationship with another woman for some time, and was behaving poorly towards her. The pursuer had also been suffering from long Covid. She had wished to have more involvement in the parties' financial affairs, but the defender wished to organise those matters himself. The defender had understood those matters better than she did, but she would have liked to understand more, and to have taken advice jointly about them. There were matters in the defender's emails to her that she knew little about. She could read the text of his communications but, for example, knew little about bond markets. She did not deal in investing funds. When she asked questions of him, she was met with blunt or patronising comments.

[56] She would not have understood the references to writing off a loan immediately with no tax consequences, or been clear what sort of family investment company he was referring to. She knew Adam Armstrong. She had not been involved in, or asked to look at, any

advice from Mazars. Every time she and the defender talked about money, it ended in arguments and patronising discussions. The defender would not go to advisers with the pursuer, and after he communicated with her, she did not know what course he went on to pursue. Sometimes he would embark on a particular course of action after an argument, but with no further discussion, and without agreement between the parties. Despite saying in one of the communications that he would make a Will, he did not do so. As far as the pursuer knew he had never done so. He had changed his mind and no longer wanted his Will to mirror hers.

[57] The pursuer made an audio recording of an incident that occurred on 11 October 2024. In the course of the exchange between her and the defender, the defender said that his relationship with the pursuer had ended "a decade ago".

[58] The pursuer rejected the suggestion, put to her in cross-examination, that she had been able to progress in her career only because of the emotional and practical support provided by the defender. She did not accept that she had become stressed and uncertain and had required the assistance of the defender in dealing with difficulties with her colleagues. Senior counsel asked her about a text message from her to the defender on 15 March 2019 which referred to her being "completely overwhelmed by work in every job", and said that she did not want "to yet again just resign and leave you with the financial burden". The pursuer explained that she was an overachiever who liked to do everything very well, and also wanted to look after her children. She could overthink things and get worried. That had happened, but not in every job, and not all the time. The text had been written in the context of a difficult day. The pursuer had discussed matters with the defender and relied on him as one would expect in the context of a marriage. If she referred to resignation in an "upset text" to her husband, that did not mean that she was actually

going to resign. Her role at Cigna had been a difficult one. She denied that the defender had become ill as a result of assisting her when she was experiencing stress at work.

[59] Asked about a draft email to one of her former bosses, in which she tendered her resignation, she explained that she had written down her frustrations. She did not think she had sent the email to the person to whom it was addressed. She had sent it to the defender, who liked her to write things down before he would discuss them. The draft email referred to difficulties she had had, in the context of her caring responsibilities, with requests for meetings and calls outside normal working ours, and her belief that she should not have had to explain, repeatedly, her childcare arrangements.

[60] The pursuer said that she had wanted to take a break to provide more childcare before the parties' youngest child went to school. She accepted that the defender had introduced her to some clients when she set up Direct LRC, but had not provided her with full access to his client base. He had given her some low level administrative work to do. He had provided her with emotional support, but she had also provided him with emotional support, particularly in dealing with a complaint against him by a client.

***John Maxwell***

[61] Mr Maxwell is an independent financial advisor. He has professional experience in the provision of advice about secured borrowing. The pursuer's solicitors instructed him to consider the defender's borrowing capacity, and he provided a report. He was asked to provide an estimate of the maximum sum that the defender would be able to borrow by lending secured over his home.

[62] The information provided to Mr Maxwell was necessarily limited, and did not include the defender's outgoings, other borrowing, credit history, or details about his

shareholding. That was information that Mr Maxwell would normally include in an application for borrowing, and would be relevant to the decision-making of a lender. Lenders no longer advanced sums on the basis of a multiple of declared income, but would look at expenditure, credit history and various other factors.

[63] Mr Maxwell had learned that the Clydesdale Bank would lend the defender 90% of the value of his home. He had spoken to a business development manager in the Clydesdale Bank to discuss the case in principle without identifying the defender, and to find out what the bank would be looking for. He had also used the calculator provided on the Clydesdale Bank website. It produced a figure of £801,464 in relation to the sum that the defender could borrow. The period of the loan would run until the defender's 70th birthday. Where the loan to value ratio was lower, it might be easier to borrow, and to borrow at a lower rate of interest.

[64] Mr Maxwell was shown 6/147 which indicated a diminution in BLP's profits from £212,550 in the year to 31 March 2024 to £22,001 in the year to 31 March 2025. He said that the fact that BLP's profits had declined year on year would not be fatal to borrowing. The bank would assess the significance of the matter, and might contact the company's accountants for more information. Senior counsel for the defender referred Mr Maxwell to the defender's schedule of income and expenditure which showed an annual deficit of £64,503. Mr Maxwell agreed that a deficit of income over expenditure would be of relevance to a lender, as would the existence and affordability of other borrowing, and the fitness to work of the borrower.

***Matt Smith***

[65] Mr Smith, who is a chartered financial planner, prepared a report in relation to pension sharing. He was not required for cross-examination, and I was invited to treat his report 6/175 of process as his evidence. The report deals with the advantages and disadvantages, from the pursuer's point of view, of receiving financial provision by way of pension share rather than capital sum. A capital sum would, in Mr Smith's view be more flexible, accessible and tax efficient. The pursuer would not be able to access pension funds until turning 57 years of age. Given the pursuer's earnings and existing pension funds, the fund proceeds could be subject to tax at Scottish higher rates.

***The defender***

[66] The defender is 52 years old and works as a solicitor. He has traded as BLP since 2015. His younger brother works in the firm, and the firm also employs a trainee solicitor.

[67] The defender explained that he was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") in 2022, and said that it manifested itself in emotional dysregulation and chronic anxiety. He received medication for ADHD. His general practitioner had diagnosed him with acute anxiety and depression, and certified him unfit for work in March and April 2025. He did not believe he would be fit to work in May 2025 - his general practitioner had told him there would be no difficulty in obtaining another fit note from her. She said he should not be working at all but understood his need to keep his business running.

[68] It was the defender's belief that his acute symptoms were caused by his estrangement from his eldest child, and for what he characterised as false accusations of

domestic abuse in the present proceedings. He said he was working in his business but only for a fraction of the hours that he normally would. He doubted his ability to run a business in the future, and thought he might seek work as a partner or consultant in the future. He had not been seeking to generate business for BLP since the divorce proceedings started. He had no appetite to return to the "always-on" service he had been accustomed to providing.

[69] The defender had prepared a document (7/86) seeking to extract information from some bank statements to show what sums had been expended to benefit the pursuer after she left Hymans Robertson. It bore to show that the pursuer had taken more money out of an account number ending 4873 than she had contributed to it during the period from January 2017 to May 2018. He had prepared it without reference to statements for an account number ending 6094. Including payments from that account by the pursuer would have caused distortion. Contributions from that account would not have been contributions from income. Both parties had paid £2,500 monthly into 6094, which they regarded as a joint savings account. In cross-examination he said it had simply been his intention to rebut suggestions that he had been controlling or had not contributed sufficiently to the family finances; he had, on the contrary, supported the pursuer while she was working under the auspices of Direct LRC. He said that the pursuer had retained more than £30,000 from Direct LRC.

[70] In the course of cross-examination it came to light that a number of pages were missing from bank statements for account 4873 lodged on the defender's behalf at 7/80 of process, to which he had referred when preparing 7/86 (for example, 7/80/4 on to 7/80/5). He said he had provided the full statements to his agents. I have no reason to doubt that the source of the problem was in the reproduction of the documents, rather than in his not having his provided his agents with the material. It did, however, limit the opportunity for

scrutiny of the extent to which 7/86 fully reflected all potentially relevant payments in and out of 4873, and for comparison, in the course of evidence, of the bank statements with the figures that the defender had used in 7/86.

[71] Asked about a trust created by his late aunt, the defender confirmed that he was not a beneficiary of it.

[72] When the parties' first child was born, the defender was working as a consultant for McGrigors. In 2008 the defender incorporated Wallace Dispute Resolution Limited ("WDR") of which he was the sole director and shareholder. He accepted a partnership with Simpson and Marwick in 2012, but was unable to join until 2013 because of a conflict of interest. He had intended to liquidate WDR on taking up the partnership, but did not do so, as he found that the business model of Simpson and Marwick was changing in a way that he had not anticipated when accepting the offer of partnership, and came to think that he would not remain there in the longer term.

[73] The defender was also still collecting debts due to WDR in 2013 and 2014. He left Simpson and Marwick in 2015, but was retained as a consultant for some time afterwards. He liquidated WDR in March 2016, he said, because of the introduction of targeted anti-avoidance rules applying to distributions made after 1 April 2016. His evidence about the incorporation of BLP and BLPH is reflected in my findings at paras [27] and [28].

[74] In seeking to counter the pursuer's case on record that she suffered economic disadvantage, and the defender experienced economic advantage, the defender said that the parties had built up significant wealth during their marriage. He had supported the pursuer during the marriage. She often said she did not like the law and complained about her work colleagues, and said she had mental health issues. Although she worked in-house she worked long hours comparable to those involved in private practice "unimpeded" by

the fact that the parties had a family and that the defender also had a career and the burden of running a business. The pursuer took 6 months of maternity leave with the parties' eldest child. Their eldest child was cared for by a combination of maternal and paternal grandparents, and a childminder. As the pursuer was working in Edinburgh and the defender was working from home in his role as a consultant. He did most of the "runs" to grandparents and childminder.

[75] When the pursuer worked at Hymans Robertson she progressed to the role of partner, and the parties organised their lives so that they could both work and care for the children. At one point she worked compressed hours, working four long days while being paid for 4½ days, and the work often spilled into a 5th day or more. In the tax year ending April 2017, the pursuer earned £162,416. It was not correct to say that the pursuer was the primary care-giver. The defender's office was close to the parties' home, and he did more school runs than the pursuer did. He did the majority of the cooking, while the pursuer did the laundry. The flexibility of the defender's business assisted family life, but both parties working in demanding roles was not "frictionless".

[76] The defender did not accept that the pursuer had taken a career break. She had been unhappy at Hymans Robertson, and complained about misogyny, pressure of work, volume of work, and what he regarded as misplaced guilt about the time she spent away from the children and working. She had spoken about resigning, and had also done so when working at Cigna. The defender had found the pursuer's need for reassurance an emotional burden which became increasingly hard to bear.

[77] The defender assisted the pursuer when she set up Direct LRC. He gave her access to his client base, office and infrastructure. The experience of running the enterprise had been unhappy for the pursuer, and the business had failed. He had paid Direct LRC's

corporation tax bill in 2019 through his director's loan account with BLP. The defender observed that he was not someone who thrived in a corporate environment; he was, however, very highly motivated and successful when working for himself. The pursuer, by contrast, was successful when working for large enterprises, but was not particularly well-suited to self-employment. In cross-examination the defender referred to an opportunity cost associated with assisting the pursuer, which he explained meant that he would have spent the money that he spent on the tax bill on something else had he not spent it on the tax. He also took into account the cost of time he had expended on "dealing with" the pursuer.

[78] In October 2024 the defender purchased a new home, into which he moved in January 2025. It was smaller than the matrimonial home. He borrowed the purchase price, legal fees and stamp duty from BLPH. He paid an additional dwelling tax of about £56,000 which he hoped would be reimbursed if he transferred his interest in the family home within 36 months of purchasing his new home. He had paid more than £48,000 to refurbish the house and provide clothing for the two younger children, and estimated that he needed to pay another £21,000 to finish the house.

[79] The defender's evidence was that he repaid £736,027.60 to BLPH first, because he had an obligation to repay his director's loan, and interest was due to rise to 3.75% per annum. That would have meant a monthly interest figure of £3,365.41 per month without any repayment of capital. Having taken advice from his accountant, he concluded that indebtedness at that level was unwise and unsustainable. Second, BLPH would be liable for corporation tax on the outstanding balance at 33.75% on 31 July 2025. Third, HMRC might treat large outstanding loans as income of the borrower, and tax them accordingly. He had

used cash, ISAs and equities to repay the loan. Realising those assets had given rise to a charge of £10,660 to capital gains tax.

[80] Had the defender taken a dividend from BLPH in order to fund the purchase of his new home (and generate a net sum of £1,076,934), he would have had declare a dividend of £1,775,648.78, giving rise to a tax liability of £698,714. The defender's position was that he would then have had to declare a further substantial dividend to meet the pursuer's claims. The defender owed BLPH £275,325, and intended to treat it as a mortgage and pay it off over 13 years. The gross cost would be £4,544 per month, and the net cost £2756. He had felt unable to declare a dividend to clear the liability entirely because of the pursuer's "position in the divorce". He expected to realise £38,000 from the sale of his Porsche. His remaining cash would be required for legal fees.

[81] After the relevant date it had become clear that a particular debt was a bad debt. The client was in liquidation, and the debt of £30,193 would not be recovered. He asked that to be taken into account as a special circumstance.

[82] The defender could not fund a capital sum by mortgage borrowing for a number of reasons. First, he would need to disclose to a lender the extent of his indebtedness to BLPH. Second, he could not borrow because his income in the tax year was £15,000 in the tax year 2023/24, and between £40,000 and £60,000 for a decade before that. Third, he did not find the prospect of a debt of £800,000 attractive at the age of 52, and in circumstances where the pursuer had mortgage free accommodation. Fourth, he was self-employed, and currently finds his ability to work impaired by stress and depression. Fifth, the turnover and profits of BLP had fallen. The defender intended to take time off work after the proof in this matter, and doubted his ability to work. Sixth, he would have to disclose his current state of health to a mortgage lender. Seventh, he would not be able to afford loan

repayments. BLP and/or BLPH would have to pay gross dividends of between £10,220.94 and £12,901.90 per month (depending on the interest rate applicable to the secured lending) to generate, net of tax, the monthly repayments for a mortgage of £800,000. That would require gross profit from BLP in the range £163,126.20.

[83] To meet all of his obligations and the proposed mortgage, the defender would require a net monthly income of £20,488. BLP would have to generate £539,148 in gross profit (£405,374) and have that sum available to it in cash. Sums at that level would require to be available for 13 years. Declaring a dividend to produce £800,000 would be £584,079.14 less than the cost of taking a £800,000 loan over a period of 13 years.

[84] If BLPH were to declare a dividend which, net of tax, yielded £1.48m, the tax payable would be £927,770.41. That would lead to a disparity in the assets with which the parties, respectively, were left. It would not be possible to liquidate BLPH. The circumstances were different from those which obtained when the defender liquidated WDR. He would not qualify for business asset disposal relief. That applied only to a trading business. He had received advice that there was a real risk that targeted anti-avoidance rules would be engaged. He had also been advised that his shares in BLPH did not represent suitable security for lending. It would in any event be prohibited by rule D5 of the Professional Practice Rules of the Law Society of Scotland.

[85] The defender had offered to undertake a reconstruction of BLPH under section 110 of the Insolvency Act 1986 and give the pursuer her own limited company. She would not pay tax unless she withdrew sums from it. The parties had planned their financial affairs together. He had originally offered the pursuer a 50% shareholding in BLPH but could not recall if she had responded. He had written notes and emails to the pursuer about financial affairs. He had during the marriage willingly shared his income with the pursuer.

[86] In cross-examination senior counsel asked the defender about a message from the pursuer to him dated 23 September 2019 to which his current partner had made reference in an affidavit. Senior counsel suggested that that demonstrated that he had begun his relationship with her in September 2019, rather than in 2021, as he claimed. He had shown his current partner the message after the relationship started in 2021 in order to inform her as to the nature of the difficulties in his marriage.

[87] Asked about the reference, in the email of 3 February 2016, to reuniting the coach house and the dwelling house, the defender accepted that the coach house had never been held on a separate title by WDR. WDR had stopped trading when the defender joined Simpson and Marwick. The money to purchase the matrimonial home came from a director's loan of £760,000 from WDR to the defender. Before he took that loan, the company had owed him £83,000. The company declared dividends in 2014 and 2016 which were used to "clear the liability for the house" before the company was liquidated. Tax required to be paid on both occasions. The defender took advice and the coach house was treated as having become an asset of WDR. It appeared on the balance sheet as an asset of WDR. At the time the defender was in some uncertainty over his future career, and thought it might be advantageous to operate a business from the coach house. A document was prepared containing an obligation to convey the coach house to WDR. When the coach house was "reunited" with the dwelling house, a dividend was paid to clear the value of the coach house. The respective values of the coach house and dwelling house were calculated by reference to the area of each.

[88] In sending communications to the pursuer about financial matters, it had been the intention of the defender to facilitate discussions that did in fact follow. In relation to the decision to liquidate WDR, he had shared with the pursuer what Adam Armstrong had

advised him. The defender encouraged the pursuer to get her own advice if she did not like what he was telling her. He had not regarded as fruitful to get a second opinion from an accountant.

[89] In relation to his proposal in an email of 18 June 2018 to set up a family investment company, he had taken advice from Mazars. Subject to some criteria, loans between related entities could be written off. If money were "dividended" to a holding company structure with the consent of HMRC, there would be no dividend tax consequence between the related entities. It had taken time to obtain the consent of the Law Society of Scotland to his working in that way.

[90] Sometimes the pursuer would ask to be involved in financial matters but in other contexts did not wish to be involved. She had always been free to take her own advice. He had been trying to benefit the wider family, but there was always some difficulty or problem from the pursuer, or limited engagement from her. There was no point pressing for something that she did not want or did not understand. The defender had never been parsimonious. He would try to discuss matters, but be met with accusations that the discussion was patronising, an experience he described as "Orwellian". In re-examination he said that the discussion that followed the document dated 3 February 2016 had been "endless" and had involved a "torrent of emotion" from the pursuer.

[91] There was no formal policy that BLP would distribute all its reserves to BLPH, but that was generally the purpose of a holding company. BLP had declared a dividend for the year ending 31 March 2024, and that had been included in the valuation of BLPH. The defender was unable to say whether BLP would declare a dividend for year ending 31 March 2025. At the time when the defender was giving evidence, in May 2025, that had not yet been decided. In his schedule of income and expenditure (7/163) the defender

indicated his monthly income consisted of £4,200 dividend taken from BLPH and a salary of £758 from BLP. He had intended to indicate what he would be taking, although there had been no decision as to whether to declare a dividend. He agreed that a partially-redacted bank statement for his current account (7/166) disclosed a payment to him on 28 February 2025 of £4,200. The reference on the transaction is "Automated Credit THE BUILDING LAW P". I did not find this passage of the defender's evidence easy to follow. A document bearing to relate to his director's current account with BLPH (7/133) characterised monthly payments of £4,200 between August 2023 and July 2024 as repayment to him of a director's loan owed to him, rather than as dividend from BLPH.

[92] In re-examination the defender explained that he had taken advice from Mr Armstrong to run down his director's loan, and the payments had therefore been "classified" as repayment of director's loan. The ultimate decision as to whether to classify the payments as dividends was one taken at the year end.

[93] Amongst the outlays listed on his schedule of income and outgoings was a figure for £800 monthly for mortgage protection. Although he did not have a mortgage, he had included the figure in response to the possibility that he would be asked to take one out. He had estimated the cost of an annual holiday with the two younger children at £12,000.

[94] Asked about the director's loan that he had taken from BLPH in October 2024, the defender said that he accounted for interest on it annually as he was permitted to do by HMRC. If interest were not paid, a benefit in kind charge would arise.

[95] The defender said that he had used joiners in his new home to modify and install furniture sourced from Ikea rather than more expensive modular furniture. He had incurred a fee of £200 for advice on colour schemes from Farrow and Ball. The £48,000 he had expended came from earnings and from a savings account.

[96] The defender said that in the most recent financial year he estimated the profits of BLP to be in the region of £200,000, gross of pension contributions. Corporation tax of 25% would be deducted. The unadjusted turnover in quarters 2 and 3 were respectively 20% and 109% less than they had been in the preceding year. The figures excluded staff bonuses. Apart from making pension contributions reflected in the 21 June 2024 accounts, he had made no further provision on the grounds of cost. In cross-examination he said that provision of £49,000 had been made on 31 March 2024; the pension payment would be one of the last made in the financial year.

***Alan Barr***

[97] Senior counsel for the pursuer objected to Mr Barr's evidence, and I heard it under reservation as to competency and relevancy. The objection was that Mr Barr would give evidence as to tax law. Evidence as to domestic tax law, as distinct from evidence as to the practice of HMRC was inadmissible. Senior counsel for the defender submitted that Mr Barr was not tendered as an expert witness; his evidence confirmed the evidence of the defender to the effect that the defender's own evidence was responsibly based on advice he had received.

[98] Mr Barr's evidence was evidence of fact that he had provided advice to the defender about tax matters, and about the terms of that advice. At certain points in his affidavit the defender said that he has taken advice - for example, in relation to the risk that TAAR would be engaged if BLPH were to be liquidated. The defender also provided affidavit evidence - to which no objection was taken - as to the extent of the dividend that would have to be declared in order to yield a particular sum net of tax. He expressly relied on the calculations provided by Mr Barr in a report.

[99] I accept that the evidence of Mr Barr was admissible insofar as it tended to support or corroborate the evidence of the defender that he had received advice to particular effect. There was no objection to the evidence of the defender that he had taken advice in particular terms. I am not sure that the evidence of Mr Barr as to the terms of the advice he had given adds much to the defender's case, in a situation in which there was no objection to the defender's own evidence referring to and incorporating Mr Barr's report 7/145 (paragraph 78 of affidavit 58 of process). Mr Barr's calculations and advice were by that means already put in evidence as hearsay evidence to which no objection was taken. Equally, it is difficult to see what the objection was intended to achieve when no objection had been taken to the relevant passages in the defender's own evidence.

[100] There was no suggestion that the calculations to which the defender spoke in his affidavit were incorrect or inaccurate applications of the relevant tax bands and rates to transactions of the sort contemplated. There was no suggestion that Mr Barr was incorrect in any of the calculations he had produced.

[101] For the sake of completeness, I record that at least part of Mr Barr's evidence related to the practice of HMRC in granting clearances and making inquiries in particular circumstances: paragraphs 21-23 of Mr Barr's affidavit.

[102] Mr Barr spoke to having provided the report 7/145 of process. In cross-examination he confirmed that unless he paid interest at 3.75% on his director's loan, it would be treated as a benefit in kind and attract income tax. Corporation Tax at 33.75% would be payable on the loan, but if the loan were repaid, then the tax could be reclaimed.

*Derek Wallace*

[103] Mr Wallace spoke to the arrangements for the care of the two younger children when with the defender, including the accommodation provided by the defender for them.

*Greig Rowand*

[104] The defender relied on Mr Rowand's report at paragraph 65 of his affidavit number 58 of process. This passage relates to the way in which a sum due from Nixon Construction was dealt with in Mr Rowand's report. The references to the debt in question are at paragraphs 3.3.16, 5.3.1, and Appendix 7 of Mr Rowand's report (7/103).

**Decision**

***The incident on 11 October 2024***

[105] Both parties in their affidavits gave accounts of the context of an incident of which the pursuer made an audio recording on the evening of 11 October 2024. I had listened to that recording in preparation for an opposed motion hearing at an earlier stage of the proceedings. That opposed motion resolved. I disclosed to parties that I had listened to the recording. I have reached the view that behaviour of the parties as disclosed on the recording is of no real relevance to the division of matrimonial property.

[106] One matter arises from it. During the incident the defender said his relationship with the pursuer ended a decade earlier. It was also put to him in cross-examination that he might have started his relationship with his current partner as early as 2019, because she had deponed in her affidavit that she had seen a text sent in 2019 from the pursuer to the defender. The underlying suggestion as I understood it was that the defender had

deliberately organised the financial affairs of the parties, including the incorporation of BLPH in 2019, with a view to making it difficult to access funds on divorce.

[107] First, I place very little weight on a statement made by the defender in an argument after the marriage had broken down. Second, if the defender had had the intention of defeating financial claims, it is unlikely that he would have arranged matters so that so many assets were in fact readily realisable at the relevant date. Third, the value of his holding in BLPH can be realised readily; the issue the defender raises is the cost, in tax, of doing so. Fourth, the defender made no secret of his intention to set up a holding company. Fifth, the fact that the defender's current partner spoke, in an affidavit, to seeing a text dated 2019 is a slender basis for an inference that she must have seen the text in 2019, rather than at a later date, or that she and the defender were in an intimate relationship in 2019.

***Communications about financial affairs***

[108] The defender relied on these to show that he had taken primary responsibility for the family finances, and that he had conferred economic advantage on the pursuer by doing so. The communications about financial affairs are also potentially relevant to a submission made by the defender to the effect that the assets held in BLPH are there because of a conscious investment strategy agreed and adopted by the parties during the marriage. The defender submitted that it was an inevitable consequence of the decision to proceed in that way that tax would arise in the event that capital required to be realised.

[109] I am not satisfied that the defender has suffered any economic disadvantage or conferred any economic advantage on the pursuer by reason his taking responsibility for organising the family finances, or by reason of providing support for her when she found the circumstances in which she was working stressful or upsetting.

[110] I find that the defender took primary responsibility for arranging the family's financial affairs. It was a matter which interested him, on which he took advice, and in which he became closely engaged. On the basis of the evidence to which I have already referred, about email and text communications between the parties, I am satisfied that the defender on a number of occasions sent detailed written communications to the pursuer about financial matters. Some of them are fairly dense, textually, and contain a good deal of information. On some occasions she responded to him in writing.

[111] I accept that the pursuer felt patronised by some of the communications. The wording selected by the defender provides objective justification for her feeling that way. The reference to "factsheet (for members of MENSA)" can be read as humorous, but it can also be read as patronising and belittling. I have no doubt that the pursuer genuinely regarded it as the latter, and that she found the way in which the defender communicated about money irritating and at times upsetting. The communication of 3 February 2016 which contained that reference was prepared expressly "(t)o avoid the usual questions", which is consistent with a situation in which the pursuer had previously asked questions, and that the exercise of answering them was one that the defender would prefer to avoid.

[112] My impression of the defender, having seen him give evidence, is of someone deeply engaged in and conversant with the minutiae of legitimate schemes to minimise tax and preserve wealth. His level of engagement and command of the material was impressive. It is plain that he took advice from his accountant, Adam Armstrong, to whom he refers in the communications. It is likely that on each occasion he communicated in writing with the pursuer he had become very closely engaged with a particular topic, and felt the need to record and communicate that engagement immediately, without necessarily devoting much thought to the tone of the communication, or to whether the recipient of the communication

would necessarily share his level of enthusiasm or engagement at the moment at which he sent it.

[113] Not all of the communications are self-explanatory. The email of 3 February 2016 refers to "unif[ying] … once more" the coach house with the main house of the parties' home. The coach house had never been held on a separate title. The reference was, as the defender explained in his evidence, to an accounting exercise. In the absence of explanation of the sort tendered in evidence, however, it is easy to see why the communication might not have made much sense to the pursuer.

[114] At least one of the communications - one in which the defender was responding to a text from the pursuer - has a rather competitive tone. The defender's email of 13 February 2020 does not engage with the text that the pursuer sent to him on the same day. It reads in part as an attempt to assert his own expertise in the area, by posing questions for the pursuer reverting to some of the suggestions for investment to which the defender had referred in the memo.

[115] While the communications support the contention that there were times at which the defender communicated with the pursuer about financial plans, and that he was actively engaged in financial planning for the family, I am not satisfied that they demonstrate that the parties had a joint plan in relation to all their financial affairs. They do not demonstrate a meeting of minds. If it is relevant that there might have been a conscious joint investment strategy so far as BLPH is concerned, then I am not able to find on the evidence that there was such a strategy. Although the defender sent communications to the pursuer, I accept the pursuer's evidence that conversations and discussions often ended with disagreement between the parties; that she expressed a wish to seek advice jointly with which the defender did not concur; and that the defender might well simply proceed with his planned

course of action whether or not she agreed with it. The defender's own evidence was in some respects consistent with that of the pursuer, albeit his perspective was different from hers. He was not parsimonious. He was trying to do his best for the family so far as financial planning was concerned, but there were things that the pursuer did not engage with, did not want and did not understand. He found discussions about finances with the pursuer difficult and unproductive.

***Contribution to childcare and household responsibilities***

[116] I am satisfied that parties both contributed to childcare and household responsibilities. It is impossible, and unnecessary, to quantify exactly who did what. Broadly speaking, I accept that the pursuer tended to underestimate the extent of the defender's involvement in caring for the children and the home, and that the parties shared caring and household responsibilities more evenly than her evidence suggested. I have, for example, no reason to doubt the defender's evidence that he was actively involved, along with the pursuer, in the placing requests for the younger children, or that they both undertook tasks related to the flood that occurred at their property.

[117] I also accept, on the balance of probabilities, and again on a broad basis, that the pursuer did more than the defender did in relation to meeting the parties' caring responsibilities. She worked part-time, when he did not, with a view to using the time that she was not at work to fulfil caring responsibilities. I accept that the pursuer stopped working for Hymans Robertson because she found her duties difficult to combine with her family responsibilities, and wished to try working on a different basis, at least for a period, with that in mind. Some of the communications on which the defender founded in seeking to show the emotional support he provided to the pursuer were consistent with the

pursuer's having experienced significant challenges at work because of her existing childcare commitments. The defender's evidence was that part-time working would not have been compatible with his professional life.

[118] Both parties are very able individuals who have worked hard over the years and who have been successful in their respective careers in the law. The disparity of assets as between the pursuer and the defender at the relevant date lay in the value of their respective pension funds (although both had accumulated very substantial funds, which exceed the lifetime allowances), and in the value of the defender's holding in BLPH. It is self-evident that someone who works only part-time is limited in her earning capacity by comparison with what that earning capacity would be if she were working full-time. I am satisfied that the pursuer has experienced economic disadvantage as a result of working part-time in the interests of the defender and the family.

***Practical, financial and emotional support provided by the defender to the pursuer***

[119] I accept that the defender provided some practical support to the pursuer in setting up Direct LRC. It was a relatively short-lived enterprise, and on the defender's own account, not a successful one. The defender's observation about the relative strengths and weaknesses of himself and the pursuer respectively in corporate and self-employed environments was one which is borne out by examination of their respective careers. The defender helped by providing some facilities and some client contacts to the pursuer. I do not consider that his assistance in that regard conferred any identifiable economic advantage on her, or resulted in any identifiable economic disadvantage to him.

[120] I have placed no weight on 7/86 of process. It is incomplete as a picture of the family finances during the period January 2017 to May 2018. It relates to what is a relatively short period in the context of a marriage of more than 20 years' duration.

[121] The submission offered by the defender was to the effect that he had to counsel the pursuer continuously and virtually daily at every stage of her career. I accept that there were times when the pursuer found her working life stressful and difficult, and that she spoke about those matters to the defender. There were times when she considered resigning. That is borne out in some of the text communications and also in a draft communication that she had written to one of her former superiors. It is consistent with her account of finding some of her work ill-adapted to caring responsibilities and in particular to women workers who have and undertake caring responsibilities. It is normal in a marriage for the parties to share with each other their day to day difficulties and matters that cause them distress, including difficulties that they may be experiencing at work.

[122] I accept the pursuer's evidence that matters of this sort arose from time to time; and that there were times when she was overwhelmed and distressed by difficulties at work, but that that was not all the time, or in every job in which she worked. I accept that when she was sufficiently distressed to be texting the defender about a matter of that sort, that would have happened on "bad days". I do not accept that the pursuer would have been unable to work, or to succeed in her workplace as impressively as she has done, without "counselling" from him. I accept that, as with supporting any partner at times of difficulty, the experience of supporting the pursuer at such times would not have been without emotional cost to the defender. I do not, however, accept that his support was extraordinary or that it conferred any identifiable economic advantage on her.

[123] There is no medical evidence to support the contention that "counselling" the pursuer, or otherwise providing her with emotional support, has been prejudicial to the defender's mental health. I am not satisfied that providing support of that sort has prejudiced his ability to work.

[124] I am not satisfied that the pursuer has derived economic advantage from the contributions or that the defender has suffered economic disadvantage in the interests of the pursuer or the family so as to justify a departure from equal sharing in favour of the defender.

***Money owed to BLP by Nixon Construction***

[125] I am satisfied that account should be taken of the bad debt referred to in the defender's evidence. Mr Rowand properly took the debt into account in valuing the company at the relevant date. Although provision of £40,257 had been made against the debtor, a number of the fee notes had been voided on the defender's practice management system because the debtor had entered into an insolvency arrangement. Mr Rowand reinstated the voided fee notes, but made a provision of £10,064 in respect that it was a doubtful debt. The debtor was placed in liquidation after the relevant date.

[126] I accept that although the relevant date valuation takes into account 75% of the debt in question, it has emerged, after the relevant date, that there is no prospect of recovering the debt. That is properly regarded as a circumstance of which account may be taken in terms of section 10(1). I have done so in the manner suggested by senior counsel for the defender. That produces a figure due by way of balancing payment of £1,463,403.50, subject to any further adjustment that might be appropriate.

***BLPH***

[127] The remaining issue for determination is whether there should be a departure from equal sharing because of the cost, arising from the effects of taxation, to the defender of obtaining funds for a capital sum by way of a dividend from BLPH.

[128] Senior counsel for the defender submitted that there should be such a departure. The effect of taxation might be treated as a special circumstance, or might be taken into account in looking at the reasonableness of any order having regard to the resources of the parties. The pursuer had rejected the proposal that she should take any part of the capital due to her by pension share, and had rejected a transfer in terms of section 110 of the Insolvency Act 1996. The defender had not been seriously challenged in relation to his ability to obtain a mortgage. He already had a debt of £275,325. It would be more expensive for him to obtain and repay a mortgage of £800,000 than it would be for him to declare a dividend to produce a net sum of £800,000. He could not avoid the tax consequences of declaring a dividend by liquidating the company.

[129] The parties had engaged in a joint investment strategy agreed on during the marriage. The value of the shares had an element of locked in tax liability. The pursuer had benefited from the tax efficient accumulation of wealth during the marriage. The defender had incurred a number of costs in anticipation of transferring his share of the matrimonial home, including legal fees, but more significantly £71,150 in land and building transaction tax. In the event that matters were disposed of in the way that the pursuer suggested, the defender would be left with nearly £1m less in assets than the pursuer (according to the calculation in paragraph 114 of his second supplementary affidavit). He would be left with resources with a locked in tax liability, whereas the pursuer would have liquid assets with no such liability.

[130] Senior counsel for the pursuer submitted that there was no need to depart from equal sharing. The defender had chosen to reduce the balance of his director's loan from easily realisable assets, rather than paying 3.75% on the whole loan. The company would require to pay corporation tax on the loan only if it remained outstanding as at 30 April 2026, 9 months after BLPH's year end. The defender could take a director's loan. He had not produced any reliable evidence that he could not obtain a mortgage. He had sufficient resources to permit him to pay the full capital sum due within 28 days of decree.

[131] The following cases are relevant to consideration of those submissions. In *McConnell* v *McConnell (No 2)* 1997 Fam LR 109 the defender argued that there should be a departure from equal sharing because his assets were difficult to realise, in that they were tied up on loans to his company which provided the working capital of the company, and in his company shareholding. There was, however, evidence that the company had a policy of not taking loans from lending institutions, but that policy could be changed so that the capital sum could be paid without requiring the shareholding to be sold or the defender's loans to the company to be called up. Lord Morison expressed the view that if the only means to achieve equal division of the property had been to withdraw the loan without replacing it with a similar amount of working capital, equal division would not have been justified. Where it is established in relation to items of matrimonial property that it would not be reasonable to expect them to be realised in order to satisfy a claim for payment of a capital sum, it is a question of circumstances and degree whether that constitutes special circumstances justifying a departure from equal sharing; paragraph 20-26.

[132] *Sweeney* v *Sweeney (No 2)* 2006 SC 82 was a case in which the Lord Ordinary in determining the net value of the matrimonial property deducted amounts which would have been payable as capital gains tax if the property had been realised at the relevant date.

The wife reclaimed, and the court found that the Lord Ordinary had erred in taking that approach. The husband lodged supplementary grounds of appeal, and argued that there were special circumstances which justified unequal sharing. The court held that a contingent tax liability could in principle be brought into account in determining the proportions in which matrimonial property would be shared and in determining what was reasonable having regard to the parties' resources.

[133] A marked disparity in the nature of property allocated was capable of constituting a special circumstance such as to justify a departure from the principle of equal division: paragraphs 18 and 19. The husband's contention was that if provision were made to the extent sought by the wife, he would be left with little, if any, assets in readily realisable form, where, by contrast, the assets available and prospectively available to the wife included substantial items readily realisable as cash. The court dealt with the non-realisable nature of the assets by making an order for payment by instalments. The husband had a business in his sole name which remained a source of substantial capital and generated a substantial income. There was no justification for departing from equal sharing.

[134] Although it would be permissible as a matter of law to make some allowance for the tax cost (in that case capital gains tax) of realising an asset in the future by reference to special circumstances, the court did not do so in *Sweeney*. There was a paucity of evidence (a) as to the tax paid or exigible on a share portfolio, and (b) that the husband would dispose of his business: paragraphs 20 and 21.

[135] In the context of considering what was reasonable having regard to the resources of the parties, the court made a deduction from the capital sum that it would otherwise have awarded, to allow the husband to retain assets in realisable form to deal with business contingencies or other contingencies of life requiring ready funds. The court awarded a

capital sum of £950,000 which it said was a little more than £100,000 less than the wife had sought. The court made only a small and unquantified allowance for the effects of capital gains tax in the context of considering the resources of the parties. Its reasons for doing so appear at paragraphs 23-25.

> "[23] As at the relevant date, the husband had readily realisable assets which, if realised, would have allowed him to satisfy, or almost to satisfy, the full claim made by the wife for a capital sum. A substantial number of these assets were subsequently realised by him and the proceeds advanced to his business by way of director's loan. If one proceeds, as seems reasonable in the circumstances, upon the basis that these advances could, with appropriate planning, be redeemed without serious prejudice to the viability of the business, the husband's resources are such that he could over a reasonable tract of time meet, or almost meet, the wife's claim in full, without requiring to dispose of his home, its contents, his pension provisions or his business (or any interest in it). There is, it is true, some uncertainty as to the extent to which the advances could readily be replaced by bank borrowing, as an alternative to their orderly withdrawal over time. On the other hand, the business appears to have been expanding, with future maintainable profits of a high order. If, nonetheless, the husband were, by substitution or withdrawal or a combination of these methods, to realise the advances mentioned and were further to realise his existing readily realisable assets and required to use the whole proceeds to satisfy the wife's claim, he would, on such satisfaction, be left only with assets which it was not reasonable to expect him to realise. He would, in particular, have no ready funds with which he could, if required or if appropriate, make fresh investment in his business.
>
> [24] We acknowledge that the absence of readily available 'private' funds to invest in the business interest as need or opportunity arose could be an inhibiting factor in maintaining the business or in developing it to its full commercial potential. Between the relevant date and the date of the proof the husband had, on three occasions, disposed of readily realisable assets (his PEPS, the AXA policy and part of his share portfolio) and invested the proceeds (about £100,000, £97,000 and £150,000) by way of director's loan into the business. The reasons why he took these steps on these occasions are not disclosed in the evidence. But the need or commercial advantage of being able to do so in the interests of preserving or developing the enterprise can readily be understood. Even on the basis that the advances mentioned could be redeemed without serious prejudice to the viability of the business, an order having the result that these and the husband's resources currently available in readily realisable form be made over wholly to the wife would not, in our view, be reasonable having regard to her, as well as to his, resources.
>
> [25] Such a result can be averted by two mechanisms, first, by modifying to some extent the amount of the capital sum to be awarded and, second, by making it payable in instalments over an appropriate tract of time. That course we shall adopt. The amount of the modification must necessarily proceed upon a broad discretionary approach, having regard to the resources and to the form of the resources of both

> parties. In the particular circumstances of this case, we consider it reasonable that the husband should retain assets in readily realisable form to the value of about £100,000 — to deal with business contingencies or other contingencies of life requiring ready funds. We also recognise that, to satisfy the order we intend to make, some liability to capital gains tax (although not quantified before us) may arise on the disposal of certain assets. We make a small allowance for that. On the other hand, given the nature of the husband's business and the uncertainty as to whether and, if so, when and in what amount he might incur capital gains tax in respect of any disposal of it, we are not persuaded that his resources are for the purposes of the 1985 Act diminished by that possibility."

[136] In *W* v *W* 2013 Fam LR 85, two prospective tax liabilities arose for consideration. The Lord Ordinary was satisfied, having considered *Sweeney* and *Coyle* v *Coyle* 2004 Fam LR 2, that it was in principle acceptable to treat liabilities of that sort either as special circumstances for the purposes of section 10(1) or as a factor relevant to reasonableness under section 8(2): paragraph 45. The tax liabilities in question were in respect of (a) capital gains tax on the sale of any shares transferred to the defender by the pursuer and (b) income tax on dividends which the defender might require to use to make a capital payment to the pursuer.

[137] The Lord Ordinary went on to distinguish, so far as section 10(1) was concerned, between the two prospective liabilities: paragraph 46. He made an adjustment of 10% to the value of the shares in respect of the prospective liability to capital gains tax. He proceeded on the basis that a sale would take place, probably sooner rather than later. The current value of the pursuer's shares included an element of locked in tax liability the burden of which the pursuer would not share if her shares were transferred to the defender with the benefit of hold over relief. The defender's obligation to pay tax on dividends that he might require to use to meet a capital sum was not a special circumstance, but might still be relevant when considering section 8(2).

[138] The Lord Ordinary found that there was little of the defender's capital wealth that was readily realisable: paragraph 53. He concluded that if a capital sum was to be paid before the sale of a company, it would require to be funded largely by profits extracted from that company. The defender's position was that there was £775,000 available to pay as a dividend, to which the defender would be entitled to half. Tax on that half share at 30.55% would leave a balance of £269,000. The Lord Ordinary was not satisfied that the ability of the company in question to pay a dividend was as restricted as the defender claimed. His assessment was that the company was capable of funding a dividend of at least £1m. A dividend at that level was sufficient, net of tax, to fund the capital sum. He wrote:

> "It follows that I am not satisfied that in assessing what is reasonable with regard to the defender's resources, I require to make a deduction from the capital sum due because he will be chargeable to income tax on dividends paid to him."

[139] The situation in this case is in some respects similar to that in *Sweeney*. The defender had, at the relevant date, readily realisable assets. Between the relevant date and the proof he has realised them. He has used them to fund the purchase of his home, rather than, as the husband in *Sweeney* did, to invest them in his business by way of director's loan to the business.

[140] The defender chose, legitimately and for reasons of tax efficiency, to use his resources, in the form of ISAs, cash and equities, to fund the purchase of his home; he used those resources to repay in part the borrowing he had taken from BLPH. The logic of what he says at paragraph 62 of his second supplementary affidavit is, however, in part, flawed. He says that had he taken a dividend to fund his new home, he would then also have had to declare a further dividend in order to pay a capital sum to the pursuer. The logic of that is flawed in part, because if he had taken that course, he would have had available to him the other resources to meet at least part of the pursuer's claim for a capital sum.

[141] If the defender is correct - and this is a subject of dispute - that the only way in which he can fund any capital sum is by taking a dividend from BLPH, then it is true that that will give rise to a significant tax liability. It is not, however, obvious why the pursuer should require, in effect, to bear the whole of that liability by reason of my calculating her entitlement to a capital sum in the way for which the defender contends, particularly when he has chosen to fund his own living accommodation from the resources which were accessible without such significant taxation consequences. The defender's unchallenged evidence was that the realisation of those resources resulted in a charge to capital gains tax of only £10,660, payable in January 2026.

[142] The defender has been left with a loan balance owed by him to BLPH of £275,325 which he intends to treat as a mortgage and pay off at £2,756 per month over a 13 year period. He had arrived at the monthly sum by using a MSE (which I take to be Money Saving Expert) mortgage calculator: 7/163. He was not challenged as to the figures that he said that exercise had produced. The monthly figure looks rather higher than I would have expected with an annual interest rate of 3.75%, particularly by comparison with the figures that the defender produced at paragraph 74 of his affidavit for borrowing at a range of rates between 3% and 7% per year. I was not able to reproduce the monthly figure using the calculator to which the defender referred. Nothing in this opinion ultimately turns on that. I infer from his evidence that this sum would pay off the mortgage and that the calculation was on the basis of repayment of both capital and interest. If the defender's figures are correct, the cost in interest of the loan over 13 years will be £154,611.

[143] Had the defender declared a dividend to produce a net sum of £736,027, he would have had a tax liability of about £450,000. Had he taken the sum as a loan he would have had to pay interest on it in order to avoid paying income tax on it as a benefit in kind. The

interest would have been a multiple of the cost in interest outlined in relation to the existing loan. There would also have been a liability in corporation tax for the company if the loan were not repaid. Had the defender applied half of his readily realisable assets of £736,027 to the purchase of his home and BLPH declared a dividend for the remainder of that sum, the tax would have been in the region of £211,000.

[144] The defender's hypothesis is that leaving out of account any adjustment related to the cost of realising the value of shares in BLPH, the pursuer would be entitled to a balancing payment of £1,395,404. He submits that that should be reduced by £532,619. That is more than the liability he would have had to tax had he declared a dividend to produce a net sum of £736,000. It would in my view be manifestly unfair to adjust the capital sum payable to the pursuer in the way that the defender proposes in a situation where he chose to apply such a substantial sum from his readily realisable assets to the purchase of his own home.

[145] The defender produced at paragraph 114 of his second supplementary affidavit a table seeking to illustrate what he said would be an unfair division of matrimonial property, if I were to accede to the pursuer's claims. Senior counsel for the defender founded on that table in his submissions. It showed a disparity in the pursuer's favour of £930,000. By way of cross-check, I proceeded, on the hypothesis that the remainder of the figures in the table were correct and fell to be taken into account, to insert into that table the figures that the defender proposes should be paid to the pursuer (that is a capital payment of £862,785 requiring a dividend of £1,395,404). Doing so produced a disparity in the defender's favour of £682,022.

[146] I turn to the question of how the defender is to fund a capital payment. He can do so readily if BLPH declares a dividend. It is in a position to do so.

[147] I accept that the defender's shares in BLPH would not be treated as acceptable security for a loan. I accept also that there would be no advantage, from the point of view of taxation, to liquidating BLPH. I did not understand the pursuer to challenge either of those propositions.

[148] I am satisfied that the defender cannot fund a capital payment entirely from mortgage borrowing. A capital payment of £1,463,403 would exceed the value of his home. Even on defender's proposed figure the capital sum would be more than 90% of the value of his home. It is very unlikely that a mortgage lender would lend at that level in any event. Although the borrowing of £275,325 is not secured over the defender's home, it is clear from Mr Maxwell's evidence that any potential lender would take it into account in determining how much to lend.

[149] As I recorded at para [91], there was a lack of clarity in the evidence about the payments that the defender took between August 2023 and July 2024, and in particular whether they were repayments of a loan, or as dividend. Senior counsel for the pursuer submitted that that cast doubt on the accuracy of the figure of £275,325, which the defender said was the extent of the debit balance on his director's loan account after paying for his house and repaying part of the loan from his realisable assets. I note, however, that the agreed value of the director's loan at the relevant date was £74,001, which is broadly consistent with what is shown in 7/133. With that in mind I do not consider that there is a basis for me to doubt the figure of £275,325.

[150] I am not satisfied that the defender would be unable to borrow at least some part of a capital sum by way of secured borrowing. There is no vouching of any medical reason why he will not be able to work in the future. I accept that there has been a downturn in the work of BLP. That is not surprising. The defender says he has not been doing anything

to generate work for it in the recent past. I have no difficulty in accepting that his involvement in these proceedings has been both stressful and time-consuming, and that that has impacted on his productivity. The pursuer described a similar phenomenon by reference to her expectation of a bonus in her employment. The stress and other burdens associated with this litigation are, however, time-limited problems. I do not know what information was provided to those who were said to have advised the defender as to the possibility of getting a mortgage. The defender has not established on the evidence that there is any health-related reason why he should not return in the near future to working in BLP and generating funds in that way as he has done in the past.

[151] As to the affordability of mortgage borrowing, the defender provided calculations at paragraph 74 of his affidavit setting out the repayments that would be required in relation to mortgage borrowing of £800,000 at a range of interest rates between 3% and 7%. The gross dividend he said would be required to meet the payments is probably overstated to some extent, as he used only the top marginal rate of tax, which relates to dividends insofar as they exceed £125,740. The first £125,740 of dividend produces a tax liability of £32,809.75. On his calculations the profit before corporation tax required from BLP would be between £163,126 to £205,914. I note that BLP's profit before tax in 2024 was £212,550. The defender's position is that it would be more expensive for him to borrow money from a mortgage lender than to fund the same sum by a dividend from BLPH: defender's second supplementary affidavit at paragraphs 75-76.

[152] The figure that the defender has produced regarding his expected income, is arbitrary. The total figure is £4,958 per month, including what is said in 7/163 to be a dividend of £4,200 from BLPH. That latter figure appears to have been fixed by reference to sums by which the defender chose to run down a positive balance on his director's loan

account. I do not regard the figure as representing a realistic picture of the defender's ability to generate income in the future.

[153] If the defender were to borrow from BLPH he would require to pay interest on the loan at 3.75% per year and BLPH would require to pay tax on the loan on the day following the end of the period of 9 months from the end of the accounting period in which the loan was made. Extrapolating from the figures in paragraph 74 of the defender's affidavit, repayment of £1,463,403 (capital and interest) over a 13 year period at 3.75% per year would give rise to a monthly cost of between £11,000 and £12,000 per month.

[154] In considering the affordability of taking a director's loan to meet the capital sum it would be necessary to take into account the repayments being made in respect of the defender's director's loan and his regular outgoings. Even allowing for some element of overstatement in relation to his outgoings, for example in relation to mortgage protection and summer holiday costs, the combined monthly cost of the existing loan, a further director's loan of £1,463,403 and regular outgoings would be in excess of £20,000 assuming repayment of interest and capital on both loans by the time that the defender is 65 years of age. It would require a high level of income from BLP to be sustained over a substantial period, and profit before tax at a level markedly higher than that which BLP achieved in the year to 31 March 2024. Borrowing from the company at that level while perhaps not entirely impossible is unlikely to be sustainable for the defender. Even if the defender were to borrow on an interest-only basis, he would require at some point to declare a dividend to redeem the principal.

[155] The pursuer's submission that the defender might take a further director's loan to fund a capital sum appeared to take the defender by surprise. It was not anticipated in the defender's written submission. In oral submissions senior counsel for the defender offered

calculations that he said demonstrated that, again, that it would cost more for the defender to borrow from the company than to take a dividend, taking into account how much income would have to be generated gross of tax to fund the payment of interest, and then to fund a dividend sufficient to pay off the principal.

[156] Taking all of those matters into account I consider that it is likely that at least part of the capital sum will require to be funded by way of a dividend. In determining whether in order to achieve fair sharing of the matrimonial property it is necessary to depart from equal sharing I regard the following matters as relevant.

[157] First, the pursuer sustained economic disadvantage which would be corrected by equal sharing.

[158] Second, the defender chose to use readily realisable assets in order to fund his house purchase in a tax efficient manner, rather than by declaring a dividend, which would have been less tax efficient.

[159] Third, the tax liability on which the defender founds is his liability to pay tax on dividends, which will be part of his income in the year that he takes them. An obligation to pay tax on income is not of itself a special circumstance: *W* v *W*.

[160] Fourth, the declaration of a dividend will decrease the value of an asset that the defender retains, namely his shareholding in BLPH. BLPH is not a trading entity, and there is no benefit to the defender comparable with that which accrued to the husband in *Foster* v *Foster* 2024 SC 99 in securing the whole shareholding of the company in that case; compare with *Foster* paragraph 33.

[161] Fifth, there is some force in the defender's submission that the asset with which he will be left in the form of his shareholding in BLPH cannot be accessed without incurring a tax liability. That is a consequence of his own favoured investment strategy, which was that

limited sums might in the future be drawn each year with a modest tax consequence. The extent of the tax liability would depend on the level of the dividend drawn. It is, however, true that in receiving a capital payment the pursuer will be given access to an asset which she can access and use without incurring a charge to tax. Her ability to enjoy a significant part of the fruits of the combined economic efforts of the parties will not be impeded by the effects of taxation as will the ability of the defender to do the same. That disparity is one which I am entitled in principle to take into account as a special circumstance, and then assess whether or not it justifies a departure from equal sharing: *McConnell; Sweeney*.

[162] Sixth, it is not certain that the defender will require to produce all of the capital sum by declaring a dividend.

[163] I have concluded that it is appropriate to make some adjustment in the defender's favour in respect of the fourth and fifth factors and to treat them as special circumstances. If the pursuer were to bear the whole cost of taxation on a gross dividend of £1,463,403, as the defender submitted in principle she should, that would amount to around £558,983, leaving a capital sum of £904,420. That would not effect a fair division, bearing in mind in particular the first, second and sixth factors referred to above. It is necessary to bear in mind the economic disadvantage sustained by the pursuer, which militates in favour of equal sharing.

[164] By way of cross-check, I considered the effect of adding back into the sum of £904,419 the sum of £211,000. That was the tax liability that the defender would have incurred had he required to take a dividend equal to half of the sum that he used from his readily realisable assets to fund the purchase of his house. A capital sum of £1,115,419 would produce a result whereby the downwards adjustment of the capital sum due to the pursuer would be approximately half of the tax liability that the defender would incur in taking a gross

dividend sufficient to fund that capital sum. An adjustment to that extent would not, however, give sufficient weight to the first factor referred to above. I have determined that the capital sum that the pursuer should receive should be modified to £1,200,000.

**Conclusion**

[165] I will therefore:

(a) divorce the parties;

(b) make a residence order in respect of the parties' youngest child in terms of joint minute number 66 of process;

(c) make an order for payment of a capital sum of £1,200,000 payable within 28 days of the date of decree of divorce with interest at the rate of 8% per year on late payment;

(d) make an order for transfer of the defender's interest in the former matrimonial home to the pursuer;

(e) put the case out by order for discussion of expenses.