OUTER HOUSE, COURT OF SESSION

[2025] CSOH 83

F64/24

OPINION OF LORD BRAID

In the cause

NICOLA DRUMMOND OR MCMAHON

Pursuer

against

JOHN GILBERT MCMAHON

Defender

Pursuer: Ennis, KC; Brodies LLP
Defender: Shewan; TC Young LLP

5 September 2025

Introduction

[1] The parties married at Loch Lomond Castle Estate on 20 March 2010. They separated on 12 August 2024, which, for the purposes of ascertaining and valuing their matrimonial property, is the relevant date determined in accordance with the Family Law (Scotland) Act 1985 section 10(3). They have not lived together as husband and wife since that date. The pursuer seeks a divorce on the ground that the parties have been separated for more than 1 year, the defender consenting thereto. I am satisfied on the basis of the evidence that that ground has been established and that the marriage has broken down irretrievably, there being no prospect of a reconciliation. I will therefore grant decree of divorce.

[2] I require to consider whether any orders require to be made regulating the welfare of any children of the marriage under the age of 16. There are two children of the parties' marriage, both under 16 at the date of commencement of the action, but the elder of whom celebrated his 16th birthday on the second day of the proof. The younger child is aged 15. Both children are happy and healthy. The parties are able to co-operate in matters relevant to their welfare and have agreed the arrangements for their welfare without recourse to this court. I am satisfied on the evidence that there is no need for any order.

[3] The parties have, however, been unable to agree what orders for financial provision should be made and the action proceeded to proof on that issue. Evidence was given by affidavit and expert report, in most instances supplemented by oral testimony. I have had regard to all of the evidence, whether or not expressly referred to in this opinion.

The law

[4] By section 8 of the Family Law (Scotland) Act 1985, the court may make a variety of orders for financial provision on divorce, including, insofar as relevant for present purposes, an order for payment of a capital sum by one party to the other (section 8(1)(a)); and an order for the transfer of property by one party to the other (section 8(1)(aa)). Section 8(2) provides that the court must make such order as is (i) justified by the principles set out in section 9; and (ii) reasonable having regard to the resources of the parties, "resources" meaning present and foreseeable resources: section 27.

[5] Section 9 of Act provides, insofar as material:

> "(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that –
> (a) the net value of the matrimonial property should be shared fairly between the parties to the marriage..."

[6] Section 10 of the Act provides, insofar as material:

"(1) In applying the principles set out in section 9(1)(a)..., the net value of the matrimonial property...shall be taken to be shared fairly between the persons when it is shared equally or in such other proportions as are justified by special circumstances.

(2) Subject to subsection 3A below, the net value of the property shall be the value of the property at the relevant date after deduction of any debts incurred by one or both of the parties to the marriage...

(3) In this section 'the relevant date' means whichever is the earlier of—

(a) subject to subsection (7) below, the date on which the persons ceased to cohabit;

(b) the date of service of the summons in the action for divorce...

(3A) In its application to property transferred by virtue of an order under section 8(1)(aa) of this Act this section shall have effect as if—

(a) in subsection (2) above, for 'relevant date' there were substituted 'appropriate valuation date';

(b) after that subsection there were inserted—

'(2A) Subject to subsection (2B), in this section the 'appropriate valuation date' means—

(a) where the parties to the marriage or, as the case may be, the partners agree on a date, that date;

(b) where there is no such agreement, the date of the making of the order under section 8(1)(aa).

(2B) If the court considers that, because of the exceptional circumstances of the case, subsection (2A)(b) should not apply, the appropriate valuation date shall be such other date (being a date as near as may be to the date referred to in subsection (2A)(b)) as the court may determine.'; and

(c) subsection (3) did not apply.

...

(6) In subsection (1) above 'special circumstances', without prejudice to the generality of the words, may include—

(a) ...

(b) ...

(c) any destruction, dissipation or alienation of property by either person;

(d) ..."

[7] Section 11 of the Act provides, insofar as material:

"...

(7) In applying the principles set out in section 9 of this Act, the court shall not take account of the conduct of either party to the marriage ... unless—

(a) the conduct has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision;

..."

[8] Finally, section 14 of the Act empowers the court to make an incidental order under section 8(2) before or after the granting (or refusal) of decree of divorce, including, by virtue of section 14(2)(k), any ancillary order which is expedient to give effect to the principles set out in section 9 or to any order made under section 8(2).

[9] The effect of these provisions is that matrimonial property must be valued as at the relevant date (whatever its current value), except that property which is transferred by virtue of a transfer of property order under section 8(1)(aa) must generally be valued as at the date of decree. After deducting any relevant date liabilities (not an issue in the present case) the resultant total net value must then be divided fairly, which means equally unless an unequal division is justified by special circumstances.

The matrimonial property

[10] The parties entered into two joint minutes in which they agreed the matrimonial property at the relevant date and (with the exception of the shares in their jointly-owned company, Advantage Wealth Management Ltd (AWM), and the pursuer's jewellery) the value of that property. In summary, the salient features of the matrimonial property are as follows. The former matrimonial home is, and always has been, in the sole name of the pursuer. There is no mortgage over it. As regard the furniture and plenishings within it, the parties have agreed their division and I need not mention them again. Both parties have built up significant pension funds, and both have a variety of other investments. The pursuer is owed a loan of £90,000 by her parents, which she agrees falls to be taken into account. Although in their pleadings the parties each advanced special circumstances arguments in relation to the matrimonial home and their respective pensions, by the end of the proof they had also agreed (a) that their respective financial contributions to the

matrimonial home and the mortgage over it cancelled each other out, and that the matrimonial home falls to be divided equally between the parties in the final financial reckoning; and (b) the extent to which their respective pensions were attributable to the marriage, resulting in each case in a "pre-marital" deduction from the respective pension values. Thus the "pot" for division is largely agreed.

[11] As far as the pursuer's jewellery is concerned, although it "included" two platinum and diamond rings, no evidence was led about any other items. The value placed on them by the pursuer is £400, whereas the defender contends for a value of £6,000. There was little evidence on value led by either party. In support of her evidence that the rings were worth only £400 the pursuer lodged a WhatsApp message from a jeweller to whom she had shown the rings, placing that value on them, and stating that there was little market for second hand rings. The defender referred in his affidavit to his "own internet research" (upon which he did not elaborate) and to the sum for which the rings were insured in proposing a valuation of £6,000. Although the pursuer's supporting evidence could best be described as flimsy - not least because there is no means of verifying the credentials of the jeweller in question - I accept the submission of senior counsel for the pursuer that the sum insured is not a reliable indicator of the value of the rings. The insurance policy and schedule reveals that although the rings were insured for £5,000 each, any claim would not have been paid unless a professional UK valuation within the last 3 years was provided, and no such valuation has been produced, from which I infer none exists. The figure in the insurance policy is therefore of no assistance, and I prefer the pursuer's proposed valuation of £400, on the basis that it is the best evidence I have. Had the defender wished to take serious issue with that figure, it was open to him to instruct his own valuation.

[12] The resultant extent of the matrimonial property, the party by whom it is owned and its value are best shown in tabular form, as follows (table 1). For the purposes of this exercise, I have aggregated the parties' respective VCTs, and rounded all figures to the nearest pound:

Table 1

	Pursuer (£)	**Defender (£)**
Matrimonial home	525,000	
Pursuer's Transact SIPP	418,624	
Pursuer's M&G SIPP	64,449	
Pursuer's Transact ISA	20,664	
Pursuer's Transact GIA	10,128	
Pursuer's M&G ISA	65,940	
Pursuer's VCTs	31,829	
Defender's Transact SIPP		443,449
Defender's M&G SIPP		64,550
Defender's Transact ISA		20,634
Defender's Transact GIA		10,157
Defender's M&G ISA		65,546
Defender's VCTs		31,866
Joint bank account	3,087	3,087
Pursuer's Starling account	46,224	
Defender's Starling account		2,037
Loan due by pursuer's parents	90,000	
Director's loans	4,474	49,482
Pursuer's NatWest Shares	313	
Pursuer's jewellery	400	
AWM shares	?	?
Totals (excluding AWM)	**1,281,132**	**690,808**

[13] Although economic advantage and disadvantage arguments were foreshadowed in the pleadings, these were ultimately departed from. The parties agree that in general an equal division of the matrimonial property would be fair. They also agree that the value of AWM as at 30 June 2025, which they agreed be treated as the current value, is £505,000. However, they are unable to agree the relevant date value, nor whether it is the relevant date or current value which should be used in the division of matrimonial property; nor

are they able to agree whether the pursuer's share should be transferred to the defender, or whether the parties should simply work through their rights as joint owners of the shares. Those are the principal issues in dispute between the parties, and take up the bulk of this opinion. The other major issue is how the former matrimonial home should be dealt with, each party wishing to retain it for her/himself.

Advantage Wealth Management Ltd

[14] The following facts about AWM are not in dispute. It is a company which provides independent financial advice to clients and is regulated by the Financial Conduct Authority (FCA). It was incorporated by the defender in May 2013, during the course of the parties' marriage, and initially he was the sole shareholder and director. He is clearly an accomplished financial adviser and the company quickly grew in value and reputation. Initially, the pursuer continued to work full time for a bank but in 2015, to facilitate child care for their children, the parties agreed that she would accept voluntary redundancy and take up a position with AWM, in which she became both a director and equal shareholder. However, the defender continues to be the sole regulated independent financial adviser (IFA), and it is he who generates the majority of the company's income. The pursuer is herself regulated by the FCA but she is qualified solely to provide mortgage advice, having attained the necessary qualifications to enable her to do so. She also performs secretarial and administrative tasks for the company, and (until the separation) provided support to the defender in his role, including sense-checking his emails and advice. The company has approximately 250 clients, although some of those are either husband/wife or inter-generational members of the same family. Those clients hold investments in various platforms. The company derives its income primarily from fees charged for advice

rendered. Most of the income is recurring, that is, it is derived from on-going advice given to clients of the company. Each client must sign a client agreement which, among other things, stipulates the service to be provided, and the fees which may be charged, albeit neither party saw fit to lodge even a redacted client agreement in process. As at the relevant date, the parties continued each to hold one of the only two shares in the company and to be its only directors, which remains the current position.

[15] Since the relevant date, the parties have been unable to communicate effectively about any of the company's affairs. Many of the clients have moved their investments from shares into cash. The defender has "switched off" the fees, meaning that the company's source of recurring fee income has dried up, with the consequence that the company is now worth only £505,000, as noted above. The reason for the switching off of fees, and the circumstances surrounding the movement into cash, are hotly disputed by the parties. The pursuer's position is that the defender has deliberately sought to drive the value of the company down so as to defeat her claim for financial provision. The defender maintains that his mental health has been so poor due to stress (for which he blames the pursuer and her solicitors) that he has been unable to work, and that switching off the fees was the only responsible course of action open to him.

[16] Having set the scene, I will now turn to consider the evidence given by each party, and their respective witnesses, insofar as material to the issues in dispute.

The evidence

[17] Although the matrimonial home and AWM are the only matters now in dispute, much evidence was given by the parties in relation to other issues, including: the circumstances surrounding the appointment/non-appointment of a locum; the interim

interdict granted at the outset of the action prohibiting dissipation by the defender of AWM's assets; the removal of the pursuer's access to company files and accounts; the parties' respective beliefs that the other was having an affair; the loan of £90,000 by the pursuer to her parents to help fund their house purchase; and the pursuer's post-separation conduct in relation to preparation of the company's accounts and mortgage income. Some of those issues bear upon whether the defender deliberately drove down the value of the company; others bear only upon the parties' respective credibility and reliability. I will discuss the evidence on an issue by issue basis.

The matrimonial home/future intentions

Pursuer

[18] The pursuer did not explain why the matrimonial home was taken in her sole name. She did not dispute that the defender had contributed significant sums to its purchase and to the mortgage, which was now paid off. Shortly prior to the separation the parties agreed that the defender would move into the "annexe" (described by the defender as an open-plan granny flat) which he did, although initially, prior to the separation, they continued to eat meals together. She had then left the house in October 2024 due to the defender's abusive behaviour, and moved into a flat. For a variety of reasons, partly financial, partly because the proof had been delayed and partly because her mental health had improved, she moved back into the house at the end of May 2025. She coped by wearing headphones in the house, which meant she did not have to listen to/hear the defender. She wished to retain the house so that after the divorce she could continue living there with the children (when in her care) in order to provide them with continuity. On her estimate, she provided 80% of the child-care including cleaning and cooking. Her plan, post divorce, is to gain employment

elsewhere, which she will be able to do, perhaps resuming her previous career in corporate and commercial banking.

Defender

[19] The defender said that the pursuer had never really explained why she had insisted that the house be taken in her name. Around the time of the breakdown of the marriage he moved into the annexe at the pursuer's request. She had threatened to build a wooden partition. It was untrue that he had abused the pursuer; any abuse had been by her of him. Her behaviour while both were living in the house had been bizarre. He wanted to remain in the house because he had been the one who had been there constantly throughout the marriage, whereas the pursuer had moved out for 7 months, and so that after the divorce he could continue living there with the children (when in his care) in order to provide them with continuity. He considered that his relationship with the children had become stronger since the separation. His plan, as discussed more fully below, is to continue working as an IFA and to rebuild his business for the benefit of the parties' children.

The locum issue

[20] It was a matter of agreement that it was advisable for AWM to appoint a locum IFA should its sole IFA (the defender) become unable, for whatever reason, to give advice. The defender's evidence was that the company did historically have a locum, Craig Gillon, but that in 2020 the pursuer changed this without his knowledge or authorisation to one Alistair Livingston. On 10 June 2025, the locum was changed back to Mr Gillon, the relevant form to the FCA being signed by the pursuer. The pursuer's evidence was that she had only ever made changes on the instructions of the defender; she would have had no idea who

should act as a locum IFA, that being the sole province of the defender. She did not know either Mr Gillon or Mr Livingston. She pointed to an email exchange she had with the defender in October/November 2024. On 29 October 2024, she wrote:

> "I have no intention of resigning as director at the moment so please feel free to ask any questions and I will respond asap. With regards to a locum or another member of staff I have previously confirmed that I have no issue with you taking on additional help. Just keep me informed."

To that, the defender made the following somewhat enigmatic response on 24 November 2024 (which was about 1 month after he had switched off the fees, allegedly because he was unable to work): "Regarding employing someone I refer to your email dated 29th October at 06:12 please refer to the highlighted paragraph you wrote." Whether or not it is down to the manner in which the emails were reproduced for the court process, I do not know, but the fact of the matter is that there is no highlighted paragraph in the pursuer's email. If it had truly been the position that the pursuer had changed the locum from Mr Gillon to Mr Livingston without the defender's knowledge, then he must have thought, in November 2024, that Mr Gillon was still the locum. As it was, he was unable to, or at any rate did not, give a satisfactory explanation as to why he had not contacted Mr Gillon, or some other person, to act as locum. I also accept the pursuer's evidence that she was not in a position to know whom to nominate as a locum and was reliant on the defender to pass that information to her. It is also fanciful to suppose that in 2020 the pursuer would have inexplicably changed the locum without reference to the defender. I find that the defender's evidence on this issue was merely an attempt by him to blame the pursuer for the company's decline and to deflect attention away from his own behaviour. His failure to take proactive steps in the autumn of 2024 to appoint a locum to operate in his absence casts

serious doubt on his claim that an inability to work was his primary reason for switching off the fees.

[21] The locum issue was mentioned in a report submitted by the defender to the FCA in April 2025, complaining about the pursuer's conduct. In it, among other things, he accused the pursuer of replacing Mr Gillon with Mr Livingstone without his knowledge or consent, stating that, as a consequence the firm currently had no appointed locum in place. That is, at best for the defender, only half of the truth; in particular, there was no mention of the email correspondence between the parties in October and November 2024, or that there had been more than adequate time to appoint a replacement locum had there been a desire on his part to do so. On no view could it reasonably be maintained that the replacement of Mr Gillon in 2020 was the cause of the company not having a locum in place throughout the period from November 2024 to April 2025.

The interim interdict

[22] Since the interim interdict was also a gripe of the defender's in his note to the FCA, this is as good a place as any to deal with it, and its possible breach. In the summons lodged at the outset of the action, the pursuer averred that the defender had told the pursuer that he would ruin her, and would set up another business and novate AWM's clients to it; that a new company, AWMGL, had been set up of which the defender was the sole director and shareholder. She has since established those facts in evidence, and the defender must have been aware of their truth. She averred that the defender was acting with the intention of alienating the assets of AWM and consequently the value of the parties' interests therein. On the basis of these averments, interim interdict was, on 4 September 2024, pronounced as concluded for, as follows:

> "*ad interim*, interdicts the defender from taking any steps to transfer assets or clients of the company Advantage Wealth Management Limited...away from the said company, or to any new business, where such transaction is likely to have the effect of defeating in whole or in part the pursuer's claim for financial provision."

[23] As can be seen, that is in wide, possibly ambiguous, terms. However the defender took no steps to seek its recall, or variation. What he did do, on 4 July 2025, was to withdraw from AWM sums totalling £106,613.16 to himself or for his benefit: a pension contribution of £60,000; a dividend of £37,430; and salary of £9,183.16. When it was suggested in cross-examination that those payment might have been made in breach of the interim interdict, he adopted a somewhat combative approach, asserting that the pension contribution was in line with what the company had done every year (which appears to be correct); as was the dividend; and that the pursuer was entitled to similar withdrawals, albeit he did not appear to tell her that at the time the withdrawals were made. He also said, somewhat truculently, that he required funds with which to pay his legal expenses, and that he did not think the interdict covered those sorts of payment. Whether he thought that or not, in the context of a business whose value, by that time, consisted mainly of the cash in the bank, there is at the very least a tolerable argument that paying funds to or for himself was indeed a transfer of assets likely to have the effect of defeating the pursuer's claim for financial provision, and that the interim interdict was breached by the defender, who displayed a somewhat cavalier attitude towards it. (Had he sought relaxation of the interdict so as to enable him to meet his legal fees, that is likely to have been granted, but that is beside the point.) Of equal significance, however, was what he said to the FCA in his report of April 2025, which was that the interim interdict prevented him from

> "transitioning clients to a new firm, despite there being no non-compete clause in either our Shareholders' Agreement [which was not produced] or the company's Articles of Association".

Again, at best for the defender, that was only half of the picture: he made no mention of the allegation that he had been deliberately attempting to defeat the pursuer's financial claims on divorce, or that he had himself taken no steps to have the interdict varied or recalled.

The removal of the pursuer's access to company files and accounts

[24] Under reference to various screen shots which vouched her position, the pursuer gave evidence that on several occasions the defender had changed her passwords to various accounts so that she was unable to access them. She acknowledged that at the present time a two stage process is required whereby when the password is changed, a code is sent to her phone. It was also common ground that the pursuer's access to the company's shared Google Drive has been disabled by the defender, whose explanation for doing so was that the pursuer was accessing his personal documents on that drive. That particular suspicion appeared well founded since a number of the documents in question formed part of the pursuer's productions. The pursuer's counter-explanation was that the defender had shared private information on the company drive, which he ought not to have done if he had not wished her to access it. The consequence of her access having been denied to the shared drive was that she had had to save company information on her C-drive, which the defender was therefore unable to access but which she was happy to share if she could.

[25] On one level, this chapter of the evidence merely illustrates the level of distrust between the parties. On another, the defender's behaviour in making it more difficult for the pursuer to access company information might also be seen as evidence that he did not wish the defender to find out how he was conducting the company's business.

Affairs?

[26] I can deal with this briefly. The pursuer said that she believed that the defender was having an affair due to his unwillingness to let her look at his mobile phone. The defender said that he believed the pursuer to be having an affair with a client of the company. The basis for that belief was never explained. However, the evidence also showed that the defender had told others, including clients, of his belief, and he wasted no opportunity in his evidence to make reference to it. For the avoidance of doubt, there is no evidence before the court that either party was having an affair, and even if there had been such evidence it would have been of no relevance to the matters in hand (nor, for that matter, was the pursuer's private life any concern of the company's clients). I mention this issue only to illustrate the depth of the defender's animosity towards the pursuer, and his eagerness, occasionally at the expense of the truth, to denigrate her at every opportunity. The pursuer, for her part, mentioned her belief in the context of it being but one of the reasons why she had considered the marriage to be over.

The £90,000

[27] Since the pursuer accepts that the £90,000 paid to her parents for their house purchase should be treated as a loan due to her, forming part of the matrimonial property, half of which requires to be credited to the defender, it is strictly unnecessary for me to make any findings in fact in relation to it. However, the evidence bears strongly upon credibility and reliability. The company's bank account shows: the sum of £81,526 from the sale of the pursuer's parents' previous home as a credit on 23 November 2020; sums totalling £171,526 being debited on 25 November 2020 (apparently for the purchase of the new house); and £90,000 being credited on 21 December 2020 (apparently funded by salary payments to

the parties on the same date totalling £50,000 to the defender and £40,000 to the pursuer). The net result of these transactions was that the company did not bear the cost of the house purchase, although I confess that I remain unclear as to why the transaction was done through the company's bank account. However the relevance for present purposes is the defender's state of knowledge at the time. The pursuer's evidence was that the defender knew all of the foregoing, which was all done with his full consent and knowledge and that he even recommended which solicitors to use for the purchase. In his affidavit, the defender said that the pursuer had withdrawn £90,000 "under the guise" of a director's loan to help her parents buy a house; he had told her "at the time" that he was not comfortable with this, and questioned its legality, feeling that it might create a future issue with both the FCA and HMRC or both, but she went ahead and did it anyway. He went on to say that the documentation disclosed that she gave her parents £170,100 but he did not know how the remaining £80,100 was funded. However, in his oral evidence, the defender said that he had not known about the £90,000 loan until recently. He had seldom looked at the company's bank statements, leaving that to the pursuer. When his attention was drawn, in cross-examination, to the credit of £81,526, which did explain how the balance of the purchase price was funded, he said that he could "see it now". He said that the statement in his affidavit that the pursuer "went ahead and did it anyway" had been "with retrospective".

[28] Related to the foregoing, it was common ground that on the date of separation, 12 August 2024, the pursuer withdrew £45,000 from AWM's bank account. When the defender discovered this, he retaliated by withdrawing the sum of £155,000 on 13 August 2024. According to the pursuer, she had told the defender that she was taking a sum of money out of the company, although she did not disclose the amount to him. He did not

tell her that he would be taking £155,000 but she later discovered he had done so. When she asked the defender for an explanation, he said that the money he had removed was to match her £45,000 plus a sum equivalent to £90,000 with interest, being £110,000. The defender's evidence differed. He denied that the pursuer had told him anything about taking money, but said that he had discovered it from the bank statement. However, he also said that the pursuer had told him to take the £110,000 to compensate for her parents' house.

[29] On any view the defender's account cannot be correct. It is internally inconsistent. If the pursuer had not told him that she was taking money from the company, there would have been no context for a conversation in which she told him to take £110,000 to compensate him for the payment to her parents; in any event, it is implausible that the pursuer would have come up with such a figure. Further, on his own account, the defender seldom looked at the company's bank statements. If the pursuer had not told him of the fact she had withdrawn money from the company, there would have been no reason for him to do so. On the other hand, if she had told him that she had taken money, but not the amount, as she said, then there was every reason for him to look at the bank statement, to find out how much she had taken. Further, in his evidence, the defender, possibly inadvertently, made reference to the day the pursuer "divulged" that she had taken £45,000, before backtracking and saying, "She didn't divulge, the reality was that I logged into the account and found she'd taken £45,000", which contradicts his contention that there was a conversation in which she told him to take £110,000.

[30] The clinching piece of evidence is that on 14 August 2024, the pursuer emailed the defender asking in terms what the £155,000 withdrawal was for; she did not receive a response and emailed again on 27 August 2024, repeating the question and acknowledging, this time, that £45,000 was available by way of salaries and dividends on his director's loan

account but asking him to explain the £110,000. Had there been a conversation along the lines suggested by the defender, there would have been no need for those questions, and the defender would likely have responded to that effect, which he did not do.

[31] I therefore find the pursuer's account of the post-separation withdrawals to be the more plausible and I accept it in preference to the defender's. It inexorably follows that as at August 2024, the defender was well aware of the £90,000 payment to the pursuer's parents, which is at least an adminicle of evidence confirming that he had been aware of it all along, as the pursuer maintained.

[32] Finally, it was put to the defender in cross-examination that his removal of the £110,000 had, on his account, "squared off" the £90,000, to which he replied that it "seemed a reasonable proposition" which was why he did it. When he was then asked why, in that case, his note to the FCA in April 2025 outlined concerns he had regarding the pursuer's conduct over the £90,000, he said that it was because of the manner in which it was carried out and the manipulative manner in which it had been done. However, that does not explain the timing of the report to the FCA. Further, the note was, at best for the defender, as in other respects, economical with the truth, making no mention of the fact that the £90,000 had been compensated for by his own withdrawal of £110,000. Given the timing of the note - after the original proof in the present action had been discharged and pending the proof which took place before me - and taking account of the half-truths in it already mentioned, I find that the report was made with a view to improving the defender's position at proof at the expense of the pursuer, rather than that it represented a genuine expression of what the defender knew and believed at the material time.

The pursuer's post-separation conduct in relation to preparation of the company's accounts and mortgage income

[33] The defender made (at least) two serious allegations against the pursuer in his affidavit. First, he asserted that she had created false accounting entries for debtors in the accounts, presumably, on his account, fraudulently to increase the value of the company; and second, that she had not accounted to the company for fees generated by mortgage business. He then listed several clients for whom a procuration fee should have been received but for which there were no corresponding entries in the company's records or bank account. This, he said, raised a concern that "payments may have been made directly to [the pursuer] or possibly through another mortgage firm." The pursuer had a complete explanation, which I accept, for both allegations. As far as the fee income was concerned, the defender had not told her at the time of switching off the fees that he had done so. She expected the fee income to resume. As it had not been received, she sought advice from the company's accountant and was told that she should accrue the fees, which she did. The entries had since been reversed. As for the mortgage fees, when asked in cross-examination to identify where they were shown in the company's bank statements, she did so with aplomb (at least back to the turn of this calendar year, at which point counsel for the defender abandoned the exercise). The reason there were no entries in the company's books was because the defender had not sent her the remittance statements and so she was unable to split payments received from Legal & General (through which all mortgage procuration fees were made) between mortgage, and other, income.

AWM

[34] The two main disputed factual issues surrounding AWM are, first, what is the appropriate relevant date value, and, second, whether that value has been deliberately dissipated by the defender.

Relevant date value

[35] Expert evidence about relevant date value was given by Mr Alan Robb and Mr Greig Rowand, both of whom are chartered accountants. They agreed that an IFA business could generally be valued by reference to both a multiple of recurring income, and on an earnings basis by applying a multiple to the adjusted EBITDA (earnings before interest, tax, depreciation and amortisation). Applying both approaches allowed recognition of the recurring income expected in future years but also took into account the profitability of the business. On a recurring income approach, and applying a multiplier of 3.5 to the average recurring income over a 3 year period, then adding net assets as at 12 August 2024, Mr Robb arrived at a relevant date value for the company of £2,054,000. For his earnings basis valuation, he took as his starting point adjusted future maintainable profits of £221,000 per annum to which he applied a multiplier of 6, giving an enterprise value of £1,326,000, to which he added net funds giving a total value of £1,867,000. On the assumption that a potential purchaser would be willing to offer only the lower valuation, he valued the company at £1,867,000, giving each share a value of £933,500.

[36] Mr Rowand agreed the foregoing methodology, the multipliers and the figures to which they were applied. However, he disagreed with Mr Robb on three issues. On the recurring income basis of valuation, he considered it appropriate to make an allowance for a corporation tax liability of £368,500, resulting in a reduction of that valuation to £1,685,000.

Second, in arriving at his earnings valuation Mr Robb had assumed a payroll cost of £120,000 for the work done by the parties as directors of the business, which after allowing for the cost of employer's NIC, pension contributions and other costs was equivalent to a salary of £100,000, which Mr Rowand considered to be on the light side. In his view, a more realistic market figure was £150,000 (which comprised a salary of about £125,000 plus the other costs listed). Using that market payroll cost would reduce Mr Robb's estimated value by £180,000 ((£150,000 - £120,000) x 6), which brought out a figure of £1,687,000. Mr Rowand then took as his value of the company, the midpoint between his two valuations, which was £1,686,000, giving each share a value of £843,000. Finally, Mr Rowand considered that a willing purchaser would not be willing to pay the whole value of the company at the date of completion of the sale, but that there would be an element of deferred consideration of the purchase price, typically 50%. Whether or not the element of consideration which was deferred was paid would depend on how the company performed over the period of deferral, typically 2 or 3 years. Mr Rowand, in arriving at the value of the shares, deducted the whole of the assumed deferred element of 50%, thus valuing each party's share at £421,500 as at the relevant date.

[37] In relation to those three matters, Mr Robb's riposte was as follows. He did not agree that corporation tax fell to be deducted in valuing shares which were to be sold (as opposed to the underlying assets). That would in his view be appropriate only where an investment company was sold, when property it owned would be revalued. Unless there was a plan for the purchaser to sell the goodwill, no liability for corporation tax would be incurred and it did not have to be taken into account in the recurring income valuation. As for the directors' salary figure, Mr Robb again stuck to his guns. He considered that his figure of £120,000 was realistic having regard to the salaries actually paid to the parties. Pension contributions

should be largely ignored, since they reflected a choice by the directors as to how to distribute the company's profits and were not truly a salary cost. Finally, he agreed that an element of consideration would be deferred but in his view that did not have any bearing on the value to be placed on the company at the date of sale. He agreed that where there was an element of deferred consideration, not all of that element might ultimately be paid; equally, the deal could be structured in such a way that the ultimate price might increase, if the company did better than expected during the period of deferral.

[38] In relation to the likelihood of deferred consideration being paid, evidence was also given by Victoria Hicks. She is the Group CEO of Melo Advisory Services, which has been brokering the sale of financial planning firms for over 6 years. She said that what a purchaser of an IFA business was buying was essentially client relationships, and the income which they would generate. The continued involvement of the existing financial adviser - in this case, the defender - at least in an ambassadorial role would be required in order to maintain the fee income. If the income were not maintained, the deferred consideration would not be paid in full. Evidence to similar effect was given by David Bremner, whose evidence is discussed more fully below.

Diminution in value - the pursuer's position

[39] As regards the diminution in value of the company, the pursuer's position in evidence was that the defender had deliberately driven the value down so as to defeat her financial claim. He had previously told her that he would ruin her and that she would not get anything financial from the separation; and that he would set up another company and novate the clients to it, which was precisely what he had done. She disputed that the defender had been unable to work. He had not told her about the sick notes he had been

given, nor had he shown any interest in appointing a locum (see above). He was continuing his life as normal. He had attended at least one CPD event, and continued to meet clients. She produced the note of a review meeting with a client, EM, dated 14 March 2025, which recorded that the defender had apparently given advice ("John mentioned possible consolidation of accounts to one platform"; "John recommended moving to a combination of S&P tracker (25%) and Dimensional model portfolio (75%)" and undertaken to research consolidation options. That note also recorded that the defender had told EM that he was going through divorce proceedings, had turned off client fees temporarily during the difficult period and that he may have to start a new business entity (described as "version 2.0") due to divorce complications. She had recently met another client of AWM, SG, who had told her that she had met the defender in a professional capacity in October 2024 and again in February 2025, both within the period when the defender was claiming to have been unable to work.

[40] Despite claiming to be unable to work, and in line with his threat to her, the defender had applied to the FCA for authorisation to carry out precisely the same work as before through a company 100% owned by him. She referred to what bore to be an application by the defender to the FCA dated 22 March 2025 seeking FCA authorisation on behalf of Advantage Wealth Management Group Ltd. The effective date was to be 1 May 2025. The application stated that the defender was the sole director and shareholder of that company and that projected income was £316,000 (presumably, per annum). Under the heading "Professional Experience", reference was made to the defender's experience with AWM and that the new application for authorisation was "purely because of divorce". That was repeated later in the application where the defender stated that "unfortunately due to divorce I am going to have to resign and re-apply for the same permissions. My intention is

to novate all my existing client's (*sic*) across to the new entity". The pursuer had discovered the application on the company's shared drive and she had been in touch with the FCA, sending them a copy of the interim interdict and asking them to put the application on hold. Because the defender had subsequently disabled her access to the company shared Google Drive, she was unable to identify precisely what work he was currently doing for clients.

David Bremner

[41] David Bremner, who has worked in the financial planning industry for more than 30 years, and who also has experience in buying and selling financial planning businesses, confirmed that fees could be switched off by an IFA, but could be reinstated if the original client agreement were still valid. Ongoing fees were linked to the provision of ongoing advice, which must include at least one suitability review every 6 months. Fees tended to be charged monthly, so that switching off fees for all clients in a single month did not reflect the fact that services may already have been rendered and that the fees could remain justifiable for the remainder of the 12-month service period. It made no sense to switch all client fees off *en masse*, which he had not previously encountered. To do so would reduce the value of a business. If an IFA took ill, a locum could be employed to give support for a period of time. Nor did it make sense to move all client investments to cash, since clients had very different risk profiles. The IFA would have to advise the client on the appropriateness of that course and an audit trail would be required.

Diminution in value - the defender's position

[42] Turning now to the defender's evidence, his stated position, as it has been virtually from the moment the parties separated, is that he does not wish to continue working for

AWM for the pursuer's benefit. On 14 August 2024, he incorporated a new company, the aforementioned Advantage Wealth Management Group Ltd (AWMG). In his affidavit, he stated that he has decided to use this company to apply for new regulatory permissions to allow him to advise clients again in the future and rebuild the business that (he alleges) the pursuer destroyed over the last 12 months. He intends to give fully holistic independent financial advice. In a somewhat inflammatory statement in his affidavit, he said that he would be withdrawing his AWM regulatory permissions with immediate effect after the proof concluded. As there was no non-compete clause his existing clients would have the freedom and choice to follow him, which he fully expected to be the case as some of them had been clients for nearly 20 years. In his oral evidence, the defender moderated that evidence in several respects. AWM had been tainted by the pursuer's conduct. He might change the name of AWMG. He could not guarantee that all of his clients would go with him. It was up to them. He would not solicit them, although there was no contractual reason why he should not do so. He had not literally meant that he would withdraw regulatory permissions on the very day after the proof finished. It would take time to get new permissions. Although the productions included what bore to be an application to the FCA for permissions for AWMG, dated 22 March 2025, that had never been submitted. He had prepared it as a "practice" using an AI tool, completing a task in half an hour which otherwise would have taken him hours to do. The projected income of £316,000 had been plucked out of the air, the true figure could be anything from £4,000 to £2.3 million.

[43] As regards why he had switched off the fees with effect from 1 November 2024, which happened to coincide with the commencement of AWM's financial year, the defender ascribed that to his state of health and his consequent inability to work. He had, on his sister's advice, consulted his GP in September 2024, and been diagnosed as suffering from

a degree of adjustment disorder with anxiety or a stress reaction. He had received several sick notes signing him off work for a period of months. He had not been able to give his clients advice. The responsible thing to do, to ensure he complied with his consumer and regulatory duties, was to switch off the fees and move his clients on to a transaction-only basis, meaning that he was relieved of any obligation to give them advice. He moved some - maybe 50% - of his clients to cash because they had given instructions to that effect. He had not been required to, nor did he, give them advice about that, because they were on a transaction-only basis. He disagreed with Mr Bremner on that point. He had managed to keep up with his CPD. He had telephoned all his clients to let them know the position. He had not given any advice to clients since switching off the fees. The note of the meeting with EM had been produced by a different AI tool from the one he normally used and was not an accurate account of the meeting. There had only been a discussion but no advice had been given. He could not remember the dates of his meetings with SG but he did not give her advice either.

[44] The defender's sister, Suzanne McMahon (who is a paediatric surgeon, although she was at pains to stress her medical expertise is not in the field of psychiatric illness), confirmed that she had been concerned about his mental health in August 2024 and had encouraged him to consult his GP, which he had done. By the time of the proof, he appeared to be getting better but was still stressed.

Assessment of the evidence

[45] The pursuer gave her evidence in a confident, straightforward manner, taking time to reflect where she struggled to remember a particular fact or incident and on occasion correcting herself. Generally I found her to be a truthful and reliable witness, willing to

make concessions against interest. The defender, by contrast, seemed more concerned with painting the pursuer in as bad a light as possible, wasting no opportunity to denigrate her both in his affidavit and in his oral evidence (as well as having done so in his note to the FCA), often doing so where his answer bore little relation to the question asked. As I have highlighted in several passages above, his evidence on various issues vacillated and, on occasion, his oral evidence differed from what had been sworn, under oath, in his affidavit. In some instances, notably in relation to the £90,000 loan to the pursuer's parents, his evidence was demonstrably incorrect. Where his evidence differed on any material point from that given by the pursuer, I prefer the evidence given by her. The other witnesses were all credible and reliable.

Submissions

Pursuer

[46] Senior counsel for the pursuer submitted that the correct approach was to divide the relevant date value of all of the parties' assets fairly between the parties. Since the pursuer was seeking a capital sum, coupled with an incidental order under section 14 that the defender acquire her share in AWM, and was not seeking a transfer of property order under section 8(1)(aa), section 10(3A) of the Act had no application. Accordingly, it was the relevant date, rather than the current date, value of AWM that fell to be divided fairly between the parties. As to what that value was, there was no basis in law for halving the relevant date valuation of the company simply because half of the consideration would be deferred. The evidence showed that the goodwill of the business lying in customer relationships was likely to be maintained, and the whole purchase price would likely be achieved. The court should not allow the parties to realise the value of AWM through a

members' voluntary liquidation, as the defender proposed. Such an approach would not be consistent with *Foster* v *Foster* 2024 SC 99. A "clean break" approach was preferable. As for the former matrimonial home, it had always been in the pursuer's sole name. Retaining that asset would allow the pursuer to rebuild her former life. It was the only home that the parties' children had known. The pursuer had been their main carer when they were younger. With the exception of the pursuer's share in AWM, it was appropriate that each party retained the assets which they currently held in their own name. Transfer of the share in AWM to the defender at relevant date value would result in a balancing payment to the pursuer of (on the pursuer's figures) £675,887.

Defender

[47] Counsel for the defender submitted that the relevant date value of AWM was something of a red herring, since it was the current value which required to be shared. The fundamental common law principle was that the owner benefitted from any increase in value between relevant date and current date: Clive, *The Law of Husband and Wife in Scotland (*4th Edition*)*, paragraph 24.028. The same principle applied in respect of decreases in value. In *Foster*, above, shares had been transferred at current value. In terms of section 10(3A), if a transfer order were made, the appropriate valuation date was the current date. In any event, the defender had made clear that he did not wish to continue in the business. The value of the parties' shareholdings should be divided equally between the parties via a voluntary liquidation process after taking account of the defender's withdrawals. Insofar as relevant date value might be relevant, the 50% of the value at the relevant date (namely, the deferred consideration) which was dependent on the future efforts of the defender should be excluded from the value of the company as a special

circumstance, failing which a proportion of it should be excluded. As far as the matrimonial home was concerned, the defender's primary position was that he wished it transferred to his sole name. He had remained there throughout whereas the pursuer had absented herself for 7 months, in addition to which he had more responsibility for transporting the children to their activities. He recognised that transfer of the house to him would result in his requiring to pay a capital sum to the pursuer. Alternatively, if the matrimonial home remained in the name of the pursuer, he should receive a capital sum of £298,000 to achieve equal sharing of the matrimonial property [that figure is on the assumption that the defender's valuation of the jewellery is also accepted; taking that value, as I have found, to be £400 would result in the defender receiving a capital sum of just over £295,000]. If the pursuer could not afford to pay that sum, the house should be sold and the proceeds divided equally.

Decision

[48] The first matter to determine is the relevant date value of AWM. A commonly used, although by no means definitive, description of how the value of a business is to be arrived at is found in *Sweeney* v *Sweeney* 2004 SC 372 at 380:

> "As a matter of ordinary language 'the value' of [any] property which is realisable for money is the price which a hypothetical purchaser would pay, and the hypothetically willing seller receive from him, for that property on a hypothetical sale at the date in question."

The issue under consideration in that case was whether account had to be taken of a capital gains tax liability potentially incurred by the husband were he to sell the shares which required to be valued, the Inner House holding not; and so the reference to the price being paid on a sale at the date in question must be understood in that context. The court was not

suggesting that the whole price agreed necessarily had to be paid on the relevant date. A price paid by instalments is nonetheless a price. However, the hypothetical sale in the present case is more complex since it would likely involve an element of the price - on the evidence, 50% - being deferred for up to 3 years to measure the agreed price against actual performance, and some or all of that element might never be paid. Accordingly, the valuation exercise here essentially involves a two stage process. First, what consideration would have been agreed by a hypothetical willing purchaser and willing seller as at the relevant date; and second, to what extent if at all does that require to be adjusted for the purposes of the 1985 Act to take account of the fact that half of the consideration would have been deferred.

[49] The first part of that exercise turns on an assessment of the evidence of Mr Robb and Mr Rowand. Both have considerable experience of providing expert reports for use in litigation and of giving evidence in this court. As is apparent from the above discussion of their evidence, and as one would expect standing their over-riding duty to the court, they were aligned on most issues, and even where they disagreed they were prepared to acknowledge the valid aspects of the other's approach. I do not agree that their difference in relation to whether corporation tax requires to be taken into account in the recurring income valuation is necessarily a moot point simply because Mr Robb did not ultimately value the company on the basis of the recurring income valuation, as was put to Mr Robb in cross-examination. As Mr Rowand pointed out, Mr Robb's view was that the lower of his two valuations should be selected, and so if deducting corporation tax in the recurring income calculation brought out a lower figure than the earnings valuation, that would then become the figure which, according to Mr Robb, should be selected. However, on this matter I prefer the logic of Mr Robb's approach, which was based on the premise that, as a

matter of fact, liability for corporation tax would be incurred only if the underlying assets of the company (in this case, goodwill) were to be sold, whereas here we are dealing with a hypothetical sale of shares. Mr Rowand agreed with that, but said he had seen corporation tax taken into account even in a share purchase. I do not dispute that, but each case must turn on its own facts and in the context of the hypothetical share of sales which we are considering, I do not consider that it must be assumed that the purchaser would have the intention of selling on the goodwill. I therefore accept Mr Robb's recurring income valuation of £2,054,000. As regards the difference between Mr Robb and Mr Rowand in relation to the earnings valuation, that centred on the figure to be deducted for the directors' employment cost, Mr Rowand being of the view that Mr Robb's figure of £120,000 was on the light side, and Mr Robb staunchly defending that figure by reference to the salaries actually taken. However, neither had conducted extensive - or indeed any - market research, and both advanced plausible reasons to support their respective figures. In this instance I propose to split the difference and reduce Mr Robb's figure by £90,000, rather than Mr Rowand's suggested £180,000, giving an earnings valuation of £1,777,000. While I can see the force of Mr Rowand's approach of taking the mid-point between the recurring income valuation, and the earnings one, which was what he did in arriving at his own proposed valuation and which takes account of what the willing seller is prepared to accept, as well as what the willing purchaser is prepared to offer, he also said that if one valuation was significantly different from the other, that would cause one to revisit the whole valuation exercise. Accordingly, I do not think it is open to me to select a figure half-way between Mr Robb's £2,054,000 and his adjusted figure of £1,777,000 which would, in any event, bring out a figure higher than the pursuer is contending for. Adopting Mr Robb's approach of taking the lower valuation, I therefore arrive at a relevant date *provisional*

valuation - that is, before taking into account the impact on value, if any, of deferred consideration - of £1,777,000, of which £888,500 would have been deferred.

[50] Turning to the second stage of the exercise, which is the impact of deferred consideration on value, counsel for the defender sought to draw an analogy with the approach taken in *T* v *T* 2021 CSOH 6, submitting that in that case, at para [40], Lady Wise took into account the existence of contingent liabilities in considering the appropriate division of matrimonial property, even though the position regarding payment or non-payment of those contingent liabilities was uncertain. However, what Lady Wise actually said, at para [31], was that the value of the companies under consideration in that case would *not* be reduced by any portion of the contingent liabilities or intercompany loans but that most of the sums (potentially) due would be placed in an escrow account to deal with the risk that some or all of them might crystallise. Accordingly, to the extent any analogy might be drawn with the situation where a company being valued has contingent liabilities, I consider that the analogy favours the pursuer's approach rather than the defender's. However, I am not persuaded that *T* v *T* is directly analogous to the current case in any event. The deferral of consideration is, in reality, a mechanism whereby the price to be paid for the shares may be adjusted in order to reflect what might be described as the actual value of the company at the date when the sales are sold. As Mr Rowand put it, "it depends on the contingencies, you don't actually know what the value will be" [ie, at the time of the sale]. Even if that is not correct, in a matrimonial context it would be inequitable to allow one party to benefit from a hypothetical price if in reality that price would never have been achieved. Accordingly it is necessary to try to assess the likelihood of the deferred consideration being paid, which in turn leads to consideration of the extent, if at all,

that it should be assumed that in a hypothetical sale the defender would continue to work at AWM for the benefit of the pursuer.

[51] No authority was cited in which the court has previously had to consider how deferred consideration should be dealt with in the context of valuing shares which are matrimonial property for the purposes of a claim for financial provision under section 8. Dealing with one submission made by counsel for the defender, it is not possible to discount part of the consideration as a special circumstance in a section 10(1) sense, since special circumstances may justify an unequal sharing of matrimonial property: they cannot affect the calculation of the value of that property in the first place, which is a separate, and prior, exercise. However, useful guidance is to be found in *McConnell* v *McConnell* 1997 Fam. L.R. 97, in which the court was faced with the task of valuing the defender's shares in a company which provided architectural services, in the light of competing expert opinions. In rejecting the evidence of the pursuer's expert, who had valued the company on the assumption that key personnel would be available to the purchaser of the shares in the hypothetical sale contemplated by him, Lord Osborne said, of that assumption that it was:

> "...an assumption that it is illegitimate to make in connection with a valuation being made for the purposes of the Family Law (Scotland) Act 1985. It is quite clear to me that the shares which are under consideration here are matrimonial property, within the meaning of section 10(4) of that Act...However, it is equally clear to me that the terms and policy of the Act of 1985 in relation to orders for financial provision on divorce are such that, in relation to a capital sum, a claimant has no right to participate in property generated by the efforts of the other party following upon the relevant date. I consider that the assumption, ...to which I have referred, would necessarily have the effect of enabling the pursuer in reality and substance to in such property (*sic*)." [I assume the missing word is 'participate']

[52] In the present case, the preponderance of the evidence - indeed, although he did not approach it in that way in his report, Mr Robb agreed - was that 50% of the purchase price would be deferred and that some or all of it would be paid after 2 or possibly 3 years,

depending on how the company had performed in that period, depending in turn on how many of the clients who generated recurring income would remain with the company following the sale, which in turn depended in large measure on whether the defender remained with the company. Not only, following the approach taken by Lord Osborne in *McConnell*, would it be illegitimate to assume that the defender would remain available to the company, the defender's own evidence (which in this regard I do accept, being consistent with his post-separation behaviour) is that in a real-life scenario he would not be so available. Senior counsel for the pursuer sought to argue that the deferred element of the consideration was irrelevant, since one could only know what 50% of the value was after first arriving at a value. However, I think a better way of looking at the matter is that the hypothetical purchaser who has agreed a price assessed on an earnings basis would be willing to pay, as total consideration, only that which the company is ultimately found to be worth, which, on the evidence, picking up on Mr Rowan's comment quoted above, cannot be known until a period of years has passed following the sale. The very point of deferring half of the consideration is to adjust the price actually paid so that it reflects the true value of the company. Further if the valuation is carried out on the assumption that the key personnel remain with the company, and the hypothetical seller were to make it clear at the outset that that would not be the case, then, on the evidence, it is inconceivable that the hypothetical purchaser would agree to pay the full value based upon that assumption.

[53] It does not follow, however, that the full element of the deferred element of the consideration falls to be left out of account, as Mr Rowand initially suggested in his report, although both he and Mr Robb agreed in evidence that either all, or none, or some, of the deferred consideration might eventually be paid. Although the defender's evidence fluctuated from time to time, he did not contend, or at any rate I do not accept, that all of

the company's clients would have left AWM following a sale, and his (assumed) departure. In any event, not all of the company's income is derived from its investment and life and pension income which the defender generates. Mr Rowand tells us that it accounted for 89% of the company's total turnover. Taking account of those two factors, and applying a broad brush approach as best I can, I propose to proceed on the basis that on the hypothetical sale scenario 15% of the deferred consideration of £888,500 would have become payable, amounting to a further £133,275, giving a total price, and therefore relevant date valuation, of £1,021,775. The value of each party's share at the relevant date was therefore £510,888. Inserting that figure into the appropriate column for each party into table 1 above gives a value for the pursuer's total relevant date matrimonial property of £1,792,021; and for the defender's matrimonial property, £1,201,696.

[54] This leads to the next question which is why the value has slumped to £505,000. I am satisfied, on a balance of probabilities, that the defender deliberately brought about a reduction in value in an attempt to defeat the pursuer's claim for financial provision. I reach that conclusion for a number of reasons. First, he told the pursuer that is what he would do. Second, he has consistently told others that he intended to start a new company - version 2 as he described it to EM - because of the divorce, and to novate all clients to it, whereas the fact of his divorce from the pursuer in no way prevented AWM from continuing as before. This is what he still intends to do. Whether his application to the FCA for new authorisations has been submitted or not, its content is, at the very least, indicative of the defender's state of mind and of his intentions. Third, his failure to appoint a locum, and his blaming the pursuer for the non-appointment, is indicative of an intention to reduce the company's recurring income, and therefore value, rather than an alleged inability to work due to ill health. Fourth, I accept Mr Bremner's evidence, for the reasons he gave, that

switching off all the fees *en masse* made no sense. Fifth, the timing of the switching off of fees so as to coincide with the company's new financial year, coupled with the defender's avowed intention to resume giving advice through his new company as soon as the divorce action has been concluded smacks of a planned and deliberate course of action, rather than an inability to work. Sixth, having procured a series of sick lines from his GP, the defender did not share these with the pursuer, his co-director.

[55] In reaching this conclusion about the defender's motives, I do not disregard the medical evidence about the defender's mental health, or that of his sister. I do not doubt that the defender did suffer a stress reaction: separation and divorce is a stressful business. However, notwithstanding the sick lines from his GP, and the other evidence about his mental health, the evidence falls far short of showing that the defender was unable to work to the extent he claimed. On the contrary, the note of his meeting with EM clearly shows advice having been given and I reject the defender's evidence that the note is the product of an unsatisfactory AI tool. I also reject the notion that he would simply have allowed up to half of his clients to switch into cash without his having given them advice to do so. It seems unlikely that a significant number of clients would have spontaneously made that suggestion of their own accord; and even if they had, I do not accept that the defender would not have given them advice not to do so, had he considered it the wrong thing for them to do. He does, after all, wish them to move with him to his new company.

[56] Having established what the relevant date value of AWM was, and that the defender has deliberately caused that value to diminish by more than half, the next question is how the shares should be dealt with in the context of the pursuer's claim for financial provision. Although it might be thought that in substance what she wishes to achieve is a transfer of property order in favour of the defender in exchange for payment to her, senior counsel for

the pursuer submitted that she is seeking payment of a capital sum together with an ancillary order in terms of section 14(2)(k) of the 1985 Act that the defender acquire her share in AWM. The defender rightly does not dispute the competency of that approach: *Murdoch* v *Murdoch* 2012 SC 271; *Foster*, above. However, it is not the competency of the approach which is in issue, but whether that approach requires the share to be valued at current, or relevant date, value. In *Foster*, it seems to have been taken for read that the shares be valued at their current value, but in that case the value had increased since the relevant date, whereas here we are faced with the converse situation where the value has decreased.

[57] The pursuer's submission is not quite in line with what her amended pleadings seek, her third conclusion being for transfer of her share to the defender in exchange for payment of the sum of £933,500 (being the pursuer's estimated relevant date valuation of her share), *in addition* to payment of a capital sum. That conclusion was introduced following the deletion by the defender, from his pleadings, of his conclusion for transfer of the pursuer's share to him for either no consideration or subject to such capital sum as the court thought fit. Thus both conclusions - the defender's now deleted one, and the pursuer's new one - seek to achieve the same end, *viz*, transfer of the pursuer's share, for a sum of money. Had the defender's conclusion remained extant, then, because he was seeking transfer of property owned by the pursuer to himself in terms of section 8(1)(aa) of the Act, the share would have required to be valued in accordance with section 10(3A) (set out above), requiring present day value to be applied, unless exceptional circumstances required otherwise (presumably "exceptional" is intended to mean something other than "special", but I was not addressed on that). However, senior counsel for the pursuer is correct in pointing out that, strictly speaking, her conclusion is not an application made in terms of

section 8(1)(aa), since she is seeking transfer of property owned by her to the defender, which is not an order for the transfer of property to her by the other party to the marriage.

[58] It is correct that on a literal construction, section 10(3A), in terms, applies only to property transferred by virtue of section 8(1)(aa) and so not to a combination of orders having the same effect. However, it seems to me unlikely that Parliament would have intended that where property is transferred to a party because that party has asked the court to transfer it to him/her, the property should be valued on one basis; but that where the same property is transferred to that same party on the application of the other party, it should be valued on a different basis. That anomaly is highlighted in the present case by the amendments to the parties' respective conclusions. If the pursuer's submission is correct, then the defender would have been entitled to acquire the pursuer's share at current value until the pleadings were amended by the parties, but now must acquire it at relevant date value, which would be an odd result. I am by no means persuaded that it is not possible to avoid that outcome by interpreting the Act in such a way as to read section 10(3A) as applying to any order which had the effect of transferring property from one party to the other, but I did not hear detailed submissions on the point.

[59] As regards the argument by counsel for the defender that, for the purposes of the 1985 Act, jointly owned assets must *always* be valued at current value, on common law principles, I do not accept that is correct, nor is that argument supported by the passage in Clive founded upon. Where jointly owned property has *increased* in value since the relevant date, I agree that, under the common law, the owners would benefit equally. That is because the increase does not constitute matrimonial property, and so falls outwith the scheme of the Act. The matrimonial property is effectively frozen at the relevant date and falls to be shared equally, but the increase is also shared equally by virtue of the rights of

ownership. However, the same reasoning cannot be applied where the property has *decreased* in value. Logically, (but for section 10(3A), the relevant date value for the purposes of the statutory scheme still requires to be the starting point for the division of assets (as it is where the value has increased).

[60] Be all that as it may, it ultimately makes little difference as to whether relevant date, or current date, value requires to be taken as the starting point, because the court is always required to achieve a fair division of the net matrimonial property. Where, since the relevant date, jointly owned property has diminished in value through no fault of the parties, then it is likely to be unfair to require one co-owner to bear the total brunt of that at the expense of the other, whatever orders for transfer of property, or otherwise, happen to be made, or not made. If necessary, a fair result could be achieved through resort to special circumstances and by adjusting the division of the net matrimonial property accordingly.

[61] However, that is not this case. Here, as I have found, the defender has deliberately caused the reduction in value of AWM through his conduct. Section 10(6)(c) of the Act lists destruction, dissipation or alienation of property as things which can amount to "special circumstances" such as to justify an unequal division of the matrimonial property. Accordingly, a fair division can be achieved in one of two ways, depending on whether the starting point for valuation of the shares is current, or relevant date, value, both arriving at the same result. If relevant date value is correct, fairness does not require that any adjustment be made to that figure, and the matrimonial property can then be divided equally. Alternatively, if current date value must be taken as the starting point, a fair result can be achieved by dividing the net assets unequally so as to restore the pursuer to the position she would have been in had the defender not caused the shares to diminish in

value. Either way that result is achieved by treating the shares as having their relevant date value.

[62] The final matter to resolve is how all of the foregoing should be reflected in the orders which I make. Even apart from the dubious appropriateness of doing so (as to which, and the reasons therefor, see *Foster* above), I am not attracted by the defender's suggested approach of allowing the parties to work through their rights in AWM by means of a members' voluntary liquidation. Apart from anything else that would require a level of co-operation between the parties that has been non-existent now for more than a year. Additionally, and more fundamentally, it would not enable the court to make an adjustment to reflect the diminution in value caused by the defender (or at any rate, would make that exercise more complicated and speculative than it need otherwise be). It would also expose the pursuer to half of the costs of the liquidation exercise, which it is not fair, in the circumstances, that she should bear. Instead, it is appropriate to make an award to the pursuer of a capital sum, as she seeks. Incidental to that, since the capital sum will take account of the value of AWM, I will order her to transfer her share in that company to the defender.

[63] As regards the former matrimonial home, I consider it fairer, overall, that the pursuer retain it, for the reasons submitted on her behalf. Post-divorce, even allowing for a degree of hyperbole as to what income he might generate, the defender is more likely to be able to rebuild his wealth at a faster rate than the defender. Care of the boys is a short-term factor but likely to diminish in importance as they emerge into adult-hood. It would be unfair in effect to penalise the pursuer for having moved out of the house for 7 months when the stated reason for doing so was the defender's behaviour towards her.

[64] Those decisions, with the house remaining in the ownership of the pursuer, and the defender assuming ownership of the entire share capital of AWM, result in table 1 being recast as follows:

Table 2

	Pursuer (£)	**Defender (£)**
Matrimonial home	525,000	
Pursuer's Transact SIPP	418,624	
Pursuer's M&G SIPP	64,449	
Pursuer's Transact ISA	20,665	
Pursuer's Transact GIA	10,128	
Pursuer's M&G ISA	65,940	
Pursuer's VCTs	31,829	
Defender's Transact SIPP		443,449
Defender's M&G SIPP		64,550
Defender's Transact ISA		20,634
Defender's Transact GIA		10,157
Defender's M&G ISA		65,546
Defender's VCTs		31,866
Joint bank account	3,087	3,087
Pursuer's Starling account	46,224	
Defender's Starling account		2,037
Pursuer's parents	90,000	
Director's loans	4,474	49,482
Pursuer's NatWest Shares	313	
Pursuer's jewellery	400	
AWM shares		1,021,775
Totals including AWM	**1,281,132**	**1,712,583**
Balancing payment	**215,726**	**215,726**
Outcome	**1,496,858**	**1,496,857**

[65] As can be seen, dividing the matrimonial property equally will result in a balancing payment by the defender to the pursuer of £215,726.

[66] The fairness of such an award can be assessed in another way. Very roughly, it equates to half of the present day value of the company. Looking at the remainder of the matrimonial property, as set out in table 1, the result is that it is divided, again very roughly, 2:1 in the pursuer's favour. Standing the defender's conduct in deliberately dissipating the

value of not only his own, but the pursuer's share in AWM, which is, in the words of section 11(7)(a) conduct which has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision, I consider that to be a fair distribution of the matrimonial property.

[67] Three further matters require to be considered. The first is that, in terms of section 8(2), any order requires to be reasonable having regard to the present and foreseeable resources of the parties. While the pursuer has vouched her present resources, the same cannot be said of the defender. In his affidavit he said that they remained more or less as they had been at the relevant date. However, it emerged in the evidence that he had an Easy Saver bank account, referenced in his Starling account, which he has not vouched. I therefore decline to conclude that his resources are such that it is unreasonable to expect him to pay a capital sum of £215,726 to the defender. He has certainly not proved that.

[68] The second matter is that I have given consideration to whether it would be equitable that the pursuer receive a sum equivalent to the £106,000 which the defender withdrew from the company in July 2025, in addition to the £215,726. However, I have concluded that it would not. Had the defender not removed that sum, the pursuer would still have received £215,726, and to order payment of an additional £106,000 would involve an element of double counting since she is already being credited with the full value of the company as at the relevant date, which included the company's net assets at that time. The effect of this is that the remaining assets of the company will in practice be available to the defender for payment of the capital sum due to the pursuer. The third matter is that in order to achieve a clean break, the pursuer requires not only to transfer her share in the company to the pursuer, but to resign as a director. That was not sought by either party, but I trust that she will do so contemporaneously with the share transfer.

Disposal

[69] Drawing all of this together, I will sustain the pursuer's first and second pleas in law, and repel all other pleas. Consequently, in addition to decree of divorce, I will make the following orders:

(i) an award to the pursuer of a capital sum of £215,726, in terms of her second conclusion. I will allow the defender 1 month for payment, and order that interest run thereafter at the rate of 8% per annum;

(ii) an incidental order under section 14(2)(k) of the 1985 Act that the pursuer transfer to the defender her share in AWM, all as more fully set out in terms of her third conclusion (i) and (iii), refusing (ii) as unnecessary;

I will refuse the remaining conclusions as not insisted in, and I will refuse all of the defender's conclusions. While strictly unnecessary, given the refusal of the conclusions for permanent interdict, I will recall the interim interdicts previously granted.

[70] I will reserve the question of expenses.