OUTER HOUSE, COURT OF SESSION

[2017] CSOH 151

F123/14

OPINION OF LORD ERICHT

In the cause

M

Pursuer

against

S

Defender

Pursuer: Brabender; Turcan Connell
Defender: I K Clark (sol adv); Gilson Gray LLP

12 December 2017

Introduction

[1] The pursuer seeks an order in terms of section 28(2) of the Family Law (Scotland) Act 2006 for payment of a capital sum from the defender following the cessation of cohabitation between the parties. The sum sought by the pursuer consists of two elements. The first relates to a farm owned by the defender, the farmhouse of which was the home in which the parties cohabited together for almost all of their relationship. The pursuer claims that she paid for half the monthly mortgage payment. The pursuer seeks half of the increase in net value of the farm over the period of the cohabitation, less the capital contributions made by the defender. The second element relates to the pursuer having

reduced her working hours after the birth of the first of their two children. The pursuer seeks half of the loss of that income.

Background

[2] The parties commenced cohabitation as if they were husband and wife in or about May 1994. There are two children of the parties' relationship: an older son born in 2001 and a younger son born in 2004. The parties ceased to cohabit as if they were husband and wife on 18 November 2013. The parties cohabited as if they were husband and wife continuously from in or about May 1994 until 18 November 2013. The pursuer was born in 1962. The Defender was born in 1951. The defender also has two adult sons from a previous marriage to whom I will refer as the defender's sons A and C.

The Law

[3] Section 28 of the Family Law (Scotland) Act 2006 provides as follows:

> "(2) On the application of a cohabitant (the 'applicant'), the appropriate court may, after having regard to the matters mentioned in subsection (3)—
>
> (a) make an order requiring the other cohabitant (the 'defender) to pay a capital sum of an amount specified in the order to the applicant;
>
> (b) make an order requiring the defender to pay such amount as may be specified in the order in respect of any economic burden of caring, after the end of the cohabitation, for a child of whom the cohabitants are the parents;
>
> ……
>
> (3) Those matters are—
>
> (a) whether (and, if so, to what extent) the defender has derived economic advantage from contributions made by the applicant; and
>
> (b) whether (and, if so, to what extent) the applicant has suffered economic disadvantage in the interests of—
>
> (i) the defender; or
>
> (ii) any relevant child.

(4) In considering whether to make an order under subsection (2)(a), the appropriate court shall have regard to the matters mentioned in subsections (5) and (6).

(5) The first matter is the extent to which any economic advantage derived by the defender from contributions made by the applicant is offset by any economic disadvantage suffered by the defender in the interests of—
(a) the applicant; or
(b) any relevant child.

(6) The second matter is the extent to which any economic disadvantage suffered by the applicant in the interests of—
(a) the defender; or
(b) any relevant child, is offset by any economic advantage the applicant has derived from contributions made by the defender.

(7) In making an order under paragraph (a) or (b) of subsection (2), the appropriate court may specify that the amount shall be payable—
(a) on such date as may be specified;
(b) in instalments.

(9) In this section—

…..

'child' means a person under 16 years of age;
'contributions' includes indirect and non-financial contributions (and, in particular, any such contribution made by looking after any relevant child or any house in which they cohabited); and

'economic advantage' includes gains in—
(a) capital;
(b) income; and
(c) earning capacity;
and 'economic disadvantage' shall be construed accordingly."

Case Law

[4] Guidance on section 28 is given by the Supreme Court in *Gow* v *Grant* 2013 SC

(UKSC) 1. Lord Hope considered the legislative background and statements made by the

Minister for Justice when the Bill was being debated in Parliament and concluded:

> "31.Common to all these statements is an emphasis on fairness to both parties. This is the principle that lies at the heart of the award that the court is able to make under this section. The words "fair and reasonable" which were in clause 36(2)(b) of the Scottish Law Commission's draft Bill do not appear anywhere in section 28. It lacks any reference to fairness as the guiding principle. But the background shows that this

> is what was intended by the legislature. Section 28(2) tells the court that it 'may' make the orders of the kind referred to in subsection (1) "after having regard to" the matters referred to in subsection (3), and the same phrase appears again in subsection (4). The purpose of this exercise must be taken to be to achieve fairness between both parties to the relationship in the assessment of any capital sum that the defender is to be ordered to pay to the other cohabitant. The same approach must be taken to the sharing of the economic burden of caring for any child of whom they are the parents.
>
> 32. 'Fairness' in the context of section 28 embraces a different concept than it does in the context of section 9(1) of the 1985 Act. Section 9(1)(a) states that one of the principles that the court must apply is that the net value of the matrimonial property should be shared fairly between the parties to the marriage. This provision must be read together with section 10(1), which states that in applying the principle which it sets out the net value of the matrimonial property shall be taken to be shared fairly when it is shared equally or in such other proportions as are justified by special circumstances. As Sheriff M G Hendry observed in F v D 2009 Fam LR 111, para 7, the rebuttable presumption at the stage of the dissolution of a marriage or civil partnership is that property will be shared fairly if it is shared equally. The rebuttable presumption at the end of cohabitation is that each party will retain his or her own property.
>
> 33. In that context what section 28 seeks to achieve is fairness in the assessment of compensation for contributions made or economic disadvantages suffered in the interests of the relationship. The wording of subsections (3), (5) and (6) should be read broadly rather than narrowly, bearing in mind the point that the Scottish Law Commission made in para 16.18 that the principle in section 9(1)(b) of the 1985 Act which these subsections adopt was designed to correct imbalances arising out of a non-commercial relationship where parties are quite likely to make contributions or sacrifices without counting the cost or bargaining for a return. As Lady Hale points out (see para 54, below), in most cases it is quite impracticable to work out who has paid for what and who has enjoyed what benefits in kind during the cohabitation, as people do not keep such running accounts and the cost of working things out in detail is quite disproportionate to the task of doing justice between the parties. "

He went on to note at paragraph 38:

> "Provided that disadvantage has been suffered in the interests of the defender to some extent, the door is open to an award of a capital sum even though it may also have been suffered in the interests of the applicant."

He further stated at paragraph 39:

> ".... as the sheriff said ….. it would be an unusual relationship if parties, from the commencement, proceeded to keep full and detailed accounts of their respective finances so that upon termination a mathematical calculation might be made of any contributions made, economic advantage derived or disadvantage suffered."

Lady Hale, in commenting on the case for reform of the law in England and Wales stated:

> "51. The second lesson is that reform needs to cater for a wide variety of cohabiting relationships which may result in advantage or, more commonly, disadvantage to one of the parties. There is a tendency to concentrate upon the younger couples who have children, where one of them suffers financial disadvantage as a result of having to look after the children both during and after the relationship. It may be very difficult to say that the other party has derived any economic advantage from those sacrifices, but it is entirely fair that he should compensate the children's carer for the disadvantages that she has suffered. …
>
> 53. A fourth lesson from Scotland is that the compensation principle, although attractive in theory, can be difficult to apply in practice because of the problems of identifying and valuing those advantages and disadvantages….. Lord Lester's Cohabitation Bill, which received a second reading in the House of Lords on 13 March 2009 (see Hansard, HL Deb, 13 March 2008, cc1413-1443), would have given the courts a much wider discretion to do what was 'just and equitable' having regard to all the circumstances. The Law Commission's proposals sought to cut down the problems by focussing on the end of the relationship: on the benefit 'retained' by one party and on the present and future losses sustained by the other. The object was to avoid 'protracted analysis of what may be called "water under the bridge": every past gain and loss over the course of a long relationship, regardless of whether they have any enduring impact at the point of separation" (see J Miles et al, (2011) 23 CFLQ 302, 316).
>
> 54. This case illustrates the problem very well. It is in most cases quite impracticable to work out who has paid for what and who has enjoyed what benefits in kind during the cohabitation. People do not keep such running accounts and the cost of working things out in detail is quite disproportionate to the task of doing justice between the parties. Section 28(3)(a) and (9) requires regard to be had to non-financial contributions; the economic disadvantage to which regard must be had under section 28(3)(b) must be suffered in the interests of the other, but does not have to amount even to a non-financial contribution. Who can say whether the non-financial contributions, or the sacrifices, made by one party were offset by the board and lodging paid for by the other? That is not what living together in an intimate relationship is all about. It is much more practicable to consider where they were at the beginning of their cohabitation and where they are at the end, and then to ask whether either the defender has derived a net economic advantage from the contributions of the applicant or the applicant has suffered a net economic disadvantage in the interests of the defender or any relevant child. There is nothing in the Scottish legislation to preclude such an approach, as the court is bound to be assessing the respective economic advantage and disadvantage at the end of their relationship. …"

I was also referred to various cases in which *Gow* v *Grant* had subsequently been applied:

In *Whigham* v *Owen* [2013] CSOH 29, 2013 SLT 483, *Saunders* v *Martin* 2014 Fam LR 86; *W* v *M* 2016 SLT Sh Ct 14; *Melvin* v *Christie* [2016] CSIH 43 *Smith-Milne* v *Langler* 2013 Fam LR 58; *Cameron* v *Lukes*, 2014 GWD 7-144.

Evidence

[5] Notwithstanding what was said in *Gow* v *Grant* by Lord Hope about compensation being awarded on a rough and ready calculation, and by Lady Hale about the cost of working things out in detail being quite disproportionate to the task of doing justice between the parties, a considerable amount of detailed evidence was led by the defender on, and the pursuer was cross-examined at length about, the parties' financial transactions, even down to the level of telephone bills.

[6] I shall deal first with the evidence on the parties' capital positions at the beginning and the end of cohabitation and then evidence on other matters.

[7] Before I do so I would make some general observations about credibility and reliability of certain witnesses. I shall deal with expert and professional witnesses when considering their evidence.

Pursuer

[8] I found the pursuer to be in general a credible and reliable witness. Her evidence was given carefully and reflectively. In cross-examination she dealt well with the questions put to her by the solicitor advocate for the defender, taking care to attempt to give precise answers to unclear and imprecise questions. A large proportion of her cross-examination was taken up with detailed questions not on original evidence but on spreadsheets produced by the defender for the purposes of the litigation. These spreadsheets contained detailed figures of many minor transactions dated from the beginning of cohabitation onwards, many of which were taken from the defender's memory and not independently vouched. She dealt credibly with this, accepting some items but not others.

Defender

[9] There were however issues with the credibility and reliability of the defender. I comment below on various matters on which I have not accepted his evidence when I have tested it against other evidence in the case, but at the outset I would make some general observations about his credibility.

[10] The defender's affidavit and the spreadsheets he lodged gave many precise and detailed figures derived, according to him, in many cases from his memory. However, in the witness box he often gave the impression of not having a firm grasp or memory of figures or events to which he spoke. On one occasion, after checking matters during an overnight adjournment during the course of his evidence, he corrected evidence he had given the previous day.

[11] Further, I found that the defender had a tendency towards presenting matters in a misleading way.

[12] For example, he agreed in clear terms set out in the Joint Minute that a Nissan Qashqai motor vehicle provided for the use of the nanny "was maintained and fuelled through the parties' joint bank accounts". Despite this, his position at Proof was that some but not all maintenance costs had been met through the joint account. His solicitor advocate sought to justify the discrepancy on the basis that the joint minute did not say that <u>all</u> maintenance was through the joint account. I upheld an objection to the leading of evidence about maintenance costs paid by him other than through the joint account. Joint Minutes play a very important role in the efficient disposal of legal business. They save court time by focusing matters for Proof. Parties prepare for Proof on the basis that they are not required to prove matters in the Joint Minute. It is very important that Joint Minutes are set out in full and frank terms and are not drafted in such a way as to mislead the reader.

[13] Had this been the only example of presenting matters in a misleading way, then, given that the Joint Minute would have been drafted by his legal representatives, I might not have placed any weight on that matter. However, there were also examples in the defender's business dealings.

[14] In 2013 the defender was looking to refinance his business interests. In an email dated 28 February 2013 he represented that his net worth was £5,738,000. In his evidence to the court, he represented his net worth six months later at the date of cessation of cohabitation as being less than half of that, £2,498,516. In cross-examination, he accepted that the figures in the email were different from his position in court and he also stated that the figure of £625,000 represented in the email to be the value of his classic car collection was wrong. His explanation was that the lender would require to do due diligence on the representation before giving a loan. I found this response to be very unsatisfactory. It is difficult to see the business logic in seeking to obtain a loan in principle on the basis of a representation of net worth if under due diligence the lender would discover that the actual net worth was less than half of what the representation had been. The discrepancy between his representation to the lender and his evidence to the court reflects badly on his credibility and reliability.

[15] Another example was in relation to the transfer to him of a flat in Edinburgh New Town. On the break up of his relationship with the pursuer, the defender went to live in a flat in Edinburgh New Town owned by his son A. When asked in cross whether his intention was to purchase the flat from his son, the pursuer, after a pause, said yes. In an email to the pursuer dated 7 November 2013 the defender stated he "was thinking we could explain to boys tonight re my buying A's flat and living in Edinburgh."

[16] A had an outstanding mortgage over the flat from Bank A. The flat was disponed to the defender by A in a disposition dated 21 January 2014. The date of entry was 21 January

2014. Surprisingly given the evidence of the defender's intention to purchase the flat, the disposition records that it was "for the love, favour and affection which I bear towards my father" and "without any consideration being paid to me." As the disposition bore to be a gift no Stamp Duty Land Tax was paid on it. On 1 February 2014 the defender entered into a standard security over the flat in favour of Bank B. The defender's evidence was that the amount of the sum borrowed from Bank B over the flat was £570,000 and that he had obtained a survey in relation to that lending which valued the flat at £950,000. On 4 February 2014, that is after both the date of entry and the granting of the standard security by the defender, Bank A discharged its standard security in consideration of all sums due to it by son A having been repaid. The defender gave evidence that the sum of £570,000 was, to use his word, "reimbursed" by him to his son in February 2014. On the basis of the evidence I heard, it seems that the transaction may have been truly a sale and not a gift. The defender was unable to give a satisfactory explanation of the circumstances of the transaction. His position on re-examination differed materially from cross. He accepted that he had paid some of the Bank B money to his son but could not remember how much. He said he was due A money for racing car expenditure. When crossed about being "reimbursed" by his father, the position of son A was that his father had "gifted" him some money in 2014 but he could not remember the date or amount. Fraud was not averred, nor was it proved to a sufficient degree for me to make a finding on whether the defender had acted fraudulently. However, the discrepancy between the email and the disposition, and the defender's inability to give a coherent, detailed and accurate account of the transaction and its purpose reflects badly on his credibility and reliability.

Defender's Son A

[17] The defender's son A, 37, a property developer gave evidence in support of his father in particular in relation to his business interests, property valuations and family life. He accepted in cross-examination that he had discussed his evidence with his father and with the defence witness Mr Kerr. More significantly, he gave evidence that he had been provided with the affidavits of all other witnesses. The pursuer gave evidence that A was involved in the preparation of the pursuer's affidavit. It appears to me that A was not an independent objective witness and I have taken that into account in assessing his evidence.

Nannies

[18] Witnesses who had been employed successively as nannies for the parties' children gave affidavit and oral evidence about their working hours and duties and the parties' family life. I found them to be credible and reliable witnesses.

M

[19] M is a longstanding female personal friend of the pursuer and is a partner in a firm of solicitors in London. She gave evidence about the parties' family life. I found her to be a credible and reliable witness. However I found her evidence to be of little assistance to me as it was, necessarily, snapshots of odd days during the cohabitation when she was visiting the family, or being visited by them, or they were on holiday together.

The Pursuer's Circumstances at the Commencement of Cohabitation

[20] The parties were in agreement about the pursuer's circumstances at the commencement of cohabitation, and set this out in a Joint Minute as follows:

"At the commencement of the parties' cohabitation, the Pursuer was a qualified solicitor, she having qualified in 1989. She was employed on a full time basis by [Firm 1] Solicitors. She had the following assets and liabilities with a total value of about £127,500:

a. A one half pro indiviso share in her former matrimonial home at … Gayfield Place, Edinburgh.

b. Her heritable property at .. Baxter's Place, Edinburgh. The Pursuer purchased the property in or about December 1985 for £30,000, partly with the assistance of a mortgage. The said property had been and was let by the Pursuer to tenants who paid rent to the Pursuer. At the commencement of the parties' cohabitation, the property was worth about £95,000. There was an outstanding mortgage at the commencement of the cohabitation.

c. Furniture in the said properties which had a negligible value.

d. A Mitsubishi motor vehicle worth about £2,500.

e. Three horses.

f. Friends Provident pension policies, all started on 29 March 1989, being Protected Rights only plans created when the Pursuer contracted out of her SERPS pension."

Accordingly I find that at the commencement of cohabitation the pursuer had assets of a total value of about £127,500.

Defender's Circumstances at the Commencement of Cohabitation

[21] The defender's circumstances at the commencement of cohabitation were a matter of dispute. There was agreement to a certain extent, and this was set out in the Joint Minute as follows:

"At the commencement of the parties' cohabitation, the Defender had the following assets and liabilities:

a. An interest in [a construction company]. On or about 19 May 1995, a receiver was appointed to [the construction company]. The Defender's said interest had no value at the commencement of the parties' cohabitation.

b. His former matrimonial home …. The property was sold in or about September 1994 in consequence of the Defender's divorce. The Defender received the sum of about £100,000 following upon the sale and in respect of the division of matrimonial property.

c. A motor vehicle.

d. Pension interests."

[22] The matters in dispute were as follows.

Land at Livingston

[23] The defender claimed in a spreadsheet lodged as a production that he had land at Livingston worth £120,000. However, it was clear from his evidence, and indeed from his averments on record, that that land was not owned by him personally but by a company. He was the sole shareholder of the company. The company had liabilities, in particular a loan due to the construction company which was in receivership. He averred that the land was "caught up" in the receivership. His evidence did nothing to elucidate what "caught up" meant. I have little difficulty in finding that the land at Livingston is not an asset belonging to the defender at the commencement of cohabitation. At best he was the owner of the entire share capital of a company which owned the land and so the value of his asset would be the value of the land and all other assets of the company less all liabilities of the company. He led no evidence as to the asset value of the company.

Citroen Car

[24] The defender's position was that the motor vehicle referred to in the Joint Minute was a Citroen car valued at £2,000. The pursuer's position was that there was no evidence of this. In my opinion there was evidence of this as the defender spoke to it in his affidavit by adopting an unvouched spreadsheet which included it. I am prepared to accept the defenders' position on this. Most people own cars, and the defender has a particular interest in motor vehicles, and the sum involved is *de minimis* in the context of this litigation.

NMPF Pension Interests

[25] The defender's position was that the pension interests referred to above were with the National Mutual Pension Fund and were valued at £100,000. He spoke to this in his affidavit, again by adopting the spreadsheet. He provided no vouching in relation to this, either in respect of the existence of this pension interest or of the valuation of it. His position was that it was transferred into a group pension fund which disappeared in around 2011. It is normal for vouching of the value of pension plans and details of any transfers out of a pension plan to be easily obtainable and to be lodged as a production. In the absence of any good reason being given to me for this not being done, I find that the existence and value of any such pension interests has not been proved.

[26] Accordingly, taking together the matters agreed and my findings, I find that the defender's net worth at the start of cohabitation was £102,000.

The Pursuer's Circumstances at the Cessation of Cohabitation

[27] The pursuer's circumstances at the cessation of cohabitation were agreed to a certain extent and set out in the Joint Minute as follows:

> "When the parties ceased to cohabit as if they were husband and wife on 18 November 2013, the Pursuer was an equity partner in [Firm 3] Solicitors working on a part time basis (80% of full time). She had the following assets and liabilities at the cessation of cohabitation:
>
> (a) The heritable property at .. Baxter's Place, Edinburgh in her sole name. The property was let and the Pursuer received the rental income.
>
> (b) The heritable property at .. Manor Place, Edinburgh. During the course of the parties' cohabitation, in or about April 1999, the Pursuer purchased the said property from [Estates] Limited, a company in which the Defender held 50% of the issued shares, with the assistance of a mortgage. The purchase price was £170,000. The market value of the property on the Pursuer's purchase was £170,000. She received no discount on the purchase price from [Estates] Limited. The property was let and the Pursuer received rental income. The sum outstanding

on the mortgage in respect of the property at the date of cessation of cohabitation was £83,327.

(c) A one half pro indiviso interest in the heritable property at … Drumsheugh Place, Edinburgh. The parties jointly acquired the property in or about February 2004 with the assistance of a mortgage. The purchase price was £200,000 and the parties obtained a mortgage for £160,000. The property was and is let. The monthly mortgage is paid from the parties' joint bank account. The rental income is paid into the parties' joint bank account. There is a shortfall between the monthly rental income and the monthly mortgage payment. The said shortfall is met from the parties' joint bank account.

(d) Furniture. The furniture in Baxter's Place, Edinburgh at the cessation of cohabitation was worthless. The furniture in Manor Place is the original furniture purchased in or about 1999. It had no re-sale value at cessation of cohabitation. The furniture in Drumsheugh is of minimal value. It consists of 2 sofas and a table.

(e) Clothing.

(f) Artwork.

(g) Jewellery, some of which was gifted to her by the Defender. She had a bangle, a brooch, earrings, necklaces and rings including two engagement rings. The Pursuer owned jewellery prior to the parties' cohabitation.

(h) Four horses: 2 ponies used by the parties' children, an old hunter used by the Pursuer, called Cally, and a horse, Polly, purchased immediately prior to cessation of cohabitation for £3,500. Cally was around 19 years old and had no re-sale value.

(i) A motor vehicle which was worth around £25,000 and on which there was an outstanding loan of around £20,000.

(j) A Gilliat Deposit account reference ****** worth £22,290.00.

(k) A Gilliat Cash ISA reference ****** worth £5,951.

(l) Sterling Investment account worth £11,366.

(m) Sterling ISA account worth £20,961.

(n) [3] Friends Life pension policies ..worth a total of £34,488. The said pension emanates from the Pursuer having contracted out of SERPS and having received protected rights prior to 1996.

(o) Aegon pension worth £105,581.

(p) EPML SIPP which was worth around £214,000 on 14 June 2016. A commercial property was purchased through the said SIPP and remains included in the SIPP. EPML are in special administration.

(q) Equity in [Firm 3] being her capital account balance of £111,625 and her current account balance of £(9,900) meaning an overall equity of £101,725. The Pursuer funded her equity, in part, by means of loans described below.

(r) Partnership equity loans from Adam & Company (£42,527 at the date of cessation of cohabitation) and from RBS (£20,500 and £44,900 at the date of cessation of cohabitation) totalling £107,927. The Pursuer's tax reserves held by [Firm 3] £155,071 was held by [Firm 3] in reserve for the payment of tax at the cessation of cohabitation. After the cessation of cohabitation, £134,596 of same was paid to HMRC in payment of tax liability and £20,475 was remitted to the Pursuer.

(s) Premium bonds worth £29,999.

(t) Bank account balances totalling £139,704.

(u) The liability on the parties' joint Adam & Company bank account ending 5800 being £4,450 of which the Pursuer's share was £2,225."

[28] Parties were in dispute on the following matters.

Flat at Baxter's Place Edinburgh

[29] There was a dispute as to the value of this property. The pursuer relied on a valuation of £215,000 by Andrew Milne. The defender relied on a valuation of £275,000 given by Howard Ounsley.

[30] The background to the evidence of the valuation of the Baxter's Place flat was that Mr Milne produced a Desk Appraisal Valuation Report dated 2 June 2016. Mr Ounsley's report was dated 17 March 2017, the Friday before the first day of the Proof. I allowed Mr Ounsley's report to be lodged late, given that neither party wished the Proof to be discharged, and that Mr Milne would have an opportunity to consider Mr Ounsley's report before he gave evidence later in the week.

[31] Andrew Milne, 54, is a chartered surveyor who qualified in 1989 and since then has worked largely for DM Hall. He has been a partner there for 20 years and has spent all his professional life inspecting and valuing residential property within Edinburgh and the

Lothians and is a member of the Royal Institute of Chartered Surveyors Scotland Residential Property Professional Group. In order to be able to assist the court as an expert witness by commenting on Mr Ounsley's report which had not been lodged until very shortly before the Proof, Mr Milne had visited this and other properties which he had previously valued. He had done so on the Monday which was the first day of the Proof. He had inspected the properties both externally and internally. This enabled him to upgrade the desktop valuation which he had previously lodged to a "red book" valuation capable of reliance upon by lending institutions. He justified his conclusions by reference to properties which in his opinion were comparable. A flat had been sold in Union Place at the same time for £225,000. In his view that was a similar flat of a similar size in a slightly better location. His personal recollection of the state of the area around the property as at the date of cessation of cohabitation was that nearby buildings were semi-derelict but had since been re-developed. A flat had been sold in Elder Street, about 400—500 yards from the pursuer's property. Its location was a secondary residential location of similar quality to the pursuer's property, being close to the bus station and the rear of a department store. It had sold for £215,000 in 2013. He also considered a flat in Broughton Place which was in better condition and was not compromised by its surroundings which had sold at roughly the same time for £269,000. In Mr Milne's opinion, the Baxter's Place prices referred to by Mr Ounsley were not of assistance because they were not 2013 values. The pursuer was not able to put the extrapolation exercise undertaken by Mr Ounsley to Mr Milne for comment as this was not set out in Mr Ounsley's written report but appeared for the first time in Mr Ounsley's examination in chief, it not having been put to Mr Milne in cross. As a result I do not have the benefit of Mr Milne's views on whether that extrapolation exercise was a legitimate one. In Mr Milne's opinion, the other properties considered by Mr Ounsley were not comparable as they were in better locations.

[32] Mr Ounsley, 52, is a chartered surveyor who qualified in 1990. He had practised since then with various firms and was now director and head of valuations for Scotland at Colliers.

[33] He had not been instructed in relation to the residential properties until 15 March 2017, which was the Wednesday before the commencement of the Proof and the day of the Pre-Proof Hearing. He had been instructed by the defender's son A. Mr Ounsley had previously undertaken professional work on behalf of certain of the defender's business entities for lending purposes, for example a valuation of commercial property in 2008. He had also produced a revaluation of certain properties in May 2015 for the purpose of this litigation.

[34] Mr Ounsley produced a valuation report for Baxter's Place dated 17 March 2017 giving a valuation of £275,000 as at 18 November 2013. This was a desktop valuation. He had viewed the properties externally but not internally. His position was that this was still a red book valuation as the red book set out that it was permissible not to inspect so long as this was stated in the report.

[35] He justified his evaluation by reference to other properties which in his opinion were comparable. Another flat in Baxter's Place at 4/3 had been sold in March 2006 for £220,000 and again May 2016 for £350,000. On the basis of trends in property prices between these dates he estimated the November 2013 value as being £275,000: the value would have grown by 10% per annum between 2006 and 2008, then it would have been the same in 2012 as in 2008, and then it would have increased by 5% per annum. He had regard to 3 Antigua Street sold in November 2013 for £250,000, 6/3 Elm Row sold in October 2013 for £315,513, 33 Haddington Place sold in July 2013 for £245,000, 25/1 Haddington Place sold in August 2012 for £300,000, 2 Haddington Place sold in August 2012 for £298,000 and 1F2 6 Elm Row sold in August 2012 for £268,000. The Haddington Place properties had an extra

bedroom which would have added £25—30,000 to the price compared with the pursuer's property. In his view the internal condition of the pursuer's property would not have affected the price as people buy the envelope and location and not the internal condition. In his view it was appropriate to restrict his comparables to Leith Walk and not have regard to the properties taken into account by Mr Milne.

[36] He disagreed with Mr Milne about the state of the area, stating that for the preparation of his report he had viewed contemporaneous Google Maps images which show that the state of the surrounding property was not as described by Mr Milne.

[37] I preferred the valuation of Mr Milne for the following reasons:

(a) Mr Milne had inspected the inside of the property, which Mr Ounsley had not.

(b) The Google Maps images to which Mr Ounsley referred were not attached to his report or otherwise provided in evidence. I prefer the evidence of Mr Milne as to what he saw with his own eyes to that which may or may not be apparent from photographs not produced to the court by Mr Ounsley.

(c) There was no disparity between the standard of valuation conducted by Mr Milne and Mr Ounsley. Although Mr Milne's original report lodged in process was at a lower "desktop" level, he had, in response to receiving Mr Ounsley's valuation, visited the properties and was able in the witness box to give a "red book" valuation.

(d) I do not accept Mr Ounsley's evidence that the buyers are concerned only with the envelope and the location and not the internal condition of a property and that installation of a new bathroom and kitchen would not increase the value of a residential property. Mr Milne's view that it would so increase seemed to me to be more realistic and to be preferred.

(e) I accept Mr Milne's evidence that the flat was in a compromised secondary location and accordingly that the appropriate comparators were flats in a nearby similarly compromised area and not the areas of Leith Walk taken into account by Mr Ounsley.

(f) It seems to me that the valuations of 4/3 Baxter's Place in 2006 and 2016 are of little assistance of the court in determining the 2013 value of the pursuer's property in circumstances where the methodology of any such determination was not put to Mr Milne on behalf of the defender.

(g) Mr Milne was completely independent from the pursuer. Mr Ounsley, on the other hand, was a professional adviser to the defender's business interests who had been instructed only days before the Proof.

[38] There was no mortgage on the property. Accordingly, I find that the value of the property at the cessation of cohabitation was £215,000.

Manor Place Edinburgh

[39] Again, there was a dispute as to the value of this property between Mr Milne and Mr Ounsley. Mr Milne valued it at £300,000 and Mr Ounsley at £400,000. Each referred to different comparable properties. Again, Mr Milne had inspected the inside of the property and Mr Ounsley had not.

[40] Mr Milne had originally valued the Manor Place property at £270,000 at 18 November 2013 in a desktop valuation on 2 June 2016. However, on inspecting the property internally the day before he gave evidence as a result of Mr Ounsley's late report, he revised his valuation upwards to £300,000 as he found that internally the property was larger and in better condition than he had expected, and included an ensuite shower room. His valuation was based on comparable sales in the area including Manor Place, Rothesay

Place and Terrace, but he could not recall the precise properties or prices. In his opinion the properties taken into account by Mr Ounsley were not comparable. Mr Ounsley had made an error in his assumption that the gross floor area was around 1,100 square feet (which would convert as approximately 102 metres). On his visit to the property Mr Milne had measured it personally and found it to be approximately 87 square metres. Further, on internal inspection he found that it was not a true double upper flat consisting of two floors with a staircase between them, but a single floor with staggered levels. Further, in his view properties taken into account by Mr Ounsley were better than the pursuer's flat in terms of location, outlook, noise level and market appeal.

[41] Mr Ounsley had regard to two basement flats in Manor Place, one of which had sold for £365,000 in April 2014 and the other for £454,139 in September 2012. He also had regard to a top floor flat at Flat 2F Walker Street which had sold for £375,000 in September 2013, a second and third floor flat at 17/3 Palmerston Place which had sold in December 2013 for £410,000 a basement flat 3A Palmerston Place which had sold for £380,000 in September 2013 and a second and third floor flat at 19/3 Palmerston Place which had sold for £425,000 in November 2012.

[42] I prefer the evidence of Mr Milne. Mr Milne had the benefit of an internal inspection. Mr Ounsley proceeded on an incorrect assumption as to gross area. I agree with Mr Milne's criticisms of Mr Ounsley's comparators. Although Mr Milne could not remember precise details of his comparators, I took the view that he was a very experienced, credible and reliable independent expert witness doing his best to assist the court and I am prepared to accept his opinion as to valuation.

[43] Accordingly, I find that the value of this property as at the cessation of cohabitation was £300,000 and so after deduction of the mortgage of £83,327 the pursuer had an asset worth £216,673.

Drumsheugh Place Edinburgh

[44] Mr Milne valued this property at £275,000. Mr Ounsley valued it at £350,000.

[45] Mr Milne initially valued this property in a desktop valuation and then inspected the property internally after receipt of Mr Ounsley's report so his valuation was now an RICS market value. The property was slightly smaller than Mr Ounsley's assumption. Mr Milne had compared the price with a 3 bedroom top floor flat in the same block but round the corner in Melville Place which had sold around the relevant time for £300,000, and this was supported by the sale prices of other properties round the corner in Drumsheugh Gardens and slightly further away in Buckingham Terrace. He rejected Mr Ounsley's comparators on the basis that they were better located and larger. In particular 1/4 Drumsheugh Gardens was considerably larger; 13/3 Drumsheugh Gardens was slightly larger but more importantly was very well presented for sale with new kitchen and bathroom and newly decorated, and Randolph Cliff is a Georgian terrace rather than Victorian like the flat in question.

[46] Mr Ounsley had regard to a third floor flat 1/4 Drumsheugh Gardens sold in December 2013 for £442,500, a second floor flat 13/3 Drumsheugh Gardens sold for £345,000 in October 2013, a third floor flat 20/7 Drumsheugh Gardens sold for £357,000 in May 2012, a second and attic floor flat 2 Randolph Cliff sold for £397,000 in August 2013, a first floor flat 5 Randolph Cliff sold for £420,000 in May 2012 and a third floor attic flat 8/3 Lynedoch Place sold for £290,000 in January 2015. In cross-examination Mr Ounsley accepted that Drumsheugh Gardens was better located than the flat in question, albeit only slightly. He did not accept that a Lynedoch Place flat was a better comparator because flats on the corner would be worth more.

[47] I prefer the evidence of Mr Milne. Mr Milne had the benefit of an internal inspection. I accept the criticisms of Mr Ounsley's comparators made by Mr Milne.

[48] The parties agreed in the Joint Minute that the mortgage was originally £160,000. In the absence of any evidence that it had reduced, I take the mortgage at cessation to be that figure. On deduction from Mr Milne's valuation of £275,000 of the mortgage of £160,000 I find that the net value of the property is £115,000 and so the half share of each of the pursuer and the defender is worth £57,500.

Clothing

[49] The defender's position in his affidavit was that the pursuer spent £300 to £1,000 per month on luxury clothing and she owned clothing with a value of £20,000. There was extensive cross-examination of the pursuer on her shopping habits, with her maintaining that she required to dress well for work and spent about £1,500 to £2,700 a year on work clothes. However, for present purposes all that matters is the value of her clothing at the date of cessation. Her evidence was that her clothing became worn through use at work and had little second hand value, and that she had made enquires of a specialist second hand clothes shop and been advised that they were not interested in worn out work clothes. The pursuer estimated that the second hand value of her clothing was £1,000. The defender provided no evidence as to what clothes she had at the date of cessation nor what their value would be. Accordingly, the only evidence before me is that of the pursuer which I accept. Accordingly, I find that at the date of cessation she had second hand clothing worth £1,000. However, I am conscious that the exercise which I require to conduct is a rough and ready one. In conducting that exercise, it seems to me that it is unnecessary for a party to account for the value of everything in his or her possession, including his or her used clothes. Indeed, the defender did not offer up any evidence as to what clothes he owned and what

they were worth. It is also in my opinion unnecessary for one party to have to justify and vouch in detail what clothes she bought over an entire period of cohabitation of almost 20 years, as the defender sought to require the pursuer to do by a call on record. Accordingly, I shall not include this figure in the pursuer's assets.

Artwork

[50] The pursuer's evidence that the value of artwork owned by her was £500 was unchallenged, and the defender provided no vouching of what paintings the pursuer had nor any alternative valuation, and accordingly I accept the pursuer's evidence.

Jewellery

[51] The defender's position is that the pursuer's jewellery is worth £30,000. He based that figure on an insurance valuation by James Ness dated 11 November 2003 amounting to £21,170 and a list of jewellery on a policy schedule to a Chubb insurance policy dated 31 May 2007 totalling £26,170.

[52] The pursuer's position was that the market value of jewellery is considerably less than insurance value, which is replacement value. Her estimate of the market value of the jewellery was £10,000. She had made inquiry of the same jeweller who had done the insurance valuation, James Ness, as to the market value of certain items, and on the basis of that she had estimated the value of her jewellery at £10,000.

[53] I do not accept that the correct valuation to be taken into account for present purposes is an insurance valuation. It is well known that insurance values are replacement values and not market values. The defender has not produced any evidence as to the market value of the jewellery. I accept the pursuer's valuation of £10,000.

Horses

[54] I accept the pursuer's unchallenged evidence in her affidavit that the total value of the horses was £6,500.

Summary

[55] In the light of the above, I find that the assets of the pursuer at the cessation of the cohabitation have a total value of £1,085,721 as set out in the following table:

ASSET	VALUE
Baxter's Place	£215,000
Manor Place	£216,673
Drumsheugh Place (half share)	£57,500
Furniture	0
Artwork	£500
Jewellery	£10,000
Horses	£6,500
Motor vehicle	£5,000
Gilliat Cash ISA	£5,951
Sterling Investment Account	£11,366
Sterling ISA Account	£20,961
Friends Pension policies	£34,488
Aegon pension	£105,581
EPML SIPP (including Gilliat deposit account of £22,290)	£214,000
Interest in solicitors firm (equity plus tax reserve less overdraft and partnership loan)	£14,723
Premium bonds	£29,999

Bank account balances	£139,704
Liability on parties Joint Adam and Co bank account	(£2,225)
TOTAL	£1,085,721

[56] Accordingly, over the period of cohabitation the pursuer's assets grew from £127,500 to £1,085,721, an increase of £958,221.

Assets of Defender at Date of Cessation of Cohabitation

[57] The parties agreed certain matters regarding the defender's assets and liabilities at the date of cessation, which were set out in the Joint Minute as follows:

> "When the parties ceased to cohabit as if they were husband and wife on 18 November 2013, the Defender carried out activities for his various business interests. His assets and liabilities at the date of cessation of cohabitation included the following:
>
> a. Heritable property at… Farm,.. worth £1,500,000. The farmhouse on the property has continued to be occupied by the Pursuer and the parties' children since the parties ceased cohabitating together. The Pursuer and the children have done so without any payment of rent to the Defender. The Pursuer utilises the farm's land for the stabling and exercising of her horse. 80 acres of farm land is let to a local farmer for grazing. 100 acres is arable land and is farmed in terms of a contract between the Defender and a local farmer. The balance of the farm is amenity rough ground and woodland. When purchased the property was subject to a standard security in favour of TSB. Said standard security was discharged in or about January 2008. In or about January 2008, a standard security in favour of Adam & Company was secured over the property. It was discharged in or about July 2013. In or about July 2013, a standard security in favour of Svenska Handelsbanken was secured over the property. The Defender increased the borrowing secured over the property to £865,000 by the cessation of the parties' cohabitation. Since the cessation of the parties' cohabitation, the Defender has reduced the borrowing secured over the property. The Defender has indicated an intention to sell the property. He seeks vacant possession by 14 July 2017.
>
> b. A one half pro indiviso interest in the heritable property at … Drumsheugh Place, Edinburgh as referred to above.

c. Hill St Edinburgh worth £300,000. The Defender sold the property in or about January 2014 for £300,000. The costs of sale in January 2014 were £4,976.

d. 4 car parking spaces at the rear of Manor Place, Edinburgh worth £100,000. The Defender sold the property in or about February 2014 for £100,000.

e. A classic car collection including a half share in a 1958 Lister Knobbly Chevrolet Chassis BHL18. The said chassis was sold for £300,000 in September 2014. This also included a Cobra rolling chassis with a value of £115,000.

f. A Porsche 911, 2009 plate, with an estimated value of £40,000. Said vehicle had outstanding finance thereon of approximately £24,000 at that date. It accordingly had a net value of approximately £16,000.

g. A Landrover Discovery 2010 plate with an estimated value of £28,500. Said vehicle had outstanding finance thereon of £25,813 at that date. It accordingly had a net value of £2,687.

h. Motor Bikes with an estimated value of £13,000.

i. Private Number Plates…. with an estimated value of £30,000.

j. A Nissan Qashqai Motor Vehicle with an estimated value of approximately £4,000. Said vehicle was purchased by the Defender in 2008 with the assistance of Blackhorse finance over 4 years. It was provided for the use of the nanny employed by the Pursuer. It was maintained and fuelled through the parties' joint bank account. It was used by the nanny to drive the boys to and from school and to and from sporting activities and other appointments as required. It has continued to be used for the said purposes by the nanny following cessation of the parties' cohabitation.

k. A Ford Transit Pick Up with an estimated value of £4,000.

l. 100% of the issued shares in … Property Group Limited …, a private company limited by shares. The company was incorporated during the parties' cohabitation on 10 October 2001.

m. A director's loan of £100,000 owed to the Defender by [London] Limited. The company was incorporated on 4 February 2013. The Defender held 33.33% of the shares in the said company at the cessation of cohabitation.... [after evidence, the pursuer now accepts that the defender's shares were worth £3,156]

n. His interest in .. Street Limited .. The company was incorporated on 31 July 2013. The Defender held 50% of the shares in the said company at the cessation of cohabitation with a value of £1. The said company was one of 2 designated members of .. Street Residential LLP ..

o. A director's loan of £2,643 due to the Defender by …Property Limited.

p. His interest in …. Land Ltd which had a value of £2.

q. His interest in … Estates Limited, which had a value of £2.

r. His interest in …[T] Investments LLP …worth £80,441 if no discount is applied. If a discount of 5% were to be applied, his interest was worth £76,419. The LLP was established on 22 April 2004. The Defender was one of three designated members of the LLP. The Defender had a 25% interest in the said LLP.

s. His interest in ..[T] Securities LLP ..worth £63,462 if no discount is applied. If a discount of 5% were to be applied, the Defender's interest was worth £60,289. The LLP was established on 20 January 2005. The Defender was one of three designated members of the LLP. The Defender held a 25% interest

t. His interest in .. Management LLP, .. worth £79,915 if no discount is applied. If a discount of 5% were to be applied, his interest was worth £75,920. The partnership was established on 17 June 2003. The Defender was one of two designated members of .. Management LLP, the other being his son A. The said LLP was one of two members of ..Highland LLP

u. His interest in .. Investments LLP established 13 May 2003. The Defender was one of three designated members of the LLP. The Defender held a 33.33% interest.

v. His interest in … Property LLP … established on 28 February 2007. The Defender was one of three designated members of the LLP.

w. His interest in .. Ventures LLP established on 8 October 2008. His value therein was £1 at the date of cessation of cohabitation. The Defender was one of two designated members of the LLP. The LLP was dormant at the cessation of cohabitation.

x. His interest in… Partners LLP established 15 April 2008 which had a nil value at date of cessation of cohabitation. The Defender was one of three designated members of the LLP. The LLP was dormant at the cessation of cohabitation.

y. His interest in .. Securities LLP … established on 29 November 2006. The Defender was one of three designated members of the LLP. The Defender had a 33.33% interest.

z. £1,036 in an account with Handelsbanken ending 933.

aa. £206,492 in an account with Handelsbanken ending 258.

bb. £29,168 in an account with Handelsbanken ending 094.

cc. £267,253 in an account with Arbuthnot Latham.

dd. £326,160 in an account with Arbuthnot Latham which the Defender held with his son, of which the Defender was entitled to £163,080.

ee. £2,033 in a Clydesdale Bank account ending 950.

ff. Euro20,814 with a Sterling equivalent of £17,490 in a Clydesdale Bank account ending 500.

gg. £349 in an Adam & Co bank account ending 950. The balance of the said account at the cessation of cohabitation was £698. The account was held by the Defender and his son. The Defender's interest therein was £349.

hh. £40 in an Adam & Co account ending 600.

ii. The Defender's pension interests including a Standard Life pension which was worth £97,814 at April 2014.

jj. The Defender's jewellery including cufflinks and chains, watches, furniture and artwork., with an estimated value of approximately £7,500 at date of cessation of cohabitation."

[58] The parties were in dispute in relation to the following matters.

Valuation of Interests in Limited Liability Partnerships

[59] The parties were in dispute as to whether a discount for a minority interest should be applied in the valuation of the three limited liability partnerships referred to in paragraphs (r), (s) and (t) of the Joint Minute.

[60] The defender led evidence from Fraser Kerr, 61 a chartered accountant since 1980 and senior partner of Haines Watt, Chartered Accountants. Haines Watts had been providing accountancy services to various entities in which the defender had an interest since 2011. Their work was to prepare financial statements for the approval of members and directors but were not instructed to carry out an audit. Mr Kerr drew the court's attention to Clause 24 in the Limited Liability Partnership agreements which provided that a member could not assign his interest without the agreement of all the other members, and Clause 25 which was a pre-emption provision requiring shares to be offered at fair value to existing

partners. Mr Kerr's opinion was that the impact of these provisions would be that it would be appropriate to apply a discount of 5%.

[61] The pursuer led evidence from David A Robb, 56 a chartered accountant since 1986. He specialises in forensic accounting and is instructed for around 30 expert reports each year. In his opinion although a discount would be normal in respect of a limited company it was not appropriate in respect of a limited liability partnership. In his opinion no discount should be applied in respect of the restrictions on transfer in an LLP. This was normal accountancy practice. In his experience he had never come across such a discount being applied. There was a fundamental difference between owning a share in a company and being a partner in a partnership. A shareholder who has a share in a limited company has a share, which can be sold and is freely transferable unless there is a restriction on sale. So if there is a restriction on sale, that may lead to the value of the share being discounted. A partner in a partnership has a capital account, which is a debt owned by the partnership to the partner. The capital account reflects his share of the assets of the partnership as a whole. The interest in a partnership is not freely transferable as a new partner cannot be assumed without the consent of the existing partners. So the inclusion of restrictions on sale in the partnership agreement makes no difference as there is a restriction anyway whether or not these are included.

[62] The dispute between the parties in relation to discount was presented by the parties as a conflict of expert accountancy evidence. I was not referred to any legislation, case law or textbooks which may be relevant to the issue. Bearing in mind that the exercise that I have to conduct in this case is a rough and ready one, and that in the context of that exercise the sums involved are *de minimis*, amounting to only a few thousand pounds in respect of each of the three partnerships, I shall base my decision on an assessment of the evidence offered in this case.

[63] I did not find the evidence of Mr Kerr to be of assistance on this matter. I do not accept him to be an expert witness. His firm was employed by the defender's business entities. His evidence lacked detailed understanding and reasoning: for example he was unable to give a reasoned explanation of how he arrived at the figure of 5%. During cross-examination on what was normal accountancy practice he referred not to his own experience but to the experience of Professor Alex MacDougall. Professor MacDougall, who was not a witness, was a consultant with Mr Kerr's firm and it transpired that Mr Kerr had consulted with Professor MacDougall prior to swearing his affidavit but had not disclosed that in his affidavit.

[64] Mr Robb on the other hand was an experienced independent expert witness. His opinion was well reasoned. I accept his evidence and in particular his evidence, based on his own experience, about normal accountancy practice.

[65] Accordingly for the purposes of this case I find that no discount should be applied to the valuations of the defender's interests in the LLPs named in paragraphs r, s and t of the Joint Minute.

Value of Securities LLP

[66] The parties were in dispute as to the value of Securities LLP. The pursuer valued his interest in that partnership as £89,791. The defender valued his interest as nil. The difference in valuation arose in relation to the capital account of the defender's son C, who was also a partner in the partnership. C's capital loan was overdrawn by £193,872.

[67] Both Mr Robb and Mr Kerr were in agreement that if C were able to repay his overdrawn account, then the defender's interest should be valued at £89,791. Mr Kerr's evidence was that the overdrawn account was due and owing by C to the partnership. In cross-examination, Mr Kerr's evidence was that the only reason it was discounted to nil was

that the defender had told him that C would be unable to repay. In re-examination Mr Kerr was referred to the concept of prudence in accounting which he explained as meaning that one looks at the likelihood of recovery. He said that at a telephone meeting the defender and his son A had told him that C did not have the financial ability to repay.

[68] The issue for me is whether C was unable to repay his loan. The only evidence in relation to this derived from the defender and his son A. Given my observations above about the credibility and reliability of the defender and A, I am not prepared to accept that evidence without independent confirmation. The court did not hear from C. The Court was given no information about C's financial status nor about the reason why he was said to be unable to repay the overdrawn amount. In these circumstances the court cannot come to the finding that C was unable to repay the overdrawn amount, nor can it come to the conclusion that it was not likely that he would be able to do so. Accordingly, given that the overdrawn amount was due and owing, I find that it should be taken into account in the valuation and I find the defender's interest in the partnership to have a value of £89,791.

Adjustments by Mr Kerr

[69] Mr Kerr produced a valuation of the defender's interests in his companies and LLPs as at the date of cessation of cohabitation as being £318,623.45. His methodology was to make a draft balance sheet as at 18 November 2013 from QuickBooks accounting records of the entities. He then adjusted this in two respects. The first respect was for intercompany loans. The second was in respect of property revaluations.

[70] There were intercompany loans from Group Limited to Investments LLP for £2,143,137, Investments LLP to Property LLP for £683,915 and Securities LLP to Property LLP of £170,000.

[71] Mr Kerr wrote those off in the lending entities as assets not recoverable. However he continued to show them as liabilities of the borrowing partnerships. In his opinion this was appropriate because of the concept of prudence: if there was a reasonable certainty of an asset being realised that should be recognised, but if there was a reasonable possibility of a liability being incurred it should be recognised. Mr Robb took the view that there was an inconsistency in Mr Kerr's approach. Mr Robb's view was that Mr Kerr's approach was correct for the purpose of identifying the liabilities still owed by the borrowing partnerships. However, this led to an error in Mr Kerr's calculation of the total liabilities of £3,633,619 as these liabilities were included but the corresponding assets were not.

[72] In my opinion when conducting the rough and ready exercise of calculation of the defender's net assets for the purposes of section 28 there should be consistency of approach. An inter-company loan should be taken into account in respect of both the borrower and the lender or in respect of neither of them. It should not be taken into account in relation to one of them only. In particular, it should not be taken into account in relation only to the borrower and not the lender as that leads to an artificial depression in the defender's overall net assets.

[73] Mr Kerr then made a further adjustment in respect of property revaluations. As the revaluations were lower than the values in the statutory financial statements, the effect was to reduce the assets of the company or LLP. I found this exercise to be fundamentally flawed and therefore of no benefit in attempting to ascertain the defender's assets at the date of cessation. The defender had instructed a valuation of the properties as at date of cessation of cohabitation from Mr Ounsley. Mr Ounsley produced a valuation report dated 25 May 2015 to which he spoke in evidence. However, that report was not used in the revaluation exercise conducted by Mr Kerr. Mr Kerr gave evidence that the only valuations he used in the revaluation exercise were the ones appended to his affidavit, ie a report from

Montagu Evans in 2008, a report from DTZ in 2008 and reports from J and E Shepherd in 2008. In my view reports from 2008 are of no assistance in valuing properties at the date of cessation of cohabitation in 2013. Accordingly Mr Kerr's exercise of revaluing at 2013 on the basis of 2008 values provides no assistance to me. Equally, Mr Ounsley's valuation at 2013 provides no assistance to me. There was no evidence led by the defender as to how Mr Ounsley's valuation would impact on the balance sheet of the relevant entities. There was no evidence as to the figure at which the specific properties were currently valued in the balance sheets, and therefore it is impossible to establish whether Mr Ounsley's value was a reduction or an increase, and if so by how much.

[74] Accordingly I reject Mr Kerr's evidence that the balance sheet should be adjusted for inter-company loans and property revaluations.

[75] The next question which arises is which balance sheet should be used. Mr Kerr used a draft balance sheet as at the date of cessation of cohabitation. Such draft balance sheets do not go through the levels of scrutiny which are required for the statutory financial statements. They are not signed off by the directors or members. In my view, in the particular circumstances of the evidence led in this case, it is more appropriate to use the figures which Mr Kerr gives as having come from the 2013 statutory financial statements.

[76] The 2013 financial statements for Group Limited showed net assets of £3,055,020. The defender owned the entire share capital. I find that the value of his interest in Group Limited was £3,055,020.

[77] The 2013 financial statements for Investments LLP and Property Limited showed negative net assets and so I find that value of his interest in these is nil.

Summary

[78] In the light of the above, I find that the assets of the pursuer at the cessation of the cohabitation have a total value of £5,691,624 as set out in the following table. By way of cross check, I note that this figure is very similar to the £5,738,000 which the defender represented as his net worth in the email of 28 February 2013 referred to above.

ASSET	VALUE
Farm	£635,000
Half share of Drumsheugh Place	£57,500
Hill St	£300,000
Car parking spaces	£100,000
Classic car collection	£265,000
Porsche	£16,000
Landrover	£2,687
Motor bikes	£13,000
Number plates	£30,000
Nissan Qashqai	£4,000
Ford Pickup	£4,000
Group Ltd	£3,055,020
London Ltd directors loan and shares	£103,156
Street Ltd shares	£1
Property Ltd directors loan	£2,643
Land Ltd	£2
T Investments LLP	£80,441
Securities LLP	£63,462
Management LLP	£79,915
Investments LLP	0
Property LLP	0
Ventures LLP	£1
Partners LLP	0

Securities LLP	£89,791
Handelsbanken 933	£1,036
Handelsbanken 258	£206,492
Handelsbanken 094	£29,168
Arbuthnot Latham	£267,253
Arbuthnot Latham Joint account	£163,080
Clydesdale	£2,033
Clydesdale euro	£17,490
Adam and Co 950	£349
Adam and Co 600	£40
Standard Life pension	£97,814
Jewellery etc	£7,500
Adam & co 800	(£2,225)
TOTAL	£5,691,624

[79] Accordingly, over the period of cohabitation the defender's assets grew from £102,000 to £5,691,624, an increase of £5,589,624.

The Farm

[80] The parties agreed certain further facts about the farm in the Joint Minute as follows:

> "8. In or around September 1994, the Defender and his former wife sold their matrimonial home …. The Defender received approximately £100,000 on the sale. Between around September 1994 and March 1995, the Pursuer and Defender resided together at [the Defender's previous matrimonial home] That was in rented accommodation in the Annex [at his previous matrimonial home], paid for by the Defender. Thereafter, the Pursuer and Defender resided together with the Pursuer's mother from around March 1995 until around July 1996.
>
> 9. The Defender purchased [the] Farm on 3 February 1995. The purchase price was £252,500. The Defender purchased it with some of the monies from the £100,000 from his divorce settlement and the balance was with the assistance of an interest only mortgage of £212,500 in his sole name. The farmhouse required renovation. On or about 19 May 1995, a receiver was appointed to [the Defenders construction company]. The Defender was unemployed for a

period. During that period the Defender worked on renovating the farmhouse at [the] Farm.

10. At the time of purchasing the property at [the] Farm, the Defender advised the Pursuer that the monthly mortgage interest payments were £1,200. It was an interest only mortgage. The Defender paid the whole mortgage interest from a bank account in his sole name. The parties opened a joint bank account with Bank of Scotland in November 1996. The parties each contributed to their joint expenses. They each made payments into the parties' joint account. The Pursuer paid on average £600 more than the Defender into said Joint Account each month from around November 1996 until around June 2012. From on or around 23 July 2012 the Pursuer and Defender each paid £3,000 per month into said joint account. The Pursuer and Defender continued to make said payments after the date of cessation of cohabitation in November 2013 until November 2016.

11. Between on or about October 2003 and 2005 the farmhouse was extended by the addition of 2 bed rooms and a hall and increasing the size of the kitchen. The size of the extension is approximately 150 m^2 and was built of a traditional masonry construction with stone cladding. The Pursuer made no financial contribution towards the costs thereof.

[81] The parties were in dispute as to the nature of the £600 paid by the pursuer, the cost of the initial renovation and the cost and purpose of the extension.

Payments of £600

[82] There was no dispute in substance between the parties as to their discussions about the farm being bought by the defender rather than jointly. The pursuer gave evidence that she and the defender had discussed buying the farm together but she did not do so as she had not at that stage sold her former matrimonial home so did not have cash to put into the farm. The defender's evidence was that he had asked the pursuer whether she wanted to contribute to the capital costs of the purchase and she declined.

[83] There was however dispute about the monthly payments made by the pursuer into their joint account.

[84] The pursuer's evidence was that it had been agreed between her and the defender that the £600 more that the pursuer paid into the joint account every month would be her

way of paying for her share of the mortgage payments and that the defender had told her that the mortgage payments were £1,200. She gave evidence that she discovered in 2012 that the mortgage payments had reduced considerably due to the lowering of interest rates so that for example by April 2009 the monthly mortgage payment was only £269. The defender had not told her of the reduction so she continued to pay £600 more than him per month into the joint account to reflect what she thought was a half share of the mortgage payments. As a result of her discovery, the amount each paid into the joint account was altered.

[85] The defender's position was that the additional £600 was a contribution towards joint living expenses which the defender was solely funding. He lodged a spreadsheet of these expenses, and I deal with this below.

[86] I prefer the evidence of the pursuer on the matter of the £600. Her evidence was consistent with other evidence. There was no dispute that the initial mortgage payments were £1,200, so the figure of £600 was indeed half of the mortgage payments.

Renovation Costs

[87] Parties were in dispute as to the cost of the renovation of the farmhouse undertaken upon its purchase. The pursuer's evidence was that she was not aware of the cost of the initial renovation. However, during the renovation the defender was unemployed and was entirely supported by the pursuer and was living rent free with the pursuer's mother. There was no dispute that the pursuer had lent the defender a large part of the £30,000 which she had received from the sale of her former matrimonial home and he had paid this back with interest, and her position was that was to pay for the renovations.

[88] The defender's evidence was that he used £40,000 of the £100,000 received in relation to his divorce from his former wife in relation to purchase of the farm and the balance of £60,000 in respect of renovation. The defender produced no vouching in respect of this,

either in terms of tradesman's bills nor in terms of bank statements showing how the £60,000 was used. His evidence was that he used local tradesmen and oversaw the works himself. The renovations involved rewiring, replumbing, central heating, replastering and replacing windows bathrooms and kitchen.

[89] I accept that the renovations did take place and they were extensive and must have involved a cost. Due to the passage of time it is not possible to ascertain with any certainty what that cost was. For the purposes of the rough and ready calculation required in this case, I am prepared to accept the defender's evidence that the cost was £60,000.

Extension

[90] The parties were in dispute as to both the purpose and the cost of the extension.

[91] The extension comprised 2 bedrooms, a shower room, a bigger kitchen and an open plan hall.

[92] The pursuer's position was that the purpose of the extension was to provide better accommodation for the family. She gave evidence that after the birth of the older child parties agreed that more space was necessary and that the works were started when she was pregnant with the younger child and finished after the birth. Initially the children shared a bedroom but when they were older it was more appropriate for them to have a bedroom each.

[93] The defender's position was that the purpose of the extension was not to provide more space for the family but to add capital value to the property, and this is why the children shared a bedroom until after the date of cessation of habitation.

[94] I prefer the evidence of the pursuer as to the purpose of the extension. It seems to me to be inherently likely that when the parties began to have children they sought to improve the family's accommodation. It also seems inherently unlikely that at that stage in

the development of family life they were motivated by increase in capital value to the extent that they built more rooms to lie empty and not be used by the growing family.

[95] The pursuer's position was that the costs of the extension were £100,000. Her evidence was that this is what the defender had told her at the time. She also gave evidence in cross (which was not challenged or contradicted by the defender) that in 2014 the defender's solicitor informed the pursuer that the cost was £150,000.

[96] The defender's position was that the estimated costs of the extension borne by him were in excess of £300,000. He produced a document showing how he came to that figure. That document was a bare list of categories of work (eg "Foundations" or "hardwood flooring") with round figures ascribed to each category. There was no vouching of the figures. The document was produced for the purposes of the litigation. In cross-examination he accepted that he had told the pursuer at the time that the costs were £100,000, but explained that that was at a stage when the works were incomplete and did not include works still to be done.

[97] I prefer the evidence of the pursuer on this matter. There was no vouching for the figures set out by the defender in the document produced for the purposes of litigation. The defender has changed his position on the amount: the total sum in that document was double the figure previously given by the defender's solicitors. I accept the figure of £100,000. The defender accepts that he gave that figure to the pursuer at the time, and I do not find it credible that at that time he was giving only an interim figure.

Contributions made by Parties during Cohabitation

[98] The parties operated a joint bank account for joint expenditure. The defender submitted that during the cohabitation he had made a significant additional contribution

beyond the joint account by his sole expenditure for joint purposes in the approximate sum of £469,000.

[99] He set this expenditure out in a spreadsheet. The spreadsheet was produced for the purposes of litigation by the defender and an employee of one of his commercial entities. There was little vouching of the sums involved. Some of the entries in the spreadsheet were expressly stated to be estimates. At the end the spreadsheet gave a "total sole expenditure of [the defender] for Joint Purposes" of £468,893.59.

[100] The exercise which the defender was inviting me to do was precisely the kind of exercise which Lord Hope and Lady Hale warn against in *Gow* v *Grant*. The defender was putting forward a running-account of the parties transactions over almost 20 years, constructed for the purpose of litigation and backed with very limited vouching. There were further difficulties in this case as many of the expenses claimed by the defender had been incurred not by him personally but by various of his business entities. There was no evidence that where appropriate these expenses had been properly declared to the Inland Revenue as benefits in kind.

[101] Accordingly I propose to deal with the matter of the defender's sole contributions outwith the joint account on a rough and ready basis.

Mortgage Interest

[102] The spreadsheet gave a total of £212,412 for mortgage interest payable solely by the defender for joint purposes from 1995-2013. I do not accept that mortgage interest was payable solely by the defender: the pursuer was contributing £600 per month towards this. Nor do I accept that it was for joint purposes: the defender was the sole owner of the mortgaged property.

Other Household Expenditure

[103] For the period 1995—2013 the spreadsheet listed totals of £3,882 in respect of horse bedding and feed, £1,769.89 in respect of boiler repairs, £17,948.84 in respect of heating oil, £15,270.60 in respect of house insurance, £84,496 in respect of house repairs and £4,500 in respect of car insurance for the pursuer.

[104] The horse bedding and feed, boiler repairs, insurance and heating oil were unvouched. They were included by the defender in his accounts for his farming business (in which the pursuer had no interest), and there was no breakdown as between personal use for the benefit of the pursuer and use for the defender's sole benefit in his farming business. While to a certain extent the pursuer and the children may have benefited from the boiler and oil, this is *de minimis* in the context of a rough and ready calculation. There is no vouching of the house repairs. There is no dispute that the pursuer did not pay her own car insurance, however the cost of that was met not by the defender but by one of his companies. In all the circumstances, taking a rough and ready approach, I do not find it proved that the defender expended these sums.

Horsebox Expenditure

[105] The spreadsheet included £18,136 in respect of purchase of a horse-box. It also included running expenses from 2000 to 2013 totalling £2,210.95 for hire purchase interest, £3,727.49 for insurance, £9,777.12 for repairs and £2,330 for tax. The defender's evidence was that he had purchased the horsebox for joint use but after his accident in 2002 it was used only by the pursuer.

[106] However in fact the horsebox was purchased not by him but by one of his limited companies. There was no evidence of it having been treated as a benefit in kind.

Accordingly, I find that the horsebox does not constitute sole expenditure of the defender for joint purposes.

Nanny Expenses

[107] The spreadsheet set out figures in respect of two cars. The first car was leased until 2008. The spreadsheet listed leasing payments totalling £13,343.94 and insurance costs of £2,917. As the first car was leased not by the defender but by one of his companies, I do not find it proved that the defender incurred these sums for joint purposes. The second car was the Nissan Qashqai included in the joint minute as an asset of the defender at the end of the cohabitation. The spreadsheet included the purchase price of £18,402, car tax of £1,268, car insurance of £5,938 and maintenance and repairs of £1,909. I accept the evidence in the Joint Minute that the vehicle was maintained and fuelled through the parties joint bank account and was an asset of the defender at the cessation of cohabitation. Accordingly I do not accept that the expenditure on it was solely by the defender for joint purposes.

Private Healthcare

[108] The spreadsheet listed private healthcare for the children of £9,304.93.

[109] However in fact private healthcare was purchased not by the defender but by one of his limited companies. Accordingly, I find that the healthcare does not constitute sole expenditure of the defender for joint purposes.

Holidays

[110] The spreadsheet listed three holidays paid by the defender from 2005 to 2008 totalling £23,169.45. The defender led detailed evidence about these three holidays, and produced bank statements giving details of costs incurred by him. There was also evidence

of what the pursuer contributed financially towards these holidays. There were also many other holidays during the cohabitation. It seems to me that holidays are a good example of the sorts of matters of which parties should not be required to produce a running account detailing what was spent and by whom over a long period of cohabitation. This is particularly so in the current case where the sums involved are *not* significant in relation to the sums being sought in the litigation.

Works to Properties Owned by the Pursuer

[111] The spreadsheet listed a total of £1,365 in 2001 and 2003 in respect of the pursuer's Baxter's Place flat, and £2,643.53 in respect of a commercial property owned by the pursuer in 2010. These works were undertaken not by the defender personally but by one of the defender's companies. The defender gave evidence that no invoices had been issued for the works. I do not find it proved that these works were sole expenditure for joint purposes.

Summary

[112] I find that, on the basis of a rough and ready calculation, there has been no economic disadvantage to the defender arising from sole expenditure by the defender for joint purposes.

Child Care Arrangements

[113] The parties were in dispute as to why the pursuer had reduced her hours to 80% after the birth of her first child. She increased them to 90% from 1 August 2014.

[114] The pursuer gave evidence that after the children were born she wanted to work but she also wanted to see the children. She went back to work part-time. Her initial intention had been to go back to work full time after 6—12 months but she found it to be more

difficult than she anticipated to be a working mother with a baby and then the second child was born. She arranged nannies for the four days when she was working. The nannies employed up to 2010 worked a 48 hour week from 7.00am to 7.00pm Monday to Thursday. Nanny 4 has been employed from 2011 to the present. With both children now being at school her working hours are different. She works a 35 hour week, being a split shift 7.00am to 7.00pm Monday to Thursday with time off in the middle of the day, and three hours on Friday. She spends some of her time looking after the pursuer's horses.

[115] The defender's position was that the pursuer did not require to reduce her working hours but chose to do so. The decision not to return to full-time work had been her decision. A nanny could have been employed on Fridays also. In the children's pre-school years, she would go riding on Friday mornings, and when the children were at school she would have her own personal time. The defender gave evidence that lots of mothers work full time quite successfully and it was the pursuer's choice to work part time. His evidence was that the decision to work part time was not to suit the children but to suit the pursuer.

[116] I accept the pursuer's evidence that on the birth of the children she wanted to both work and care for the children. I reject the defender's evidence that pursuer was working part time solely for her own benefit. It was clear to me from the evidence of the nannies and the pursuer that there was generally no nanny on a Friday so on that day the pursuer was the person looking after the children. Later when the children were at school she was still the person looking after the children on Fridays, and would have to get them to and from school on Fridays and look after them when they were not at school.

Parenting

[117] There was much evidence about the quality of the parenting by each parent. This evidence came from the parties, the nannies, the defender's son A and the pursuer's friend M.

[118] The pursuer gave evidence that both parties participated in caring for the children, and that the defender participated in this to a lesser extent than she did.

[119] The defender's evidence was that both parties shared responsibilities of looking after and caring for the children, and the defender played as significant a part as the pursuer.

[120] Although there was little difference between the parties' positions, much evidence was led and much court time expended on that difference. I heard evidence about the minutiae of family life, eg things that had happened on weekends or holidays, the arrangements for when one party was working late at the office, occasions on which one party was absent overnight for work or other reasons, ironing of children's clothes, getting the children ready on Sunday nights for the start of the school week, the number of empty bottles in the house, circumstances surrounding the choice of school.

[121] From all of that evidence a clear general picture emerged. I find that both parties took part in the upbringing of the children, and the particular involvement of each of them varied from time to time depending on their work commitments and other activities.

Careers of Parties

Pursuer's Career

[122] Evidence was also led about the careers of the parties during the period of cohabitation.

[123] At the commencement of cohabitation the pursuer was a solicitor working as an associate for Firm 1, becoming a partner in 1995. She was an equity partner in 2000 when

Firm 1 merged with Firm 2 and she became a salaried partner in Firm 2. In June 2001 she was interviewed for an equity partnership in Firm 2 but not appointed as such. By that time the parties' older son had been born and the pursuer went back to work four days a week in October 2001. In 2008 the pursuer moved to Firm 3 and became an equity partner. From 1 August 2014 she worked 4.5 days.

[124] During the period from October 2001 to 31 July 2014 as a partner in Firm 2 the pursuer was working a four day week and so she received 80% of the profit share she would otherwise have received. The 20% reduction while a partner in Firm 2 amounted for the tax year ending 2002 to £37,440, for 2003 £32,455; for 2004 £36,701; for 2005 £34,979; for 2006 £34,241; and for 2007 £44,446. The reduction while a partner in Firm 3 from 2008 to the partnership year end on 31 July 2014 was £303,544. On 1 August 2014 she increased her hours to 90%. The 10% reduction from then to 31 July 2016 was £211,962. Accordingly the total reduction due to part-time working was £735,768.

[125] The pursuer's claim is based on that figure of £735, 768, being her actual loss. It is not based on loss of earnings resulting from lack of promotion due to her part-time status. I heard evidence about her lack of promotion. I deal with that now but do so briefly as it did not form part of the pursuer's claim. The argument was that had the pursuer not gone part time in Firm 2, she would have become an equity partner with Firm 2 and would have had a larger share of partnership profits in Firm 2 than she did have. Then when she moved to Firm 3 she would have gone straight to top lockstep as she was moving as an equity partner, and would have had a larger share in profits in Firm 3. In 2001 Firm 2 had a policy that there should not be part time equity partners: I accept the evidence of the current chief operating officer of Firm 2 in that regard. There was a structured process for appointment of equity partners involving interview and various levels of decision making within the partnership governance structure. When after interview the pursuer was informed that in

accordance with the policy she could not go forward for promotion to equity partner unless she worked full time, she decided that it was more important for her to spend time with her new son, so she remained a salaried partner. It is not necessary for me to consider whether she would have been successful had she gone forward for promotion, as she makes no claim for loss of earnings at Firm 2 or Firm 3 as a result of not being promoted by Firm 2.

Defender's Career

[126] At the commencement of cohabitation, the defender had an interest in a construction company which went into receivership shortly thereafter in May 1995. In 1996 he recommenced his construction activities.

[127] During the co-habitation the defender's business interests comprised a small farming enterprise at the farm, the personal ownership from time to time of some small commercial properties together with a share in various entities alongside his two sons A and C (and other partners, shareholders and joint venture partners) which carried out a variety of property investment and investment activities.

[128] The defender lodged his tax returns for the entire period of cohabitation. These showed that he did not receive a salary after 2008 but that he had capital gains or losses depending on how his various property interests and entities were faring.

Comparison of Income

[129] The defender submitted that during the period from 2001 to 2013 the pursuer had total net income (net of income tax and pension contributions) of £1,300,000. The defender sought to compare this with his net earnings for the period from 2008 to 2014 of £422,423.

[130] I did not find that this submission was of much assistance in the matters with which I have to deal. The submission does not constitute a comparison of all income of both parties

over the entire period of cohabitation, not least because the defender was comparing 13 years of the pursuer's income with 7 years of his own. Further, the defender's figures as to the pursuer's partnership profit bore no relation to the figures provided in an affidavit from the partnership's finance director, whose evidence I accept. In any event, a focus on the relative earnings of the particular parties in this case would be too narrow an approach. The nature of the defender's property development business was such that much of his profit took the form of capital gain on the completion of a successful development rather than income.

Contributions after Cessation of Cohabitation

[131] The Joint Minute provided as follows:

> "13. As referred to at paragraph 10 hereof, both parties made payments of £3,000 per month in to the parties' joint account from the cessation of cohabitation in November 2013 until 2 December 2016. The Defender paid one half of the outstanding debit balance on the said joint account as at 19 December 2016. The total debit balance was £10,981.26. The Defender paid in the sum of £5,325.04 to the account on 19 December 2016.
>
> 14. During the cohabitation of the parties and following the cessation of cohabitation of the parties, the Defender's gold credit card was held by the nanny, who used the card for fuel for transporting the children and groceries and incidental costs for the children. On occasion, the Defender also used the card. Following notice given by letter sent on behalf of the Defender to the Pursuer's agents on 9 November 2016, the card was to be cancelled on 30 November 2016. The cancellation was postponed by the Defender until 20 December 2016, when the credit card account was closed. Throughout the period the card was held by the nanny and used by the Defender, the expenditure on the card was met, in full, from the parties' joint account.
>
> 15. The rental income from the parties' jointly owned property at ... Drumsheugh Place, Edinburgh is deposited into their joint current account. The monthly mortgage payment on the said property is met from the said account. There is a shortfall between the monthly rental income and the monthly mortgage payment. The shortfall is met from the said joint account. The Defender paid 50% of the shortfall for the month of December 2016 into the joint account on 24 February 2017 having been alerted to the shortfall on 22 February 2017……
>
> 18. Since 28 December 2016, the Defender has paid £725 per month into the parties' joint account.

19. Since November 2016, the Defender has made arrangements with the children to set up personal bank accounts for them. Since December 2016, the Defender has been depositing the sum of £50 per month per child into the said accounts as his contribution towards the children's pocket money."

[132] After the cessation of cohabitation the pursuer continued to live at the Farm with the two children. They did so without payment of rent and the defender sought to ascribe to them an advantage of £2000 a month, being the rental value of the part of the Farm occupied by them. I do not accept that figure as being a market rent as no evidence was led as to what such market rent would be.

[133] On 17 March 2017 the defender provided an undertaking to the pursuer in the following terms:

"1. Our client will continue to pay the sum of £362.50 per child per month by Standing Order direct in to a bank account nominated by your client. This sum is paid as our client's 50% contribution towards the costs of groceries, other household expenditure and basic clothing attributable to the children whilst they are residing with your client. This is based on analysis of the past spending through the parties' joint account and credit cards up until November 2016. Until such bank account is nominated by your client, said payments will be made in to the parties' joint account (namely joint Adam & Co Account in the parties' name with Account Number ending 800). Said sums will be paid to your client in trust and for the benefit and maintenance of the children.

2. Our client will continue to pay the sum of £50 per month direct to each of the parties' children as his 50% contribution towards the children's pocket money. Such payments have already been made (and will continue to be made) direct to the personal bank accounts which he has set up for each of the children and to which they have open access.

3. Subject to the other terms of this undertaking, our client will continue to make such payments as noted at 1 and 2 above for each child who is below the age of 18 years, or is below the age of 25 years and undergoing instruction at an educational establishment, training for employment or for a trade, profession or vocation. Our client will review and adjust such payments by reference to the UK Consumer Prices Index on an annual basis.

4. Our client will continue to pay 50% of the private school fees attributable to the parties' children. Since November 2016, our client has made arrangements for the school fees to be involved separately by the children's schools to each of the parties for said 50% share of the school fees.

5. Our client will pay 50% of all reasonably incurred extraordinary expenditure for the parties' children, such as for school trips, extracurricular sporting activities, new ski clothing or equipment etc., as has been agreed in advance on an *ad hoc* basis with your client. If your client intends to incur expenditure for the children of this nature, we would ask your client to inform our client of the expected total costs thereof, providing any vouching or written confirmation of same, as appropriate, and he will arrange to discuss and agree same with your client; and thereafter to pay his 50% share of any such agreed expenditure. If your client has incurred any such expenditure since 30 November 2016, for which he has not yet been requested to pay a 50% share thereof, subject to such information and vouching being produced by your client and agreement between the parties, our client undertakes to make payment of 50% of such agreed reasonably incurred expenditure to your client.

6. Our client will continue to make contributions towards the maintenance and support of the parties' children by purchasing casual clothing for them when required and providing for their electronic hardware and media requirements, e.g. by purchasing mobile phones when required and paying for their subscriptions, including the children's entertainment media, such as games and subscriptions (such as Xbox Gold subscriptions, and e.g. FIFA 17 game) and providing any computer equipment reasonably required by the children. Our client will continue to make such arrangements directly with the children, as he has done previously.

7. Our client will solely fund the holidays which the children will be spending with him, including any flights, accommodation, meals and other maintenance required during the periods when they have residential contact with him."

[134] The defender sought to offset his post-cessation contributions against any economic disadvantage suffered by the pursuer. In my opinion it was not appropriate to do so. The pursuer too contributed to the post-cessation living expenses of the children. When parties respective contributions are looked at in the round and on a broad brush basis, it cannot be said that there was a significant imbalance between their contributions such as would justify any offsetting.

Pursuer's Submissions

[135] The pursuer sought payment of a total capital sum of £912,000.

[136] She did so under two heads.

[137] The first head was division of the increase in the net value of the farm less the capital contributions made by the defender. The pursuer's claim values the increase in the value of the farm as £1,248,000. This figure is arrived at as follows. The property increased in value over the period of cohabitation from the purchase price of £252,000 to £1,500,000. The increase in the net value over that period was from £40,000 (the equity in the property at purchase) to £1,288,000 (the equity in the property at cessation of cohabitation less the original mortgage sum). The pursuer then deducts £60,000 in respect of the defender's contribution to the first renovation and £100,000 in respect of the extension to give the figure of £1,088,000 as being the increase in value to be shared between her and the defender. She claims a half share of that increase, that is £544,000.

[138] The second head represented the pursuer's loss of income resulting from her reduction in working hours in the interests of the parties' children. As indicated above, she was not seeking to recover any loss arising out of her not having become an equity partner in Firm 2. Her claim was only in respect of the partnerships she had in fact held and was only in respect of the difference between working full time and part time. It is also important to note that she did not seek that difference in full. She accepted that payment of the whole of that loss of income would simply transfer the economic disadvantage in the interests of the children from the pursuer to the defender, and so she sought only half of the difference. Accordingly she sought £367,868, being half of the £735,768 income loss.

[139] When the figures for these two heads are added together and rounded the total sum sought is £912,000.

Defender's Submissions

[140] The solicitor advocate for the defender submitted that no award should be made in favour of the pursuer. He argued that the contributions of the defender were sufficient to

compensate the pursuer for any economic disadvantage and indeed that the pursuer had not been economically disadvantaged at all.

[141] He also argued that as the defender had already been compensated by additional payments after the cessation of cohabitation, no order for capital award should be made.

[142] He referred to *Gow* v *Grant* and submitted that fairness would be achieved by refusing to make an order for a capital sum. He urged me to exercise my discretion in refusing to grant such an order.

[143] He sought to distinguish various cases in which a capital sum had been ordered. He argued that the pursuer in *Gow* v *Grant* had nowhere to live, was no longer employed, had been persuaded by the defender to sell her house and had used the proceeds to pay off debts and on living expenses, and was left with very little. He contrasted this with the situation in the present case where, he submitted, the pursuer chose not to contribute to the costs of buying, renovating or extending the farmhouse, had a number of other heritable properties, was still working with a lucrative career, had a number of significant investments and cash to her name, and the defender had contributed more than the pursuer to living expenses both during and subsequent to the period of cohabitation. He argued that in *Whigham* v *Owen*, the pursuer had been the person primarily responsible for most of the domestic tasks within the family, and the pursuer was unable to develop any career of her own and had sacrificed her own career for the benefit of the pursuer. He submitted that in the present case, the nanny was the principal carer four days a week with other childcare duties being broadly shared between the parties, the pursuer did not in any way directly or indirectly contribute to the defender's business, the pursuer did not take an extra burden of the care of the children to facilitate the defender's work obligations, the pursuer worked part time to spend more time with the children rather than to assist him concentrate on his business and she pursued a very lucrative career.

Decision

[144] The task of the court in deciding whether to exercise its discretion to make an award under section 28 requires consideration of the particular circumstances of the parties in the particular case. Each case turns on its facts. In some cases, one party may have undertaken a domestic role while the other was economically active. In other cases, both will have been economically active. It is important to note that the purpose of section 28 is to redress any economic disadvantage. Its purpose is not the relief of one of the parties from poverty. Accordingly section 28 can apply in situations like the present where both the pursuer and the defender have successful careers and substantial assets.

[145] In the current case, both parties continued to progress their careers and business interests during the period of cohabitation. They did not pool their finances, but kept these separate. Where they incurred joint expenses for living expenses or child care, they contributed to these jointly. They operated a joint account for joint expenses. They both took part with bringing up their two children and with household tasks. They employed a nanny to assist with childcare. A cleaner was employed to assist with domestic chores. At the end of the cohabitation, the pursuer had assets of £1,085,721 being an increase of £958, 221 since the beginning of cohabitation. The defender had assets of £5,691,624, being an increase of £5,589,624.

[146] This is not a case where the court is being asked to make an award based on the overall financial position of the parties. The pursuer seeks to rectify two particular disadvantages, one in relation to the farm and the other in relation to part-time working. Accordingly I shall first consider whether the court should exercise its discretion to make an award under section 28 in respect of these two matters. I shall then look at the overall fairness of the situation.

Farm

[147] I am satisfied that in relation to the farm the defender has derived economic advantage from contributions made by the applicant. The applicant paid £600, half of the monthly mortgage payment, into the parties' joint account on the understanding that this was her contribution to the mortgage. When the mortgage payments reduced due to falling interest rates, she continued to pay the sum of £600 which then constituted more than half of the monthly mortgage payment. Indeed by 2012 her £600 was around double the monthly mortgage payment. The defender has derived various economic benefits from these payments. His farming business benefited from not having to meet the full costs of the mortgage payments. He has benefited from the increase in the capital value of the farm. He has benefited from using the funds he raised in 2008 and 2013 when he borrowed further moneys on the security of the Farm.

[148] I am also satisfied that the sum sought by the pursuer takes into account the offsetting of economic disadvantages suffered by the defender in the interests of the pursuer. The defender has expended sums in purchasing the property and the first and second renovation. This expenditure has been offset by the pursuer in calculating the amount claimed. As there has been no economic disadvantage arising from sole expenditure by the defender for joint purposes, there is no such disadvantage to set-off. There is no off-settable imbalance in the contributions of the parties since cessation of cohabitation.

[149] It seems to me that the extent of the financial disadvantage is fairly reflected in the sum sought by the pursuer under this head. The pursuer has deducted from the sum sought the amounts contributed by the defender for the initial purchase and renovations. She does

not seek the whole increase, but half of it, recognising that the increase in value should be shared equally between her and the defender.

Part-time Working

[150] I am satisfied that the pursuer has suffered economic disadvantage in the interests of the parties' two children. By reducing her working hours in order to spend time with them and care for them she has suffered economic disadvantage in the form of loss of income. Lady Hale in *Gow* v *Grant* at paragraph [51] sets out the principle that where one party suffers financial disadvantage as a result of having to look after the children it is entirely fair that the other should compensate the carer for the disadvantages that she has suffered. In my opinion that principle falls to be applied in the current case. The principle does not cease to apply merely because the carer could have gone to work full-time and used her earnings to buy in childcare. Where, as in this case, a carer decides that it is in the best interests of the children that she spends part of the week with them, then her loss of income is an economic disadvantage suffered in the interests of the children.

[151] No offsetting falls to be applied under this head. The offsetting in respect of the defender's capital contribution to the farmhouse has already been applied in full to the first heading. No other off-setting is applicable for the same reasons as set out in paragraph [148] above.

[152] It seems to me that the extent of the financial disadvantage is fairly reflected in the sum sought by the pursuer under this head. The pursuer does not seek the whole income loss, but half of it, recognising that the loss of income should be shared equally between her and the defender.

Overall Fairness

[153] In *Gow* v *Grant* at paragraph [31] Lord Hope emphasised that the purpose of the exercise of making an award under section 28 is to achieve fairness between the parties. In my opinion, the award of the sum of £912,000 sought by the pursuer would achieve that fairness. That sum is targeted at redressing two specific disadvantages, being the paying of half the mortgage payments and the loss of income due to caring for the children. In all other respects, each party will retain his or her own property. After that sum is paid, the defender will still be left with a substantially greater increase in wealth over the period of cohabitation than the pursuer. Over that period the defender's assets increased by £5,589,624 and the pursuer's by £958,221. The effect of an award of £912,000 will be that the defender will have enjoyed an increase of £4,677,624 and the pursuer £1,870,221.

[154] In all the circumstances of this case, fairness requires the making of an order for a capital sum in the amount of £912,000.

Order

[155] I uphold the pursuer's first and second pleas-in-law. I uphold the pursuer's third plea-in-law in part, the parties elder child now being 16. I repel the defender's pleas-in-law. I grant decree for payment of a capital sum in the amount of £912,000.

[156] In terms of section 28(7) the court may specify that the amount may be payable on a date to be specified or in instalments. The equity in the farm at the date of cessation of cohabitation was £635,000, and this will have increased as a result of the subsequent reduction of the defender's borrowing secured over it. At the Proof I was advised that the defender had given the pursuer notice to quit the farm and the farm was being sold urgently. In addition, at the date of cessation the defender was holding around £680,000 in

cash in bank accounts. In these circumstances I will order payment to be made in 42 days. I reserve all questions of expenses.