

OUTER HOUSE, COURT OF SESSION

OPINION OF LADY SMITH

in the cause

TERESA SAMANTHA REID or COYLE

Pursuer;

F19/2000

against

DANIEL PATRICK COYLE

Defender:

Pursuer: Cheyne; Digby Brown

Defender: Scott; Anderson Strathern, W.S.

25 April 2003

Introduction:

[1]The parties to this action of divorce were married in Scotland on 8 February 1975. They separated on 5 February 1995 since when they have not cohabited. There are three children of the marriage aged 25, 24 and 19 years.

[2]The pursuer, who is 54 years old, seeks decree of divorce on the ground that the marriage has broken down irretrievably as evidenced by the parties' non cohabitation for a period in excess of five years. Evidence to that effect was given by both the pursuer and the defender and was covered in affidavits from the pursuer and Margaret Hughes. I am satisfied by that evidence that the marriage has broken down irretrievably and I shall therefore grant decree of divorce.

[3]In terms of her pleadings, the pursuer seeks, as financial provision on divorce: a capital sum, periodical allowance and property transfer orders in respect of the former matrimonial home at Hamilton Avenue, Glasgow and in respect of a holiday home, St. Catherine's Lodge, Turnberry. At the end of the proof, the parties remained in dispute as to the financial provision to be awarded to the pursuer.

[4]The defender had, throughout the marriage, worked as a wholesale fruit and vegetable supplier. He joined the family business, D Coyle & Co Ltd ['the company'], when he left school and, over the years, he became a director of the company and acquired shares by way of gifts from his parents and a bonus issue. At the date of separation, he had a 53.7% interest in the company and by the time of proof, that interest had increased to 74.75%. He was still running and actively working in the company at the time of proof. He is now aged 52 years.

[5]The pursuer, on the other hand, had given up a career with British Caledonian Airways to marry the defender and stopped work altogether shortly after the marriage, the defender not wanting her to work. She had and has no qualifications. She ran the house and cared for the children. The defender worked long and unsocial hours in the family business.

The claim for financial provision:

[6]Section 8[2] of the Family Law [Scotland] Act 1985 ['the 1985 Act'] directs that where an application for an order for financial provision has been made:

'..the court shall make such order, if any, as is -

[a] justified by the principles set out in section 9 of this Act; and

[b] reasonable having regard to the resources of the parties.'

In this case the pursuer's claim was advanced under reference to the principles contained in s.9[1][a] and 9[1][b] of the 1985 Act, which provide:

'[a] the net value of the matrimonial property should be shared fairly between the parties to the marriage;

[b] fair account should be taken of any economic advantage derived by either party from contributions by the other, and of any economic disadvantage suffered by either party in the interests of the other party or of the family.'

Section 10[1] sets out a presumption that fair sharing is to be taken to be equal sharing, a presumption which both parties accepted should apply in this case. Section 11[2] makes further provision in respect of the principle set out in s.9[1][b], as follows:

'For the purposes of section 9[1][b] of this Act, the court shall have regard to the extent to which -

[a] the economic advantages or disadvantages sustained by either party have been balanced by the economic advantages or disadvantages sustained by the other party; and

[b] any resulting imbalance has been or will be corrected by a sharing of the value of the matrimonial property or otherwise.'

[7]It was, accordingly, necessary to determine:

- the nature, extent and net value of the matrimonial property;
- whether the defender had sustained an economic advantage that was derived from contributions by the pursuer, if so to what extent, whether so as to result in an imbalance between the parties and if so, the extent to which, if any, it had already been corrected or was capable of being corrected by a sharing of the matrimonial property;
- whether the pursuer had sustained an economic disadvantage, if so to what extent, whether so as to result in an imbalance between the parties and if so, the extent, if any, to which it had already been corrected or was capable of being corrected by a sharing of matrimonial property; and
- the nature and extent of the parties resources.

The nature, extent and net value of the matrimonial property;

[8]The parties were in agreement as to what items constituted matrimonial property. Also, apart from the effect, if any, on the value of matrimonial property of a potential charge to capital gains tax being levied on the defender, the value of a Ferrari motor car, and the value of a debt due to the defender by his sister, the parties were largely in agreement as to the value of that property. It consisted of the following:

Item: Agreed Separation date Agreed Subsequent value:

value:

20 Hamilton Avenue , Pollockshields, Glasgow - former matrimonial home	£270,000 [less mortgage of £28,736, since repaid by the defender]	£500,000 as at February 2002
St. Catherine's Lodge , Turnberry - holiday house	£110,000	£135,000 as at February 2002
Bank Accounts: a/c's nos. 020072, 020123, 020080 with Clydesdale Bank	£513,212.34 total net credit	
Legal & General Insurance Policy	£21,743.90	£53,000 as at February 2002
Clerical & Medical Personal Pension	£40,631.10	£40,631.10 as at February 2002
Ferrari motor car		
Scottish Amicable Pension	£21,053	£21,053 as at February 2002
Debt due by sister	£25- 50,000	£50,000 as at November 2002

[9] Apart from the Scottish Amicable Pension, which was the pursuer's, all the matrimonial property was owned by the defender at the date of separation. Apart from the Ferrari motor car, the bank accounts, and the debt due by the defender's sister, the matrimonial property owned by the defender at the date of separation was still in his ownership at the time of proof. The Legal and General Policy matured in January 2003, with proceeds of £53,000 which were paid into the defender's bank account. The money in the bank accounts and the debt due by the defender's sister had been invested in a bond and in various items of heritable property, to which I will return later in this opinion. The Ferrari motor car had been sold some time after separation but before proof.

[10] The house at Hamilton Avenue, which has four bedrooms, a boxroom and the usual public rooms, had been run by the pursuer as the family home for many years. The parties' three children, who were aged 24, 23 and 18 years at the beginning of the proof, all still live at home and have, apparently, no plans to move away. The pursuer expressed a strong wish to retain the house as a base for the children. Indeed, she indicated that if she was forced to move, she would still look for a property that would be large enough for the children to have rooms in it. The defender's home is a modern two bedroom flat which clearly would not have the potential for such family provision.

[11] The defender had referred to the value of the house at Hamilton Avenue in evidence. He said that it had increased in value beyond his wildest dreams and that if the parties had still been together, it would have been a wonderful opportunity to realise a tax free gain. In the part of his evidence that was given in November 2002, he commented that he had been offered £650,000 for the house. He gave no details of the circumstances and conditions of the offer, the identity of the offeror, or whether it was a formal or informal one. No document relating to the house at Hamilton Avenue supported that figure as being an appropriate valuation of the house. Given that lack of detail and documentation and given that it was later shown that the defender was apt to misrepresent the truth of the nature and extent of his resources, I was not inclined to place any weight on that adminicle of evidence.

[12] The house at Turnberry had been used regularly as a holiday house. The pursuer having become a keen golfer and being very fond of that house, she was keen to retain it in addition to the house at Hamilton Avenue.

Ferrari Motor Car:

[13] Parties were not in agreement as to the value to be placed on the Ferrari motor car. The facts surrounding the defender's ownership of the Ferrari motor car first emerged in evidence from Mr Bruce Graham, the Chartered Accountant instructed as an expert to assess the accounts of the company, and, thereafter, from the

defender himself. From the company's accounts Mr Graham identified that there was a transaction between the company and the defender in 1994 whereby the company sustained a loss of £125,000 in transferring a Ferrari motor car to the defender. The defender had had the car transferred to him in lieu of a cash payment due to him by the company of £60,000. Thus, the picture was presented of an asset which the company regarded as having a value of £185,000 being transferred in respect of the company's liability to pay £60,000. Hence the loss to the company. The background was explored in evidence with the defender. He was unhelpfully vague and unreasonably irritated at being asked questions regarding the transaction. He said that he had bought the car originally in 1990, for £200,000. He had then sold it to the company in 1992, for £185,000 to get money to buy a property in Monreith Road in Glasgow. The transfer of the car to the company appears, however, in the 1994 accounts. He said that the sale to the company was carried out on the basis of a valuation from the company that he had bought the car from, a London company. The car was then transferred back to him by the company in 1994, in lieu of a bonus of £60,000 [although his tax return for the year to 5 April 1995 shows a manuscript addendum in respect of the transfer of car and number plate to him not in the sum of £60,000 but in the sum of £68,995]. He described this transfer back to him of the car as a 'disaster', a reaction that I found hard to follow given the tax benefits to him of the car being transferred at a lower value and the apparent chance, given the valuation obtained for the transfer of the car to the company, of him earning a substantial profit on the car. He also explained that the car in fact never moved. It remained in his possession throughout these transactions and they were, it seems, devised by the company's accountants, who were not called to give evidence. I found that lack of evidence unsatisfactory since it did seem that those accountants would have had relevant evidence to give regarding the dealings between the defender and the company in respect of a valuable asset. They certainly should have been able to explain what was involved in the transactions and why the particular figures that appear in the accounts were chosen.

[14]The defender gave evidence that he sold the Ferrari some time after the separation for a price that reflected that the market for such cars had dropped. He realised only £48,000 or £50,000 on the sale of the car, he said. He did not, however, produce any paperwork in respect of the Ferrari transactions at all. I found it astonishing that he did not disclose the existence of this asset in his pleadings or produce any documentation in respect of an asset of such significant value. Matrimonial litigation is not a game and the days have long since gone when failures by parties to a divorce action to disclose and, where possible, vouch, relevant assets can be justified. Even if the defender were to be excused, which I do not accept he should, for failing to disclose the existence of the Ferrari as matrimonial property prior to the first diet of proof, the best part of a year elapsed between the first and second diets of proof during which he could and, in my view, should have produced documentation regarding the transactions since they were identified by Mr Graham as having taken place during the evidence that he gave at the first diet. Similarly, his failure to call the company's accountant who was, apparently, the author of what took place, is hard to fathom. In all the circumstances, it seems to me that the fair value to place on the Ferrari is the value that it is recorded in the 1994 company's accounts as having, namely £185,000. That is a figure which I must, I consider, assume was acceptable to the company's auditors as justification for payment to the defender of that sum in cash, it was a figure which was, on the basis of the defender's own evidence, the result of a valuation carried out independently and a figure which was arrived at not long before the date of separation. The defender's counsel urged me to value the Ferrari at £48,000 but I considered that the later sale figure advanced in evidence by the defender was too vague in amount and, in particular, as to time of realisation, for any weight to be placed on it. Further, it was wholly unvouched. Like much of the defender's evidence regarding matters of detail, it was, I considered, unreliable if not deliberately slanted to keep the truth from the pursuer.

[15]Further, I was not inclined to accept the defender's evidence on this important matter as credible. Not only was he, as I have already noted, vague and unreasonably irritated at being asked questions regarding it but it transpired at the end of the proof that he had been dishonest regarding other matters, something to which I will return later in this opinion.

St. Catherine's - Capital Gains Tax:

[16]The defender's counsel submitted that the value of the holiday home at Turnberry should be reduced as at the date of separation and also when considering the value of the defender's resources, so as to allow for a potential capital gains tax charge. Richard Gilliland, an accountant instructed to give expert evidence on behalf of the defender, was asked questions about potential charges to capital gains tax. He was not, though, a tax expert. He had been instructed to give a view as to the value of the defender's interest in the company at the date of separation and as to the extent to which the value of his interest had changed over the years of the marriage. His evidence regarding potential charges to capital gains tax was, it seemed, an extra piece of work for which he had not, evidently, had much notice. It certainly did not form part of his original instructions. As regards St. Catherine's, he noted that it had been bought in 1984 for £48,500 and had been worth £110,000 in February 1995. He said that if it had been sold in 1995, the defender would have paid £22,000 in capital gains tax, 'roughly speaking'. In respect that the value of the house was agreed as being £135,000 as at February 2002, he said that if it was sold or transferred 'now' [though presumably he meant as at February 2002] the defender would have to pay roughly £25,000 in Capital Gains Tax after indexation and taper relief had been allowed for. No calculations of capital gains tax were lodged and no attempt to analyse the defender's precise tax position in each of the valuation years was attempted. The rough figures advanced did not appear to take account of the tax free annual exemption that would have been available to the defender on each occasion and there was no evidence as to when the tax, if payable, would have been due. I did not feel, on the evidence, that I could reach any firm conclusion as to what the defender's ultimate tax liability would have been if the property had been sold or transferred on either date albeit that I could accept that, as a generality, a charge of some significance was likely to have arisen.

[17]Counsel for the defender submitted that I should reduce the value of St. Catherine's in the calculation of the net value of matrimonial property by £20,000, to allow for a charge to capital gains tax. She also submitted that I should allow for potential charges to capital gains tax in respect of various items of heritable property now owned by the defender, having been acquired by him since the date of separation, when assessing his available resources, although she conceded that Mr Gilliland had not given any evidence as to the potential capital gains tax charges in respect of those properties. I was referred to several authorities on the subject, which demonstrate an apparently sharp divergence of view as to the correct approach. Those views are summarised in the case of *Sweeney v Sweeney* 2002 Fam LR 126. On the one hand the approach that has been taken is to regard notional tax on a hypothetical valuation as being without foundation in reality and therefore irrelevant to the question of value [see: *Latter v Latter* 1990 SLT 805; *McConnell v McConnell* 1997 Fam LR 97]. On the other hand an approach has been taken that regards notional capital gains tax as something which should be taken into account so as to allow what has been referred to as 'a degree of realism' to play its part, lest the spouse whose asset is valued is in fact left with only a small proportion of the value of it, once it has been sold or transferred to meet the award [see: *Bolton v Bolton* 1995 GWD 14-799, OH unrepd 17.2.95; *Savage v Savage* 1997 Fam LR 132; *Sweeney v Sweeney supra*].

[18]There are, in my opinion, problems in the latter approach so long as potential liability to capital gains tax is treated as an issue of valuation for the purposes of s.9[1][a] of the 1985 Act rather than as an issue of resources, for the purposes of s.8[2]. It is not difficult to conclude that it is only reasonable, if an asset is going to have to be realised or transferred to satisfy an order for financial provision on divorce, to take account of any tax consequences of doing so. That would seem to be the thinking that lies behind the approach that is sometimes adopted in England whereby notional capital gains tax may be taken into account in assessing the property and financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future. Although there is no hard and fast rule [*White v White* 2001 1AC 596] in that jurisdiction nor, significantly, is any attempt there made to ascertain or value matrimonial property. The emphasis seems, rather, to be on assessing what assets are available at the time that the court determines liability to pay.

[19]What is harder to justify, in my opinion, is reducing what would otherwise be regarded as the market value of the asset for the purposes of calculating the value of the matrimonial property. Such an approach has, as Lord Marnoch said in *Latter*, no foundation in reality, it fails to take account of the fact that the asset might never be realised by the spouse who owns it, it fails to take account of the fact that even if the spouse

does have to realise it, he or she will not have to pay the capital gains tax charge immediately, indeed, there may be scope for making a profit by investment of the proceeds of the asset before the tax has to be paid, and it fails to take account of the fact that whilst the owner of an asset might regard its value as its value after capital gains tax is paid [although that seems to be an odd way to express value], the recipient of the asset if it is transferred will regard its value as being its full value without taking account of tax. In short, I see no reason for depriving the word 'value' of its usual and ordinary meaning when assessing the value of matrimonial property. It would not be usual to refer to the 'value' of a house or any other investment as being its market value less whatever is anticipated will be the impact of selling it on a person's ultimate liability to the Inland Revenue in a particular tax year, whether in respect of capital gains, inheritance or any other tax.

[20]The proper way to deal with the contingency of capital gains tax is, in my view, to take it into account, if it exists, when assessing a spouse's resources so as to determine what would be reasonable financial provision to order. S.8[2] of the 1985 Act provides a valuable safeguard against any unfairness that might, according to the facts of a particular case, appear to arise from the strict operation of any or all of the principles set out in s.9. Thus it would be open to the court to take account of the impact of any capital gains tax liability that was likely to arise by reason of the order for financial provision in determining what would be a fair amount to award. In so doing it might, if it seemed appropriate, reduce the amount payable to a sum that was less than one half of the net value of the matrimonial property. On the other hand, if it seemed that the chances of actual realisation having to take place were remote, it might seem fair to ignore any potential capital gains tax charge.

[21]Accordingly, for the purposes of arriving at the net value of the matrimonial property in this case, I am of the view that St. Catherine's Lodge should be included at its full value without making any allowance for capital gains tax. As regards the chances of its being sold to pay any award of financial provision, there was no evidence that that was liable to happen. Indeed, the defender has an arrangement with Mr Hindmarsh, the man from whom he bought the property, allowing him to occupy a significant portion of the rear of the property for the duration of his life [see: No. 6/5 of Process].

[22]I would add that, given that there was no evidence to the effect that capital gains tax would be payable in respect of the sale of any of the defender's heritable properties that comprise a part of his current resources and no evidence to the effect that he would have to realise any of them to meet his liabilities to the pursuer, I do not consider it appropriate to reduce the values of those properties in respect of a potential capital gains tax charge when assessing the extent of the defender's resources.

The debt due by the defender's sister:

[23]Later in this opinion, I deal in greater detail with evidence that emerged when the defender was recalled as a witness. One piece of evidential material was that he had, about ten years ago, lent £25,000 to his sister, Mrs Maureen Coyle, who lives in Ireland and that, at various times after that, he had lent her further sums so that when she came to repay him in November 2002, she was due to pay him £50,000, which she did in the circumstances that I later explain.

[24]In common with much of the defender's evidence, the lack of detail and vouching was unsatisfactory, particularly as regards the dates of the later advances. Clearly, £25,000 was due by the date of separation but it was impossible from his evidence to tell when the later sums became due. In particular, it was not clear whether they were due by the date of separation although given the defender's apparent desire to conceal relevant material from the pursuer, it seemed likely to me that at least some of the balance of £25,000 was due by then.

[25]In these circumstances, the net value of the matrimonial property at the date of the parties' separation amounted to between **£1,157,913.34** and **£1,182,913.34**, depending on the view that is taken of the debt due by the defender's sister, £21,053 of which belonged to the pursuer and the balance to the defender.

Whether the defender sustained an economic advantage derived from contributions by the pursuer?

[26]Evidence was led on behalf of the pursuer as to value of the defender's interest in D Coyle & Co Ltd as at the date of the marriage and as at the date of separation, with a view to showing that there had been an increase in the value of his interest in the company over the period of the marriage. Mr Graham, having studied the company's accounts for the years to 30 June 1974, 30 June 1975 and 30 June 1992 - 30 June 1998, had prepared a memorandum [No. 6/118 of Process] which set out his workings and the reasons for the views that he had reached in a readily intelligible form. Apart from one small correction that he required to make to allow for the incidence of income tax on investment income, his views in evidence remained as outlined in his memorandum. He was of the opinion that the defender's interest in the company at the end of the year to 30 June 1975 [a 27.8%] interest, was £44,000 and at the end of the year to 30 June 1995 [a 53.7% interest] was £619,000. His figures, which were calculated on an earnings plus surplus assets basis, were cross checked against the price per share [£23.05] that was paid by the company to buy back 8,400 of its own shares in 1998. That amounted to an overall gain in value of £399,000 once appropriate calculations were made for the share acquisitions that had occurred during the period of the marriage. His calculations did not make any allowance for inflation probably because that was not something that he was asked to do by either counsel.

[27]Mr Graham also expressed the opinion that, from a reading of the company's accounts, the company always had a very healthy bank balance [credits of £112,000, £137,000, £820,000, £697,000, £773,000 and £749,000 in each of the years to 30 June 1974, 1975, 1992, 1993, 1994, and 1995] together with, in the last four years considered, other investments. It had no borrowings in any of the years considered by him. All performance indicators showed a well managed position and the company persistently showed a healthy level of total net assets, with excellent cash resources. He noted that in recent years a strategy appeared to have been adopted to remove cash from the company for the benefit of the defender in a tax efficient way by investing it in a small self administered pension scheme. He did not conclude, as was urged on behalf of the defender, that by 1995, the company was in decline.

[28]Mr Gilliland, Chartered Accountant, was led in evidence on behalf of the defender. It was highly unsatisfactory that he had never been asked to prepare a written report which made his evidence difficult to follow, particularly when he had to resort to trying to carry out calculations from the witness box. This was the first occasion that Mr Gilliland had given evidence in court and it is to be hoped that he will not, if ever asked again, put himself in the difficult position of being asked to give expert opinion without having first prepared a report. The lack not only of a report lodged in process but of Mr Gilliland having gone through the discipline of preparing one did make his evidence seem rather less professional and certainly less impressive than Mr Graham's. Whilst it may not have been until the first diet of proof that it was realised, on the defender's side, that the pursuer intended to seek to prove that the defender's interest in the company had increased in value during the marriage, the best part of a year elapsed between the two diets of proof which should have given ample time to have Mr Gilliland prepare a report.

[29]Mr Gilliland agreed that Mr Graham's approach to valuation was fair and focused. He, however, used a slightly higher figure for future maintainable profits and a higher price/earnings ratio for 1975 - Mr Graham had used £27,000 and 5 on the basis of the figures in the accounts for 1974 and 1975 for profits and a view that there was less corporate activity then. Mr Gilliland used £30,000, a figure arrived at after adding back a single extraordinary charge in respect of a lease payment and 6 on the basis that the business was very profitable in the 1970's with plenty of room for growth. He accepted, though, that the choice of price/earnings ratio was very much a matter of judgment. He assessed the value of the defender's interest in the company in 1975 as being £53,850.

[30]He assessed the value of his interest in 1995 as being £493,000. He did not accept that the figure that Mr Graham had used for future maintainable profits was a fair figure. Mr Graham had used £107,000, a figure which had also been used by Messrs Kidson's Impey, Chartered Accountants, in a valuation of the defender's interest as at 1 March 1995 that they had carried out on his, i.e. the defender's, instructions, which valuation was set out in a letter dated 14 May 1998 [no. 6/73 of Process]. Mr Gilliland's refusal to accept that figure

seemed to be influenced partly by the defender having told him that the business was declining and partly by his failure to add back the exceptional loss that arose on the transfer back to the defender of the Ferrari car in 1994. Further, his insistence that a lower price earnings ratio [4] should be used - Mr Graham had used 7.8 and Kidsons Impey had used 11- had no particular basis other than a belief that a buyer would try to negotiate the figure downwards. Mr Gilliland could not, however, say what price/earnings ratio he would have advised the seller to hold out for. He did not say that he would have told the seller to accept a price/earnings ratio of 4. Thus his expressed view as to price/ earnings ratio did not appear to amount to an objective assessment of the likely outcome of any transaction in 1995.

[31]For reasons which I will explain, it is not, in my opinion, necessary to determine which of the two expert accountants produced the correct valuations of the defender's interests in the company as at 1975 and 1995. If, however, I had had to determine the issue, I would have preferred the approach taken by Mr Graham which was professional, objective and bore the hallmarks of systematic preparation and cross checking.

[32]I would add that, when invited to do so by counsel for the defender, Mr Gilliland carried out an exercise of inflation linking the value of the defender's interest in the company in 1975 and at the times he acquired additional shares from members of his family, so as to demonstrate that the real amount of any increase in value was significantly less than Mr Graham figures. He was invited to use the inflation factors contained in the retail price indices for the relevant years. It was unfortunate that Mr Graham was not asked whether he considered it would be appropriate to inflation link in the way that the defender's counsel had Mr Gilliland do but, again, this is an issue which I need not determine, albeit that I would tend to the view that since s.9[2] of the 1985 Act simply refers to 'gains in capital' as being relevant if the principle contained in s.9[1][b] is being applied, it would not be appropriate to carry out any detailed indexation exercise. It may though be that in taking 'fair' account of any such gain the court may feel it appropriate to take account of the extent to which a gain on paper represents a gain in real terms.

[33]Evidence from the pursuer, her friend Mrs Patricia Massie and, to an extent, the defender, was also founded on under this head. Mrs Massie knew the pursuer well. She had, at one point, shared a flat with her when they were both working for the airline. The pursuer had given up a promising career with Caledonian Airways. She started working with them as a member of the cabin crew but quickly got into a position of responsibility. She was described by both the defender and Mrs Massie as having been a beautiful and striking woman and her physical attributes helped to lead her into doing public relations work for the airline. She worked closely with board directors and became more and more involved with promotional events. Increasingly she was de-rostered from flying so as to enable her to be heavily involved in event organisation. Mrs Massie was a straightforward, intelligent and credible witness and it seemed clear that her assessment that the pursuer could easily have moved into a management role with the airline or with another employer, was a fair one. She described the pursuer as 'very, very employable.'

[34]The defender did not, however, want the pursuer to work once they had children and she did not, accordingly, do so. The 'deal' was, said the pursuer, that she was not allowed to work.

[35]Counsel for the pursuer submitted that I should include a sum of £200,000 in the order for financial provision that would fall to be made, to allow for the defender having been beneficiary of the increase in the value of his shareholding in the company, it being derived from a non-pecuniary contribution by the pursuer. He submitted that the pursuer had given up a promising career to marry the defender and had looked after the home and the children. She had to take a great burden. In these circumstances I should, he submitted, find that the defender's economic advantage was best exemplified by the increase in the value of his shares. His approach seemed to be that, using a broad brush, the pursuer should receive about half of that increase, using Mr Graham's figures.

[36]Counsel for the pursuer submitted that it was not established that the defender had derived any economic advantage from a contribution of the pursuer's. She referred me to the dictionary definition of the word 'derived' as meaning to trace the origin of. The defender had not gained any more shares nor had the business

become more profitable because he was married to the pursuer. Indeed, if he had not married, his wealth would, she submitted, have been greater as he would not have incurred the expense of supporting the pursuer and the children. This was not a case where it was appropriate to apply the principle.

[37]It is important to recognise that Parliament did not, in the 1985 Act, provide that whenever a couple divorce after a marriage in which one has been the breadwinner and one has been the homemaker, the latter must receive extra and compensatory financial provision on divorce. The section is quite specific. Before the principle here relied on can be taken into account it must be established that there has been an identifiable economic advantage which derives from an identifiable contribution by the other spouse and it must appear fair to the court to take account of it. An example of the operation of the principle can be seen in the case of *de Winton v de Winton* 1998 Fam LR110 where the wife pursuer had contributed substantial sums of non-matrimonial money to a family partnership from which the defender derived economic advantage and had also worked, without payment, in his business. It was not difficult to identify a specific financial and non financial contribution nor to identify that the defender had been left in a better financial position as a result, retaining property which had an enhanced value because of those contributions which was not, significantly, matrimonial property.

[38]In this case there was evidence that the pursuer managed the house and the children leaving the defender free to work. The defender's working day usually started very early, as was inevitable from the nature of the business of wholesale fruit and vegetable dealers operating from the fruit market. Clearly, if the pursuer had not been available to run the house and care for the children, other help would have had to be employed. However, on the evidence, if the pursuer had not been available that would have been because she would have been pursuing her own career, earning a significant salary and thus bringing more income into the household, from which the cost of help could have been met. That seems to me to be the correct approach rather than to ask what would the defender's financial position have been if he had not married.

[39]It does not follow, in my opinion, that the defender's net financial position would have been any less by reason of the need to employ help. In all the circumstances, even if it is the case that the defender's financial position, including the value of his interest in the company improved over the course of the marriage, I do not see that it can properly be characterised as the sustaining of an economic advantage that was derived from a contribution of the pursuer's. I am not, accordingly, persuaded that it would be appropriate to take this principle into account.

Whether the pursuer sustained an economic disadvantage in the interests of the defender or of the children of the marriage ?

[40]Wisely, in the circumstances, counsel for the defender did not dispute that such an disadvantage had been sustained. It would have been difficult for her to do otherwise given the compelling evidence to the effect that the pursuer was disadvantaged by giving up what was likely to have been a very successful career, to marry the defender.

[41]Mrs Massie gave evidence regarding her earnings. After a period not working [because she had got married] she resumed employment with British Airways. She was, until recently, working full time as cabin crew and earning £22,000 per annum plus allowances and 'long day' payments which took her income up to about £30,000. She also received benefits in kind in the form of cheap travel for herself and her family which was worth in the region of £8-10,000 per annum, the travel being club class. If she had not left to get married, she would have attained a promoted post in cabin crew with a basic salary of £34,500 per annum plus £10-15,000 allowances together with two free flights per annum, club class, for herself and her family. Those working in public relations earned more, she said. British Airways are a large organisation with a whole department that deals with events and organisation. That was where she would have expected the pursuer to gravitate to, had she remained with the airline.

[42]Mrs Massie also explained that she will receive a pension from British Airways. She could retire at either 55 years or 60 years and receive a pension which will be almost equivalent to the value of her basic salary. If

she had attained a promoted post, her pension would have been in the region of £28-30,000.

The earnings and pension figures put forward by Mrs Massie were not challenged in cross examination.

[43]It is, accordingly, clear that had the pursuer followed the career path upon which she had embarked prior to marrying the defender, she would have had significant earnings - at least £34,500 per annum gross - and would be looking forward to a comfortable pension income of at least £28-30,000 gross per annum. If, as seemed likely, she had moved into the field of public relations, these earnings and pension figures would have been higher. Thus, on any view, by refraining, at the defender's request, from pursuing her career, in the interests of the home and the children, she sustained a very significant economic disadvantage.

[44]It was suggested by counsel for the pursuer that I could quantify the pursuer's economic disadvantage by means of a calculation which simply sought to compensate her as if she were pursuing a claim for future loss of earnings and pension in an action for damages for personal injuries. He submitted that I should use a multiplicand of £30,000 net per annum and a multiplier of 6 for the years that she would have continued in employment and a multiplicand of £20,000 for her pensionable years and a multiplier of 15, under reference to the Ogden Tables. That brought out, he submitted, a sum due of £480,000.

[45]Further, the defender was well able to afford to make such a payment, given the extent of his current resources. I will return to the matter of the defender's resources later in this opinion.

[46]Counsel for the defender resisted the approach taken by the pursuer's counsel. She submitted firstly that there was no question in this case of the pursuer's economic disadvantage having started to have a direct effect on her as yet, given the level of financial support that she received during the marriage. I did not understand the pursuer's counsel to suggest otherwise. Secondly, under reference to the case of *Dougan v Dougan* 1998 SLY [Sh Ct] 27 she submitted that s.9[1][b] did not provide for compensation. She submitted that, in any event, there were imponderables in this case such as the possibility of the pursuer finding some work or even remarrying and being supported by another man. She also submitted that there was a problem in that the court was being asked to speculate on the future as it would have been if the pursuer had not married the defender, which was difficult to determine. As regards the evidence from the pursuer and Mrs Massie about what career she would otherwise have had, the defender's counsel submitted that it was not clear that the pursuer would have been capable of any managerial role and that Mrs Massie's evidence, being that of a loyal friend should not be given weight. I did not, however, note her to have challenged the veracity of Mrs Massie's evidence regarding her knowledge of the pursuer at the time they were working together or regarding her knowledge of relevant rates of pay, allowances and pensions. The defender's counsel also submitted that Mrs Massie was not in a position to say what criteria the employers would have applied when making appointments nor was she a reliable comparator for the pursuer. It had, however, seemed to me that Mrs Massie was clear in her impression as to where the pursuer's career was going when she was working with her and it was telling, in my view, that when a reunion was planned recently, the directors got in touch with the pursuer, according to Mrs Massie, to ask her to get involved in arranging it. As regards her submission that Mrs Massie was not an appropriate comparator, to an extent that must be correct since her current earnings are in respect of part time cabin crew employment following a career break. She was, however, able to give clear and confident evidence that the earnings of those involved in public relations were and are higher than cabin crew which, as I have already commented, was not challenged.

[47]The primary submission made by the defender's counsel was that since, on any view, the pursuer would receive an award in the form of a half share of the net value of the matrimonial property amounting to around half a million pounds, there would be no imbalance in respect of her economic disadvantage remaining. It would not, she submitted, be fair to add an additional payment since if the pursuer had not married the defender she would not be about to receive that share of matrimonial property nor would she have had the comfortable lifestyle that she has enjoyed.

[48]If tables were to be used to evaluate this part of the pursuer's claim then, under reference to the case of *White v White* 2001 1 AC 596 and *Dharamshi v Dharamshi* 2001 1 FLR 736, the pursuer's counsel submitted

that the Duxbury Tables rather than the Ogden Tables should be looked to for assistance. The Duxbury Tables are a set of calculations set out in tabular form that are regularly used in England, in assessing claims for ancillary relief. They provide figures for the amount of capital that would be required to provide annual net incomes ranging from £10,000 to £100,000 for divorcing spouses ranging in age from 42 to 76 years. There are two sets of tables, one based on the assumption of a 4.25% real rate of return and one based on the assumption of a 3.75% real rate of return. For the latter, inflation is assumed to be 3%, income yield, 3% and capital growth, 3.75%. Counsel for the defender drew my attention to the fact that if it is assumed that the pursuer would have had an earned income and pension both of the order of £20,904 [an assumed net figure using Mrs Massie's earnings of £28,000 gross as a basis], then if a real rate of return of 4.25% was allowed for, the sum of £301,000 would require to be invested to produce that income for a 54 year woman old and £293,000 if she were 55 years old. If a real rate of return of 3.75% was allowed for, then the respective figures would be £318,000 and £309,000. Once these figures were taken into account, it could be seen that the share of matrimonial property that the pursuer would receive would be a fair sum to allow for her economic disadvantage.

[49]I do not accept that it is appropriate to approach the application of the economic disadvantage principle enshrined in s.9[1][b] as though an award were being made in a personal injuries case. The inappropriateness of doing so is highlighted by the fact that, in applying the statutory provisions, the question arises as to whether any economic disadvantage suffered by the pursuer has been balanced by economic disadvantage suffered by the defender and whether any imbalance will be correct by sharing the net value of the matrimonial property. Moreover, the court is directed to take "fair account" which clearly involves an exercise of discretion.. These requirements underline that there is expected to be an interplay between the principles enshrined in s.9[1][a] and [b] so that an overall view of the fairness and reasonableness of the outcome must be looked at.

[50]These provisions do not, in my opinion, require that a step by step calculation of sums due under each principle be carried out, which was the approach of the pursuer's counsel, as though a compensatory award was being calculated. Rather, as commented by Lord McCluskey in the case of *Cuniff v Cuniff* [unrepd - Extra Division, 12 March 1999], the effect of the provisions of s.9 and 11 is that it is the duty of the court to apply the principle in s.9[1][a], if there is matrimonial property, and also to apply whichever of the other specified principles are relevant given the facts of the particular case, in this case, the principle contained in s.9[1][b].

[51]That may mean that, depending on the facts of a particular case, where one of the other principles is taken into account, the court makes an order for financial provision the amount of which goes beyond whatever is considered to be a fair share of the net value of the matrimonial property. It may not.

[52]Clearly, the approach required may have to be a subtle one, depending on the circumstances of the case.

The nature and extent of the parties' resources:

[53]The pursuer's resources can be shortly stated. They consist of her interest in the Scottish Amicable pension policy which has already been referred to. The defender's resources, on the other hand, are far more extensive and complex. I am instructed by the terms of the 1995 Act to take account of all the parties' resources which are defined in s.27 as being 'present and foreseeable resources.' As the evidence progressed, it became apparent that the defender has substantial present resources as follows:

20 Hamilton Avenue, Pollockshields	£500,000 as at February 2002
St. Catherine's Lodge, Turnberry	£135,000 as at February 2002
19 Ravenscourt, Thorntonhall [the defender's home]	Purchased for £140,000 in 2000
Clerical Medical Bond	£100,000 invested post separation, using some of matrimonial property funds in bank at separation

Part of proceeds of sale of property at Sheen Road, London, held on defender's behalf by his sister in an account with the Allied Irish Bank	£135,000 as at November 2002
Flat 1, 64, Langside Drive, Glasgow	£99,000 as at November 2002
Flat 7, 64, Langside Drive, Glasgow - one - half pro indiviso share	£60,000 as at April 2003
Flat at St. James' Square, Edinburgh	Purchased for £66,000 in 1997
Flat at 3/23 North Werber Park, Edinburgh	Purchased for £91,000 in 1999
Interest in company pension scheme	Substantial sums have been paid into this scheme as already referred to
Director's remuneration	Variable but can be substantial as shown in the company's accounts as already referred to
74.75% of the shareholding in the company	Substantial value
Bank account as at April 2003	£130,000

[54]As regards the value of the defender's current shareholding, no witness gave an opinion as to that. However, the defender gave evidence that he had recently sought to negotiate a sale of the right to his site in the fruit market, for £100,000, with a view to ceasing trading himself so that the purchaser would also have the chance to secure the goodwill of his existing customers. The defender described this negotiation as an attempt to sell 'the business' for £100,000 but on closer examination, the reality of what he was trying to sell emerged, as above. There was in fact no question of him seeking to sell his interest in the company which, according to the most recent accounts available, has substantial assets greatly in excess of £100,000.

[55]I was, in the end of the day, left with the impression that the defender was determined to refrain from allowing his wife to get a clear picture of the extent of his resources, an attitude which led me to conclude that he was not entirely honest in his dealings with her or with the court. He, ultimately, was put in a position of having to admit that he had misled the court. The circumstances were as follows: at the close of submissions, Mr Cheyne, advocate for the pursuer, indicated that information had just come to hand to the effect that the defender had recently, though prior to completing his evidence, purchased a flat at number 7 Langside Drive, Glasgow. In the course of evidence and at a date subsequent to that purchase, he had been asked specifically what heritable properties he currently owned. He had failed to disclose this property. There was also a query as to whether he also owned a further flat at 64 Langside Gate. Given that this raised a question as to whether the defender had fully disclosed his resources and as to whether he had misled the court, I refrained from making avizandum and arranged to have the case put out By Order for the defender to give an explanation. In the event, the date arranged had to be postponed on account of the defender's absence from the country. A further By Order hearing was fixed and took place on 22 March 2003. The defender was not present.

[56]At the hearing on 22 March, I was advised that the defender apologised. Mrs Scott, counsel for the defender, advised that she had had a telephone consultation with him in the course of which he had explained that he had sold the flat in Sheen Road, Richmond for £234,000 and had used £99,000 of the proceeds thereof to buy the flat at number 1, 64, Langside Drive, Glasgow. The balance had, I was told, 'been placed at the disposal of his sister, Ms Maureen Coyle, who was buying a farm in Ireland but in the course of that transaction, it was agreed that his sister would advance £50,000 to him for the purchase of flat 7 at the same address, which he proposed to buy jointly with his cohabitee, Christine Coyle.' I was told also that his sister owed him £25,000 but counsel could not say when the money had been lent to her. Thus, of the £234,000 realised from the house at Sheen Road, Richmond, £99,000 had been used to buy flat 1, 64, Langside Drive, Glasgow and £50,000 had been put towards his purchase, jointly with his cohabitee, of flat 7, 64, Langside Drive, Glasgow. He accepted, it was said, that he probably did not tell the court about flat 7.

[57]The above explanation did not accord with what the defender had said in evidence and I, accordingly, granted the pursuer's motion to recall the defender, for the limited purposes of having him give a full explanation of his current assets including the heritable properties that he currently owned or in which he had an interest and to give a proper explanation of what bank accounts he held or had access to, the latter arising from concern regarding the information that his sister in Ireland was holding money for him. The further hearing took place on 3 April 2003.

[58]The defender had been called as a witness by the pursuer on 19 November 2002 and in the course of his evidence in chief that day, he had stated, regarding the house at Sheen Road, Richmond, that it was a property that he had purchased for about £95,000, using some of the money in the Clydesdale Bank account that is referred to in the table of matrimonial property set out above. He initially said that it was in his name and then he said that it was not in his name, it was in his daughter, Caroline's, name. He said that it was in the process of being sold by his daughter because he had asked her to do so and that he would be asking his daughter to give him the proceeds of sale to use to meet his liabilities to the pursuer. He said that the asking price had been just over £200,000, that it had been sold 'on paper' and that the purchase was imminent for a price of £235,000. When asked what he would do with the proceeds, he said, in a cocky manner: 'Oh - I think I'll sail off into the sunset.'

[59]He was also, on 19 November, again in the course of his evidence in chief, asked whether he had any Irish or Isle of Man bank accounts. He replied in the negative. He was then asked whether he had access to sums held in anyone else's name in such an account. He again replied in the negative.

[60]At the hearing on 3 April 2003, the following emerged in evidence: the defender accepted that what he had previously said to the effect that he had not, as at 19 November 2002, received the proceeds of sale of the house at Sheen Road, Richmond, was not true. By that time the proceeds had been realised and he had instructed his London solicitors, Messrs Stone, Rowe and Brewer, to send £99,500 to Messrs Holmes McKillop, solicitors, Glasgow, to complete the purchase of flat 1, 64, Langside Drive, and to remit the balance of some £135,000, to his sister in Ireland. He said that he had not told the truth because he just felt that he was under pressure. He accepted that the balance of £135,000, though in a bank account with the Allied Irish Bank in his sister's name, was his money and that he could get it back as and when he wanted it. The latter was in conflict with his answer on 19 November 2002, regarding whether he had access to any such account.

[61]The defender was then questioned regarding a Power of Attorney that had been utilised in the course of the transaction for the sale of the house at Sheen Road, Richmond. He was shown 7/53 of Process which bore to be a Power of Attorney in favour of the defender signed by his daughter, Caroline, and witnessed by Margaret Kidd, an employee of the defender's company. It is in terms that are wide enough to empower the defender to sell heritable property of the grantor and to receive the proceeds. It was presented to the defender's London solicitors as evidence of the defender's authority to instruct them in the sale and to receive the proceeds thereof. It was a form that was supplied to the defender by his Glasgow solicitors, Messrs Holmes McKillop, who do not appear to have made any enquiries as to whether his daughter had her own solicitor. Somewhat surprisingly, they appear simply to have supplied the Power of Attorney form to the defender, leaving it to him to get it signed and witnessed. He told his solicitor, Ken McClew, of Messrs Holmes McKillop, that he was going to get his daughter to sign the Power of Attorney. What happened thereafter was that the defender himself signed the form in his daughter's name. She had no knowledge of his having done so. He then presented it to Margaret Kidd for her signature as a witness, representing to her that it had been signed by his daughter. She did not know that he had signed it. He then seems to have sent it to his London solicitors, who noted that his daughter had a middle name that did not appear in her signature, so they added the interlineation that appears on the front page: 'otherwise known as Caroline Coyle' to read after the name: 'MISS CAROLINE CAMILLE COYLE' and returned it to the defender for the interlineation to be initialled by his daughter and the witness. He initialled it himself without presenting it to either his daughter or the witness. He accepted in evidence that he had pretended to his London solicitors that the initials on the document were those of his daughter and the witness.

[62]As can be seen from page 2 of the Power of Attorney, there was a note at the end of it, obviously for the benefit of the grantor, which reads: 'The signing of this documentation will give rise to legally binding obligations. You are recommended to take independent legal advice before signing same.'

[63]The defender said in evidence that he did not know who the warning was directed to - he supposed that it was directed at him, a comment which showed a surprising lack of respect for the interests of the other member of his family involved, namely, his daughter but which was redolent of the extent to which his dealings with the pursuer over the matter of what financial provision she should receive, seemed to have been motivated by self interest and an insistence that he should be in control.

[64]As regards the realisation of the sale proceeds of the house at Sheen Road, Richmond, the defender confirmed that that had occurred prior to the last hearing and thus, his evidence on 19 November 2002 regarding that matter was simply not true. He had he said, been totally embarrassed that the matter of his having bought a second flat jointly with his cohabitee was 'being read out in court', an answer which was hard to fathom since there was no reference at all in November to his having done so given that he had refrained from making the disclosure at that time. Because of his embarrassment he had, he said, concealed what had happened with the sale proceeds of the house at Sheen Road, Richmond from the court.

[65]His explanation as to what had happened with those proceeds was slightly different from that which I had been given by his counsel on 22 March 2003. He explained that the purchase price of the first flat had been paid from the proceeds. Then, the remainder, £135,000, had been remitted to his sister who put the money into an account with the Allied Irish Bank. He gave as a reason for doing so that 'with the divorce' ongoing, he just did not want to put a sum of that amount into his own bank account. His sister also owed him money. He had lent her £25,000 about 10 years ago to buy a farm. He had also advanced further unspecified sums on unspecified dates to her to assist in its renovation and improvement. The upshot of that was that his sister had owed him £50,000 from some earlier date.

[66]When it came to the purchase of the second flat, given that his sister owed him money, he asked her to pay to him the sum of £50,000, which she did. He put that towards the purchase price of the second flat, which, as I have already noted, was bought jointly with his cohabitee, the total price being £120,000. He later, following the maturing of his Legal & General Insurance Policy, to which I have already referred, paid his cohabitee a further £10,000 so that their contributions to the purchase price were equalised.

[67]At the hearing on 3 April 2003, the defender stated that his bank account had, as at that date, a credit balance of about £130,000.

[68]He also advised that he had drawn a lump sum out of his pension amounting to approximately £148,000. It was from that sum that he had paid his cohabitee the £10,000 above referred to. He had also purchased a car at a price of £41,000, an extravagance which did not appear to fit with the attempts that he made in evidence to suggest that his financial position was deteriorating.

[69]Throughout the hearing on 3 April 2003, I gained the distinct impression that the defender had little respect for the court and found the proceedings a tedious intrusion which he should not have had to tolerate. He was tetchy, somewhat truculent and apt to treat matters as though he should not have to answer the questions that were being asked of him. He showed exasperation as though he felt that his wife should not, through her advisers, be entitled to make enquiries but should rather, just accept what he, in his dominant position, dictated.

The Award of Financial Provision:

[70]The starting point for the award has to be to recognise that the pursuer is entitled to receive an award which leaves her with a one half share of the net value of the matrimonial property, in recognition of the principle enshrined in s.9[1][a] of the 1985 Act. This is a case where the defender clearly has sufficient assets out of which to meet such an award so there can be no question of reducing it on account of limitation of

resources. Thus, since the total net value of the matrimonial property is £1,157,913 or £1,182,913, as I have already referred to and the pursuer has retained her insurance policy of £21,053, she is due to receive a figure of some £557,903 - £570,403 to achieve equalisation of the net value of the matrimonial property between the parties. It would, in my view, be appropriate in all the circumstances, to regard fair sharing as allocating the sum of £565,000 to the pursuer.

[71]The question then arises as to whether she should receive any further payment in recognition of the application in this case of the principle enshrined in s.9[1][b] of the 1985 Act. Whilst recognising that the principle enshrined in s.9[1][b] of the 1985 Act clearly applies in this case I have reached the view that no further award should be made but only because of the way in which I propose to order that the defender make payment to the pursuer of the sum due to equalise sharing of the matrimonial property.

[72]The pursuer submitted that a property transfer order should be made, of the former matrimonial home, as it was the family home and likely to be used as such by her and the children for the foreseeable future. This was, in my opinion, a reasonable position for her to adopt. It is a house which is matrimonial property, which she has run for the benefit of the family and she proposes to continue doing so. If she were forced to move, she would, on the evidence to which I have already referred, have to buy somewhere large enough to carry on providing a family home. I am satisfied, accordingly, that the pronouncing of a property transfer order in respect of the house at Hamilton Avenue is justified by the principle enshrined in s.9[1][a] of the 1985 Act and reasonable having regard to the parties' resources and I will pronounce such an order accordingly. I am not, however, satisfied that the additional transfer of the property at Turnberry would be justified. I propose also to order that the defender make payment to the pursuer of a cash sum of £295,000. If the pursuer receives, in payment of her entitlement to a half share of the net value of the matrimonial property: [a] a property transfer order in respect of the former matrimonial home at Hamilton Avenue; and [b] a balancing payment of £295,000 then she will, like the defender, be left with both cash investments and some investment in heritable property albeit not to anything like the same extent as the defender. The pursuer's evidence was to the effect that her intention will be to retain the house so as to provide a base not only for herself but also for the parties' children. If she does that, and I have no reason to assess her as other than genuine in her declaration that that was what she intended to do, she would be able to invest the cash payment for income. If the Duxbury tables were used to give a broad indication of what such a cash investment might produce by way of income, it can be seen that that sum would only produce an annual income of some £20,000 net, assuming a real rate of return of 3.75%, which, in the current financial climate may be over-optimistic. I am, however, well aware of the fact that the real value to her of such an award will be significantly in excess of £565,000, given the increase in value of the house, a surplus which will be available for her to call on by way of realisation or secured lending, if she requires it, but it is precisely for that reason that I propose to make no specific award under reference to s.9[1][b] of the 1985 Act. Because of the way in which I propose to order that equalisation of the net value of the matrimonial property be achieved, I am satisfied that the clear imbalance arising from the economic disadvantage sustained by the pursuer will be corrected by an award of the sum which is produced as a result of the equalisation process. Had it been that equalisation could only have been achieved by the awarding of a cash payment, then I would certainly have provided for payment by the defender of a further substantial cash sum as I would not have regarded the sharing of the matrimonial property as adequately recognising the extent of the economic imbalance in this case, where the defender has not been disadvantaged and has, as a result of his working life, an interest in a company and pension scheme which are clearly of substantial value, with the option of carrying on in business for a number of years into the future, all in addition to his share of the matrimonial property, some of which he has converted into valuable investments in heritable property and the pursuer has no qualifications, no job, no pension and, on the evidence, no realistic prospect of earning her living, although matters would have been rather different had she been able to pursue her airline career.

[73]I would add that I was not inclined to place much weight on the defender's evidence that was to the effect that his business has taken a serious downturn, given his lack of credibility on financial matters that was apparent from his having originally misled the court regarding his resources and his dealings over the Power of Attorney which he signed in his daughter's name, as I have already detailed above.

I would add that I am readily satisfied that the award that I propose to make is reasonable having regard to the defender's resources which are very substantial, as detailed above.