**OUTER HOUSE, COURT OF SESSION**

**[2020] CSOH 54**

**F1/19**

OPINION OF LADY WISE

In the cause

SCA

Pursuer

against

MMA

Defender

**Pursuer: Brabender QC, McAlpine; Morton Fraser LLP**
**Defender: Cheyne; DAC Beachcroft; Levy & McRae**

28 May 2020

**Introduction**

[1] This is an action of divorce at the instance of the wife pursuer, ("SCA") against her husband ("MMA"), in which financial provision is the contentious issue. The parties were married on 14 February 1989. There are two sons of their marriage, both now adult, one of whom ("M") works with his father in the family business. Their other son lives in London and receives both emotional and financial support from SCA. The agreed date of the parties' separation is 14 June 2018; that is the "relevant date" for the purpose of identifying and quantifying their matrimonial property. The parties continued to live in the same property for most of these proceedings but the pursuer has now secured rented

accommodation and the family home is being sold. The issues in dispute between the parties relate primarily to the value of the matrimonial property and its division.

[2] So far as the merits of the divorce action are concerned, on the basis of the affidavit and oral evidence led I am satisfied that the marriage has broken down irretrievably and there is no prospect of reconciliation. MMA consents to decree of divorce. There were eight days of evidence and a full day for submissions in this case. Affidavits were lodged from all witnesses other than skilled witnesses who had prepared reports. There was extensive agreement on the nature, extent and value of much of the matrimonial property and during the proof certain additional agreements were reached on the value of a number of properties. I intend to limit this Opinion to dealing with the issues that remained in dispute and give my decision on each issue with reasons before listing the assets and liabilities of the parties at the relevant date to reflect those decisions. Where there were issues of credibility and/or reliability of any witness I will address those in context.

[3] The legal framework within which financial provision on divorce disputes operate is that contained in the Family Law (Scotland) Act 1985 ("the 1985 Act"). The provisions of sections 8-16 of the Act are relevant to financial provision on divorce (or dissolution of civil partnership which is not relevant here). Section 8(2) of the legislation provides that before making any order for financial provision the court must be satisfied both that it is justified by the principles listed in section 9 of the Act and reasonable having regard to the parties' resources. Section 9 has five principles. They relate to both marriage and civil partnership but as this is a divorce I will restrict any references to that situation. Insofar as relevant to these divorce proceedings only three principles are directly or indirectly applicable, namely:

(a) The net value of the matrimonial property should be shared fairly between the parties to the marriage,

(b) Fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any economic disadvantage suffered by either person in the interests of the other person or of the family, and

(c) ….

(d) A person who has been dependent to a substantial degree on the other person should be awarded such financial provision as is reasonable to enable him to adjust, over a period of not more than three years from the date of decree of divorce, to the loss of that support on divorce.

[4] The court's initial task is to conduct a process of identifying the matrimonial property, which is defined in section 10 (4) as:

> *"…all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party) – (a) before the marriage for use by them as a family home or as furniture and plenishings for such home; or (b) during the marriage but before the relevant date"*

Section 10(5) makes clear that the proportion of value of life policies and pensions relative to the period of the marriage until the relevant date constitute matrimonial property. Once the value of each item or asset has been determined and a total value calculated, matrimonial debts must be deducted to achieve a figure for the net value of the matrimonial property. Matrimonial debts are those of either party and incurred before the marriage if they relate to matrimonial property or are otherwise incurred during the marriage and *"which are outstanding"* at the relevant date. When the calculations are complete, a schedule of matrimonial property can be drawn up. The court then requires to determine whether the value of the matrimonial property should be shared equally or in such other proportions as may be justified by special circumstances [section 9(1)(a), section 10(6)]. Equal sharing is the

norm and the existence of special circumstances does not inevitably lead to an unequal division of value – *Jacques* v *Jacques* 1997 SC (HL) 20. Section 10(6) includes a non-exhaustive list of special circumstances that may be taken into account in determining the division of value, one of which is prayed in aid by the defender in this case, namely:

> *"...the source of the funds or assets used to acquire any of the matrimonial property where those funds or assets were not derived from the income or efforts of the persons during the marriage..."*

The issue of division of value is essentially one for the court's discretion and other decisions taken at first instance are simply examples that may be of little assistance without a grasp of the underlying factual matrix. Finally, the last stage is to consider the parties' present and foreseeable resources before deciding what order or orders to make. It was agreed at the submissions stage that there would require to be a further hearing in this case to confirm the specific orders to be made, including timescale for payment, after the determination in principle is known. To the extent that valuation of assets was agreed, that agreement is reflected (together with the figures following determination of the disputed valuation issues) in the schedule of matrimonial property that appears towards the end of this opinion.

**MMA's business interests**

**(i) Background**

[5] The most significant and contentious issues at proof related to the value of MMA's various business interests. These were held in a number of different types of business entity from sole trader to partnership to incorporated businesses. First it is useful to summarise what the evidence established about the historical background to the various business interests held at the relevant date, something relied on by MMA as special circumstances.

MMA's father, ("MLA"), explained in evidence that he had arrived in Scotland as a child in 1945. As an adult he owned and operated fish and chip shops. In 1987 and 1988 respectively he placed the title of two of his commercial properties in Glasgow (in Crookston Road and Castlemilk Road, the latter of which he had purchased for the sum of £85,000) into the names of his three sons, MMA, TA and RA. Initially the three brothers ran those together (as M & Sons Fast Foods) but during the parties' marriage (1996) MMA and TA purchased RA's share because he no longer wanted to be involved in the business. MMA is now the sole surviving son, TA having died in 2007 and RA in 2018. MLA also formed a property partnership with his sons MMA and TA. Property in Queen Street and St Vincent Place Glasgow was held by them as trustees for the firm of Messrs A. The property is now owned by MLA and MMA as trustees for the firm. MLA gave evidence about the early years of the fish and chip shop business and also about the property partnership with the defender. He was a colourful character who was clearly immensely proud of what he and his sons had achieved. His stated objection to realising his interest in the property of the partnership by joining with his son in a sale of the heritage was expressed in dramatic terms, declaring that he would "rise from the ground and choke" any family member who tried to sell the Queen Street premises if this was attempted after his death. MLA's loyalty to his son is now unwavering, although they have had difficulties in their relationship in the past. I conclude that his evidence on the partnership issue was motivated by a desire to assist his son and his grandson, the parties' son M, with whom he sat in court after M gave brief evidence in the defender's case. Accordingly, while I accept his evidence about the origins of the business and property insofar as held with his sons (and now the defender), I reject his evidence that he would obstruct realisation of partnership assets if there was a reasonable financial incentive for him and the defender was willing to sell.

[6] At the time of the parties' marriage, MMA and his brother TA were already operating the fish and chip shops. SCA worked in the business as a counter assistant. During the marriage MMA moved from the fish and chip shop business to the pizzeria business. Again SCA helped in the business, making pizzas. Over the years restaurant premises in Glasgow were purchased. MMA and his brother TA set up a holding company, LVP Limited, for the restaurant businesses, in which they had equal shares and the business of which they ran together until TA died in 2007. On 21 June 2013 LV(Scotland) Limited, the new holding company for the restaurant businesses, was incorporated. A few days later, on 26 June 2013, LV(Scotland) Limited acquired the whole share capital of LVP Limited. As illustrated in a formal agreement (no7/147 of process), MMA acquired the shares of the new company in exchange for those he had held in LVP. From then the wholly owned subsidiary companies of the new holding company operated each of the restaurants, five in total (although Gordon Street was not yet trading) by the relevant date in 2018. As at 14 June 2018, MMA held 998 of the issued ordinary shares in the holding company and SCA held 1 ordinary A share. The parties' son M held one ordinary B share. The trading companies which operate LV restaurants are LVSS Limited (Newton Mearns), LVNS Limited (Bishopbriggs), LVWE Limited (Byres Road), LVGS Limited (George Square) and LVGS Limited (LVS). The relationship between the holding company and MMA as an individual, and separately as a partner with his father was relevant to the issue of valuation because three of the five of the restaurants operate from premises owned by MMA personally, the fourth, George Square, being owned (save for a small part in St Vincent Place) by him and his father as trustees for their partnership. The fifth business was not yet trading as at the relevant date and its heritage was owned by G Limited. Both sides approached the valuation exercise by instructing commercial surveyors to value the various businesses and

subsequently asking forensic accountants to value the entities having regard to the information provided by the commercial surveyors.

[7] During the proof, in a Supplementary Joint Minute of Admissions (no 47 of process) and a Third Supplementary Joint Minute of Admissions (no 56 of process), the parties agreed a number of commercial property valuations and also a number of fair maintainable trade ("FMT") and fair maintainable operating profit ("FMOP") figures in respect of some businesses about which there remained an element of disputed valuation. This narrowed the scope of the business valuation issues considerably and so I will summarise the evidence of the expert witnesses only insofar as relevant to the aspects that remained in dispute and the basis for my conclusion about which evidence on those to prefer.

[8] As indicated, MMA owned a number of commercial properties as an individual at the relevant date, the value of which was relevant to the overall calculation of matrimonial property. These are listed in the first Joint Minute of Admissions, No 28 of process and included the premises operated at Mearns Road (LVSS Limited) and Byres Road (LVWE Limited) as well as part of premises at St Vincent Place Glasgow connected with property in Queen Street Glasgow owned by him and his father as trustees for their firm and from which LVGS Limited operates. Again, the relationship between MMA's ownership of the premises from which some of the restaurants operate and the valuation exercise was relevant.

[9] MMA and SCA have equal (50% each) shareholdings in G Limited, a company which owns three commercial properties, including the one in Gordon Street, Glasgow, which was purchased in September 2017 and was being refurbished at the relevant date. By the date of proof it was operating as a restaurant, LVS by the fifth wholly owned subsidiary mentioned above. The current value of the parties' interests in G Limited is relevant because it is

anticipated that SCA will transfer her shares to her husband at the conclusion of these proceedings. She had initially been keen to secure a transfer of her husband's shares in G Limited, although had indicated her willingness to transfer her interest to him before the proof commenced. Finally, MMA held 51 of the 102 issued shares of a holding company, S I (Holdings) Limited, the balance being held by a third party.

**(ii) Valuation evidence**

[10] Two main witnesses were led in the pursuer's case on this issue. First, Mr Alan Creevy, who is an experienced commercial property surveyor having qualified in 1989. He has undertaken training as an Arbitrator and is a Member of the RICS in Scotland Chairman's panel of Experts and Arbiters for hospitability and leisure properties. He has prepared many expert reports, usually for commercial proceedings involving lending institutions and has given evidence as an independent skilled witness in such proceedings in a number of cases in this court. He specialises in the valuation of businesses in the leisure and hospitality sector and is joint founding director of his firm CDLH Leisure and Hospitality Surveyors ("CDLH"). He spoke to his detailed report on relevant date values, no 6/79 of process, and to a subsequent report (no 6/80 of process) on the Gordon Street premises involving how to split the heritable value from the business if it was maintained on a lease. He also provided a current date value for Gordon Street, given the likely transfer of the G Limited shares. His main report lists (at page 7) nine properties that he had valued for these proceedings as at the relevant date. Two other properties were valued by his residential property colleague, Steven Toulson, who gave evidence but the value of the residential property that remained in dispute when he did so was subsequently agreed. For his valuations, Mr Creevy applied the guidance in the RICS work "Global Standards",

commonly known as "The Red Book". His approach to valuation was set out in detail in his report, including consideration of market conditions and comparable evidence of actual sales in the sector. He had valued the restaurants having regard to their trading potential. He valued the heritable interests of MMA as an individual and as a partner in the firm with his father. The heritage owned by G Limited was also valued. Having assessed each business and each heritable property on an individual basis he then considered the nature of potential purchasers and whether the businesses would be sold individually or as a group. Finally, he calculated the "lotting premium" that he considered would be paid by a purchaser acquiring the whole LV (incorporated and unincorporated), although it was not suggested on behalf of the pursuer in submissions that the figure including such a premium should be used in the calculation of matrimonial property. For the partnership property, Mr Creevy assumed that it would be transferred at the value in the accounts, revalued to market value and sold at that price.

[11] The main issues of difference between Mr Creevy and Mr George Ranachan, a surveyor instructed by the defender had initially included the calculation of FMT and FMOP as part of valuing the trading potential of the various restaurants, but prior to Mr Creevy's evidence he and Mr Ranachan had met and had agreed these figures for Newton Mearns and Byres Road and had agreed the FMT (but not FMOP) for George Square, in addition to agreeing the total value of the Bishopbriggs business. The issue of the appropriate multiplier to be applied otherwise remained contentious. Mr Creevy had arrived at a multiplier by use of comparable evidence and taking into account all of the factors outlined in his first report. He produced revised figures (No 6/187 of process) to reflect the partial agreement with Mr Ranachan.

[12] Mr Creevy explained that he and Mr Ranachan had been unable to agree an FMOP figure for George Square because they disagreed on whether to value it as leasehold or take account of MMA's ownership interest, but they had agreed the FMT. The difference between them was the annual rent payment and so unrelated to any issue of how the business would be run after sale.

[13] Under cross examination, Mr Creevy reiterated that he considered that someone like MMA would best maximise price by collapsing the current corporate structure and so combining his ownership of the heritage and business assets into one, something he had the power to do for all but possibly the George Square property, held for the partnership with his father. The witness considered it likely that someone such as MLA, with a family connection, would agree to sell his "piece of the property" to any proposed sale to maximise price. He was asked about the comparators he had used in selecting relevant multipliers. He agreed that three of the transactions related to a business that his firm had been involved in when asked by the sellers to review market value. He considered this an ideal comparator as he understood how the valuations had been reached. Mr Creevy agreed also that it was highly unusual for a group of successful restaurants such as the LV ones to come on the market as a group. He had experience of this only in a situation where trading figures are not so good and a group wants to release some of its low earning outlets. An analogy for a successful group might be a chain of public houses. Mr Creevy had knowledge of such a group where the valuation involved a multiplier of six times profit but eight times profit was achieved on sale.

[14] The two main factors that had influenced Mr Creevy's judgement on multiplier were location of the businesses and longevity of profitability, with the good quality fit out of all the restaurants also being relevant. Demand for such well operated restaurants in locations

such as Byres Road is very high. In this he differed from Mr Ranachan, who, Mr Creevy said, had focused on a comparator in Cambuslang in fixing his multiplier. Mr Creevy considered that business to be not nearly as good as the LV restaurants on both location and longevity of profitability. He confirmed also that he had treated all of the premises as if they were "freehold" given the absence of any lease arrangements and the identity of the owner, with the single exception of George Square where a lease was in place. He understood that this was the same approach Mr Ranachan had taken, other than that for George Square Mr Ranachan had valued only the leasehold interest. Mr Creevy's supplementary report (6/80) took account of the ownership structure.

[15] Greg Rowand CA, a forensic accountant and partner in MHA Henderson Loggie gave his opinion on the various business entities that took account of Mr Creevy's valuations, including the areas of compromise with Mr Ranachan. His initial report (No 6/39 of process) set out his approach and he updated this to reflect the revised figures in a subsequent document (no 6/196 of process). Mr Rowand's curriculum vitae was appended to his main report. He prepares reports regularly as an independent expert in financial provision on divorce cases and has given evidence regularly in court over the last twenty years or so. He has a wealth of experience in valuation of all types of businesses and is a recognised expert in this field. His main report sets out in detail the material he had available to him and his valuation approach.

[16] Mr Rowand confirmed that he had relied heavily on Mr Creevy's specialist surveyor's valuation for the restaurant businesses. Like Mr Creevy, Mr Rowand considered it most likely that MMA would have sold the heritable property of the relevant restaurants, including George Square, together with the businesses operated there had he sought to achieve best price at the relevant date. He adopted no 6/196 as part of his evidence, which

constituted his final valuation. It included a final revised version of his Appendix 15, which listed all relevant properties and business and their valuation figures. Mr Rowand had seen a first report (no 7/130 of process) by Alan Robb CA and had prepared an initial comparison of the two reports (no 6/189 of process) but matters had then moved on following the partial agreement between the two surveyors.

[17] Under cross examination Mr Rowand disputed that his approach to valuing the restaurant businesses as outlined in his main report at para 3.3 was unusual for a company engaged in the restaurant business. It was an assets based valuation but took into account the specialist surveyor's valuation of the various operational entities and so the earnings of each entity were included. Mr Rowand agreed that in valuing a company for a divorce action he would look to see what the owner did, if he worked in the business, and calculate the cost of his replacement as he was aware that the valuation should not assume that the owner would continue to operate the business after a hypothetical sale on the relevant date. If the future profitability of the business was dependent on an owner remaining that would affect value for this purpose, although that would normally affect the FMP figure, not the multiplier. All of that had been Mr Creevy's role in this case, with Mr Rowand necessarily altering his figures following Mr Creevy's adjustments. Mr Rowand had been instructed to illustrate the position if the existing structure was collapsed to effect a sale overall. The figures for tenant premiums in his report were taken from Mr Creevy. In essence what Mr Rowand had done was replace the accounts value of the fixed assets with Mr Creevy's tenant premium value, which was the value someone would pay to take over the operation and continue to trade from the premises and occupy them on the same basis as the seller at the relevant date. So the figures for fixtures and fittings and leasehold improvements were replaced by Mr Creevy's figures. Whether the exercise is referred to as acquisition of the

leasehold interest or inclusion of tenant premium value it amounts to the same thing. Where the properties are owned investment value was used. Mr Rowand did not include any "lotting premium" to reflect the greater price by selling everything together in his figures. He explained the difference between assuming that everything would be transferred into one entity for sale (an assumption he made) and the idea of an additional payment to reflect the benefit of buying all together (which he did not include). He had not looked at the existence and/or terms of any leases as that was Mr Creevy's territory.

[18] When pressed on whether he had taken into account that one party (such as MLA for George Square) might not agree to selling all of the property and related business interests together, Mr Rowand said that he had assumed Mr Creevy had used a willing buyer, willing seller approach, which is what he would expect. MLA's interest would be included in the whole and on sale he would receive his share. For the value of MMA's interest in that partnership with his father, Mr Rowand had uplifted the accounts figured for the property with market value as valued by Mr Creevy. It had been when Mr Rowand first looked at the accounts of the various entities in this case that he realised these did not reflect the true ownership structure. Sections 4 and 7 of his main report set out in detail what he had considered to be the correct approach in order to reflect the ownership situation. He had also illustrated what valuation using the existing structure (ie valuing each entity separately) would look like at paragraph 8.2.2 – 8.2.3 of his main report (prior to the figures being updated) and explained why the different approaches led to different valuations, which he compared at paragraph 8.2.5.

[19] In the defender's case evidence was led from Mr George Ranachan, a commercial surveyor in Glasgow, who qualified as a chartered surveyor in 1991 and is currently a Director of Christie & Co. Mr Ranachan has extensive experience of valuing commercial

property and has in depth knowledge of the restaurant market in Glasgow. He was instructed to value the "LV (Scotland) Limited Portfolio" and produced a main report, no 7/129 of process. Like Mr Creevy he sought to provide a view on market value of the various entities using the Red Book for methodology. Like Mr Creevy he was provided with accounts and other relevant information for each entity. His valuations were initially lower across the board than Mr Creevy's and, subsequent to their agreement on certain matters as already recorded, remained lower. He spoke to his detailed report and highlighted that he had taken into account that MMA played a very significant role in the day to day running of the business. His input exceeded what might be expected of a reasonably efficient operator ("REO") coming into the business and account was taken of that. Mr Ranachan explained that when he met MMA he was taken with just how much control he had over each business entity, visiting each daily, interviewing for waiting staff and acting as both purchasing manager and HR manager, together with his son. This level of involvement was exceptional.

[20] Mr Ranachan differed from Mr Creevy in relation to the approach to valuation in that he valued each individual property and did not assess the group as a whole. He considered that there was no basis for indicating that any "lotting premium" would be added to price to reflect sale of all of the entities together. There was no evidence in the market place of a transaction of that type taking place for a restaurant group in Glasgow or even in Scotland. In any event, he had met MLA for a few minutes at a meeting and it was clear that he would not agree to part with his interest in the George Square premises. Accordingly Mr Ranachan had valued each entity on a going concern basis, with the hypothetical purchaser being a restauranteur. He used evidence of similar transactions to form a view of the appropriate multiplier and had listed the relevant comparators at page 25

of his report, on which he commented. Mr Ranachan was critical of Mr Creevy's comparators as he considered that only Italian restaurants, which are generally identifiable in terms of similar food, ambiance, fit out and so on, were direct comparators. Where Mr Creevy had mentioned one Italian restaurant comparator it was not in the city of Glasgow and the sale had taken place after the relevant date. Three of Mr Creevy's comparators were a single off market deal involving different types of eateries, only one of which was an Italian restaurant. There was no basis for Mr Creevy's assertion that a named Italian restaurant group represented a possible purchaser.

[21] Following the production of his first report, Mr Ranachan had prepared a Supplementary Report (no 7/186 of process) to provide a freehold valuation of the George Square premises that reflected the current lease arrangement. Subsequent to that, he had also prepared what he described as a "Further Supplementary Report" (no 7/188 of process), a two page document which he had prepared following what he said was further consideration of MMA's contribution to the business. In that document he offered revised figures for four of the restaurant businesses, including Bishopbriggs, notwithstanding the agreement reached with Mr Creevy and recorded in the Third Supplementary Joint Minute. I sustained an objection from Ms Brabender when it appeared that Mr Ranachan was seeking to depart from that agreement and matters then proceeded on the basis that insofar as he could offer revised evidence it could only be on matters that were not the subject of agreement. Thereafter, Mr Ranachan's position was that three of the restaurant businesses, George Square, Byres Road and Newton Mearns should be given lower values than he had originally thought because more detailed consideration of MMA's remarkable contribution had led him to revise his multiplier for each. This was something he had not taken into account when he spoke with Mr Creevy.

[22] Under cross examination Mr Ranachan accepted that his report indicated that MMA had instructed him on an agent/client basis and that as part of his fee quote he had agreed to include the production of a separate updated valuation for MMA for the bank used by the business. When challenged on whether he had truly accepted instructions as an independent expert in this case, the witness accepted that certain aspects of the RICS guidance on expert witness reports had not been followed. His report had not stated that he was instructed as an individual with a primary duty to the court with an accompanying statement of truth, all which he said were errors on his part. He had stated in his report that the usual complaints procedure would apply, something that would not normally be the position for independent expert reports. His position was that notwithstanding that the report was in the form of one prepared on a client instruction, he had understood his role as an independent expert. During the period of his instruction he had met MMA on three or four occasions, one of which was the meeting at which MLA was present. He had met MMA without solicitors or counsel being present after a meeting with Mr Creevy. There had been a consultation with solicitors and counsel after Mr Creevy's evidence and at some point thereafter Mr Ranachan reviewed his figures downwards.

[23] When the terms of his main report were put to him in relation to MMA's daily involvement in the business, something known to him from the outset, Mr Ranachan said that he was unaware of just how many hours each week MMA put into the business until recently. He had known previously that it was significantly more than a working week but now knew it to be in excess of 80 hours per week. He maintained that there was no evidence that a purchaser would acquire the group as a whole and so considered that there was no premium in the LV brand. On the issue of the appropriate multiplier Mr Ranachan considered that there was sufficient comparable evidence from Italian restaurants, which he

regarded as suitably similar. While the FMT and FMOP figures for the LV businesses were impressive, it was the comparator sales from the subsector (Italian restaurants) that influenced the multiplier. It was accepted that a private transaction without bank input could still be an example of a willing buyer, willing seller transaction, but the absence of marketing would mean there was no ability to analyse its details. The witness accepted also that the main comparators he had used all had a lower turnover than the LV restaurants. Location affected multiplier and had been reflected in a higher figure for the Byres Road and Newton Mearns restaurants which were situated in affluent areas, although such areas tended to have more competition. Direct comparables were difficult as he had been unable to identify a leasehold Italian restaurant sale in Glasgow in the last two years.

[24] On the George Square restaurant, Mr Ranachan had valued the leasehold business on the basis that MMA would leave the business on sale, as he had with all of the other restaurants and to that extent his valuations excluded any personal goodwill attaching to MMA. The difference in value on George Square included a disagreement on FMT but that depended on whether it was being valued as leasehold or not. In relation to his agreement with Mr Creevy, the witness accepted that the FMOP figures did not assume MMA would remain in the business but contended that these left it open whether the incoming REO would be a third party or MMA himself. To reflect the removal of MMA's presence he had then revised his figures, although he accepted that the primary basis for the multiplier was comparable sales. He disputed that what his revised figures did, in effect, was double count the contribution of MMA to the business. There was a correlation between earnings as a percentage of turnover and the multiplier, such that an adjustment could be made to consider MMA as an REO. The approach taken in his revised figures was not one he had employed in other reports he had prepared. When taken to extracts from the RICS "Red

Book", VPGA 4, the witness agreed with the definitions of FMOP, FMT and personal goodwill provided there. He continued to maintain that he had better comparable sales evidence than Mr Creevy, although both surveyors considered performance, profitability and location to be material factors in determining a multiplier.

[25] In re-examination Mr Ranachan reiterated that he had been instructed as an expert and that he had not revised his figures under any suggestion or persuasion from MMA. He denied acting as an advocate for the defender's side. On the changes he had made after meeting MMA and his legal advisers part way through the proof he said:

> "...following the consultation I became aware of the services provided by the current operator ceasing on the valuation date and the impact that would have was significant enough to alter the multiplier".

[26] Alan Robb CA gave evidence, as Mr Rowand had in the pursuer's case, to give a valuation of the relevant business entities, that took account of the commercial surveyor valuation reports he had been given. Mr Robb is, like Mr Rowand a chartered accountant of very considerable experience, who routinely undertakes as part of his work, business valuations for financial provision on divorce cases. He qualified in 1986 and was a partner in a national accountancy firm before joining Robertson Craig, where he remains a partner, in 2001. Mr Robb has appeared as an expert witness in such cases for many years in both this court and in the sheriff court. He too had produced a main report (no 7/130 of process) and then a Supplementary Report (no 7/189) with revised figures. His main report narrated the approach he had taken, which was to value each of the various business entities and provide a total, rather than to look at these as a whole. He adhered to his approach and said that his later report simply fed in the new information from Mr Ranachan. The main difference between his approach and that of Mr Rowand was in valuing the component

parts of MMA's business interests separately, consistent with Mr Ranachan' s valuation. He adopted his Supplementary Report as his final valuation.

[27] Under cross examination Mr Robb was asked about a document he had prepared (no 7/11 of process) detailing the intercompany loans when he was attempting to reconcile the various figures. He had noticed a bookkeeping error and said he had corrected that in preparing his report. When he was valuing MMA's sole trader entity, which owns three trading properties, two office properties and a garage, he had made an adjustment to reflect that the fixtures and fittings of these should be attributed to the relevant companies (the restaurants) to reflect that they had incurred the expenditure. In relation to the partnership between MMA and his father, Mr Robb accepted that in his main report he had assumed that the partnership had a leasehold interest in the George Square premises but now understand it was freehold, which he had then reflected in his revised valuation. He accepted that the relevant documentation on this was in Mr Ranachan's report but he couldn't recollect seeing it before he prepared his first report. For G Limited, which owns properties including Gordon Street, Mr Robb had relied on Mr Ranachan's valuations. He had not been advised that there had been agreement on these and so that was not reflected, even in his revised figures.

[28] Mr Robb accepted that MMA was the controlling mind of LV (Scotland) Limited. He agreed that some of the changes to the intercompany loans reflected that MMA instructed that large sums of money be moved around the various companies when required to fund assets. One example related to G Limited. At the relevant date G Limited was owed over £1million by LVS Limited, but G Limited was also shown as owing LV (Scotland) Limited the sum of £2,766,195. However, Mr Robb maintained that it was appropriate to assume that the intercompany loan could not be repaid in full because there was a net liability position if

all the loans were to be repaid. His figures on this differed from Mr Rowand's consolidation figures because he considered that each company would have to settle its own liabilities. Mr Robb accepted that all of the companies listed in Appendix 8A of Mr Rowand's report had a net assets position as at 31 March 2018, but he had taken the liability figures from draft management accounts that included the intercompany loans. There was one discrepancy in the management accounts relating to the Directors' loans and the final statutory accounts contained the correct figures on that. Mr Robb had not been asked to provide any current date valuations. He was also unaware that certain property valuations had been agreed since his report, such as in relation to Bishopbriggs and the heritable property owned by G Limited. He accepted that such agreement would change his valuation.

**(iii) Discussion**

[29] While the valuation evidence was detailed and took up considerable time at proof, the reasons for my decision on the figures to be inserted in the matrimonial balance sheet for these items can be summarised relatively briefly. Firstly and importantly, only Mr Rowand produced figures that reflected all agreements reached between the surveyors. Mr Robb was not told of the values agreed subsequently in relation to Bishopbriggs and the heritage owned by G Limited and was not asked to update his figures in evidence. It would not, therefore, be possible to accept Mr Robb's evidence in its entirety, although not on this point due to any issue of his different approach. Secondly and separately, both Mr Rowand and Mr Robb relied on the opinion of the commercial surveyors instructed by the pursuer and defender respectively for valuation of the restaurant businesses and other commercial property, given the speciality of surveyors' work in this area. Accordingly, if the approach of one of those surveyors cannot be relied on, neither can the accountant's report on which it

is based. I have reached the view that I cannot rely on the evidence of Mr Ranachan in this case. While I have no doubt that he is a skilled and experienced commercial surveyor on whose advice many can and will rely with confidence, in the circumstances of this particular case as it evolved and for the reasons given below, I am unable to do so.

[30] Under reference to the approach in the UK Supreme Court authority of *Kennedy* v *Cordia (Services)* LLP 2016 SC (UKSC) 59, Ms Brabender submitted that Mr Ranachan's evidence could not be described as impartial and that he had effectively acted as an advocate for MMA, something that had been put to Mr Ranachan in evidence and which he had denied. A number of points had been brought out in evidence in relation to the terms on which Mr Ranachan had accepted appointment and the narrative in his report did not conform to RICS standards for providing independent expert advice, something he accepted was an error. There was also an element of a potential ongoing instruction in relation to a valuation for the bank. While these are important matters and while those instructed as experts must take particular care to be clear about the nature of their instruction before they are in a position to provide opinion evidence to the court, I acknowledge Mr Ranachan's position that these were errors and that in general terms he understood the nature of an instruction to be an independent expert. Had there been no issues of substance with the views he expressed, I might have been able to overlook those errors as relating only to form. However, as I have narrated above, what occurred in this case was that during the progress of proceedings, after Mr Creevy's evidence (and after the pursuer had closed her case) following communication with the defender and his legal team, Mr Ranachan sought to depart from his earlier view in relation to the effect on the valuation of MMA's role in the business.

[31] Mr Ranachan accepted in evidence that the FMOP figures he had agreed with Mr Creevy (for all of the restaurants other than George Square) took account of the assumption that MMA would leave the businesses on the hypothetical sale at the relevant date and be replaced by a reasonably efficient operator, thus excluding ongoing personal goodwill. Nonetheless his subsequent figures (7/188 of process) sought to revisit that issue under the guise of adjusting the multiplier for each of the four relevant restaurants. His reason appeared to be that he had underestimated the stellar contribution MMA made to the businesses, particularly in terms of hours worked. This attempt was flawed for three main reasons. First, as personal goodwill had been excluded in calculating FMOP, it could not properly be factored in again when selecting a multiplier. Both surveyors agreed that selection of a multiplier was a matter of judgement but that profitability and location were the most relevant factors. As FMOP is an assessment of future profitability on the assumption that the seller will leave the business, it would constitute double counting to factor his contribution into selection of the multiplier. Secondly, Mr Ranachan's initial attempt to revise the figures included a view that Bishopbriggs should have a lower value than that agreed with Mr Creevy. While he ultimately accepted that there could not be a departure from the agreement on Bishopbriggs, it was clear that at the time of his post consultation reflections, Mr Ranachan considered that it was open to him to do so. Thirdly, when pressed on how he could alter his view on the multipliers given all that he had accepted was behind the FMOP figures, he said that he had thought at the time that MMA himself might be the reasonably efficient operator. This was incomprehensible given the clear requirement for business valuation in cases of this type to assume no contribution after the relevant date (and so no personal goodwill to the business) of a spouse who runs the business. It was also inconsistent with the earlier agreement on FMOP and the view he had

expressed on valuation in his main report, which included a number of statements about MMA's central role in the business. Mr Ranachan made a telling concession that he had never sought to change his own valuation in this way on any previous occasion.

[32] In light of the unsatisfactory nature of Mr Ranachan's change of heart on valuation, the backdrop of the absence in his report to his duties to the court and the other errors mentioned take on more significance than they might have otherwise. I do not doubt Mr Ranachan's general motivation of course, but in light of the evidence about how his views developed I consider that he has allowed himself to be influenced by MMA's views on the matter. As a result he departed from the necessary position of impartiality of a witness giving opinion evidence and appeared to promote the defender's cause on valuation. His position in evidence was that he did not seek to defend all of his initial valuations. As I cannot accept his final figures I am effectively left with no definitive valuation by Mr Ranachan. For all these reasons I have concluded that I cannot rely on his evidence at all and so cannot use any of his figures for the purpose of valuing the various business interests. Neither Mr Creevy nor Mr Ranachan took account of the ownership structure in expressing views on market value of each of the businesses, with the exception of George Square, on which I will comment separately. Mr Creevy's valuations appear to me to be based on a sound understanding of the market and the particular features of the business operations controlled by MMA and I accept his figures. Mr Creevy's views on lotting premium play no part in that calculation. What that section of his report does is fortify the view that a willing seller on the relevant date who controlled the businesses (MMA) would realise that collapsing the ownership structure would be the way to achieve the best price. As indicated, I reject MLA's evidence that he would stand in the way of such a sale. In any event, Mr Creevy put the matter simply and correctly when he reiterated that

the basis of valuation for these proceedings was to hypothesise a willing buyer, willing seller sale. The willing seller will want to get the best reasonable price he can for what he is selling and the purchaser will see the benefit of securing the whole trading enterprise. It is unrealistic in my view to contend that on the hypothesis that MMA had been willing on the relevant date to collapse the structure and sell everything for a better price than he would receive by realising the component parts of the entities, his father (who would also gain in such a global sale) would stand in his way rather than agree to a sale of the heritage in George Square and associated premises. On Mr Creevy's figures the willing purchaser would acquire everything for market value of the whole but without paying an additional premium. I conclude that this satisfies the requirements of fair valuation.

[33] Turning to the accountants' evidence, Mr Robb's valuation is predicated in large part on Mr Ranachan's opinions of value (albeit without taking account of all of the agreed values) and so cannot be relied upon. However, there were some differences in approach between the two accountants that are also relevant. For example, as narrated, Mr Robb treated each wholly owned subsidiary as a separate entity for the purpose of assessing ability to repay intercompany loans and concluded on the basis of draft management accounts that some of these could not be repaid. More fundamentally, he took Mr Ranachan's valuations and fed them into tenants' improvements as a book exercise to adjust the value of each of the subsidiaries and so the holding company, which was valued as if there was no relationship between it and the owner of the heritage. Mr Rowand on the other hand considered the value of the heritage of each restaurant and then the leasehold or tenants' value separately before preparing a valuation illustrating how the various business entities would look if sold together on consolidation of the company, partnership and individual interests. The intercompany loans are all accounted for within the net asset

position and no issue of repayment arises. I prefer Mr Rowand's approach, as it reflects the reality of MMA's interest as the controlling mind of the whole enterprise and his ability to transfer loans between companies and entities as he sees fit. There was evidence of him being the sole actor not just in relation to the subsidiaries of LV (Scotland) Limited but also in the way his sole trader property business and his partnership with his father were all conducted, including their relationship with the company. To take one example, having confirmed in evidence that the Byres Road property had been purchased just before TA died in 2007 with borrowing from the bank, a property now owned by him as an individual, MMA said "the bank just structured it, I just say I want to buy it and they tell me how to get the best tax relief". This explained why there were figures for "rent" in relation to such properties owned by him (and run by subsidiary companies) where the payments were in reality loan repayments. He agreed that for him it was all just his business, however structured. On the basis of Mr Rowand's revised report, the total value of MMA's business interests LV (Scotland) Limited, G Limited, property rental individually and in partnership and LS amounts to £9,974,057, all as set out and calculated in his final revised version of Appendix 15. That is the figure I have inserted below in the schedule of matrimonial property.

**Other valuation disputes**

[34] There were a few other disputed issues in relation to the identification and/or value of the matrimonial property that remained unresolved by the end of the proof. These were far less valuable than the business interests but a determination is required on each.

**Jewellery and watches**

[35] There was contested evidence about the full extent and value of the parties' jewellery and watches, although the value of some items had been agreed. There was a dispute about what watches MMA owned at the relevant date that should be included in the schedule of matrimonial property. In evidence he accepted that he had two Rolex watches at the relevant date, one of which (a gold Rolex) he had purchased on a family holiday to Switzerland and continues to wear and the other (a black faced Rolex) which he said he had purchased during the marriage but traded in for a Cartier watch in late 2018. There was a possible special circumstances argument relating to the gold Rolex and no valuation of the black faced Rolex because it had been traded in and so was not available for valuation.

[36] In the pursuer's case, opinion evidence of the value of the jewellery and watches at the relevant date was led from Samantha Maclachlan of Laings in Glasgow. Ms Maclachlan is an experienced valuer of jewellery and a gemologist. She spoke to her qualifications and professional memberships all as set out in her principal report (no 6/16 of process). In addition to that report, Ms Maclachlan prepared a supplementary report (no 6/165) and also provided paperwork illustrating her workings for the valuations she had reached. She spoke to all of these documents in evidence. The basis of valuation for each item was an open market value as at the relevant date based on a hypothetical public auction sale without time or geographical constraints. Each value was intended to represent the "hammer price" less commission and/ or premium on such a sale. Ms Maclachlan had access to auction sites such as Bonhams, Christies and Sotheby's which she had used to research comparable prices. Her reports, which she adopted as her evidence, contained careful descriptions of each item valued. When read together with her workings the basis for each value could be seen.

[37] Ms Maclachlan had been shown the report (no 7/131 of process) of the defender's witness on jewellery valuation, Mr David Bercott. She did not know of Mr Bercott and said that his name did not appear on the register of gemologists and he was not a member of the Institute of Valuers. She had reviewed her own valuations where these differed with Mr Bercott's but expressed the view that she had come to the correct conclusion on each. She pointed out that a valuation for insurance purposes, which was referred to in Mr Bercott's report, was a very different type of valuation than the hypothetical sale at auction approach that she had employed. Insurance value represented replacement cost if an item was lost or stolen. On being taken through every item on which she and Mr Bercott differed, Ms Maclachlan was clear that she was confident in her own methodology and opinion for all of them. On the black faced Rolex she had been asked to provide a valuation from a photograph as the item had not been available. She thought that the watch seen in the photograph No 6/101 of process (of MMA wearing a watch) was probably the same watch as the close up of a watch in the photograph no 6/102. She said that even without the diamond embellishment such a watch would normally sell for about £20,000 but she had not seen this one for valuation purposes.

[38] Under cross examination Ms Maclachlan explained that she had a software programme built for appraisers and that she had used it to key in details of the items she valued, such as whether and where hallmarked and the valuation date. The fixing of value was however a matter of judgement having consulted auction websites for comparables. She agreed that in one example she had produced, the item had gone for the lowest price in the range estimated by the auction house and in another for lower than the lowest estimate. She said that much depended on popular trends at the valuation date. The time of year and fashion are relevant features. While it was not an exact science, she had used her

qualifications and experience to apply the methodology to come up with opinions she was comfortable with. An Affidavit from Mr Bercott (no 40 of process) was put to the witness which refers to a second hand sale value as providing "fair valuation". Ms Maclachlan said that second hand sale value would relate to items bought at auction and marked up in price by a jeweller and so a higher value than hammer price. An individual looking to sell their jewellery might achieve a little more than auction price from a high street jeweller but would receive less than the price such jeweller would then give to a purchaser following mark up.

[39] Mr Bercott gave evidence in the defender's case. MMA had given evidence that most of the Italian families in Glasgow bought their jewellery from Bercotts, although he had no recollection of buying more than one or possibly two items there himself. Mr Bercott adopted his affidavit (no 40) and confirmed that he had 40 years of experience of buying and selling jewellery and watches. He had studied gemology and antiques but that was long ago. He is not a registered valuer. Mr Bercott was taken through the values he had placed on each of the disputed items, as Ms Maclachlan had been in her evidence. Mr Bercott did not use online auction sites to assist in valuation. He used his experience to get a feel for the right price and then cross checked it against online sites for other retail shops. He had looked at Laings website and saw that they had a higher price for a pearl bracelet that he had valued.

[40] Under cross examination Mr Bercott said that he had known MMA and SCA for 30 years. MLA used to buy jewellery from him and then his son became a customer. MMA personally had requested the jewellery valuation and asked for it to be dated 14 June 2018 (the relevant date). Mr Bercott accepted that his letter dated 14 June 2018 (no 7/131 of process) referred to insurance value and said that was an error. It should have stated "for asset purposes" or auction price. He had provided two valuations, (nos 7/131 and 7/132 of

process) and thought these had been prepared in October 2019. The witness confirmed that he knew MMA and SCA had separated in June 2018 because he frequents the restaurant in Newton Mearns and speaks to MMA regularly. When taken through his affidavit in relation to SCA's items of jewellery and his opinion as to their value, he was asked about the expression "fair valuation" he had stated therein. He thought that second hand sale value and auction value would be very similar, or at least that auction value would be slightly below cost price. Insurance value would be retail sale price plus 10%. Mr Bercott then said he was asked for an asset valuation and so had given values at auction prices. He agreed that when he had described the value as second hand value at auction that should be read as auction value.

[41] Mr Bercott had not seen Ms Maclachlan's valuations prior to being cross examined. When they were put to him he agreed that unlike Ms Maclachlan he had not followed the standard laid down by the National Association of Jewellers. He was taken through the various items of jewellery on which his valuation differed from the pursuer's witness. Mr Bercott did not consider that auction sites were a helpful guide at all because an auction price depended on who was present at the time. In any event items often sell for below cost price. Mr Bercott said he did not have any cause to review his views on valuation having seen Ms Maclachlan's figures. He is involved in the manufacture of jewellery and so is knowledgeable about how diamonds are set and the impact of that on value. His business sells a lot of second hand watches and he stated that he knows what they sell for.

[42] In re-examination Mr Bercott confirmed that gemology is the study of gemstones and is unrelated to valuation of jewellery. His manufacturing work had given him good knowledge of value because he buys all the stones and other materials for that on a daily basis. Mr Bercott does not buy anything at auction because he gets two to three months

credit on used diamonds and doesn't have to pay commission. On watches, he would sell a Cartier Santos watch at most once or twice per year, as compared with Rolexes, which every customer seemed to want and he could sell four per month, with considerable mark up in the price.

[43] I have reached the view that Ms Maclachlan's evidence of the value of the parties' jewellery and watches should be preferred. Unlike Mr Bercott she was completely independent of the parties. She had a clear remit which she followed and explained her methodology. Mr Bercott's instructions were a little casual and there was real confusion about his basis of valuation, i.e. whether it was insurance value, second hand sale value or auction value. Mr Bercott said that he did not look at auction prices, yet in cross examination appeared to equiparate those with second hand sale value and indicate that was his basis of valuation. In any event, the basis on which he arrived at value was unclear. In fairness to Mr Bercott, he is a jeweller and jewellery manufacturer of very considerable experience and I have no doubt that he provides an excellent service for his clients. He appeared to answer questions openly and honestly. His written reports and oral evidence, however, do not meet the standards of impartiality and attributed methodology necessary for him to be categorised as an independent skilled witness for the purposes of providing opinion evidence as an expert – *Kennedy* v *Cordia ( Services*), cited ante, at 51- 53. Accordingly, I am unable to rely on his evidence and will use Ms Maclachlan's figures in the schedule of matrimonial property. I have included only the items that she saw and valued. While it was ultimately accepted that MMA also owned a black faced Rolex watch at the relevant date, its specification, age, condition and value at that time are unknown and it has been disposed of. There was some evidence that it was traded in for a watch worth far less

than the £20,000 given by Ms Maclachlan as a very rough estimate on the information she had. I do not consider that any acceptable evidence of value of that item has been led.

**Publicly quoted shares held by the defender**

[44] There was evidence from MMA that he had been gifted a number of shares by his father and MLA was questioned in some detail about these as there was some dubiety about what shares within MMA's holdings should be disregarded as not constituting matrimonial property. Unchallenged evidence was also given by Ms Hunter, solicitor, who provided an affidavit (no 35 of process) as to value of all quoted shares held by MMA at the relevant date. A table was also provided at no 6/177 of process. By the time of submission there did not appear to be any remaining dispute about these and I have accepted Ms Brabender's figure of £24,523 for the quoted shares that constitute matrimonial property. Some of those were purchased by MMA from the estate of his late brother TA.

**Vehicles and cherished number plates**

[45] There were two vehicles that were agreed to be matrimonial property and then two about which there was no agreement as to their inclusion in the schedule. First there was the Jaguar F-Pace, a car driven by the parties' son M who gave affidavit evidence that his father agreed to pay the instalments on the loan taken out to buy the car. The finance documentation for the vehicle (no 7/10 of process) appears to be in the name of the defender. The evidence as to the ownership of this vehicle was a little unclear. M was not asked who owned it although the defender was and he said that it was M's car and that he was the registered keeper of the vehicle. MMA thought he had provided the vehicle finance document when served with a specification of documents. A receipt (no 7/155 of process)

from a car dealer in Ayr was put to MMA who said that it reflected the deposit of £26,750 paid by M for the car and that the document had M's signature on it. M had traded in a Porsche for the Jaguar. MMA said he had checked that the finance document could run in his name for M's car and that M owned the car. An extract from Parker's guide (no 6/145) indicated that the used car price for such a vehicle might be £25,000 - £29,000 at the material time. In submissions it was suggested that as there was finance over the Jaguar car it could not be said to be in the ownership of either the defender or his son. I conclude that there is insufficient reliable evidence that the vehicle was MMA's property at the relevant date and so have not included it in his assets. However, I will not deduct the outstanding finance due on the vehicle as a matrimonial debt of the defender. This is consistent with the position that if the debt is unpaid the car (which is worth more than the level of debt) will belong to the finance company and with MMA's position that what he agreed to do was service the debt on his son's car. The second vehicle in dispute was a Lambretta scooter, the document for which (no 7/6 of process) confirmed it was registered in the defender's name. MMA's evidence initially was that he was the registered keeper but not the owner of the scooter. Under cross examination he said it didn't work and was not in good condition and that he hadn't had an MOT certificate for it for two years. He agreed that it would be worth £4,000 if on the road and in good condition. It is kept at MMA's restaurant in Newton Mearns. On this vehicle I consider that there is sufficient evidence to infer the defender's ownership of it. In light of the evidence that it requires repair and an MOT I will discount the suggested value of £4,200 down to £3,000 and include that in the schedule. The parties each had a personalised number plate on their vehicle. The pursuer had produced (at nos 6/190 and 6/107 of process) estimates of value and the defender appeared to accept those in evidence, albeit there was no formal agreement.

**Matrimonial debts**

[46] There were two disputed issues about the debts due at the relevant date that should be deducted from the value of the matrimonial property (i) tax liabilities and (ii) sums due by each of the parties to LV (Scotland) Limited. The first of these included an issue about tax liabilities arising from an Employee Benefit Trust ("EBT") in which MMA had been involved some years prior to the relevant date. Such schemes were subsequently challenged as constituting disguised remuneration and, like many others, MMA's tax advisers have been in a negotiation process with HMRC with a view to settling this liability. The issue in principle was not raised on behalf of the defender until close to proof in this action. Mr Cheyne was very clear as to the reason for that, namely that a view had been taken at an earlier stage that the EBT liability would not fall within the definition of debt "outstanding" as at the relevant date and so might not be deducted from the value of matrimonial property. Mr Cheyne took the view that it did fall within the definition and so had produced a Minute of Amendment to reflect that shortly prior to proof. While the matter was not without controversy, I considered that the defender's side should be permitted to amend and so lead evidence about this matter.

[47] SCA gave evidence of a meeting she had attended in London and it was suggested to her that she had been well aware that this related to the legal issues arising from the EBT scheme. She had no recollection of the details of what was being discussed and I accept that she was not involved in tax or accounting matters at all during the marriage. MMA spoke of meetings he had attended on the issue of the EBT giving rise to a tax liability, but it was clear that he relied heavily on professional advisers for all tax and accounting matters. Joyce Fleming, an experienced accountant (FCCA) and now a Director of Consilium, the firm of

accountants who are instructed by MMA in all of his personal and business tax and accountancy affairs, gave evidence about all of the tax liabilities of the defender at the relevant date. She had prepared a letter (No 7/96 of process) setting out her understanding of five separate tax liabilities of MMA's as at 14 June 2018. Her support for the figures was contained in five Appendices to the letter.

[48] First, Miss Fleming had estimated MMA's personal tax liabilities as at the relevant date to be £107,795, which with the benefit of hindsight and completion of his tax return for the year to 5 April 2018 was now known. She acknowledged under cross examination that the figure was not be completely accurate as it included a small amount of interest and a late filing penalty not actually incurred by the relevant date. I have accepted that the correct figure for this liability was £106,084. The second liability related to a scheme known as Excalibur, which had been set up in relation to both MMA and his brother TA and which had been challenged by HMRC because it had created losses that were deemed to be sheltering trading profits. HMRC's decision had been challenged, unsuccessfully, on MMA's behalf and the principal sum due had been paid by 2016. The sums outstanding at the relevant date were interest and penalties, although an appeal to the tax tribunal was outstanding in relation to the penalty. So far as MMA's own liability in relation to Excalibur was concerned, Miss Fleming had calculated this as £46,242 at the relevant date. However, £5,655 of that relates to the penalty still under challenge and so cannot be regarded as a liability outstanding as at the relevant date. I have included both the interest of £40,577 that was relative to the now unchallengeable liability and the £5,665 in respect of the penalty as matrimonial debts. Both relate to a period prior to the relevant date and there was no evidence on whether the appeal was likely to succeed, such that the chance of that could have been factored in.

[49] The third proposed tax liability related to the personal liability to HMRC of the late TA in relation to the Excalibur scheme. The sum calculated by Miss Fleming as due in respect of TA's Excalibur liability and due at the relevant date was £142,128. Miss Fleming's position was that she had been told that the late TA's tax was to be paid by MMA. Correspondence from HMRC in respect of this matter and produced within Appendix 3 of Miss Fleming's Appendices was addressed to MMA as personal representative of the late TA. Miss Fleming's understanding was that the solicitor dealing with TA's estate (Mr L Franchi) had told the relevant lead partner in Consilium (previously Mr C Briton, now Derek Shaw) that this debt was to be paid by MMA. That was consistent with MMA's evidence although when pressed he accepted that there was no document setting out any agreement between him and his siblings that he would settle the debt. Ms Fleming agreed that the usual position would be that such a liability would require to be settled by the beneficiaries of TA's estate as a debt of the deceased impacting the quantum of the estate for distribution, but she had not seen any documents confirming how TA's estate had been distributed. She had taken over the discussions with HMRC on this and other matters in the summer of 2018. She had produced email correspondence with HMRC offering settlement terms in respect of this matter but she continues to await a response. Since December 2018 when she made the offer she has sent two reminders to HMRC. Mr Franchi had provided an affidavit which supported MMA's position on the tax liability of the late TA but the Deed of Variation entered into by the beneficiaries (no 7/20 of process) made no reference to this. Ms Brabender had made clear that she wanted to cross examine Mr Franchi but he was not called to give evidence. Accordingly, there is insufficient evidence from which I can conclude confidently that MMA had or has any liability, as between him and HMRC to settle this debt. He would appear to have agreed informally with his siblings that he will do

so. The debt was not one incurred by MMA during the marriage but is a debt of a third party that he seems willing to take on. It remained unpaid at the relevant date and at the date of proof. That said, it seems to me that MMA's offer to settle this particular tax liability and the likelihood that he will do so is a special circumstance to be considered in division of matrimonial property rather than as a debt incurred by him and due at the relevant date. It forms part of a larger special circumstances argument about how TA's estate was divided between his relatives and I will address it in that context.

[50] The fourth liability included in Miss Fleming's schedule was a sum of £9,853 in respect of a dividend replacement strategy, "Akido". The witness said that HMRC had categorised this as a tax avoidance scheme. It related to the tax year ending April 2012 and HMRC were now pursuing MMA for this personally. The relevant correspondence was produced in Appendix 4 and dated from 2016. A revised tax liability for the tax year to April 2012 had been calculated and the additional tax due was £9,853 in respect of Akido. Miss Fleming did not know from which company the dividends had been paid, but they had been paid to MMA personally and so he had liability for the tax. This seemed to me to be a personal tax liability due by MMA arising during the period of the marriage and outstanding at the relevant date and so I have included it as a debt.

[51] By far the largest tax liability said to be due was the fifth and last. This was the one relating to the EBT referred to above. It arose from a trust set up by LVP and through which MMA's remuneration was filtered by way of " loans" from the trust which have not been (and it was ultimately accepted would never be) repaid. Schemes of this type are now regarded as disguised remuneration and open to challenge by HMRC. The debt, representing the tax and NI that should have been paid had there been no EBT, was due by LVP, which went into voluntary liquidation in November 2017. In May 2018 Miss Fleming

registered an interest with HMRC in settling the tax liabilities arising from the EBT, something that HMRC had invited. When asked whether she was acting for the liquidator in that process Miss Fleming answered "Yes, and probably for MMA because he would have to pay". It was known that the company (renamed as "COU1" during in liquidation) would not be able to settle the debt. There had been a tax tribunal case which the company lost. Consilium advised MMA that it would be prudent to negotiate a full and final settlement calculation. MMA agreed and by May 2018 it was known that MMA would be the payer. He agreed to provide the sums to COU1 for them to pay the tax. Miss Fleming and Derek Shaw had met the liquidator (Mr Bain) on a number of occasions and it had been made clear to him that MMA would provide the funds. MMA had given clear instructions by May 2018 that he would settle the tax liability, although that hadn't been reduced to writing. The draft calculations were made in July 2018 and a draft agreement was in circulation by July 2019. The total sum due was £583,420, although there was about £70,000 of money in the company, part of which would be required to settle liquidators fees.

[52] During the course of the proof Miss Fleming produced a further document (no 7/197 of process) after being asked to expand on the EBT liability and how it would be worked through. The document provided a breakdown of the total figure of £583,420 for the liability. She was clear that she would not have entered into negotiations with HMRC on behalf of the liquidator unless MMA had agreed he would settle the liability. Regulation 80 notices (under the Income Tax (PAYE) Regulations 2003) had been served on the company, which had appealed. From her own experience she knew that if the company did not pay the tax within 30 days following determination of the appeal, HMRC can pursue MMA directly for the PAYE and NI contributions due because he was the income earner whose remuneration was disguised. MMA's agreement in May 2018 to settle the liabilities

voluntarily was the reasonable alternative to waiting for formal action to be taken against him. Ultimately Miss Fleming's best estimate of what MMA would have to pay (taking account of the money in the company under deduction of the liquidator's fees and expenses) was £560,000 for this particular liability. The affidavit of Derek Shaw was put to the witness, paragraph 3 of which states that agreement has been reached in principle for this debt that will involve MMA paying the sum of £513,420. Miss Fleming indicated that the difference between her estimate and Mr Shaw's position was likely to be that her colleague may have taken into account the extent of the liquidator's fees, a note of which had been provided. As she had indicated, her calculations did not take account of the money in the company.

[53] Derek Shaw, a practising chartered accountant since 1995 and a partner of Consilium Chartered Accountants also gave evidence about this matter. He spoke to his affidavit (no 38 of process) and adopted it as his evidence. Mr Shaw's now retired colleague Mr Burton had been MMA's accountant for many years and Mr Shaw had been involved from about 2008/9, although not as principal partner until August 2018. He had knowledge of the accounts of the various entities already discussed in the valuation context. So far as the EBT was concerned, he understood that Miss Fleming had made an accurate calculation but because of the £70,000 in the company COU1 Limited (in liquidation), Mr Shaw thought that the sum due was £513,420. He would defer to Miss Fleming for the final figure. Under cross examination he agreed that the decision to wind up LVP had been taken after an adverse decision about the legitimacy of EBTs in the English High Court, where HMRC's challenge was successful. The insolvency practitioner for the company had insufficient knowledge to negotiate the tax settlement for the EBT and so Miss Fleming had become involved. He understood that there was a firm agreement that MMA would pay the sum now calculated for this liability to the liquidator who would then settle the debt. The sum agreed as due to

HMRC is £583,420, but how much of the £70,000 held by the liquidator would go on fees was unknown. Mr Shaw was in no doubt that the agreed settlement would be effected by payment of well over £500,000 by MMA. The only reason why the final agreement had not yet been signed was because the liquidator was seeking legal advice, but there was no question that MMA was taking on the liability. Mr Shaw had advised him that he might well have this tax liability as early as the adverse legal decision for EBTs being issued.

[54] Alan Robb was also asked about the EBT issue in his evidence. His evidence on the principle of the matter accorded with that of Miss Fleming and Mr Shaw. Mr Robb was familiar with the procedure of the ultimate taxpayer offering voluntary settlement followed by a delay while calculations are checked and a settlement agreement prepared. He was clear that if such settlement was not reached HMRC would revert to Regulation 81 for recovery of the tax and NI from the taxpayer. He thought that MMA's settlement of the liability in this case could not be regarded as voluntary in that he was just agreeing to pay something that HMRC could recover from him anyway. For completeness I should add that the pursuer had lodged an affidavit from an experienced chartered accountant and tax specialist, Lachlan Fernie, of Geoghegan, chartered accountants in anticipation of the defender's evidence on this issue and that Mr Fernie gave evidence. His Affidavit confirmed the position in principle about recovery from MMA personally of the tax that should have been paid, although he considered that recovery of the employers' NIC could not be sought. Under cross examination however, he agreed that it was possible that a former Director involved in an EBT scheme would agree to pay the Employers' NIC also and that HMRC would then pursue him. The distinction between employee and employer NIC was not pursued on behalf of the pursuer in submissions.

[55] In light of the evidence summarised above, I conclude that the liability to settle the tax due and arising as a result of the EBT entered into by LVP in respect of sums that were MMA's remuneration on which tax and National Insurance contributions should have been paid was a matrimonial debt within the meaning of section 10(2) of the 1985 Act. The effect of the scheme was that for a period during the course of the marriage MMA and SCA had more income as a couple than they ought to have had because MMA was paid gross rather than net of the relevant tax and national insurance. The liability to tax arose prior to the relevant date and although the primary responsibility rested with the company, MMA has to take responsibility for it to avoid HMRC pursuing him personally following the liquidation of LVP and the consequent inability of that company to settle the large debt due. Importantly, the offer to settle voluntarily on the basis of a payment by MMA personally was made in May 2018, just prior to the date of separation. There was no suggestion that there was any relationship between the parties' separation and MMA's instructions to his accountants. It was accordingly clear from prior to the relevant date that (i) there was a significant liability due in respect of unpaid tax, (ii) there was no defence to that liability and (iii) the liability that would ultimately fall to MMA to settle and that he would do so. While the position remained formally disputed, I sensed that the pursuer's side felt rather ambushed at the manner and timing of this issue arising rather than having any argument to advance on the issue of principle. Ms Brabender made points about some of the evidence on the issue, but very fairly included the whole debt in her calculation of the net matrimonial property. Mr Cheyne suggested that the sum of £560,000 be deducted as a debt in keeping with Miss Fleming's best estimate. I accept Miss Fleming's evidence and conclude that £560,000 is the sum to be deducted as MMA's liability.

[56] The other matter of dispute about matrimonial debt was the level of the sums due by the parties to LV (Scotland) Limited at the relevant date. So far as SCA is concerned, she had a debt to the company of £60,721 at the relevant date, a figure that was not disputed. However, the sum arose because of a dividend of £135,000 issued to SCA as a shareholder in LV (Scotland) Limited but which she did not receive as cash. It apparently related to monies taken out of the company through the Directors loan account to spend on home improvements that were then classified as dividend payments to SCA. Mr Shaw was clear that SCA had shortly before the issue of the dividend received a class of share and that the issue of the dividend was considered a tax efficient way of dealing with the monies taken for home improvement. He said he had explained the situation to SCA at a meeting, although he accepted that the money for the home improvements would have actually been taken out of the company account by MMA. In her evidence SCA had said that she was shocked to receive a tax demand about this and did not know (or at least didn't understand) why she would incur such a liability. Ms Brabender accepted that the sum should be included in the schedule but should be considered as an economic disadvantage when considering the division of matrimonial property. I will return to it in that context.

[57] MMA owed the sum of £36,885 to the company according to the accounts and information provided to Mr Rowand, who gave evidence about it and who had checked the positon on the sums due by the defender with Mr Shaw. Mr Robb had a very different figure, the sum of £232,520, as owed by MMA to the company at the relevant date. He said that he had taken this from draft management accounts as at 31 May 2018. However, he also said that he had contacted Consilium when he had queried some of the intercompany loan figures he had summarised (no 7/111 of process) from the accounts. He was told that a sum stated of £196,755 due to "M & Sons" was an incorrect entry by an employee within the

company and that the sum should be classified as due to the property partnership, in which of course MMA has a 50% interest. In broad terms, that figure accounts for most of the disparity between Mr Rowand and Mr Robb's figures. Mr Rowand treated the M & Sons figure as being due to MMA personally because Derek Shaw told him that it should be a credit balance to the MMA director's loan account (see no 6/29 of process, para 4.4.2). When he gave evidence Derek Shaw agreed that there may have been an error in recording this reference to M & Sons, which was an entity that no longer existed, but also stated that the preparation of accounts for the year to 31 March 2019 had not been commenced as at December 2019 and that any error would be picked up when those accounts were prepared. Against the background of MMA being the controlling mind of the whole enterprise with an ability to move money around the entities at will, I consider that Mr Shaw's initial position to Mr Rowand should be accepted. If the sum of £196,755 due to M & Sons is credited to MMA's directors' loan account as at the relevant date, he owed the company £36,885 as calculated by Mr Rowand. Mr Robb's figure fails to take any account of the £196,755 as he did not appear to take it into account as a credit to the partnership account, whether as due to MMA alone or otherwise. Mr Shaw's later evidence appeared to be a suggestion as to how the matter might be resolved in accounts as yet unprepared, rather than a statement of the situation as at the relevant date. I will include Mr Rowand's figure in the schedule of assets and liabilities.

**Calculation of the net value of matrimonial property**

[58] I have determined the areas where the extent or value (or both) of the matrimonial property was the subject of dispute at proof. I have used a single figure for MMA's business interests in the schedule below, consistent with my conclusions on the disputed valuation

evidence relating to that most significant issue. I have reached a view on each of the debt issues, at least on quantum. Accordingly, the following schedule represents both agreed figures and those on which I have made a determination on the evidence:

| | **SCA** | **MMA** |
|---|---|---|
| Matrimonial home | | £962,500 |
| Contents | £5,215 | £5,215 |
| Investment flat | £130,000 | |
| Bank accounts | £1,489 | £4,046 |
| Mercedes Benz car | £17,845 | |
| Maserati Levante car | | £33,500 |
| Lambretta Scooter | | £3,000 |
| Vehicle number plates | £3,500 | £10,000 |
| Defender's SIPP | | £474,538 |
| Quoted shares | | £24,523 |
| Jewellery and watches | £31,820 | £7,638 |
| LV (Scotland) Limited | £4,406 | |
| G Limited | £65,500 | |
| Sums due by G Limited | £21,000 | £348 |
| Business interests | _____ | £9,974,057 |
| **Total (gross):** | £208,974 | £11,499,365 |
| Less debts: | | |
| Mortgage | £57,103 | (£599,838) |
| Vehicle Finance | £9,997 | (£13,885) |
| Sums due to LV | £60,721 | (£36,885) |
| Sums due to HMRC: | | |
| (i) personal £106,084 | | |
| (ii) Excalibur £46,242 | | |
| (iii) Akido £9,853 | | |
| (iv) EBT £560,000 | | (£722,179) |

| | | |
|---|---|---|
| **Total net:** | **£153,153** | **£, 10,126,578** |

**Proportions in which the net value of the matrimonial property should be divided**

[59] On the basis of these figures, the total net value of the matrimonial property as at 14 June 2018 was £.10,279.731 There was a dispute about the proportions in which the matrimonial property should be divided. Ms Brabender's position on behalf of SCA was that a fair division of value would be an equal division. Mr Cheyne contended that an unequal division would be fair because of the inheritance by MMA of TA's share in most of the business assets, particularly his interest in LPV, the previous holding company. It was suggested that one half of the value of LV (Scotland) Limited should be deducted to reflect that non-matrimonial source and that the assets of the partnership should be adjusted by deducting one sixth of total value. The value of the Castlemilk Road property should also be deducted from the SIPP. Determination of this matter requires consideration of the evidence about how the late TA's estate was divided, including on the issue of the debt apparently taken on by MMA.

[60] The evidence about this came primarily from MMA, who spoke to certain documents and was supported to some extent from Derek Shaw who was familiar with the general agreement reached by the family. It was unfortunate that Mr Franchi, the solicitor instructed in the executry was not called to give evidence, as there was some doubt, as already explained, as to the basis upon which MMA regards himself as liable to settle his late brother's tax liabilities. However, certain facts about the late TA's estate were led and were in large part undisputed. First, the Confirmation relative to his estate (no 7/22 of process) was lodged and spoken to in evidence. It had been prepared by Mr Franchi's firm. The total estate for Confirmation was said there to have a value of £2,235,327 and MMA

confirmed that he had signed that document as Executor Nominate. The main items relevant to the arguments in these proceedings were TA's interest in (i) M & Sons , with a stated value of £380,911, and (ii) LVP Limited with a stated value of £767,192. TA's capital account in the partnership of TA and MMA was said to be in deficit and so given a Nil value, as was his interest in the Firm of Messrs A (the three way partnership with MLA). It was initially overlooked that a Shettleston Road flat and accompanying loan relative to the TA and MMA partnership were held in TA's name alone. When this was noticed and confirmed in a letter from the accountants to Mr Franchi (no 7/94 of process) it resulted in a revised deficit of £111,295 taken on by MMA. The fish and chip shops at Castlemilk Road and Crookston Road were given a Nil value in the confirmation. TA's interest was transferred to MMA. He still retains the Castlemilk Road property in his SIPP and he sold the Crookston Road property with the proceeds being added to the SIPP prior to separation. MMA and his siblings entered into a Deed of Variation (no 7/20 of process) in terms of which it was agreed that MMA would inherit all of TA's business assets, other than the property partnership involving MLA. It was agreed that MLA should receive any value at credit of TA's capital account in that partnership and that a new partnership would then be drawn up between MMA and MLA. In broad terms, even allowing for the deficit, MMA received business assets from the sources mentioned above to the value (in 2007) in the region of £1 million from his brother's estate. In addition he inherited the Castlemilk and Crookston Road properties, albeit that in the Confirmation these were stated as not having a net value at that time.

[61] So far as debts were concerned, there was some support for there having been a departure from the usual rule that the deceased's estate would normally settle all debts due before distribution to beneficiaries. However, this was at best a verbal agreement and in the

absence of evidence from Mr Franchi about how the executry progressed and how debts were treated, I have not deducted the sum of £142,128 representing sums still to be paid on behalf of the late TA as a matrimonial debt notwithstanding that it seems clear that this will be paid by MMA to HMRC. The fact that he will do so is a special circumstance in the context of this case. While the separate liability that I have included as a matrimonial debt arose from non-payment of tax during the years that LVP was operating, that debt related primarily to personal income tax and National Insurance that should have been paid by MMA at the time and has no real bearing on the value of the capital assets he received on his brother's death in 2007.

[62] Ms Brabender suggested that the defender's evidence lacked candour and if that was accepted it militated against any unequal sharing in his favour notwithstanding the existence of special circumstances. Mr Cheyne on the other hand contended that the non-matrimonial source of many of the valuable assets held by MMA should be reflected in a significantly unequal division of at least some of the assets. I accept that it was likely that had TA lived he would have remained in business with the defender and would have held a half share in many of the business assets now owned wholly by MMA. On the other hand, MMA has, through his industry and dedication to the business enhanced its value considerably during the years leading up to the relevant date. The basic policy of the 1985 Act is to share fairly between the parties the fruits of their labour insofar as created during the marriage and prior to the relevant date. Both parties contributed to this marriage in different ways. SCA worked in the fish and chip shops and in the pizzeria, although was also engaged bringing up the parties' sons and running the family home. Their son M seems set to take on the running of the family business one day. Their other son is likely to be provided for by SCA, there being an unfortunate division of loyalties as already indicated.

It is not for the court to explore how or why that arose. However, the reality appears to be that the division of assets effected by these proceedings may well work through to the next generation. In my view, the defender did not display a lack of candour that would require to be taken into account in considering the division of matrimonial property. He was vague on many details and said in terms that he was not an educated man but knew how to run pizzerias. He left matters of accountancy and tax to trusted advisers, but seemed to have a clear understanding of what he regarded as his responsibilities in terms of his brother's estate. There were some inconsistencies in his evidence on minor matters such as whether his late brother had gifted him a watch, a matter that I have taken into account in the sense that he has the benefit of an item of matrimonial property not having been valued and so not included in the assets. He also seemed to think that he had inherited some of TA's share in the property partnership, although the documentation illustrated that it was agreed that MLA would receive that and his own interest was agreed to be matrimonial property. It seemed to me that his misunderstanding was perfectly reasonable against the background of his lack of attention to documentation. He, his father and TA had an equal three way partnership and he and his father now have fifty per cent shares each in a partnership. The current partnership was created after TA's death and so is matrimonial property. However, the assets held by the partners for the firm have effectively not changed and are now shared between two rather than three. As Mr Cheyne put it, one sixth of the value property of that partnership reflects what MMA received from TA's interest, albeit indirectly, and so has a non-matrimonial source regardless of what the Confirmation stated as to value.

[63] There are other matters that I must consider in deciding the proportions in which to divide the matrimonial property. SCA was left with a debt of £60,721 to LV (Scotland) Limited as a result of the tax liability arising from the dividend issued to her by the

company but which she did not actually receive. Ms Brabender contended that this presented an economic disadvantage to her that should be taken into account and I agree that it is part of the general picture within which I must decide on division of matrimonial property. But in value terms it is a very minor matter as compared with the value of the business assets and the arguments about the source of them. This is illustrated by the fact that, in addition to the assets ascribed a value in the Confirmation relating to TA's estate, the property at Castlemilk Road, originally purchased by the defender's father for £85,000 had a value within the defender's SIPP of £135,000 at the relevant date. In summary, the vast majority of TA's valuable or income producing assets were inherited and used by MMA as a solid base to further develop the businesses he then held at the relevant date.

[64] What I must achieve is a balance that seems fair and reasonable having regard to the undisputed history of the origins and development of many of the business interests that now comprise matrimonial property. Those interests dominate the matrimonial balance sheet, comprising about 97% of the net value thereof. Taking into account all of the considerations mentioned above, including but not limited to the stated value of TA's estate and the proportion inherited by MMA directly and indirectly and his stated intention to settle the tax, the requirement to effect fair sharing of the net value of the matrimonial property would not be satisfied in the circumstances of this case by equal sharing. It is rarely appropriate to effect some sort of reimbursement of the value of inherited wealth, with or without an adjustment to reflect its relevant date value. In many cases, including this one, it will have become intermingled with assets that have grown and provided the parties with both income and assets since it was received, the value of which they are both entitled to share after a lengthy marriage. The value of the defender's inheritance from the late TA and what happened to it thereafter is by no means a determinative factor. I have

taken all of the evidence into account in deciding how to reflect that inheritance and the other special circumstances and economic disadvantage mentioned. I have concluded that fair sharing of the matrimonial property in this case will be achieved by dividing its total value in the proportions 58: 42 in favour of the defender. As the total net value of the matrimonial property is £10,279,731, SCA will retain and/or receive assets and/or payment to a total value of £4,317,487 to effect sharing in those proportions.

**Resources and the orders for financial provision to be made**

[65] There were few details of the value of the assets at the time of proof and it was not suggested on behalf of MMA that financial provision should be reduced to reflect any resources issue. That said, it is apparent that he will require to raise a very large sum of money to meet the orders I intend to make and he will need time to do that. During the proof I made an award of interim aliment in SCA's favour and she is dependent upon that for income meantime. It was not suggested that she would be entitled to any award of periodical allowance once she has received a significant capital sum, but she will require support until a sufficient proportion has been paid that will allow her to invest in income producing assets. She has been a dependent spouse and she will require a short period to adjust to financial independence of this kind. To achieve sharing in the proportions I have determined would be fair, I must take account of the sum of £100,000 that SCA has already received as a payment of capital to account and such assets as were held by her at the relevant date. The combined effect of that is to reduce the capital she will receive from MMA to £4,064,334. She has, however, indicated agreement to transferring her shares in G Limited and her share in LV (Scotland) Limited to MMA. As a matter of law (section 10(3A) 1985 Act) he will require to pay current value for those in the absence of exceptional

circumstances justifying valuation at a different date, something that was not pled or argued. I have accepted Mr Rowand's evidence of the current value of G Limited. SCA's shares are now worth £381,500. Her interest in LV (Scotland) Limited was not revalued and so I will use the relevant date value of £4,605. The combined effect of that would be to increase the sum due to SCA to £ 4,450,439. If, as she now seeks, she receives transfer of the defender's SIPP (at its current value of £513,874) the capital sum then due to her will reduce to £3,936,565.

[66] I will fix a By Order hearing for submissions to be made in relation to the precise orders to be made to give effect to my decision, although neither the transfer to the defender of G Limited nor the transfer of the SIPP were said to be in dispute. I will also expect submissions at that hearing on the timing of the capital sum payment, including any submissions on whether payment by instalments would be appropriate and if so, the size and timing of those and of any periodical allowance be paid meantime. I will reserve meantime all question of expenses, which should also be addressed at that hearing, together with any confidentiality or anonymisation issues if parties consider those relevant in this case.