SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT KIRKCALDY

[2026] SC KDY 118

KKD-F384-23

JUDGMENT OF SUMMARY SHERIFF MARK ALLAN

in the cause

GRAHAM PHILLIP BELL

Pursuer

against

ANGELA BARBARA CAMPBELL

Defender

Pursuer: McLaughlin; McLaughlin & Co, Kirkcaldy
Defender: Walker; Ferguson Walker Solicitors, Leven

KIRKCALDY, 7 September 2026

The sheriff, having resumed consideration of the cause, finds as follows:

Findings in fact

1. The parties are as designed in the instance. The parties were in a cohabiting relationship which commenced on or around 8 March 2014 and ended on or around 27 July 2023.

2. At the commencement of the relationship the defender was a council tenant of the property at [Redacted]. The pursuer resided at his mortgaged property at [Redacted]. The pursuer owned and operated a financially successful timber harvesting business for over 30 years resulting in relative financial security. The defender, worked part-time in retail and earned a modest income by comparison.

3. Early in the relationship the parties began cohabiting, planning their future together and blending their lives and finances. The parties resided at the pursuer's property in Glenrothes.

4. In early 2015 the parties agreed to purchase the property at [Redacted] as a joint investment enterprise taking advantage of both the defender's 58% discount resulting from her 28-year tenure under the council tenant "Right to buy" scheme, and the financial means of the pursuer which enabled him to fund the purchase.

5. There were financial impediments to the defender funding the purchase. The defender had a limited income and financial difficulties in her past. The defender was unable to finance the purchase. In accordance with the parties' joint investment Agreement the pursuer provided the funds necessary to allow the defender to purchase the property at [Redacted].

6. The parties agreed to let the property to third parties after purchase. The parties agreed that the pursuer's initial outlay would be repaid from the rental income. The parties agreed that the property would later be sold and the proceeds of sale split equally. The parties agreed to maintain a handwritten note/account of expenditure on the property to be reimbursed from the sale proceeds.

7. The joint investment was a decision taken by the pursuer and defender as a couple arising from the opportunity their relationship presented to take advantage of the pursuer's means and the defender's discount. The Agreement was entered into by parties with the intention of benefiting their relationship and both parties financially. Mutual benefit was the founding purpose of their investment Agreement. The joint investment Agreement conceived at an early stage in their relationship was central to the financial arrangements of the parties. The defender openly and repeatedly discussed the joint investment Agreement

in the presence of Stuart and Susan Bell. The defender confirmed the terms of an Agreement which accorded with findings in fact 4 to 6 above.

8. On 24 March 2015 the parties attended a meeting at Rollos solicitors and provided their instructions to Lindsay Brown, solicitor, to prepare a formal minute reflecting the principal elements of their joint investment Agreement regarding the funding and sale of the property. The Agreement drafted by the solicitor stated that the property would be sold and the net proceeds would be divided equally between the parties. The parties thereafter agreed to continue with their arrangement absent any formal written Agreement. The pursuer was persuaded by assurances from the defender that a formal written Agreement was unnecessary and that she would abide by their Agreement. The Agreement relied on the trust of parties in a committed relationship to honour their Agreement and not commercial principles and written contract.

9. The market value of the investment property at time of purchase was £89,000. The discounted price paid for the property purchase in 2015 was £37,798 inclusive of legal fees. Title to the property was conveyed in the sole name of the defender only in order to comply with conditions of the discount scheme. Parties did not intend that the property belong entirely to the defender in an economic sense.

10. In accordance with parties' joint investment Agreement the pursuer funded the purchase price. The funds came from the pursuer's savings together with a £20,000 commercial loan he obtained. The pursuer assumed the financial risk of purchase. The defender's rental payments to the council for the investment property ended on purchase. Her disposable income increased as a result.

11. The Agreement between parties was that the pursuer's initial outlay be repaid to him from rental payments. The initial outlay was not gifted. The property was rented to third

parties for periods between May 2015 and May 2023. Rental payments totalling £46,600 were received by the defender and paid to the pursuer in accordance with parties' Agreement.

12. The parties maintained a handwritten note/account of expenditure in relation to the investment property. The note contains multiple entries between 2015 and 2023 regarding outlays made by the pursuer in respect of home insurance, landlord registration, landlord insurance, tenancy paperwork, boiler repair and replacement, property repairs and renovation. The pursuer was responsible for the cost of administration, maintenance, repair and refurbishment of the property during that period. The pursuer carried out repair and maintenance work on the property during that period. The pursuer oversaw tradespeople carry out maintenance and repair works. On occasion those tradespeople utilised for the work were personal contacts of the pursuer providing favourable rates because of their relationship.

13. The pursuer made significant financial contributions to the joint investment from which it was intended that both parties would benefit. The pursuer met the purchase, maintenance, repair and refurbishment costs of the property on that basis. The efforts and funding of the pursuer in maintaining and improving the property contributed to the increase in value of their investment asset over the relationship. The pursuer's contributions to the property maintained and added to the capital value of an asset from which the defender alone presently benefits. Based upon their Agreement the pursuer had a legitimate expectation of financial benefit from his provision of funds to the investment. The operation of parties' other financial arrangements was influenced by that anticipated benefit. There was an imbalance in the financial contributions of parties to their relationship to be

alleviated in some measure by the benefit to be shared from the proceeds of sale of their investment property.

14. The pursuer financially supported the defender during their relationship. The pursuer met the costs of the home they shared in cohabitation. The pursuer met the majority of their living costs and social expenses. The defender contributed modest amounts of money to the household from her income. Parties enjoyed a comfortable lifestyle which included a number of family holidays abroad funded by the pursuer from the rental payments from the investment property. The pursuer and defender kept a record of the holiday costs on the handwritten note of property expenses with a view to repayment from the proceeds of sale of their investment property. The handwritten note recorded just over £9,000 of property/holiday expenditure. The parties, other than financially, provided equally to the household they shared. There was a fair and equal division of labour to their shared household in cohabitation.

15. Refurbishment works in 2023 were undertaken by agreement between the parties to prepare the property for sale in an effort to maximise the sale price and investment return on the property. Before, during and immediately subsequent to parties' separation in 2023 the pursuer supervised and met the cost of the professional installation of a replacement kitchen, including a new gas hob, sink and taps, bathroom improvements, renewed electrics, interior renovation, new skirting boards and facings, new internal doors and fitting, upgrades to the electrics, a new bathroom, new flooring, fence replacement, replastering and decoration at the property. The pursuer sourced materials directly and undertook some of the renovation work on the property during that period.

16. The relationship ended on 27 July 2023. The pursuer continued to fund and oversee the renovations which were completed on the basis of parties' agreement to sell. The

pursuer paid for all of the work. The refurbishment work undertaken by the pursuer was valued at approximately £10,000. Following separation, the parties continued communicating in relation to the property refurbishment and subsequent sale. As efforts to market the property commenced the defender impeded valuations of the property. The defender delayed discussions about the property. The pursuer then received a text message from the defender advising she had decided not to sell. The defender indicated she planned to get a mortgage over the property to repay the pursuer in accordance with their Agreement.

17. The defender later told the pursuer she was neither going to sell the property nor obtain a mortgage. In a telephone conversation overheard by the witnesses Stuart and Susan Bell, the defender told the pursuer that the investment property was in her name, the pursuer had his own house and that the investment property was "her house". The defender has refused to sell the property in accordance with parties' Agreement. The property was valued shortly after the parties separated at £135,000. The property was valued after the completion of the renovation work. The defender resides in the property. The defender retains sole title to the property.

Therefore, finds in fact and law:

1. The defender has derived economic advantage from contributions made by the pursuer which is not offset by any economic disadvantage to the defender.

2. The pursuer has sustained economic disadvantage in the interests of the defender which is partly offset by the economic advantage the pursuer has derived from contributions made by the defender.

3. That having regard to sections 28(3), (5) and (6) of the Family Law (Scotland) Act 2006, and to all the other relevant circumstances, it is fair to make an order requiring the defender to pay a capital sum to the pursuer in the sum of £18,670 in terms of section 28(2)(a).

Therefore, repels the first plea-in-law for the defender in the principal claim and sustains the first plea-in-law for the pursuer and makes an order for payment by the defender to the pursuer of a capital sum of £18,670 in terms of section 28 of the Family Law (Scotland) Act 2006, and repels the first plea-in-law for the defender in the counterclaim and sustains the third plea-in-law for the pursuer and refuses the counterclaim, reserves meantime the issue of expenses pending a hearing to be assigned; and decerns.

NOTE

Evidence at proof

The pursuer – Graham Bell

[1] The pursuer operated his own timber harvesting business for more than 30 years and was financially secure before entering into a relationship with Angela Campbell in 2014. He explained that the relationship developed quickly. Pretty shortly after it began, the defender moved into his home at [Redacted]. Although she retained her council tenancy at [Redacted], she was effectively residing with him from that stage onward. Initially Ms Campbell continued paying rent for [Redacted] while making no financial contribution towards his household. Both parties maintained their separate financial arrangements during the early stages of the relationship. He met the household costs associated with his own home.

[2] Discussions then took place regarding their future and what should happen to [Redacted]. He stated that the defender could have surrendered the tenancy because she was no longer living there, however, the possibility of purchasing the property under the Right to buy scheme arose. He and the defender discussed the advantages and disadvantages of purchasing the property and concluded that doing so represented a worthwhile opportunity for both. The defender had no savings available to fund the purchase and was unable to obtain a loan because of her financial circumstances and previous bankruptcy. His evidence was that they jointly devised a plan under which he would provide the necessary funds, the property would be retained during the period when restrictions applied to any onward sale, and it would be sold later for the benefit of both parties.

[3] There was never any discussion of him simply gifting the purchase price or acting merely as a lender. He stated that the Agreement from the outset contained two distinct elements. The first was that he would fund the purchase and be reimbursed from future rental income. The second was that, after reimbursement of that initial outlay and any later expenditure incurred by either party, the proceeds of sale would be divided equally between them. He described the proposal as a sensible investment because the house could be purchased substantially below market value due to Ms Campbell's discount. He maintained that while the existence of the discount made the purchase attractive, the parties always intended that both of them would ultimately benefit together from the transaction.

[4] The pursuer explained that he financed the purchase using a mixture of personal savings and borrowing. He stated that approximately £20,000 was obtained through a loan and the balance came from his own savings. He was in a position to make an investment because of the success of his business. The arrangement immediately benefited the defender

because she no longer needed to pay rent and therefore had greater disposable income available for her own use. He said that it was only after the purchase had been completed and the defender had ceased paying rent that she began contributing £50 per week towards food and general household expenses.

[5] His evidence was that, apart from the weekly contribution, Ms Campbell contributed little to the household finances. He stated that he paid the mortgage, utilities, holidays, meals out and the bulk of the parties' social expenses. Although he accepted that the defender occasionally purchased groceries in the latter years of the relationship, he maintained that these contributions were modest when compared to the overall cost of maintaining the household. She earned significantly less than he did. He paid for most aspects of their lifestyle.

[6] The purchase of [Redacted] led to the creation of a written record which both parties referred to as a "chitty" or ledger. He stated that the purpose of this document was to record expenditure incurred in relation to the property. He explained that whenever items were purchased for [Redacted], whether repairs, improvements, replacement fixtures or other relevant expenditure, the cost would be noted down so that the appropriate party could later recover that expenditure from the eventual sale proceeds. He said that much of the handwriting on the document was the defenders. This was not a document created retrospectively, but an ongoing record maintained throughout the life of the arrangement. He explained that the purpose of keeping the records was to ensure fairness when the property was eventually sold.

[7] Over the years there were regular conversations between him and the defender concerning the house. These discussions often took place in the presence of family members, particularly Stuart and Susan Bell. According to him, the proposed sale of the

property and division of proceeds were discussed openly and repeatedly. He maintained that all close family members and friends understood the arrangement because it was something the parties spoke about frequently. There was never any suggestion during the relationship that the property belonged solely to Ms Campbell in any meaningful economic sense. Rather, he maintained that both parties viewed themselves as working towards a future sale which would provide a financial benefit to each of them.

[8] In relation to the conveyancing process, the pursuer accepted that the documentation from the conveyancing solicitors described the funds advanced by him as a gift. However, he strongly disputed that this accurately reflected the parties' intentions. He explained that Innes Johnston solicitors advised that the funds required to be declared as a gift for the purposes of the transaction. The parties understood that description to be a formal requirement rather than a reflection of the true arrangement between them. He repeatedly stated that he never intended to make a gift of approximately £37,500 and would never have done so.

[9] He stated that he and Ms Campbell attended at Rollos solicitors together with the intention of reducing their Agreement to writing. According to him, both parties participated in discussions concerning the arrangement. He maintained that the draft minute of agreement ultimately produced by the solicitors reflected the true Agreement which had existed from the outset. He accepted that the document was never signed. However, he explained that this occurred because the defender persuaded him that formal documentation was unnecessary and expensive. She repeatedly assured him she would never depart from her word and that he trusted her completely. He described himself as a person who valued trust and honesty and said that, because of the nature of their relationship, he accepted her assurances that a formal Agreement was unnecessary.

[10] The pursuer accepted that rental payments amounting to approximately £46,600 had ultimately been received by him. He did not accept that receipt of those sums exhausted the parties' arrangement. He accepted that the original purchase price had effectively been repaid from rental income but maintained that repayment of the purchase price was always intended to be only the first stage of the Agreement. He explained that some of the rental money was used for purposes jointly agreed by the parties, including several holidays, and that the existence of those arrangements demonstrated that their financial dealings concerning the property were more complex than a simple repayment of debt.

[11] The pursuer stated that over the years he funded numerous repairs and improvements at [Redacted]. He described replacing a boiler, carrying out maintenance work, organising tradespeople and generally overseeing the property. According to him, whenever expenditure was incurred, it was entered into the ledger so that an accurate accounting could eventually take place. He said that many of the tradespeople undertaking work on the property were personal contacts who provided favourable rates because of their relationship with him. He maintained that this contributed significantly to the value of the property over time.

[12] The most substantial expenditure described by the pursuer related to the extensive renovation project undertaken after the final tenant vacated the property in 2023. The work was undertaken by agreement between parties in preparation for sale in an effort to maximise the sale price. He described the installation of a replacement kitchen, bathroom improvements, renewed electrics, interior renovation, fence replacement, replastering and decoration. He stated that he personally funded the works and also undertook some of the jobs himself.

[13] He described that difficulties in the relationship first became apparent in early 2023. He initially believed that the relationship might be repaired. Although the parties ultimately separated in July 2023, he stated that he continued funding and overseeing the renovation works because he still believed their Agreement concerning the property remained unchanged. He explained that they continued communicating after separation and that nothing occurred immediately to suggest that the defender intended to renegotiate or abandon the arrangement which had existed for many years.

[14] That position altered when efforts were made to market the property. He described the pursuer delaying valuations, postponing discussions and eventually informing him that she no longer wished to sell. In his account, she instead proposed remortgaging the property. This was entirely inconsistent with everything they had previously agreed. He further described a telephone conversation, overheard by Stuart and Susan Bell, during which she stated that the property was "her house". He said that this represented the first occasion on which he realised she did not intend to honour the arrangement under which he believed they had both operated their financial affairs for almost a decade.

[15] During cross-examination he accepted that title to the property was always in the defender's sole name. He accepted that the purchase price he originally advanced had effectively been repaid through rental income. He also accepted that the Right to buy discount was substantial. However, he rejected the proposition that these matters defeated his claim. His position remained that repayment of the purchase price was only one component of a broader Agreement. He maintained that neither the discount nor the formal title position altered what he believed had been the parties' true understanding throughout the relationship.

Stuart Bell – brother of pursuer

[16] Stuart Bell saw the pursuer regularly, usually at least once each week, and for a period of approximately 4 years worked alongside him. As a consequence, he said he was in frequent contact with him throughout the relationship with the defender. He described the defender as someone he knew socially through Graham. Whilst he would not characterise their relationship as particularly close, he stated that he and his wife socialised with both parties regularly, met them for drinks and meals, and spent a considerable amount of time in one another's company over the course of the relationship.

[17] When the defender moved into his brother's home, he told him that the defender paid approximately £50 per week towards household expenses and that, other than that contribution, he largely funded the household. Whenever he socialised with the parties, he observed his brother paying for meals, drinks and other expenses. He did not personally observe the defender paying for such items. He also recalled occasions when she borrowed money from his brother and his impression throughout the relationship was that he was the significantly stronger financial party. He accepted that this impression was based largely upon what he observed during social occasions and conversations rather than a detailed knowledge of the parties' bank accounts or finances.

[18] The parties frequently travelled on holidays together and enjoyed what he would regard as a relatively comfortable lifestyle. He specifically recalled holidays to Bulgaria and described the pursuer as someone who had not experienced any significant financial difficulties for many years due to the success of his business. In his view the pursuer was financially secure and therefore able to pay for the majority of these activities. He stated that, based on his understanding of the defender's employment and income, he did not consider her capable of funding that lifestyle herself. He accepted in cross-examination that

he had never seen her wage slips and could not speak with precision about her earnings. Nevertheless, he maintained that his impression was that the pursuer contributed substantially more financially throughout the relationship.

[19] He explained that the house at [Redacted] was frequently discussed in his presence and in the presence of his wife - Susan. According to him, after the defender moved in with his brother there were repeated conversations about their future, finances and what should happen to the council house. He recalled discussions regarding the Right to buy scheme and his understanding that she could not afford to purchase the property herself. He stated that the arrangement discussed in front of him was that the pursuer would provide the funds necessary to purchase the house, that the property would be rented out, and that after his brother Graham had recovered his outlay the property would eventually be sold and the profit split between them. He described these not as isolated discussions but as recurring conversations which arose on numerous occasions over the years.

[20] This witness stated that his understanding of the arrangement was not derived solely from conversations with the pursuer. He maintained throughout cross-examination that both parties participated in discussions about the house. He explained that the discussions were ordinary social conversations. According to him, the future sale of the property and sharing of the benefit obtained from it were discussed openly and repeatedly in the presence of both parties. He maintained that the defender never contradicted those discussions or suggested that the arrangement was limited merely to repayment of the purchase price.

[21] Stuart Bell explained that he was aware of the existence of a written record relating to expenditure on the property. He described seeing it from time to time in his brother's house, often pinned up near the staircase. Although he admitted he did not scrutinise the details or figures, he understood that the purpose of the document was to record

expenditure incurred in connection with [Redacted]. He recalled hearing Angela use the phrase "put it on the chitty" whenever expenditure arose which she could not afford at the time. According to him, this became something of a standing joke. His understanding was that expenditure entered into the ledger would later be recovered from the proceeds of the property when any division took place.

[22] In relation to the maintenance and improvement of the property, the witness stated that he was aware of numerous repairs and upgrades undertaken over the years. He recalled, in particular, the installation of a boiler and other works which, to his knowledge, were funded by the pursuer. He stated that he never personally observed the defender contributing financially towards these items. His understanding was that whenever substantial expenditure arose, the pursuer initially paid and it was thereafter recorded in the ledger.

[23] In relation to the 2023 renovation of the property, he explained that he himself supplied the kitchen eventually installed at [Redacted]. The kitchen had previously been in his own home, and he offered it to the parties rather than selling it elsewhere. Both parties attended together to collect it. There were numerous conversations involving the three of them about what improvements should be carried out in order to maximise the value of the house before sale. He recalled discussions concerning decoration, joinery work and other renovations. The common theme of all these discussions was that the property was being prepared for sale. He stated that there was never any suggestion in these conversations that the defender intended simply to retain the property indefinitely for herself.

[24] The pursuer remained involved in renovating [Redacted]. Mr Bell stated that he and his wife were present when the pursuer telephoned the defender to discuss the matter. According to him, the conversation was conducted on speakerphone. He stated that he

heard the defender say that the property was in her name, that his brother had his own house, and that [Redacted] was "her house". He described both himself and the pursuer as being shocked by this statement because it appeared entirely inconsistent with the arrangement they had previously understood.

[25] He believed that the pursuer had been led to continue spending money and labour on the house because he still believed the original arrangement remained in place. In his opinion the pursuer would not have continued undertaking renovations had he understood that the defender intended to keep the property and exclude him from any future benefit. He accepted that he had no direct knowledge of every financial transaction between the parties. He conceded that he could not know whether the defender might have repaid his brother privately or transferred monies to him outside his presence. He also accepted that he did not know the defender's exact income, had never seen documentary proof of her earnings and could not state definitively whether she could have obtained mortgage finance at the relevant time. He acknowledged that these aspects of his evidence involved assumptions based upon his observations and general experience.

[26] He accepted that the defender's discount existed and was significant. He maintained that the attraction of the transaction was that both parties would benefit from it. He stated that the arrangement made sense precisely because the property could be acquired for substantially less than its market value and because both parties expected to profit from that circumstance. Stuart Bell accepted that the pursuer had recovered some of the money originally advanced through rent. However, his understanding was that rental income was not simply retained as reimbursement of the purchase price. Rather, he believed that over the years it became mixed into the parties' wider financial arrangements and was used for various joint purposes including holidays and social activities.

Susan Bell – pursuer's sister-in-law

[27] The witness explained that she had known the pursuer Graham Bell for many years through her marriage to his brother Stuart and had first met Angela Campbell at the beginning of the parties' relationship. She stated that she generally got on well with the defender and had no disagreement with her prior to the events giving rise to this litigation. She regularly saw the parties together throughout the course of their relationship, usually several times each week, and therefore had ample opportunity to observe them socially and to hear discussions between them.

[28] The witness stated that whenever she socialised with the parties, she generally observed the pursuer paying for meals, drinks and social activities. She also understood that he funded the parties' holidays. Whilst she accepted in cross-examination that she could not know the entirety of the parties' private financial arrangements and could not exclude the possibility of the defender reimbursing him at other times, she maintained that her overall impression throughout the relationship was that the pursuer was the principal financial contributor. She explained that this impression came from years of observing the parties together and from conversations she had with them.

[29] She explained that after the defender moved into the pursuer's home, there were frequent discussions regarding the future of the council house. According to her understanding, the arrangement was that the pursuer would provide the money required to purchase the property at [Redacted] and that the property would then be let. The rental income would then reimburse him for that expenditure. Thereafter, the property would be renovated, sold and the resulting benefit shared between the parties. Her evidence was that this was not a one-off conversation but rather something discussed over a prolonged period.

[30] Mrs Bell stated that both parties participated in those discussions. The defender appeared fully committed to the plan. She described the future sale of the property as something regarded by both parties as part of their shared plans. She stated that she understood the arrangement to involve the pursuer recovering expenditure incurred on the property prior to the remaining proceeds being divided. There was an understanding throughout the relationship that the property would not simply be retained indefinitely but would eventually be sold for the mutual benefit of both parties.

[31] Mrs Bell stated that she was aware of discussions regarding improving the property before sale. According to her understanding, the purpose of the works was to increase its value and maximise the eventual sale proceeds. She understood that the pursuer was paying for the renovations. It was therefore particularly confusing when the defender later took the position that she was not selling the property. From her perspective, years of discussions and months of renovation work all appeared to have been undertaken on the assumption that a sale would eventually occur.

[32] Susan Bell explained that both she and her husband were present when the pursuer spoke to the defender on the telephone and that the call was conducted on speakerphone. According to her evidence, she clearly heard the defender state that she was not selling the property because it was "her house". Susan Bell recalled the defender saying that the pursuer already owned other properties and that she intended to keep [Redacted]. This was entirely inconsistent with the understanding she had formed over the years from hearing the parties discuss the property.

[33] After the relationship ended the pursuer continued carrying out work at the property. Her perception was that he believed matters remained amicable and that the arrangement concerning the house would still be honoured. According to her evidence, the

real dispute arose only when the defender stated that she no longer intended to sell the property. She described the pursuer as shocked and upset by this development.

[34] She accepted that she could not speak with certainty about every aspect of the parties' financial dealings. She agreed that she did not know precisely how much had been paid by either party, how much rental income had been transferred, or whether there were reimbursements and transfers which occurred outside her knowledge. She also accepted that some aspects of her understanding had come from what she had been told by the pursuer. However, she maintained that her evidence concerning the discussions about [Redacted] came from her own observations and from conversations she personally overheard involving both parties.

Lindsay Brown - solicitor

[35] Lindsay Brown, solicitor, had been involved in providing advice in relation to the parties' proposed formal Agreement concerning [Redacted]. She explained that the relevant meeting had taken place many years previously and that she had no independent recollection of the detail of the consultation. Accordingly, much of her evidence was based on what could be gleaned from the contemporaneous documents rather than from memory.

[36] Ms Brown explained that she had been a solicitor for in excess of 15 years and was familiar with the preparation of agreements of this nature. She confirmed that the attendance note and the subsequent draft minute of agreement had been generated as part of her involvement with the parties. Although she accepted that the passage of time meant she could not confidently remember the exact discussions which took place, she was able to explain the significance of the file records and the normal procedures which would have been followed.

[37] She stated in cross-examination that, from the documentation available to her, she understood that she had taken instructions from the pursuer. She accepted that the attendance note appeared principally to record information obtained from him. She nevertheless confirmed that both the pursuer and defender were recorded as having attended the consultation. Although unable to recall the meeting itself, she explained that the documentation suggested the parties had attended to discuss formalising an arrangement connected to the purchase of a council house. The attendance note recorded matters relating to the purchase of [Redacted], the provision of funds by the pursuer and future arrangements concerning the property. Her evidence was that she would ordinarily prepare a draft Agreement based upon the instructions provided during such a consultation.

[38] She explained that, following an initial consultation, it would be normal practice for a draft Agreement to be prepared and circulated for consideration. Her expectation would ordinarily be that there would then be further communication, amendments where necessary and, if matters proceeded, execution of a final Agreement. She stated that the document before the court was clearly a draft and was not itself a binding Agreement. Ms Brown accepted that where one party was providing significant funds to another for the purchase of her property, separate legal advice would ordinarily be required before a binding Agreement could safely be concluded. She explained that this was because the parties' interests might diverge and each required independent advice before being bound by any arrangement. She accepted that the attendance note reflected awareness of that issue.

[39] Cross-examination focussed on the absence of any provision in the draft minute of agreement dealing with the practical mechanism by which rental income would be paid to the pursuer. Ms Brown accepted that no such provision appeared expressly within the

draft. She stated that, if the parties had indicated they were dealing with certain matters informally between themselves, it was possible that not every aspect of the arrangement would necessarily have appeared within the draft document. However, she accepted that because she could not remember the consultation, she could not state definitively why particular provisions were included or omitted.

[40] She was further asked about the significance of the attendance note identifying Angela Campbell and Graham Bell as having been present. In re-examination she explained that, while she could not remember who spoke during the consultation, there was nothing within the attendance note which suggested significant disagreement between those present. She stated that where two parties attended together and one contradicted the other on a material issue, she would ordinarily note that circumstance because it would have immediate relevance to the advice being provided. Her evidence was that nothing in the contemporaneous note suggested such disagreement.

The defender – Angela Campbell

[41] The defender worked as a sales assistant and had lived at [Redacted], for many years as a council tenant. She entered into a relationship with the pursuer in March 2014 and that the relationship continued until July 2023 when the parties finally separated. When the relationship began, she remained the tenant of [Redacted] while spending increasing amounts of time with the pursuer at his home in Glenrothes.

[42] The substantial discount available on the purchase price of her home at [Redacted] arose entirely from her own lengthy tenancy of the property. According to her, the pursuer became aware of that entitlement and repeatedly encouraged her to exercise the right to purchase the house. She recalled him frequently asking whether she had contacted the

council and whether she intended to proceed with the purchase. The idea initially came from him rather than from her. She maintained that the discount represented the value of many years of tenancy and was, in effect, an asset generated by her own occupation of the property over a lengthy period.

[43] The defender accepted that she could not fund the purchase herself and that the pursuer ultimately provided the money necessary to buy the house. However, she disputed the pursuer's interpretation of what that payment meant. The pursuer initially described the payment as a gift and that description appeared in the contemporaneous conveyancing documentation. She recalled receiving correspondence from Innes Johnston solicitors in which the payment was described as a gift. Notwithstanding that terminology, she stated repeatedly that she personally considered herself obliged to repay the money. Whatever language had been used in the conveyancing process, the practical arrangement between the parties was that she would return the money he had provided.

[44] She insisted that repayment of the pursuer's outlay was always contemplated. However, she was adamant that there was never any Agreement for him to acquire half of the value of her council house. Her position was that the arrangement was straightforward. Mr Bell would advance the money required to buy the property and she would repay him from rental income. Beyond that, she denied any obligation to share the value represented by the property itself or the substantial discount through which it had been acquired.

[45] She calculated that rental income amounting to approximately £46,600 had been generated during the letting period. According to her evidence, every penny of that rental income was transferred to the pursuer either by bank transfer or in cash. She maintained that the rent was paid over specifically because she regarded herself as repaying the money advanced for the purchase. Her position was that by the end of the letting period the

pursuer had received considerably more than the original purchase price of approximately £37,500.

[46] The effect of these rental payments was that the defender had recovered the entirety of his original contribution to the purchase. In her view, once those payments had been made, he no longer had any financial interest in [Redacted]. She accepted that there had been discussions about selling the property at various stages during the relationship. However, she maintained that these discussions were motivated by the practical reality that sale would provide an easy means of reimbursing the pursuer if necessary. She denied that there was ever any agreement that sale proceeds would subsequently be split equally.

[47] She disputed the pursuer's suggestion that she contributed very little to their household and expenses. When she first moved in with him, she earned relatively little from her part-time work and initially contributed approximately £50 per week. As her working hours increased and she moved into full-time employment, she stated that her contributions increased substantially. She maintained that she paid for shopping, groceries, household items and various other day-to-day expenses. She paid what she could afford at each stage. She complained that the pursuer's evidence dramatically understated the extent of her contribution.

[48] She contributed in numerous non-financial ways. She stated that she undertook almost all household chores, including cleaning, washing, ironing, cooking and shopping. She continued carrying out those tasks even during periods when she was working full-time. She contrasted this with the pursuer's greater financial contribution, contending that the relationship involved a division of responsibilities rather than a running financial account. She contributed significantly to the household even if her contributions were not always reflected directly in financial records.

[49] She stated that when the parties met, the pursuer still had a mortgage. During the relationship he increased his mortgage repayments and eventually paid the mortgage off entirely. She maintained that he repeatedly told her that rental payments and the relief provided by her household contributions enabled him to increase those repayments. She also described him purchasing another property and making improvements to his own home. In her view, the relationship left the pursuer financially better off rather than disadvantaged.

[50] In relation to the handwritten account, the defender accepted that it contained handwriting from both parties. She identified much of the writing beneath her own name as hers and much of the writing beneath Graham Bell's name as his. She accepted that the document originally functioned as a means of recording expenditure associated with [Redacted]. However, she challenged some aspects of the pursuer's reliance upon it. She suggested that certain columns and figures may have been added later and maintained that not all annotations reflected the state of the document during the relationship. Her evidence was that the ledger became increasingly confusing over time and that some figures appearing on it did not reflect the original record she remembered.

[51] Nevertheless, she accepted that substantial expenditure concerning the property was entered into the ledger. She accepted, for example, that a boiler purchased in 2018 had been funded by the pursuer. This aspect of her evidence differed from a sentence in her affidavit suggesting that she herself had replaced the boiler. When confronted with this discrepancy in cross-examination, she accepted that the pursuer had funded the boiler and said she could not explain the wording which appeared in the affidavit. She maintained, however, that by the time all rental income and other financial contributions were considered, expenditure of that nature had effectively been reimbursed.

[52] In relation to the meeting at the solicitors regarding the draft minute, she said she did not really know why she was attending the meeting and had little understanding of its purpose. The pursuer made the arrangements, did almost all of the talking and effectively controlled the discussion. She did not instruct the solicitor and did not engage in any detailed discussion regarding a future division of sale proceeds. She denied agreeing to any proposal whereby he would receive fifty per cent of the value of the property. She would never have agreed to surrender half of the value generated by her Right to buy discount. She stated that if she had understood such a proposal was being advanced, she would have sought independent legal advice immediately. Indeed, she stated that had she appreciated that the pursuer's interpretation of the arrangement involved him receiving half of the value of her discount, she would not have proceeded with the purchase at all. Instead, she would simply have retained the tenancy or returned the property to the council.

[53] Regarding the final renovation project undertaken in 2023, she accepted that substantial works were carried out and that the pursuer paid for much of the material and labour involved. She acknowledged that the property benefited from a replacement kitchen, bathroom improvements, fencing, joinery work and other upgrades. However, she disputed the pursuer's suggestion that these works represented a separate uncompensated contribution. Her position was that the value of those works had to be viewed against the background of many years of rental payments and other contributions made by her during the relationship. She did not accept that the pursuer had spent anything approaching the figures suggested by him.

[54] In relation to the breakdown of the relationship itself, she stated that over time she came to view the pursuer as controlling. According to her evidence, he wanted matters done his way and frequently influenced decisions within the relationship. She cited the

solicitor's meeting as an example, claiming she was effectively taken there without understanding its true purpose.

[55] The defender accepted that the pursuer continued to press for a valuation of [Redacted]. She denied that this occurred because there was an existing Agreement to sell the property and divide the proceeds. She discussed re-mortgaging because she wished to determine whether any remaining financial obligations to him existed and, if so, how they might be settled. She maintained that she was uncertain about what sums, if any, he claimed remained outstanding. Her evidence was that references to re-mortgaging in any communication reflected an attempt to determine and settle legitimate claims rather than an acknowledgment that he possessed a continuing financial interest in the house. She accepted that the pursuer funded the original purchase. She accepted that rental income was paid to him. She accepted there were discussions about sale after a period of years. She accepted that he funded substantial renovation works - however, none of those facts established an Agreement to divide the value of the property. Her position remained that all of those matters were directed solely towards ensuring reimbursement of money he had advanced.

[56] She had never agreed to any equal division of proceeds, never instructed a solicitor to prepare such an Agreement and never received a copy of the draft minute of agreement. Her position remained that she had repaid what she owed and that she had not obtained any economic advantage at his expense. It was put to the defender that she had left the relationship in a substantially improved financial position because she now owned a fully renovated property. She rejected the proposition. She maintained that her ownership stemmed from the discount she had earned through many years as a council tenant and from rental income generated by the property itself. She denied obtaining an economic

advantage at his expense and denied that any Agreement existed entitling him to half of the proceeds of sale.

[57] It was repeatedly put to her that she allowed the pursuer to continue investing labour and money in the house because he believed the property would ultimately be sold, whereas she had already decided otherwise. Her evidence was that she had not reached any final decision immediately after the separation and that discussions concerning re-mortgaging arose only because she was attempting to assess whether any legitimate claim remained outstanding. In relation to text messages the defender explained that at the time she had not calculated what, if anything, Mr Bell might claim and therefore considered re-mortgaging as a possible method of paying any legitimate liabilities. She denied that references to re-mortgaging in a text amounted to recognition that he held an entitlement to half of the property's value or half of its proceeds.

[58] It was suggested to the defender that she had emerged from the relationship in a substantially improved financial position because she retained ownership of a fully renovated property acquired at a discounted price, whereas the pursuer was left with no return for years of expenditure and labour. Ms Campbell rejected that assessment.

The pursuer's submissions

[59] It was submitted that the purpose of section 28 of the 2006 act is to allow the court to award a capital sum to correct an uncompensated financial imbalance that has arisen between cohabitants during their relationship. The 2006 Act is not intended to be a rigid, restrictive, or forensic accountancy exercise. Instead, the court is to look broadly at the "overall course of dealing" between the parties across the entirety of their relationship to determine whether an unfair economic imbalance exists at the point of separation.

Lord Hope in *Gow* v *Grant* [2012] UKSC 29 affirmed that the overriding, guiding principle governing judicial discretion under section 28 is fairness.

[60] A profound and uncorrected economic imbalance exists between the parties. The defender holds sole legal title to a substantial capital asset that was valued at £135,000 in September 2023. Conversely, the pursuer left his 8-year relationship with a financial loss. The pursuer provided capital, years of subsiding the defender's household expenditure and physical labour, he did so on the explicit, shared understanding that he was investing in a joint asset to be sold and split equally.

[61] The rental cash flow merely offset the acute commercial risk of the pursuer taking out a personal loan of £20,000 and using his personal savings to fund the initial purchase price and legal fees (£37,798). The acquisition of which was entirely enabled by the pursuer's willingness to utilise his savings, take on personal debt, and provide the defender with a rent-free home. The discount was a mechanism to buy the house; it does not count as an ongoing financial contribution that justifies the defender keeping a £135,000 asset.

[62] It was submitted that the defender made a significant admission at proof by conceding under oath that she attended a formal legal meeting with the pursuer in 2015 to discuss this property Agreement. Her subsequent acceptance of the pursuer's loan capital and savings, 8 years of household subsidy, and £10,000 in renovations were done with the full knowledge that those contributions were conditional upon a future 50/50 sale split. It was submitted that the evidence established that the parties conducted their 8-year relationship on the explicit, shared understanding that the property was a joint commercial investment to be sold and split equally.

[63] By resiling herself from the Agreement reached between the parties in 2015 and refusing to sell the property the defender has retrospectively engineered an economic

disadvantage for the pursuer and a consequential economic advantage for herself. It was submitted that under the broad fairness test in *Gow* v *Grant*, the only equitable mechanism available to correct this imbalance is to award the pursuer a capital sum equivalent to the 50% capital equity in terms of section 28 of the 2006 Act. This is the sum he was contractually promised, and which he spent 8 years performing his side of the bargain to preserve. Based on the valuation of £135,000, the pursuer's primary submission was that decree should be granted in his favour for the sum of £67,500.

[64] If the pursuer's primary position was rejected his submission was that the court must instead address the pursuer's specific outlays. Parties agreed in their evidence that they kept a joint handwritten note or ledger. It was therefore submitted the note represents clear, bilateral proof of a binding domestic Agreement that the expenses listed therein were to be split on a 50/50 basis upon the future sale of the property. The handwritten note proves a total relationship outlay of £9,474.18 covering maintenance of the investment property and joint holidays. The court was invited to adopt this figure for the purposes of calculating the section 28 capital sum. On that basis the entries on the note are joint debts. The debts were to be split 50/50. In order to affect a 50/50, split the defender owed the pursuer £4,675.09.

[65] I was said that the pursuer expended £10,000 in materials and his own physical labour carrying on renovations to ready the house for sale. Under section 28(3) of the 2006 Act, this represents a direct, uncorrected reliance loss arising from the breakdown of the cohabitation arrangement. The pursuer executed this work on the promise of a sale; the defender has kept the upgraded asset. Her economic advantage must be reversed by awarding the pursuer the £10,000 he paid and laboured for. The objective value of his physical labour and materials represents a direct economic disadvantage to the pursuer which must be corrected by a capital award of £10,000.

[66] The first *esto* position of the pursuer is for the court to grant decree against the defender for the sum of £14,675.09. This represents the net amount to re-dress the imbalance in the joint debts as recorded in the handwritten note plus the cost of the renovations. (£4,675.09 plus £10,000 equals £14,675.09), failing which it is submitted that the minimum sum that can be awarded to the defender based on the evidence presented is £12,507.90. The property price, plus legal fees and interest on the initial loan totals £39,155.72. Maintenance costs to preserve the asset and joint holidays as logged in the handwritten note total £9,412.18. The renovation costs totalled £10,000. Therefore, the total capital, cash, and labour injected by the pursuer into the defender's asset was £58,597.90. Subtract from that the total rental payments of £46,060 leaves a minimum economic disadvantage suffered by the pursuer of £12,507.90.

The defender's submissions

[67] The defender submits that the primary area of factual dispute centres around "the Agreement" the pursuer says was reached with the defender and which forms the focus of his whole case. To that end the pursuer relies on a draft minute of agreement prepared on his instructions by Rollos, solicitors. The pursuer could not explain why the Agreement contained reference to the defender being obliged to make a will granting an irrevocable legacy in his favour and was vague as to why it contained no reference to repayments being made to him. The defender's position is that all she agreed to do was to repay monies expended on her behalf by the pursuer in respect of his funding of the purchase price of the property at [Redacted].

[68] The Agreement, it was submitted, is a red herring in determining the issue the court is asked to adjudicate on namely whether the pursuer has suffered an economic

disadvantage from contributions made by him which have given the defender a corresponding economic advantage. The court was invited to look at all the circumstances surrounding the "Agreement". It was never signed. It was prepared on the sole instruction of the pursuer and was never provided to the defender to enable her to obtain independent advice which the solicitor who gave evidence said she had told the defender to do. It contained no reference to the admitted sums which were being repaid by the defender to the pursuer, and it contained no reference to the significant contribution to the purchase price which came from the defender's maximum local authority discount.

[69] A signed Agreement of this nature it was submitted would amount to a contract between the parties and a remedy under contract law would have been available to the pursuer if he felt that contract had been breached or there was a failure to implement. That is not what the court is dealing with here. The pursuer does not plead that he is entitled to certain sums in terms of any contract. Such an argument would require a different type of action. This action is based on the terms of section 28 of the Family Law (Scotland) Act 2006. It is submitted for the reasons narrated that the Agreement is irrelevant as should be disregarded for the purposes of determining whether the pursuer has suffered any economic disadvantage which has provided a corresponding advantage to the defender.

[70] The primary focus for the court is in determining, based on the evidence, whether either party suffered a financial disadvantage which provided the other party with a corresponding financial advantage and to consider that properly the court has to look at the respective position of the parties at the commencement of and at the termination of their relationship as set out in the Supreme Court Case of *Gow* v *Grant* [2012] UKSC 29 as set out in Lady Hale's decision, paragraph 54. At the outset the defender was a local authority tenant living in her rented home. The pursuer owned his own property albeit subject to a

mortgage. Both parties worked, the defender as a sales assistant the pursuer running his own business. At the conclusion of the relationship the defender owned her previously rented home at [Redacted] and continued to work as sales assistant. The defender owned his home outright having paid off his mortgage and owned another property let to his daughter which he paid cash for and derived an income from. He continued to run his own business.

[71] It was submitted that the pursuer craves the sum of £67,500 but at no point in his evidence did he set out how he arrived at that sum nor was he directed to any productions which accurately set out how that sum was arrived at. He had received £46,600 in repayments via transfer to him of rental payments. That is an excess of £9,100 which would more than account for any additional funds he expended on renovations. There is therefore not any financial disadvantage incurred by him. He expended monies they were refunded to him. He is in the same position if not a better position as if he had not expended said sums. If the court were to decide that the pursuer is correct, he will benefit to the extent of over £114,000 (the sum he craves plus sums admittedly repaid to him by the defender) if it is accepted that the sum he is craving is accurately and justifiably craved. The defender by contrast will be disadvantaged having contributed the entire purchase price and the discount which enabled the purchase at a discounted price if a finding is made in favour of the pursuer. It was submitted that in this case it cannot be held that the pursuer has suffered an economic disadvantage in the interests of the defender nor can it be held that he has made contributions from which the defender has derived an economic advantage.

Decision

The statutory framework

[72] The pursuer seeks an order in terms of section 28(2) of the Family Law (Scotland) Act 2006, the relevant parts of which provide as follows:

> "(2) On the application of a cohabitant (the 'applicant'), the appropriate court may, after having regard to the matters mentioned in subsection (3)—
> (a) make an order requiring the other cohabitant (the 'defender') to pay a capital sum of an amount specified in the order to the applicant;
>
> (3) Those matters are—
> (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
> (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—
> (i) the defender;
>
> (4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).
>
> (5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—
> (a) the applicant;
>
> (6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—
> (a) the defender;
> is offset by any economic advantage the applicant has derived from contributions made by the defender."

Gow v Grant [2012] UKSC 29

[73] Both parties referred to *Gow* v *Grant* [2012] UKSC 29 in their submissions; the decision of the Supreme Court provides guidance on the operation of section 28:

- Section 28 involves the assessment of compensation for contributions made, or economic disadvantages suffered in the interests of the relationship.
- The subsections should be read broadly.

- The court has a discretion as to whether to make an award, and what that award should be, with fairness as the overriding principle.
- The court should look at where the parties were at the start and end of the relationship.
- The purpose of the exercise is fairness between both parties.

Evidence of an Agreement between pursuer and defender

[74] In dispute between the parties was the existence and import of an Agreement between them. I have concluded, on the evidence, that at an early stage in their cohabiting relationship the parties agreed to purchase the council house at [Redacted] as a joint investment. This was a joint investment as a couple created by the opportunity their relationship presented to take advantage of the pursuer's means and the defender's local authority discount. The purchase was funded by the pursuer to be repaid by rental income from the let property. An account of expenditure on the let property was maintained by them to be reimbursed from the sale proceeds. The parties agreed that the property would later be sold and the proceeds of sale split equally.

[75] On these issues, as with the majority of the disputed issues in this case, I accepted the evidence of the pursuer. The pursuer's case advanced cohesive and cogent evidence of a joint investment Agreement and of the consequential financial arrangements of parties. Compelling evidence was provided by Stuart and Susan Bell of the defender's confirmation of the existence and terms of the Agreement. I accepted that the defender confirmed the position to them on repeated occasions over the years of the relationship. Support for the evidence they gave about the Agreement was provided by the actings of the parties and in the documents produced.

[76] The maintenance by parties of a contemporaneous handwritten note which recorded expenditure on the investment property is an example. Both witnesses provided evidence of the parties' Agreement to reimburse property expenditure from the sale proceeds. A joint record, kept by the parties of expenditure on the property, is consistent with the witness evidence and with an expectation that there would be an eventual accounting exercise conducted between the parties.

[77] The 2023 refurbishment of the investment property for sale was another issue with which these witnesses were able to assist. Stuart Bell provided a second-hand kitchen to the refurbishment and described extensive renovations to the property. Both witnesses confirmed that these efforts were directed at increasing the value of the property in preparation for sale in accordance with what they knew of the parties' Agreement. Their evidence provides support to the pursuer for both the existence of the original Agreement and the defender's later departure from it. Further, these witnesses provide support for the pursuer's evidence in relation to the parties' comfortable lifestyle which was largely funded by the pursuer, including the holiday expenditure and the intended reimbursement of these costs from the proceeds of sale. I am satisfied that the relationship between the two couples was sufficiently close, and their interaction sufficiently frequent, to allow these witnesses to provide an accurate description of the parties' financial arrangements.

[78] I found the evidence of the pursuer, Stuart and Susan Bell to be credible and reliable on the crucial issues of fact in this case. In contrast the defender struggled to coherently explain her version of the parties' financial arrangements, resorting to the mantra repetition of her core position, when questions asked of her called for considerably more. I found the defender's evidence to be delphic and self-serving. I did not accept the defender's evidence

on important issues of fact. I did not accept her denial of an investment Agreement to split the proceeds on sale of the property.

[79] The defender's account of the meeting at the solicitors in March 2015 was an example of the difficulties in her evidence. The defender accepted her presence at a meeting which produced a document reflecting the core elements of the pursuer's version of their Agreement including splitting the proceeds of sale. In her efforts to maintain there was no such agreement, the defender denied any active participation whatsoever in the meeting. She also, oddly, claimed the meeting was with a solicitor other than the witness Lindsay Brown, a fact left previously unchallenged by her in the proof. I did not accept her evidence about the meeting. Her evidence of remaining silent, whilst discussions about her property took place, was unconvincing. The difficulties in her evidence did not end there.

[80] The defender's position on whether the initial funds were provided as a gift or by agreement to loan and refund appeared to waver through the proceedings from affidavit to evidence. I accepted the pursuer's evidence that the use of the word "gift" in the conveyancing lawyers' letter was a formal requirement for the conveyance rather than a term of their arrangement. I did not accept the defender's version that an arrangement to loan and refund the initial outlay was the full extent of their Agreement. The maintenance of a contemporaneous record over the subsequent years of expenditure on the property in both their names and in their handwriting supports an ongoing financial arrangement of the kind described by the pursuer.

[81] The 2023 refurbishment was another example of ongoing financial arrangements and dealings between the parties which did not fit with the defender's evidence of an agreement of loan and repayment only. The defender's evidence in relation to the renovation works undertaken in 2023 by the pursuer was confused and confusing. She disputed the pursuer's

estimate of the value of the renovation work and asserted that the cost was recouped from the rent payments. However, that issue aside, absent the existence of an agreement to sell and divide profits, the defender's evidence did not provide a coherent explanation for the money and effort expended by the pursuer at that stage of their relationship on a property from which he, according to the defender, was not to receive future benefit.

[82] The defender continued to struggle in her evidence to explain her position on other matters. The defender was unable to explain the fact that her affidavit stated she paid for a replacement boiler when in her evidence she now accepted it was paid for by the pursuer. The defender's evidence of the pursuer's coercive behaviour towards her was no more convincing. In fact, the defender's ability to persuade the pursuer that a written contract was not necessary, and to persuade him to continue to refurbish a property at the end of their relationship and beyond, suggests a very different picture than the one the defender attempted to paint.

[83] Having concluded that an Agreement existed between parties in relation to the property, the question arises as to what bearing this has on the issues to be considered by the court in the application of the section 28 framework to the parties' circumstances.

Has the defender derived economic advantage from contributions made by the pursuer?

[84] The initial financial outlay by the pursuer in terms of the Agreement was the key to unlocking this property for the defender. The defender was unable to finance the purchase. The defender had a limited income and financial difficulties in her past. The financial success of the pursuer's business gave him the means to provide the defender the funds necessary to purchase the property. The defender obtained title to the property as a direct result of this contribution by the pursuer. The defender thereby moved from tenant to

homeowner. The funds provided by the pursuer underpinned the property purchase and allowed the defender to take advantage of her discount. As a result of the contribution by the pursuer the defender gained an asset immediately worth considerably more than had been paid. The defender derived an obvious economic advantage from that contribution alone.

[85] The initial outlay was only the first turn of a funding tap which flowed into the property from the pursuer over parties' 8-year cohabiting relationship. The pursuer met the costs of administration, maintenance and repair of the investment property during their relationship. The work included replacing a boiler, carrying out maintenance and repair work, organising tradespeople and overseeing the work. On occasion tradespeople utilised were personal contacts of the pursuer providing favourable rates because of their relationship. The pursuer carried out some of the work himself. The substantial expenditure on the property over the relationship was recorded by the parties in their handwritten account. The refurbishment undertaken by the pursuer on the property in advance of the planned sale in 2023 was extensive. The efforts and funding of the pursuer in maintaining and improving the property contributed to the increase in value of their investment asset over the relationship. The defender derived economic advantage from those contributions from the pursuer.

[86] The defender no longer paid rent on the council property. Her disposable income increased as a result. The defender resided with the pursuer at his property. The defender contributed only modest amounts of money to the household over the relationship. There was a significant disparity in the income of parties. The pursuer financially supported the defender during their relationship. The pursuer met the costs of the home they shared in cohabitation. The pursuer met the vast majority of living costs and social expenses. Parties

enjoyed a comfortable lifestyle which included a number of family holidays abroad funded by the pursuer. These were further contributions by the pursuer to the defender in their shared life from which she derived economic advantage.

[87] I have little difficulty in concluding that the defender derived economic advantage from contributions made by the pursuer. In considering the issue it may assist to look at the defender's circumstances at the beginning and end of the relationship. The defender at the commencement of the relationship was a council tenant in a rented property on a modest income from a part-time retail job. The defender was unable to fund the purchase of the property. At the end of the relationship, the defender owned a property valued at £135,000 gained as a result of contributions by the pursuer to the initial funding, the ongoing maintenance, repair and renovation costs of the property during a period of time in which he subsidised the defender's living and social expenses.

Has the pursuer suffered economic disadvantage in the interests of the defender?

[88] I am satisfied, based upon the evidence, that the pursuer has suffered economic disadvantage in the interests of the defender. Paragraphs 25-33 of Lord Hope's decision in *Gow* provide detailed exploration of the intent of legislators in introducing section 28. The discussion makes plain that the legislation was intended to ensure that financial awards address the net economic disadvantage a person may face as a direct result of joint decisions that were made by a couple during their relationship.

[89] The joint investment Agreement in this case was conceived at the early stages of this couple's relationship. The evidence clearly demonstrates that the pursuer and defender thereafter acted on the basis of that Agreement in their financial arrangements as a couple. The Agreement was central to their financial arrangements. As a result of this joint decision

the pursuer invested significant sums from his savings and took on risk in borrowing further funds to meet the cost of purchase of the property. He also met the maintenance, repair and refurbishment costs of the property on the same basis. The contributions of the pursuer over the relationship have maintained and added to the capital value of an asset from which the defender alone now benefits. Those contributions are obviously economically advantageous to the defender in her continuing ownership of the property beyond their relationship. The pursuer meantime suffered economic disadvantage. The pursuer committed significant sums of money to a property owned by another on the basis of an investment Agreement. As a result of the decision by the defender not to implement the terms of their Agreement and to retain the property the pursuer was denied benefit from his investment. Based upon their Agreement the pursuer had a legitimate expectation of benefit from the provision of funds to the investment and the defender.

[90] The operation of parties' other financial arrangements was influenced by that anticipated benefit. There was an imbalance in the financial contributions of parties to the relationship to be alleviated in some measure by the benefit to be shared from the proceeds of sale of their investment property. The pursuer financially supported the defender during their relationship. The pursuer has suffered economic disadvantage from contributions made in the interests of the defender to the funding of her lifestyle throughout the relationship. The parties maintained an account of significant relationship expenses such as family holidays abroad which were funded by the pursuer. The parties agreed that the sale of the property would result in an accounting exercise between the parties and the repayment of those expenses to the pursuer from the proceeds.

[91] The pursuer's case is that this couple made a joint decision to invest in property, a decision followed by others in their financial affairs which flowed from that Agreement.

The pursuer argues that the evidence demonstrates that the parties conducted their 8-year relationship on the shared understanding that the property was a joint investment. The pursuer argues that at the end of their relationship the defender retrospectively engineered an economic advantage to herself and an economic disadvantage to the pursuer in refusing to sell in accordance with that understanding. I agree. What had previously operated as a mutual investment intended to benefit both parties became an asset retained entirely by one party creating economic imbalance. The withdrawal of the defender from that arrangement at the end of their relationship created a significant financial penalty for the pursuer. The defender retained a significant capital asset as a result. The defender's decision to retain the house rather than sell it fundamentally changed the effect of those prior arrangements. The outcome for the pursuer in the defender defaulting on their Agreement is that he has suffered economic disadvantage in the interests of the defender. The value of the property and the agreed benefit to the pursuer informs the capital sum sought by the pursuer of £67,500.

[92] Related to this issue of economic disadvantage, objection was taken to evidence from the pursuer relating to what was said in the defender's submissions to be evidence of an evolving Agreement encompassing other expenditure to be reimbursed from sale proceeds, in particular payments for holidays. It was submitted by the defender that this position had not been pled on record.

[93] The pursuer however pled on record that he financially supported the defender during the relationship, paid for the majority of their joint expenditure which included holidays abroad and had been left at a financial disadvantage as a result of parties' relationship. Properly understood, the evidence of the pursuer was that the holiday expenditure formed part of the wider financial dealings of parties influenced by the

Agreement. These were other expenses the pursuer was encouraged to meet by the existence of their joint investment from which he expected to benefit. As the defender properly identifies in her submissions, these are not breach of contract proceedings. This is an action in terms of section 28 of the Family Law (Scotland) Act 2006. In those circumstances whether economic disadvantage resulted directly or indirectly from an Agreement is not the crucial issue. The pursuer's pleadings and productions provided sufficient notice to the defender of the fact that the pursuer intended those sums to form part of the court's consideration of economic disadvantage.

Any economic advantage derived by the defender offset by any economic disadvantage suffered in the interests of the pursuer

[94] On the evidence I was unable to identify any appreciable economic disadvantage suffered by the defender in the interests of the pursuer during their relationship. Only economic advantage was derived by the defender from the relationship. Such financial contributions as were made by the defender to their shared household were limited, and did not meet her living costs, which were subsidised the pursuer. The pursuer met the costs associated with the investment property, the home they shared and other relationship expenses. In relation to contributions other than the financial, it seems on the evidence, that the parties otherwise provided equally to the household they shared. There was a fair and equal division of labour to their shared household in cohabitation with no obvious economic disadvantage to the defender.

Is any economic disadvantage suffered by the applicant offset by any economic advantage derived from contributions made by the defender?

[95] The pursuer acknowledged in his evidence the value and import of the defender's local authority discount in his decision to invest in the defender's property. It was the discounted purchase price which made the investment attractive for them both. The defender's discount was just as important to their joint investment Agreement as his ability to fund the purchase at that time. The pursuer understood that the property required to be conveyed into the sole name of the defender on the basis that the defender alone was entitled to the discount. Just as the defender relied on his funds for purchase, the pursuer relied on the defender for access to the discount in order that the joint investment benefit him sufficiently to make the investment an attractive proposition. There was a broad equivalence to that arrangement.

[96] There is a quantifiable contribution to the investment from the defender's "Right to buy" discount which results exclusively from her 28-year tenure as a tenant. A 58% discount resulted in a £51,620 reduction to the cost of the property in their joint investment vehicle. It is a contribution by the defender which added value to their investment. Any section 28 award to be made that reflects disadvantage suffered by the pursuer resulting from deprived benefit from the investment must be offset by the discount as a contribution to the investment and to his economic advantage. The English authority referred to in the pursuer's submissions to suggest a different approach, is distinguishable on the circumstances, on the legal issues the court was addressing and the fact that the decision pre-dates the guidance provided to this court by the binding authority of *Gow*. Even if I am wrong to treat the discount as a contribution to the pursuer's economic advantage in terms of the statutory scheme, the financial benefit gained by the pursuer from the discount would

still require to be factored into the equation on the basis of the principle of fairness. In achieving justice between the parties, it would be manifestly unfair to ignore the significant value that the local authority discount brought to the parties' joint investment. Both parties had depended on each other to cooperate in the financial arrangements initiating their investment, and fairness requires that be reflected in the outcome of these proceedings.

[97] Notwithstanding the pursuer's submissions to the contrary, the rental payments received from the defender in relation to the investment property are relevant to the statutory exercise of offsetting required by sections 28(6). The rental payments received by the pursuer from the defender amount to £46,600. The rental payments include a figure of about £9,000 beyond the pursuer's original purchase funding. The rental payments are contributions from the defender to the pursuer from which he has derived economic advantage.

[98] The rental payments require to be offset against economic disadvantage he suffered. The pursuer in submissions in arguing to the contrary overstates as "acute" the commercial risk of borrowing the initial funds and understates the economic benefit to the pursuer of an additional income flow from rental. The defender meantime overstates the benefit to the pursuer and understates the fact that the rental payments are, at least in part, simply repaying funds already expended by him. Sections 28(5) and (6) are to be interpreted broadly. The rental payments provided the pursuer with an income flow from the property, repaid his initial outlay of £37,798 and provided a further sum of about £9,000 beyond his initial outlay. These were contributions from which he benefited to his economic advantage.

[99] I have therefore concluded on the evidence that the defender has derived economic advantage from contributions made by the pursuer which is not offset by any economic disadvantage to the defender. I have further concluded that the pursuer has sustained

economic disadvantage in the interests of the defender which is partly offset by the economic advantage the pursuer has derived from contributions made by the defender.

Section 28 subsections (2), (3) and (4)

[100] The joint investment property is central to the resolution of this case. The pursuer suffered economic disadvantage when the defender refused to implement the terms of their Agreement. His Agreement with the defender entitled the pursuer to split the proceeds of sale. If the terms of their Agreement were to be strictly implemented that would result in a 50/50 split of the value of the property. The value of the property and the agreed benefit to the pursuer informs the capital sum sought by the pursuer of £67,500. The pursuer argues that it is a fair measure of his net economic disadvantage. As the defender points out in her submissions however, if the court were to follow the primary submission of the pursuer to that effect, then he would already have been reimbursed his initial purchase outlay, an additional sum from rental payments of over £9,000 and now obtains a £67,500 share of the property value. The pursuer would in those circumstances recover over £114,000 from the investment.

[101] This is not a contractual action brought seeking to implement terms. As the defender points out, that would require a different action. Nor is section 28 a property sharing regime, it is a compensatory balancing exercise. It requires the application of all the issues the court is directed to consider by section 28 to the parties' circumstances. The Agreement between the parties has some bearing of course on the outcome of the exercise required of the court, however it does not determine it, that requires the application of statute and fairness to the circumstances. These section 28 proceedings are the legal route the pursuer

has chosen to take. These are the rules to which his case is now subject. The final decision in the case is neither contractual nor arithmetical.

[102] In this action, application of the statute to the parties' circumstances, having proper regard to sections 28(3), (5) and (6) of the Family Law (Scotland) Act 2006, requires that the economic disadvantage, which has been established as suffered by the pursuer, be offset by his assessed advantage from the defender's contributions. That exercise is to some extent assisted by some of the quantifiable elements to their financial arrangements. Together with his deprived shared benefit from the investment property, other quantifiable sums in the evidence assist with establishing the extent of his disadvantage. The handwritten account reveals repair/maintenance/holiday expenses of just over £9,000. The pursuer estimates the cost of the 2023 refurbishment work at approximately £10,000. Allowance also requires to be made in the totality of economic disadvantage for his contributions in financially supporting the defender. Against that, a sum equivalent to £51,060 represents the value of the defender's discount contribution to the investment. The pursuer received £46,600 in rental payments from the defender. Both of these sums are contributions which economically benefit the pursuer and partly offset his above disadvantage. Even if I have wrongly identified either or both of these sums as section 28(6) contributions then these amounts should still be taken into account as part of the broader considerations to be brought to bear by the court given the objective of achieving fairness in the assessment of compensation.

[103] I have concluded that, given the economic imbalance which remains after offset, the pursuer should be compensated for economic disadvantage by payment of a capital sum. In taking a broad axe to sever the financial ties of this couple I intend to approach the matter in this way; the capital value of the parties' joint investment asset is £135,000. When the contributions made to the pursuer's advantage are subtracted from the property value, the

resulting figure is £37,340. This figure represents the balance of their joint investment benefit (£135,000 - £51,060 - £46,600 = £37,340) after both their initial investment contributions are deducted. The excess figure of rental payments in that calculation, beyond the initial purchase price paid to the pursuer of over £9,000, reimburses the pursuer with the defender's half share of the handwritten account repair/maintenance/holiday expenses and half share of the cost of the 2023 refurbishment work. The remaining issue of the subsidised living expenses falls into the category described by Lady Hale in *Gow* as "quite impracticable" to attempt to work out in detail and "quite disproportionate to the task of doing justice between parties." An allowance for these expenses can be absorbed in the capital sum I intend to award.

[104] In order to reflect the overall justice of the case, having considered the issues as directed by section 28, I conclude that fairness is reached by the parties sharing equally the balance of their joint investment after the parties' various contributions have been considered. In that way the pursuer and defender leave the relationship with what they each contributed to the investment together, each meeting their share of the costs of maintenance, repair and renovation of the property and with a fair share of the resulting benefit from the investment. The resources of parties are relevant. Granting redress to one party should not be done if the consequence is to render hardship to the other party. The capital sum to be paid ensures the pursuer is compensated fairly but in such a way that takes account of the pursuer's financially secure position, and the defender's relatively limited income from which to make payment of the capital sum. The capital sum is an amount which the defender should be able to meet and still retain the property in which she presently lives. The pursuer is to be compensated in the sum of £18,670.

Expenses

[105] A hearing on expenses should be fixed for parties to address the issue of costs.