

Tuesday, 25 September 2018

Before:  
HIS HONOUR JUDGE BOOTH

B E T W E E N:

W and W

MS HARRISON QC and MR KLOSS appeared on behalf of the Applicant wife  
MR BISHOP QC appeared on behalf of the Respondent husband

APPROVED JUDGMENT

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## HHJ BOOTH:

1. This is my judgment dealing with the wife's application for financial relief consequent upon the parties' divorce. I will refer to the parties as husband and wife for convenience and to give them anonymity. The wife has been represented by Ms Sally Harrison QC and Mr Alex Kloss, the husband by Mr Tim Bishop QC. During a four-day hearing I heard evidence from the parties, from the husband's two sisters and from a single joint accountancy expert who had been instructed to provide a valuation report on the husband's various business interests. There was insufficient time for me to deliver an oral judgment at the conclusion of the trial.

### **Background**

2. Let me set out a little background. The parties' relationship began in 1992. They had both been involved with other partners, the husband being divorced from his first wife after a short marriage. The wife had a son from her previous relationship. They first began to live together in about 1993 or 1994 at the same time as the husband was starting the business that has provided the source of the parties' support and wealth.
3. The husband had been married for the first time in 1988. He lived with his first wife in the farmhouse that had originally been bought by his grandfather in the 1920s and had provided a home for his parents, and his two sisters had also been brought up on the farm, although they had left when they reached adulthood and formed relationships of their own. Over time, the farmhouse had been added to so that there is now ownership of an attached cottage, additional land and a further house known as the Lodge. It had not in living memory operated as a productive farm. The husband's father had a milk round and used the land at the farm for his hobby of breeding Shire horses. The wife adopted that interest and in recent times the husband has acquired a herd of pedigree cattle which he has run as a hobby on the land at the farm.
4. After initially living together in the wife's rented accommodation, the parties set up home together at the farmhouse, together with the wife's son. Over the course of time, they carried out very considerable improvements to the farmhouse so that it has represented an attractive and very comfortable home for them and their family. They have gone on to have two children together, a son who graduated from university a year or so ago and has subsequently lived in the cottage adjoining the farmhouse, and a daughter who has just completed her schooling and is expected to go on to university this autumn. The wife's son was adopted by the husband and he lives in a caravan in the grounds of the farm. Both sons work in the husband's business.
5. Whilst they lived together as a family, it was the wife who took primary responsibility for the care of the children. The husband described himself as a workaholic. In addition to her childcare responsibilities for three children, the wife periodically worked in the business, in particular in the struggle following the financial crash of 2008, so giving her a reasonable working knowledge of the administration side of the business. The husband has always relied on others for administration and for example, does not know how to operate the computer system that records the business activities.
6. One advantage of living in a family-owned farmhouse was that there were no costs of acquisition, meaning that more of the income generated by the business could be either reinvested or used to support the parties' lifestyle.

### **The husband's business**

7. The first career that the husband had was as an HGV driver. He then branched out into

- plant and plant hire, firstly in partnership with somebody else in a business that failed, but in 1993, started a plant hire business operating from the farm. He continued as an HGV driver whilst sourcing, renovating and hiring out initially tractors and then other items of plant. To get the business started, he was helped by his father, who put in £10,000 to match the funding put in by the husband.
8. A great deal of the evidence was spent examining the role of the husband's father. At the time he was helping the husband with the plant hire business, he had retired from his milk round and the husband sought to play up the role that his father had. The wife gave a very different picture. I do not have the material to make firm findings, but I was left with the very clear impression that the role of the husband's father was a supportive role to the husband so that he was physically around whilst the husband was often away with his driving job. He would assist in fettling tractors and other pieces of machinery, but the skilled part of the business - identifying appropriate equipment to buy and establishing the contacts with those who might rent it - was entirely the work of the husband.
  9. The business was incorporated in 1997. The shareholding was divided 25% to the husband, 25% to his father, 25% to the wife and 25% to the husband's mother. The limited company began to trade in 2002 and the growth of the business was remarkable. When the husband's father died in 2003, his 25% shareholding passed to the husband. In 2005, a group structure was established whereby the husband held 52.44% of the shares, with the wife and the husband's mother holding 23.78% each. The husband's mother played no part in the business whatsoever and, on her death, the husband inherited her shareholding so that the present time is the husband holds 76.22% and the wife 23.78% of the issued share capital.
  10. Under the umbrella of the group, the husband has innovated with other machinery to do specialist jobs. There has been some evidence about how successful that may or may not have been. For present purposes, it makes no difference to the outcome of this case. In addition to the group business, the husband established a separate company which operates as a franchise for a well-known machinery manufacturer. There is trade between the two companies, with the group buying equipment from the separate company, as well as that separate company trading with other companies and the public.

### **The farm**

11. The wife has agreed that the cottage and some of the land should be left entirely out of account on the basis that they are occupied by the parties' son. The farmhouse however has been a matter of major contention. On separation, it was the wife who left and she has lived in rented accommodation ever since. The husband has stayed at the farmhouse, together with the parties' daughter. She will go to university in the autumn and the husband expects her to return to the farmhouse during her vacations. The wife expects her to spend some of her time with her wherever she is living.
12. The wife's case is that throughout the marriage, she was led to believe that the farmhouse and indeed the other properties and all the land was held in the parties' joint names. The husband's case, as has turned out to be the position, is that that was not so. In fact, the farmhouse remains owned by the estate of the husband's late father. His will created a trust providing for the husband's mother to have occupation for life with a remainder trust for the benefit of the husband and his two sisters.
13. The husband's case is that the farmhouse and the farm in its entirety is held for the benefit of the parties' son who currently lives in the cottage. The husband's mother's will when she died in 2013 is expressed to leave the farm, including the farmhouse, to that son if he attains the age of 25. She had no title to leave.
14. It was ultimately agreed that the position was that the current legal ownership of the whole

of the farm, including the farmhouse, is held by the husband and a solicitor as executors of the husband's father's estate. Whilst acknowledging the terms of their father's will, both husband's sisters say they have no beneficial interest in the property and go on to say that it was the intention of their father that it should be left to the parties' son who currently occupies the cottage. When it was pointed out to one of them that at the time of her father's death, that child was a mere eight years of age, she expressed some surprise.

15. The wife relied on the amount of money that the parties had spent modernising the farmhouse as a clear indication that it was a property that they owned. At the very least, that, it was submitted on her behalf, would be consistent with an intention for them to remain there. It was the wife's case that had there been no divorce, she and the husband would have continued to live in the farmhouse for the rest of their days. Again, it was the wife's case that the husband will remain in the farmhouse for the rest of his days, whatever else he may have said to the court. He has lived at the farm throughout his life and at the farmhouse for all his adult life.
16. It was the husband's position that the farm and the farmhouse play a central role in his family's thinking, that it occupies a dynastic position having been bought by his grandfather, looked after by his father, looked after by him and ready to be passed on to his son.
17. Much of the evidence was directed to the wishes of the husband's father. As he died as long ago as 2003, it is difficult to identify his authentic voice. I am unconvinced by the evidence given by the husband's sisters in support of the husband that the farm and farmhouse was intended for the parties' son when he attained 25. That may have been a plan perhaps to reduce inheritance tax, which may be why it appeared in the husband's mother's will. However, as explained above, she had no title to leave.
18. The picture is complicated by the fact that although the husband is only legally entitled to a third of the farm and farmhouse, his sisters appear to accept that they have no interest in it. It may well be that until these proceedings were underway and they were invited to become witnesses on behalf of the husband, that they had no idea what the legal position really was. In my judgement, the appropriate approach for me to take is to ascribe to the husband one-third of the value of the farmhouse not excluded from the process and that is what I do.
19. When I come to consider the overall fairness of the provision I am making for each of the parties, I will have to bear in mind that as things currently stand, his sisters make no claim to their one-third each so that the whole of the value of the farm and the farmhouse will fall for the benefit of the husband. If he chooses to give it away, that of course is a matter for him.

### **The Spanish property**

20. In 1998, funds were drawn from the business to purchase a flat in Spain in a block of holiday flats. At the time, the business effectively belonged to the husband and his father, but the flat was put into the husband's sole name. Because they had retired, it was the husband's parents who spent more time than anybody else at the flat in Spain. Whilst they were there, they met the bills and it was the husband's case that he was holding the legal title to the flat on trust for his parents and that the purpose of the acquisition of the flat, which should be maintained, was that it was bought as a family asset for the use by all the family members, including his sisters and their respective families.
21. In fact, the two sisters have had very little use of the holiday flat and the older sister's adult son, now in his 30's, has never been since being a baby. I reject the notion that this was a family asset to be preserved for the use of the wider family. It is an asset of the husband and it falls directly to be taken into account in this case. If the husband chooses to allow his

family members to use the flat for holiday purposes, he is perfectly entitled to do so.

### **The mill and goods yard**

22. With the success of the business, land and premises were acquired from which the business could operate. A mill and goods yard and some further land adjoining were initially acquired with borrowed money. The premises were put in a SIPP belonging to the husband and his father. Following the husband's father's death, the husband and the wife purchased the premises from the SIPP and it was placed in their joint names. The yard was registered in the names of the husband and the wife following the death of the husband's father. The husband has suggested that the transfer of the yard into the parties' joint names was a mistake. Whatever led to it being put in their joint names, that seems to me to make no difference to the outcome of the case.

### **The law**

23. Whilst I have been referred to a plethora of authorities, some of the major principles are agreed. It is agreed that I am conducting a staged process. Stage one is to establish what the parties have, both by way of capital assets, pensions, income and earning capacity. The second stage of the process is to distribute those assets and make appropriate orders to deal with pensions and incomes using the powers provided to me under the Matrimonial Causes Act 1973 and exercising my distributive powers by applying Section 25 of the Matrimonial Causes Act to meet their entitlement and their respective needs. I must then stand back from the detail and consider whether the proposed outcome that I have in mind is "fair".
24. The parties' youngest child attained the age of 18 years during the hearing. Although I am to give first consideration to the welfare whilst a minor of any child of the family who has not attained the age of 18, whilst at university and perhaps beyond, she will remain dependent upon her parents for financial support and I do not lose sight of her. The parties' two sons have achieved a degree of independence, but are dependent to this extent that they both work in the business operated by the husband and any adverse consequences to the business because of this divorce will inevitably be felt by them as well as potentially by 130 people employed by the husband, one of whom is his sister.
25. Section 25 (2) provides a checklist of matters that I am required to have particular regard to. They are as follows.
- '(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
  - (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
  - (c) the standard of living enjoyed by the family before the breakdown of the marriage;
  - (d) the age of each party to the marriage and the duration of the marriage;
  - (e) any physical or mental disability of either of the parties to the marriage;
  - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
  - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
  - (h) in the case of proceedings for divorce or nullity of marriage, the value to

each of the parties to the marriage of any benefit, which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.”

Consideration of the statutory scheme by the higher courts has identified the following factors that are applicable to the facts of this case:

- i) The analysis must be gender neutral and non-discriminatory – *White v White* [2000] 2 FLR HL.
  - ii) The starting point in every enquiry is a two-stage process. First, computation, then distribution – *Charman v Charman* (No 4) [2007] 1 FLR 1246 CA.
  - iii) In considering s.25, there are three main distributive principles: needs, compensation and sharing, shaped by the overarching requirement of fairness – *Miller v Miller; Macfarlane v Macfarlane* [2006] 1 FLR 1186 HL.
  - iv) The objective of financial orders is to meet the needs of the parties to enable a transition to independence to the extent that that is possible.
  - v) The main needs in this case, as in most cases, are for housing and present and future income, including income in retirement.
  - vi) “Need” will be measured by assessing available financial resources and assessing the standard of living during the relationship and generally the longer the relationship’s duration the more important the standard of living will be.
26. Section 25A(1) then requires the court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon as is just and reasonable (the so-called clean break provision).
  27. It is agreed that this was a long marriage. The wife is 49 and the husband 54. Having married in 1997, they separated in 2016. The wife petitioned for divorce in 2016 and the decree nisi was pronounced in April 2017. It has not yet been made absolute. It is agreed that both parties have made in their different ways a full and equal contribution to the welfare of the family. It is agreed that both parties now as mature single people have broadly the same needs and it is agreed by both parties that I should strive to achieve a clean break between them.
  28. I was provided with a schedule of assets, liabilities, and incomes. The bulk of the entries on that schedule are agreed.
  29. It is the wife’s case that the total assets, including pension assets, come to just short of £10 million. It is the husband’s case that they come to just over £7 million. Whichever figure is correct, clearly there is enough money available to provide for the parties so that I can achieve a clean break to avoid the parties being dependent upon one another financially into the future.
  30. When the case was opened to me, the wife’s open proposals were that there should be an equal division of the capital. She sought a transfer to her of certain of the properties owned by the parties, including the yard from which the business operates, an equal pension share and the sale and equal division of the proceeds of the family business despite it providing employment for two of the parties’ three children. At the conclusion of the case she argued for a cash distribution to her of 50% of the value of their combined assets allowing the

husband to continue the business.

31. The husband's proposal was that the assets should be divided 66.23% in his favour and 33.77% in the wife's favour, suggesting that there was an unmatched contribution on the husband's side consisting of the property inherited from his father, the investment in the business by his father at its inception, the shareholding emanating from his father and his mother and that if the wife received her share of the parties' assets in cash, that would be giving her copper-bottomed assets, leaving the husband to carry the risk inherent in any trading business.

**The law on contribution, matrimonial and non-matrimonial property and sharing**

32. What is the law on contribution? I was referred to *Waggott v Waggott* [2018] EWCA Civ 727, in which Moylan LJ gave some guidance. At paragraph 69, he set out a series of overarching principles stating:

'The first, over-arching, principle is that the court must exercise its discretionary powers in a manner which is not discriminatory. As Lord Nicholls said in *White v White* [2001] 1 AC 596:

"In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles."

This was repeated with added emphasis in *Miller v Miller; McFarlane v McFarlane* [2006] 2 AC 618'.

33. He goes on at paragraph 71:

'The next three principles are, of course, those identified in *Miller* as guiding the manner in which the court determines its award. I will deal with them together by citing some passages from the authorities to which we have been referred.

72, I start by referring briefly to *White v White* in which the, "yardstick of equality" was developed as a, "general guide". In particular, it is relevant to note that the yardstick was to be applied to the division of the parties', "available assets": Lord Nicholls p.605F/G.

73, In *McFarlane v McFarlane; Parlour v Parlour* [2005] Fam 171, Thorpe LJ (para 4) referred to the, "novel point of principle" raised in these cases as being whether the yardstick of equality, introduced by *White v White*, "for measuring the fair division of capital", should also be, "applied as the measure for the division of income". He rejected this because he did not consider that the cross-check of equality was appropriate in respect of the division of income, "for a number of reasons" (para 106)'.  
'

34. Moylan LJ goes on at paragraph 77:

'Matrimonial property is defined by Lord Nicholls as being, "property acquired during the marriage otherwise than by inheritance or gift", such property being, "the financial product of the parties' common endeavour" (para 22). This definition is picked up in *Charman v Charman* (No 4) [2007] 1 FLR 1246 in which the matrimonial property was defined as, "the property of the parties generated during the marriage otherwise than by external donation" (para 66).

78, As to sharing, which Lord Nicholls called the, "equal sharing" principle, in his view: "When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary" (para 16). Lady Hale put it in terms of, "the sharing of the fruits of the

marital partnership” (para 141), and also, “roughly equal sharing of partnership assets” (para 143)’.

35. In *Hart v Hart* [2017] EWCA 1306 Moylan LJ emphasised the difference between the application of the sharing principle to matrimonial and non-matrimonial property. He said this at paragraph 62:
- ‘The classification of property as non-matrimonial or matrimonial is relevant in the application of the sharing principle because the court is seeking to establish the extent to which the current assets owned by the parties comprise or reflect the product of marital endeavour and the extent to which they do not. This arises because, as explained below, the sharing principle applies with force to matrimonial property but does not apply, or applies with significantly less force, to non-matrimonial property’.
36. Once the court has decided whether an asset is matrimonial or non-matrimonial the approach to non-matrimonial property is a matter for the court’s discretion, as referred to by Lord Nicholls in *Miller*, where at paragraph 27 he said:
- ‘Accordingly, where it becomes necessary to distinguish matrimonial property from non-matrimonial property the court may do so with the degree of particularity or generality appropriate in the case. The judge will then give to the contribution made by one party’s non-matrimonial property the weight he considers just. He will do so with such generality or particularity as he considers appropriate in the circumstances of the case’.
37. Moylan LJ in *Hart* expressed himself as follows:
- ‘95, The third and final stage of the process is when the court undertakes the Section 25 discretionary exercise. Even if the court has made a factual determination as to the extent of the parties’ wealth, which is matrimonial property and that which is not, the court still has to fit this determination into the exercise of the discretion having regard to all the relevant factors in this case. This is not to suggest that, by application of the sharing principle, the court will share non-matrimonial property but the court has an obligation to determine that its proposed award is a fair outcome having regard to all the relevant Section 25 factors.
- 96, If the court has not been able to make a specific factual demarcation but has come to the conclusion that the parties’ wealth includes an element of non-matrimonial property, the court will also have to fit this determination into the Section 25 discretionary exercise. The court will have to decide, adopting Wilson LJ’s formulation of the broad approach in *Jones*, what award of such lesser percentage than 50% makes fair allowance for the parties’ wealth in part comprising or reflecting the product of non-marital endeavour. In arriving at this determination, the court does not have to apply any particular mathematical or other specific methodology. The court has a discretion as to how to arrive at a fair division and can simply apply a broad assessment of the division, which would affect, “overall fairness”. This accords with what Lord Nicholls said in *Miller* and, in my view, with the decision in *Jones*’.

## **Application of the law**



38. Part of the exercise I must carry out is to look at whether I can identify what is truly matrimonial and what is truly non-matrimonial property, and look how those different classifications of property have been treated by the parties during their marriage. For example, a party may inherit a piece of furniture, which is referred to as a family heirloom, and is kept distinguished from the other furniture, or it may relate to an investment, which is kept *in specie* and not mingled with other assets. It may be that something that is inherited is simply added to the family's pot and mixed up with the other assets and wealth generated during the marriage. Inevitably there will be all shades in between.
39. The first matter I need to look at is the farm and the farmhouse. This is distinguishable as the legal title has never reached the husband. He is entitled to his one-third share, and his sisters are entitled to their two-thirds share. It is property that has passed down the husband's family for two generations, but upon it being occupied by the husband and the wife, and their family, it was treated as if it was their own, with them spending money substantially refurbishing it for the benefit of their family. Work was done on out buildings, which had the benefit of supporting the wife's hobby, and it was treated by the family as their home. Now, clearly there are elements that distinguish it as an inheritance, and factual elements that muddy the water.
40. As far as the husband's shareholding that he inherited from his parents is concerned that has been kept by him, and can be traced back to the original distribution of shares. However, the wealth generated by the business, the success of the business, has all been because of the husband's efforts. He has, in fact, received the income generated through those shares for himself, even though those shares were inherited from his parents. As is common, the parties have paid themselves by way of dividends rather than a substantial salary. Again, whilst the non-matrimonial nature of the inheritance of the shareholding can be established, in practice the benefit of that shareholding has been absorbed into the family economy.
41. I do not regard the flat in Spain as anything other than the husband's.
42. How then do I reflect the non-matrimonial element? It is impossible to distinguish a value to be attributed to that non-matrimonial element, but it is right that I should reflect it in the overall distribution of the assets between the parties. It is one of the factors I propose to consider when I determine a fair division of the parties' wealth and which will tip the balance in the husband's favour.

### **Business valuation**

43. The next matter I need to consider is the value to be attributed to the parties' business interests. I have had the assistance of evidence from Ian Pickles, a forensic accountant, who has provided an initial report, updating material, and was working on the case on the weekend before the trial started, providing the court and the parties with his final written evidence on the first morning. He gave evidence, and was subject to cross-examination on his conclusions. He struck me as a careful and fair expert witness, doing his very best to assist the court, and I commend him for the effort he put in to ensure that the material I needed was available to me on the first morning of the hearing.
44. It is not necessary for me to set out in detail the structure of the husband's plant hire business. The first matter considered by Mr Pickles was the appropriate method of valuation. He set all this out in his first report where he considered whether he should value it as a trading company. Having approached that method of valuation in two different ways he concluded that the most appropriate way was on a net asset basis.
45. In his initial calculations he worked from the year end accounts of 2016. He concluded that the plant hire business had a gross value of £11,626,000. He relied on the assets as valued in the balance sheet.

46. The husband raised with Mr Pickles when he was preparing his initial report that the fixed assets as set out in the accounts of the business might be overstated. Mr Pickles said this:  
‘4.31, The primary assets of the plant hire business are its fixed assets. I note from Appendix 4 that the net book value of fixed assets in the accounts, as at 30 June 2017, was £20,976,022.  
4.32, I understand from Mr Walsh that the value of the fixed assets may be overstated in the accounts due to the fact that the company holds a significant amount of old plant, which has been under depreciated. However, as described in paragraph 4.11(a) above, the information memorandum states that assets are consistently sold at greater than net book value.  
4.33, I am not qualified to value plant and machinery. I recommend that an independent valuation of the fixed assets is carried out in order to value the fixed assets of the company at current market value. This could have a material impact on my valuation of the plant hire business, and therefore, the group’.
47. The reference to the “information memorandum” was to a document prepared by the business accountants (who are the auditors) to support the sale of the business when an approach was made in 2015. In his evidence the husband accepted that he has a track record of selling old assets that have been written down in the accounts for more than their book value. In fact, the most recent figures from the business suggest that currently that is the primary source of profit for the business.
48. The matter was considered at a hearing before District Judge Bever on 7 February 2018. He listed the case in front of me for a pre-trial review on 5 July 2018, and for a final hearing on the 24<sup>th</sup> to 27 July 2018. He made the following order by agreement:  
‘12, Order to instruct a single joint expert with respect to plant and machinery:
- (a) The parties shall jointly instruct an expert valuer to act as a single joint expert and to provide a report addressing the value of the plant and machinery as at 30 June 2017.
  - (b) The parties shall agree the identity of the expert by 4pm on 14 February 2018, or in default as ordered by the court.
  - (c) The husband shall file and serve a schedule of the plant and machinery held by the company as at 30 June 2017 by 4pm on 14 February 2018 (in accordance with the values ascribed in the balance sheet as at that date of £19,708,902 hire equipment and £106,171 plant and machinery).
  - (d) The letter of instruction shall be drafted by the wife, and agreed by the husband by 4pm on 21 February 2018.
  - (e) The letter of instruction shall be sent to the expert by 4pm on 21 February 2018.
  - (f) The report shall be filed (in both hard copy and electronic format), and served on the parties simultaneously by 4pm on 4 April 2018.
  - (g) The parties shall be at liberty to ask questions of the expert by 4pm on

18 April 2018.

(h) The expert shall reply to the additional questions by 4pm on 2 May 2018’.

49. What then followed did not assist the court process. The parties initially agreed to instruct a valuer. The husband then changed this mind and sought to instruct auctioneers to value the property. The wife agreed. The husband then provided a spreadsheet of what was said to be the hire equipment and plant and machinery with that document annotated in rough handwriting recording the then present state of some of it. The auctioneers asked for that document to be typewritten, and it duly was.
50. I am not going to labour this judgment with the details of the correspondence that followed, to which I was taken in detail, but the bottom line is this: paragraph 12(c) of District Judge Bever’s order referred to the balance sheet. What emerged during the course of the hearing when I asked about it was that the auditors had been provided by the company with a list of the hire equipment and plant and machinery in order to carry out their audit. On the final day of the hearing, long after Mr Pickles had given his evidence, the auditors sent to the court their working papers. Not only did the auditors have accurate information about each piece of equipment that was identified as being owned by the company, but they had information as to its state and status on the date of the financial year end. They applied a four-test formula to each piece of plant and equipment to test the veracity of the depreciation policy, concluding at the end of a quite elaborate process that the value they have ascribed to each piece of plant and equipment was a fair value consistent with their duty as auditors to the company. The husband, as a director of the company, then signed off the accounts affirming that view.
51. It was alleged on behalf of the wife that the husband had attempted to subvert the process of valuation by not providing records that were available to him to provide. When the point was put to him in cross-examination he denied it vehemently. He asserted through his leading counsel that he has at all times attempted to assist the court in arriving at an accurate valuation. I am not entirely persuaded that that is the case. Whilst I accept from the other evidence in the case that the husband is not a man of paper and computers, I do not accept that he will have been unaware that documentation was provided to the auditors for them to carry out an analysis of the hire equipment and plant and machinery. It would have been the easiest thing to have obtained that documentation supplied to the auditors, and supplied it to the auctioneers to assist in their valuation process.
52. The valuation process then went off at a tangent because the exercise that was then carried out was to compare values given by the auctioneers with the current state of the plant and machinery. Some of it had been sold, some of it was in for repair, some of it had been damaged. Much of it was out on hire.
53. The reason why that process began is that the auctioneers when they valued the plant and machinery came up with a very significantly lower figure than that adopted by the auditors for the purposes of the company’s balance sheet.
54. The auctioneers put a value on the plant and machinery attributable to what would be achieved at an auction without reserve.
55. In Mr Pickles’ addendum report dated 17 July 2018 he said this:

‘4.26, Furthermore, 2 May 2018 valuation was an, “estimate of value based on what similar equipment has sold for recently at Ritchie Bros. Auctioneers unreserved auctions”. The auction figures referred to may reflect an amount lower than market value due to this being based upon auction price rather than the value of part of the open market

value of the company, which is continuing to trade on a going concern basis. As such, an auction may well understate the value of plant and equipment as against an open market value based on the assumption of going concern.

4.27, The effect of potential undervalue could be significant, and could have a material impact on my overall valuation of the business’.

56. That observation was reflected in Mr Pickles’ evidence to the court. He was concerned that the court did not have that which had been ordered, but was obviously reluctant to express a firm view as to what should or should not be preferred as the appropriate valuation figure as he repeated that he was not a valuer of plant and machinery. It is, therefore, a matter that I will have to determine. I need to put it into a legal context.
57. The value of the plant and machinery is part of the valuation process of the business. As the business is being valued on a net asset basis, it is the most significant component. However, business valuations are a difficult area in any event. A number of cases that go back pre-*White v White* have emphasised the dangers of trying to ascertain the precise value of an interest in a family business, or shares in a private company, particularly when no sale is going to take place. The same concerns have been repeated post-*White v White* with words that apply with particular force to business valuations. Lord Nicholls in *Miller* said:  
‘Similarly, the “equal sharing” principle might suggest that each of the party’s assets should be separately and exactly valued. But valuations are often a matter of opinion on which experts differ. A thorough investigations into these differences can be extremely expensive and of doubtful utility. The costs involved can quickly become disproportionate. The case of Mr and Mrs Miller illustrates this only too well.’
58. The possible unfairness of basing the division of assets on a snapshot valuation was forcibly pointed out by Charles J in *A v A* [2006] 2 FLR 115, and he stressed the importance of looking at all issues relating to a private company from the viewpoint of the commercial as well as of the matrimonial litigator. He made the same point in *D v D* [2007] EWHC 278 (Fam).
59. In *H v H* [2008] EWHC 935 (Fam) Moylan J said:  
‘The experts agree that the exercise they are engaged in is an art and not a science. As Lord Nicholls said in *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24; [2006] 2 AC 618 [26], “valuations are often a matter of opinion on which experts differ. A thorough investigation into those differences can be extremely expensive and of doubtful utility”. I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my, “share” be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act, not a detailed accounting exercise. As Lord Nicholls said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often result in divergent opinions each of which may be based on sound reasoning. The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera. Further, to seek to construct the whole edifice of an award on a

business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound, and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained’.

60. How does that help me in my approach? The valuation evidence here is based on the value of the assets owned by the business. That is more likely to be capable of a realistic and reliable valuation than a valuation based on assessing the future profitability of a business. At the end of the day a business is only worth what somebody else will pay for it. Neither party now suggests I should force a sale. It is agreed that the husband should keep it and that it should continue to trade.
61. If the business were to be liquidated and all the assets sold at auction without reserve then the valuation attributed to the assets by the auctioneers would be a reasonably accurate guide. Mr Pickles has been able to calculate the net value of the husband’s business assets based on the figures in the balance sheet in July 2017, as audited. He has been able to do calculations based on substituting the balance sheet figures with the auctioneers’ figures. He was invited to carry out some further calculations based on the auctioneers’ figures uplifted by various percentages, including 18%, that being based on a very small snapshot of pieces of machinery about which the valuers were given more information, and invited to carry out a further valuation, which resulted in them providing a higher figure.
62. For these purposes I am satisfied that the true value of the business as at June 2017, which is the date I have been invited by all parties to adopt, will fall somewhere between the audited balance sheet figure and the figure based on the substituted figures from the auctioneers. The balance sheet figure will represent the top of the bracket. The auctioneers’ figures represent the bottom of the bracket. I acknowledge that one outcome of this case may be that the husband is forced to sell some or all of the business, or he may be forced to sell some of the hire equipment and plant and machinery to raise funds to pay out the wife. If he is forced into a sale that is likely to result in a lower value being achieved than if the business is bought by a competitor in a standard commercial transaction.
63. There is another factor to consider. The parties had, as any prudent business owners would, discussed with their accountants their exit strategy from the business. Following the crash of 2008 they had a five-year plan and a 10-year plan, but out of the blue in 2015 they received an enquiry from another much larger plant hire business about whether they would be prepared to sell. Ultimately, that sale did not go through. The parties were looking to clear after tax approximately £10 million. The tentative offer that was made but not pursued was nowhere near that level. After that tentative enquiry they made further enquiries of other professionals who might be able to assist them with the selling of the business.
64. The husband’s case was that he never really had any intention of selling the business, certainly has no intention now, and will carry on with the business for as long as he can, ultimately, hoping to pass it on to the parties’ two sons. I am satisfied that that was not his intention when he was made an offer that he thought might be sufficient to allow the parties to have £10 million on which to retire.
65. Time has passed, and the parties’ second son has now graduated from university, and has spent a year working in the business. The divorce has intervened, and it may well be that whilst the husband could envisage a retirement spent with his wife, he would struggle to envisage what he would do in retirement on his own. However, I take from that enquiry that it is possible that the business might be sold as a going concern. It is possible that the husband might have other plans, but I should reflect all of that, both in the figure I use to

- base the calculations I carry out, and in my overall assessment of what is fair.
66. With any valuation there is a significant margin of error. In this case based on what Mr Pickles said about the point and my own assessment of the reliability of the valuation process that could realistically reduce the upper valuation by 10% and increase the lower valuation by 10%. If the valuation falls towards the lower end of the remaining bracket then Mr Pickles' calculation based on the auction valuation plus 18% would seem to me to be fair. The figure produced is significantly less than the £10 million net that could not be achieved in 2015.
  67. On that basis, I am satisfied that the appropriate valuation for the husband's business interests, allowing for the deduction of capital gains tax, is £7,191,987.
  68. It was argued on behalf of the husband that a director's loan account, which at the time of the preparation of the balance sheet stood at £264,000 should be deducted from that valuation. The way the husband operated his director's loan account was to pay for much of the parties' domestic finances through the business, and then in the subsequent financial year vote a dividend on the shares, which paid off that director's loan account. In other words, the director's loan account represents distributed income from the business taken by the parties as dividends. Whilst I acknowledge that if the business were to be sold that sum would have to be paid by the husband to bring his director's loan account to zero, as I am not valuing the business on the basis that it will be sold and the husband's evidence is that it will not be sold, then it seems to me appropriate to ignore that as it will be dealt with in the distribution of income generated by the business going forward. In any event, I am satisfied that taking the valuation figure, using Mr Pickles' calculation with the added 18% from the auctioneer's figure, I have adopted a valuation that is the most realistic and, in many ways, favourable to the husband.

#### **Other valuation figures**

69. I take these figures from the schedule of assets. The husband's interest in the farm is £108,433. The husband's interest in the Lodge is £343,000. The parties' interest in the goods yard is £593,320. The parties' interest in the mill is £600,428. The parties have other property interests in their joint names valued at £70,784 and £75,780. The husband has a share in a different mill worth £134,937. There is some land in the parties' joint names worth £168,036. There is some land in the husband's name worth £24,052 and £490. The Spanish property in the husband's name is worth £152,915. The parties have bank accounts of £103,136. I leave out of account other assets, including cars, watches, vintage tractors, etc., and I also leave out of account money that the parties owe, largely in respect of the costs of this case. There is an overdrawn Lloyds joint account of £180,535, which I am going to require the husband to settle.
70. The parties have a SIPP. This is jointly owned with three other partners in the husband's business accountants. It is an interest in an office block in Stock-on-Trent. The wife knew nothing about it. The husband tells me there is no exit strategy. It seems to me that this is something that ought properly to be shared equally between the parties, and I require the husband to transfer to the wife sufficient of his share to equalise their interest under the SIPP.
71. Using the figure for the husband's businesses that I have adopted gives a total asset base of £9,567,298 plus the SIPP.

#### **Income and expenditure**

72. I must go on to consider the parties' income and expenditure. It is agreed that as a family in recent years they have spent approximately £250,000 per year. That included school fees

for their daughter at day school, and support of their son at university. Their daughter is about to start at university, and she should properly look to both her parents equally for support.

73. As mature single people these parties have identical needs for income. How they choose to spend the discretionary part of their budget is a matter for them. Time was spent comparing schedules, and analysing how schedules have changed and differed. In a case such as this I regard that as a complete waste of time.
74. The wife has an interest in Shire horses. If she chooses to spend part of her money on that that is entirely up to her. Equally, the husband can spend his money on rare breed cattle and his vintage tractors. Using the standard of living enjoyed during the marriage they would both need between £100,000 and £115,000 per annum to spend.
75. Mr Pickles considered what the business could possibly pay to the husband if he was to draw the maximum income that could be made available. Mr Pickles concluded that before tax that would be about £1 million a year. That is considerably more than what these parties have ever drawn from the business.
76. Going forward, if the husband chooses to retain the business, as I anticipate he will, he will need to borrow. He produced at the very last minute some limited evidence about borrowing. It did not illuminate the full extent of his borrowing capacity, and served only to illustrate that he has immediate access to £2.2 million. However, that borrowing, or greater borrowing, will need to be serviced. That will reduce the amount that he will be able to pay himself.
77. Looking at the wife's position, a Duxbury capitalised fund to represent the sum of money needed for a woman of 49 to give her £100,000 a year for the rest of her life, if every penny is spent the day she dies, would require a fund of £2.188 million. I am satisfied that the distribution I am about to make will allow both parties sufficient income to live at a standard commensurate with the standard they enjoyed during the marriage.

### **Housing**

78. Next, I need to look at the parties' housing needs. The husband has his inherited farm and land. The cottage and the land associated with that has been excluded from the figures on the basis that it will go to the parties' son. The farmhouse I have included at one-third of its value because of the husband's father's will. His sisters appear not to want their share. If they give that to the husband then that is his good fortune. The husband says I should exclude it because he wants to pass it, as was his father's intention he says, although I have rejected that evidence, to his son. That assumes that only the husband is entitled to make provision for the parties' children in the future. The wife is entitled to support her children as she wants. It is not for the husband to dictate how that should be done. Although it forms no basis of my decision, I do not regard it as necessarily very healthy for the children to be compelled to live, as the husband would appear to want it, in the three properties that comprise the farm and farm land and for the rest of their days. To impose that on the parties' daughter at the age of 18 seems to me to be quite inappropriate. For the children to spend the rest of their lives prospectively under the eye of their father, again, is not something I would condone.
79. I am satisfied that the husband's housing needs will be met at the farm for as long as he chooses to stay there.
80. I was given a range of housing particulars for the cost of the wife rehousing, both in a house with land so that she could pursue her interest in Shire horses, and properties without land on the basis that she would have her horses in livery.
81. The area where the wife wants to live is an area well known to me. I am satisfied, both

from the estate agent's particulars I was shown and taking judicial notice from other cases involving that area, that the wife is likely to need something of the order of £750,000 to buy a house with land. The husband will have the use of land and I regard it as perfectly reasonable for the wife to have land of her own, albeit on a much-reduced scale from the farm. What she ultimately spends, of course, is going to be a matter entirely for her. I am satisfied that when I put together the wife's housing costs together with her Duxbury fund and arrive at a figure of c.£3 million that is the minimum that would meet her needs as I assess them. If I am satisfied that on the application of the sharing principle that she is entitled to more then it is the higher figure she gets.

**The application of the sharing principle and the application of section 25**

82. Standing back from the detail then I must in the final analysis exercise my discretion, bringing into play those factors from Section 25(2) of the Matrimonial Causes Act, and achieving a clean break between these parties, and I must start from the premise that they are equally entitled to share that which has been generated during the marriage.
83. I must make allowances for the following matters: firstly, the husband's parents' initial investment of £10,000 in the business, and the initial share ownership subsequently transferred to the husband on their respective deaths.
84. Secondly, I take account of the fact that if all the shares are transferred to the husband, so that the husband exits this marriage with the whole of the businesses, he will be left with the riskier and more volatile assets compared to the wife having cash. The husband wants to keep the business. It was his case that under no circumstances should I order a sale. He wants to keep the property assets that are associated with the business, and potentially to use them to restructure, and for them to provide security against which he can borrow.
85. Next, I must make allowance for the fact that the value of the farmhouse that I have included in the assets to be divided was inherited by the husband. However, that farmhouse was then fully integrated into the parties' economy when they spent what would otherwise have been their joint funds in modernising it, and it has been their home throughout their marriage.
86. Although I have not dealt with this in detail, there is clearly a disparity in earning capacity in the future. The wife will effectively be reliant upon her capital sum. She has the potential to earn a modest amount in the beauty business in which she has recently trained. She is clearly a capable, intelligent woman, but, having not worked independently of the family business throughout the parties' relationship, I anticipate at 49 she might find it difficult to obtain anything other than a job earning her perhaps £15,000 per annum net. The husband has demonstrated a capacity to be a successful businessman. He takes that capacity with him going forward. It is not a factor I weigh in the balance in the capital distribution, but it is a factor that I look at in overall fairness.
87. My conclusion is that the parties' assets, as I have identified them, should be divided as to 45% to the wife and 55% to the husband. That would give the wife an entitlement to £4.3 million, and the husband £5.2 million. In addition, he may well have his sisters' two-thirds of the farmhouse. Part of the wife's entitlement will be met by a transfer to her of the house where her mother lives, having a net value of £70,784.
88. The husband contended for a differential between them of 32%. The wife contended for no differential. I have concluded that there should be a differential and that it should be 10%. Why? In my judgment it would be wrong to ignore those matters set out in paragraph 31 above however for the reasons I have explained as I have gone along they do not justify the conclusion contended for by the husband. In my evaluation those factors are properly reflected in the division I propose.



89. Can the husband afford to pay? I am giving him, as he requested, the opportunity to continue the business. At the Pre-Trial Review I invited the husband to consider how he might raise funds by borrowing and/or by selling assets or part of the business. I was surprised that I needed to make that suggestion. I was invited to infer from the very limited information that the husband elected to put before me that he could raise funds but did not want to disclose how much in case that opened the door to a larger award to the wife than I might otherwise have been contemplating. That has not been my approach. I have assessed what I regard as the wife's entitlement. It is for the husband to organise his affairs to make it happen. To that end I will give him time.

### **Overall fairness**

90. Standing back from the detail, I am satisfied that is a fair outcome to reflect the length of the parties' marriage, their contributions including the success of the business to which they have both in their different ways contributed, and which will provide adequately and appropriately, bearing in mind the risks that they will be taking with them, into the future.

### **Implementation**

91. To achieve the above I anticipate that all the property in the parties' joint names will be transferred to the husband, with the husband to secure the wife's release from any mortgages, with the house occupied by the wife's mother transferred to the wife. The husband may need title to the properties to secure borrowing to pay money to the wife. The transfers should take place as part of the payment of the first lump sum. The wife's car will be transferred to her, subject to finance, and it will be for her to pay that off. The wife must assume in due course responsibility for her own car insurance, health insurance, etc., and that will happen on the payment of the first of the lump sums that I am going to order.
92. The current arrangements where the husband continues to provide support for the wife will continue until he pays her, on a date, three months hence, £2.3 million. From then onward she will be responsible for her own payments for herself. Her entitlement to periodical payments for herself will end. The balance of the funds that she is entitled to will be paid to her as to £1 million in 15 months' time, and a further £1 million (less £70,784) in 27 months' time. As I have already indicated, the pension is to be shared equally. A capital clean break will be imposed when all payments have been made.

### **Developments after circulation of the draft judgment**

93. Since I circulated my judgment in draft I have received, at my request, notes of points where clarification was required or corrections needed. I have incorporated the uncontentious ones into the text. More contentious points I will deal with below.
94. I also invited any application for permission to appeal. I have received none.
95. After seeing my judgment in draft, the husband has disclosed that he may want to restructure the shareholdings in the companies. The wife seeks security against the shares until she has received payment of all her entitlement. Those two positions need not be incompatible. The wife is entitled to security. However, I see no reason why that security should not be transferrable to any newly created shareholding that acquires the assets of the existing businesses all of which shareholdings will go to the husband. If the shareholding needs to be in the husband's name then other possibilities need to be investigated such as him holding the shares on trust for the wife on terms that would be readily enforceable. I would invite those acting for the parties to seek the kind of commercial advice I referred to in paragraph 58 above.
96. Again, after seeing the judgment in draft, the husband has asked that he be allowed 6

months to pay the first lump sum. His evidence at the trial was that he could raise at least £2.2 million immediately. I see no reason why the wife should wait. Time for payment of the lump sums will run from the date of distribution of the draft judgment as I set out in paragraph 92 above. The wife asks that part of that payment is advanced to allow her to pay her legal costs loan that carries a high rate of interest. I had that fact in mind when I set the date of first payment when I did and I do not propose to change it.

97. Clarification has been sought as to computation. The figures I have adopted in my judgment were taken from a schedule of assets prepared on behalf of the wife with a column of figures added on behalf of the husband. I have considered the comments made on behalf of both parties and am satisfied I have adopted the correct figures consistently. The figures I have adopted are all net of the deduction of CGT where applicable. Consistent with the case advanced by both parties I have provided for cash payments to the wife. That will leave the CGT liability with the husband. I have explicitly allowed for the *Wells v Wells* “risk” argument in my overall assessment as to what is a fair outcome – see paragraph 90. The payments I am ordering are three separate lump sums.
98. Finally, the husband has raised the spectre of a liquidation of the business as he suggests that the funds he is required to pay to the wife may be beyond the business’s ability to raise or sustain. At the Pre-Trial Review I reminded the husband of the need for me to have information as to how he would set about raising the money that he might be required to pay to the wife. He knew she was asking for 50% of everything based on a valuation of the businesses substantially higher than that contended for by him. He presented his case as if there was no possibility of me providing that she should receive more than he was prepared to offer. That was a bold strategy that failed. He must bear the consequences of the decisions he made in the way he ran his case. I am not prepared to fundamentally alter my judgment so as to reduce the amount the wife might eventually receive. I have resolved the case on the basis of the evidence put before me. The husband is a man of considerable ability with access to good professional and commercial advice. He should apply his skill to raising the money.
99. I would ask counsel to prepare an agreed form of order to reflect this decision.
100. That is my judgment.

### **End of Judgment**

Transcript from a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

This transcript has been approved by the judge.