



Neutral Citation Number: [2022] EWFC 53

Case No: LV20D03547

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 June 2022

Before :

MR JUSTICE MOSTYN

Between :

Brid Angela Gallagher

Applicant

- and -

Donal John Gallagher

Respondent

Jonathan Southgate QC and Petra Teacher (instructed by Rayden Solicitors) for the applicant ("the wife")

Simon Webster QC and Phillip Blatchly (instructed by Hall Brown) for the respondent ("the husband")

Hearing dates: 21, 23, 25, 27 May 2022

**Judgment Approved by the court
for handing down**

This judgment was delivered in private. The judge hereby gives permission – if permission is needed – for it to be published. It should be reported as *Gallagher v Gallagher (No.2) (Financial Remedies)* [2022] EWFC 53

The judge has made a reporting restriction order which provides that in no report of, or commentary on, the proceedings or this judgment may the children be named or their schools or address identified.

It further provides that certain financial matters may not be reported.

Breach of that order will be a contempt of court.

Mr Justice Mostyn:

1. The wife applies for the full range of financial remedies. This is my judgment on her application.
2. I find that the overall value of the parties' assets is **£35,456,884**.
3. In reaching that figure I have had to resolve one major point, namely the value of the construction company, Galldris, of which the husband is a 50% shareholder. I have also had to resolve some lesser disputes such as the treatment in the computational exercise of certain potential liabilities of the husband, and the valuation of the former matrimonial home.
4. In relation to the primary point - the valuation of Galldris - the parties are agreed on the applicable methodology namely that the value will be established by the usual technique of $(A \times B) + C$ where A is the future maintainable earnings of the business, B is the appropriate multiplier to be applied, and C is the amount of the surplus assets of the business.
5. The computational exercise was therefore not complex.
6. The distributional exercise was equally straightforward. The parties agreed that the matrimonial property should be divided equally. The main dispute in the assessment of the matrimonial property was how much of the business's value should be excluded to reflect its foundation some years prior to the start of the parties' relationship. The dispute was whether that element should be calculated on the linear basis, as contended for by the husband, or on a rather more intuitive basis as contended for by the wife. My decision, reasoned in the paragraphs below, is that 24.5% of the value of the business should be excluded as pre-marital property. I also had to resolve a minor dispute as to whether the value of some properties should be excluded as pre-marital assets.
7. The resolution of those issues leads to a finding, explained below, that the matrimonial property amounts to £28,475,246, resulting in an award in the wife's favour of £14,237,623, made up of a transfer of the matrimonial home, a property in Ireland and a lump sum of £12,129,209. The wife's award represents 40.2% of the total assets.
8. As I have said, the case was very straightforward. No case-law was seriously cited to me either as to computation or distribution. The wife's evidence lasted one hour. The husband's evidence lasted half-a-day. The experts' evidence lasted half-a-day. Final submissions lasted three-quarters of a day. All in, under two days were spent in court. The case should have been capable of being dealt with quickly and economically.
9. And yet.
10. In the two years since the wife's Form A the parties have incurred costs in the extraordinary amount of £1,670,380, or 5% of the total assets. Those costs are tabulated as follows:

	Husband	Wife	Total
Solicitors	398,869	320,116	718,985
Counsel	206,880	335,130	542,010
Disbursements ^a	295,599 ^b	113,786	409,385
Total	901,348	769,032	1,670,380

^a Mainly the business valuation experts

^b The husband paid the fees of Faye Hall, the SJE

11. The wife's open proposal was that she should receive an overall award of £18m. That was in the spectrum of possible awards. The husband proposed that the wife should receive an overall award of merely £6.6m. That was not.

12. It would be no answer to the question:

How is it that these exorbitant costs have been incurred?

to respond:

“Well, that is what the market will bear and how the parties want to spend their money is a matter for them not the business of the court”.¹

It is no answer because the court is bidden to do its utmost to compel litigants to conduct their cases proportionately. The court does so in the wider public interest. It is in the public interest that citizens who invoke the rule of law should have true access to justice. A putative litigant does not have true access to justice if it is unaffordable; if it is, to adapt the weary aphorism, only open to all like the Ritz Hotel. Financial remedy litigation seems to be fast heading for Ritz Hotel status - so expensive that it is only accessible by the very rich.

13. I am not going to repeat my lamentations about the exorbitance of costs which I have expressed in recent judgments. Nor am I going to repeat my cry that something must be done. In this judgment I merely record the facts and I leave it either to the Lord Chancellor, or to the Family Procedure Rule Committee, to do something about it.

The background facts

14. The husband is 50. The wife is 44. Both are from the Republic of Ireland and met in Donegal in 2003 or 2004. At that time, the wife was undertaking a post-graduate teaching diploma and the husband was living and working in London (to which he had moved in 1989).

15. On 23 March 1998, Galldris Construction Ltd was incorporated. The husband and Sean O'Driscoll each own 50% of the shares. Mr O'Driscoll did not join the company, and it did not start functioning as a partnership, until Christmas 1999 by which time it had just secured its first two major contracts. Galldris has since been developed into a group

¹ I am not suggesting that either counsel even implied this answer.

of companies which, in addition to a number of dormant companies, comprises: (i) Galldris Services Ltd (which carries on the main trade traceable back to Galldris Construction Ltd); and (ii) two companies under common control supplying to Galldris Services Ltd, namely ODG Plant Hire Ltd (which provides rent of plant and equipment) and 3G Tunnelling Services Ltd (which supplies labour). The experts in this case have agreed that these companies should be valued as one. As such, and unless otherwise stated, in this judgment ‘Galldris’ will be used as an umbrella term for the various iterations of the corporate structure since 1998.

16. After a period of being in a long-distance relationship, during which the wife completed her education and taught for one year in a primary school in Dublin, the wife moved to London to live with the husband in his council flat. Both parties accept that cohabitation began in July 2005.
17. The husband and the wife became engaged in December 2006 and married on 25 July 2008.
18. The husband and the wife have three children, 11-year-old twin boys and a 6-year-old girl. All three attend independent prep schools, the fees of which are paid by the husband.

The financial history

19. The financial history of the marriage is a story of ever rising prosperity and ever increasing standard of living. The business was, and is, extremely successful. Its accounts for the year to March 2019, being the last accounting year before the separation, show that turnover had by then reached £74 million with a pre-tax profit of £5 million. The milestones in the financial history were as follows:
 - i) The husband moved to London in 1989 with “just £1.00 in my pocket”, and worked as a labourer for J Colman Tunnelling.
 - ii) In 1995, the husband was approached by a company called Macrete who would supply the clients for the husband to do the work. The husband therefore began working as a sole trader/subcontractor.
 - iii) In the summer of 1997, whilst working with a company called Active Tunnelling, the husband met his current business partner, Sean O’Driscoll, and they set up Galldris in March 1998.
 - iv) From March 1998 to Christmas 1999, the husband was solely responsible for Galldris. He describes that in those early days “the business totally consumed me”.
 - v) During the 1999 Christmas period, when Galldris secured its first two major contracts, Mr O’Driscoll began working full-time for Galldris. At this time, Galldris was a construction company with a civil side and a rail side.
 - vi) From November 2000 – 2004, the husband also operated Galldris (Ireland). The husband closed this business owing to the success of Galldris in the UK and

being unable to manage both. £1m was transferred from Galldris (Ireland) to Galldris in March 2004.

- vii) In 2000, the husband and Mr O’Driscoll purchased land in Hertford for development.
- viii) On 13 May 2002, ODG Plant Hire Ltd was incorporated.
- ix) The husband purchased a number of investment properties in 2003 some of which were later sold to help fund the refurbishment of the matrimonial home at 3 Belmont Avenue.
- x) In late 2003 or February 2004, the husband bought Irish property No 2² for 70,000 Irish Punts (mortgage free). Following a fire in 2011, it was completely refurbished.
- xi) By 2005 the business was prospering. Its combined accounts for the year ending 31 March 2005 show turnover of £5.7 million and pre-tax profit of £320,000. In July 2005, the husband bought a property in Hornsey - a dance studio - which was developed into 6 apartments.
- xii) As at July 2005, when the wife moved from Ireland and the parties started to cohabit, the husband held the following property portfolio of which the cost price totalled approximately £1.24m:
 - a) Land at Hertford (50%);
 - b) The investment properties mentioned above;
 - c) Irish Property No 2; and
 - d) The Hornsey property.
- xiii) At this time, the husband states that he had savings of c.£55,000, with the remainder of his capital mostly held in Galldris or in the properties purchased. He had also acquired a 911 Porsche purchased for £12,500 and a collection of classic cars in Ireland.
- xiv) As noted above, at the time that cohabitation began in July 2005 the wife moved into the husband’s one-bed flat. The wife describes Galldris as operating from a portacabin and renting a yard at Mollison Avenue. Galldris is said to have moved into “proper offices” around 2006.
- xv) In August 2005, the husband purchased a property in Southgate, London, for c.£250,000 with a small mortgage, in his sole name. The property was intended for himself and the wife to live in together. The parties moved into the Southgate property in late September 2005 when refurbishments were completed.

² Four inexpensive properties in Donegal were purchased, which I do not consider it necessary to name. They are listed as Irish Properties Nos 1-4 in the asset schedule at [72] below.

- xvi) In September 2005, the wife began working as a full time supply teacher.
- xvii) The Southgate property was sold in July 2006, and the proceeds were invested directly into the purchase of Belmont Avenue, purchased in July 2006 for £570,000. The husband describes this as the first matrimonial home.
- xviii) In July 2006, the wife secured a permanent teaching job which she continued until Easter 2010 when the twins were born and she stopped working. Since then, the wife has worked intermittently, most recently as a part-time supply teacher from September 2018 to April 2019.
- xix) By December 2006, the husband had increased his property portfolio. In addition to the properties mentioned above, the husband also owned four properties on Hoxton High Street, and a 50% share in land at Mollison Avenue Yard. The husband states that the cost price of the various properties totalled approximately £2.1m. The husband states that he also had savings of c.£50,000.
- xx) The combined figures from the accounts for 2007 show that the business had plateaued. Turnover was £5.8 million and pre-tax profit was £327,000. These were very similar figures to 2005.
- xxi) However, thereafter Galldris grew significantly. Notably, Galldris moved into its present office in 2008, and 3G Tunnelling Services Ltd was incorporated on 21 October 2011. The accounts for the five most recent financial years ending 31 March show:

	2018	2019	2020	2021	2022
Turnover	73,757,529	80,905,854	68,927,385	70,613,084	107,008,718
Gross Profit	17,024,387	17,115,127	13,817,059	9,159,192	10,381,395
Operating Profit	3,826,621	3,275,890	3,489,144	333,281	650,608
Profit before Tax	4,965,551	3,361,220	3,537,017	293,582	591,095
Adjusted Profit before Tax	12,328,753	12,319,324	8,116,482	3,019,677	1,947,389

- xxii) In 2013, Irish property No 1 was purchased by the husband in his sole name though it was later transferred into joint names. Extensive building works were completed in 2016, though the parties disagree as to how much involvement the wife had in such works.
- xxiii) The husband purchased the final matrimonial home in January 2015, and the parties moved into it in January 2016.

Separation

20. The parties separated on 17 November 2019 and a petition for divorce was filed by the wife on 17 March 2020. Decree nisi was granted on 8 March 2021, and decree absolute has not yet been granted.
21. Following the separation the husband purchased his own home in Barnet in August 2020 for £2.15m mortgage-free, although a £1.5m mortgage was subsequently secured against it. It is described by the husband as “very close” to the former matrimonial

home. This property has since been improved, including by addition of a neighbouring piece of land purchased on 29 June 2021 for £250,000.

22. The wife has remained living at the former matrimonial home since separation. The children reside with her throughout the week, and then stay with the husband at his new home on weekends.

The financial remedy application

23. The wife made an application for financial remedies in a Form A dated 14 April 2020.
24. The wife's Form E was dated 9 October 2020 and said that the parties enjoyed "a very comfortable standard of living - money was never an issue". In terms of particular contributions, the wife noted her contributions to renovating/refurbishing previous family homes, work as a teacher, and involvement in the property development business, as well as her contributions as the "homemaker" with the husband the "breadwinner".
25. The husband's Form E was dated 15 October 2020 and stated that the parties "enjoyed a comfortable standard of living commensurate with my income" during the marriage. In terms of particular contributions, the husband asserted that his business was "essentially the same business that it was when he and Mr O'Driscoll started out together in 1998" and that "without the work, time and money that he and Mr O'Driscoll invested in the business in those early years the company would not be what it is today". The husband's asserted pre-marital wealth and contributions are addressed in further detail later in this judgment.
26. On 6 November 2020, the wife made a Part 25 application for the instruction of experts to report as follows:
- i) a forensic business accountant as a single joint expert to value the husband's business interests;
 - ii) a tax accountant as a single joint expert to determine the tax liabilities of the husband and/or his businesses;
 - iii) two surveyors to carry out a valuation of the husband's property portfolio in the UK and in the Republic of Ireland, to include commercial and residential properties; and
 - iv) a surveyor to be appointed to value the former matrimonial home and the husband's home.
27. A First Appointment was held on 13 November 2020 before Peel J, at which directions were made by consent for replies to questionnaires; updating disclosure; the instruction of Alastair Woodgate of Rumball Sedgwick to value the matrimonial home to commence only if the parties could not reach agreement on the value within 14 days; the instruction of Michael Lee of Michael R Lee (Surveyors) Ltd to value the husband's UK property portfolio; the instruction of Manus Kelly of DNG Kelly to value the husband's Irish property portfolio; and the instruction of Faye Hall of Smith &

Williamson to report on various issues concerning the husband's business interests; and the listing of a FDR.

28. A private FDR was conducted by Brent Molyneux QC on 29 and 30 April 2021.
29. Neither party accepted the valuations of Faye Hall, and *Daniels v Walker* applications were made by the wife and the husband on 12 May 2021 and 17 May 2021 respectively. The wife maintained that Faye Hall had "grossly undervalued" the husband's corporate interests "as a result of over-reliance on pessimistic forecasting data provided to her by the husband's team", and sought to adduce evidence from Sally Longworth. The husband, on the other hand, considered that Faye Hall "place[d] a much higher value on those assets than he believes is correct" and sought to rely on evidence from Paul Singleton.
30. The wife's application further disagreed with the analysis of Manus Kelly and sought permission to instruct Declan McLoughlin. The husband disagreed with the valuation of the family home provided by Rumball Sedgwick and sought permission to rely on evidence from Nick Staton of Staton Estate Agents.
31. At the Case Management Hearing on 25 May 2021, Holman J ordered by consent that:
 - i) the husband was to reply to a specific question in the wife's questionnaire as to the extent of his wealth when the parties started to cohabit and were engaged;
 - ii) the husband was to use his best endeavours to serve on the wife the final audited business accounts for the year ended March 2021;
 - iii) permission was granted to adduce the evidence of Sally Longworth (for the wife) and Paul Singleton (for the husband) as to the husband's business interests, and for those experts to meet and produce a joint statement;
 - iv) the experts in respect of the matrimonial home and the husband's Irish property portfolio were to meet and, if agreement on valuation could not be reached, then permission was granted for each of Nick Staton (for the husband on the matrimonial home) and Declan McLoughlin (for the wife on the Irish property portfolio) to file a report;
 - v) updating disclosure, s25 statements and open proposals were to be provided in advance of a pre-trial review.
32. By an application dated 2 March 2022, the husband sought permission to adduce a witness statement from Mr Thomas Kerins, the Managing Director of Galldris, to explain his and the husband's roles in the company and the company's performance and trajectory.
33. A pre-trial review was held before myself on 9 March 2022, at which I directed that:
 - i) further evidence on a number of issues between the parties was to be provided by the wife and the husband respectively, including s25 statements and permission to rely on a witness statement from Mr Kerins dealing with specified issues of fact only;

- ii) Ms Longworth and Mr Singleton were to meet with Mr Kerins, must share with each other “all information and documentation with which they have respectively been provided in the course of their enquiries”, and were to produce an updated statement of areas of agreement/disagreement;
 - iii) unless the court determined oral evidence to be necessary at the final hearing, the question of the value of the family home was to be resolved by the appointed experts giving evidence in writing;
 - iv) the question of whether any discount should be applied to the value of the properties held within Twin Estates (London) Limited was to be decided on the basis of submissions only; and
 - v) other preparatory steps were to be taken in advance of the final hearing.
34. Section 25 statements were subsequently provided by the husband dated 3 May 2022 and the wife dated 9 May 2022. The open proposal referred to above were made by the husband and the wife on 10 May 2022.
35. Forms H1 were provided by the wife dated 10 May 2022 and the husband dated 17 May 2022. The exorbitance of the costs I have set out above.
36. An application for a reporting restriction order and/or anonymity order was made by the husband dated 13 May 2022. At the beginning of the final hearing, I heard submissions and then granted an interim blanket reporting restrictions order pending the conclusion of the evidence and closing submissions when I would be in a position to undertake the requisite “ultimate balancing exercise” (see my judgment, *XZ v YZ* [2022] EWFC 49). Having heard closing submissions, I directed that the interim order should continue until the handing down of my final judgment on that issue. I have produced a separate judgment on that matter (*Gallagher v Gallagher (No.1) (Reporting Restrictions)* [2022] EWFC 52).
37. At the outset of the final hearing, which commenced on 20 May 2022 following a reading day, it appeared to me that there were lacunae in the evidence which required urgent remedial action. This was particularly striking given the vast amount of costs incurred. I did not, and do not, accept the submission of Mr Southgate that this was assisting the husband to fill the gaps in his case. This was doing nothing more, and nothing less, than ensuring the court had all the relevant information in order to reach a properly informed decision.
38. I therefore directed the parties to instruct junior tax counsel jointly to address the likelihood of a number of potential tax liabilities eventuating. The court received the conscientious and prompt advice of Mr Thomas Chacko on 24 May 2022, to whom the court expresses its gratitude. A supplementary report was subsequently provided on 6 June 2022.

The transition of Galldris to Tier-1 status

39. Thomas Kerins joined Galldris in September 2021 as managing director. In his witness statement he wrote:

“Donal and Sean explained they were looking for an individual to guide the company in the delivery of their clients' increasing demands for Tier 1 work. Historically, Galldris was a Tier 2 contractor. When I joined, it was delivering some Tier 1 projects and moving into increased Tier 1 work. If Galldris is unable to service their current clients Tier 1 work requirements, those clients would look to competitors. The role was therefore an opportunity to enhance the work Galldris was already doing, and to direct the company as it transitions into the Tier 1 world by putting in place the required infrastructure, processes, and systems.”

40. The categorisations “Tier-1” and “Tier-2” are not official kitemarks. They are creations of the construction industry and are no more than descriptors of the types of work done by construction businesses. However, the position of a construction business in the hierarchy will strongly influence its turnover and profits.
41. I have read the written evidence, and heard the oral evidence, of the husband as well as of the experts Mr Singleton and Ms Longworth. I have also read the written evidence of Mr Kerins. I have been able to form a very clear view about the reasons for the transition and their likely consequences.
42. The evidence described to me the construction industry’s hierarchy and what it signified. I summarise that evidence as follows:
 - i) A Tier-1 contractor will make the primary contract with the client (which may or may not be a public sector body). These contracts are typically much larger than the contracts entered into by Tier-2 contractors. The revenue of a Tier-2 contractor derives from secondary contracts with the Tier-1 contractor. Examples would be works by electricians, plumbers, joiners and plasterers. They are one step removed from the original source of the revenue and have to rely on the Tier-1 contractor for payment.
 - ii) Therefore, the turnover revenue of a Tier-1 contractor will usually be much higher than that of a Tier-2 contractor. Further, the source of that revenue, particularly if it derives from a public sector client, is guaranteed to be paid on time and is therefore stable and certain.
 - iii) However, the profit margins of a Tier-1 contractor are typically lower than those of Tier-2 contractor. This is because Tier-1 contractors usually (but not invariably) will have much greater administrative expenses. This case is directly in point. The expenses have risen from £2.3m (of which £892,000 was salaries) in 2018 to £6.8m (of which £4.6m was salaries) in 2022.
 - iv) The question therefore arises why a contractor would want to transition from Tier-2 to Tier-1 where margins and therefore profits are lower.
 - v) The answer is that while a Tier-2 contractor typically prospers in a bull market, such a contractor tends to suffer badly in a bear market with many going to the wall.

- vi) In a bull market there may well be a shortage in the market of electricians, plumbers, etc. and so these Tier-2 contractors will be able to dictate prices and contractual terms in their sub-contract negotiations with the Tier-1 contractor.
- vii) But the roles are reversed in a bear market. Here the Tier-1 contractor can impose brutal terms on the Tier-2 contractor scrabbling for work perhaps insisting, for example, that the Tier-2 contractor accepts a prolonged delay in payment of an outstanding invoice (or even a price reduction). Here the Tier-2 contractors are price takers rather than price makers.
- viii) The combination of Brexit and Covid has suggested for at least a couple of years that the economy is heading for downturn if not recession, and recent economic events have confirmed this. Therefore the transition of a business from Tier-2 to Tier-1 makes complete economic sense.
- ix) Given the cyclical nature of economies, a transition from Tier-2 to Tier-1 would make sense even in a bull market, in that riding the peaks and troughs is much more manageable as a Tier-1 contractor.

43. In the joint experts' report Ms Longworth wrote:

“Based on the information from TK, Sil and GM, it would appear that the business will be loss making going forward. TK expects sales to continue at £100m with substantial increases in staff costs and a reduced margin as more Tier 1 work is taken on a reduced margin, whilst SIL and GM consider loss making contracts will continue despite the new management. SL considers such an outcome incongruous with the investment in high level and expensive staff and the decision to become a 'blue chip' company. There appears to be no commercial justification for the very high level of investment, if business performance is not expected to improve. Whilst she acknowledges the issues with pricing and inflationary costs, she does not consider these will impact to the same level going forward given the shorter contract lengths being tendered for and the move to more Tier 1 work.

She notes further that the business has a strong balance sheet, with a high cash balance, and that it has grown substantially over the last few years in both turnover and gross profit as shown in the graphs below ...”

44. This view led her to adopt high figures for future maintainable earnings. She assessed separately the future maintainable earnings of two distinct elements of the business. The aggregate future maintainable earnings were £8.1m. Mr Southgate QC went even further, urging me to discern, and reflect in my disposition, an indefinable (and unvalued) “springboard” lurking latently in the transitioned business which will at some point in the future propel the profits skywards.
45. On this point I accept the evidence of the husband, Mr Singleton and Mr Kerins. For the reasons given above the sensible decision has been made to transition the business to Tier-1 and thereby to sacrifice the prospect of big profits on high margins on lower

revenue in exchange for the stability and certainty of smaller profits on lower margins on bigger revenue. I therefore do not accept either the £8m future maintainable earnings figure or the springboard argument.

The impartiality of the experts

46. In *Vernon v Bosley (No 1)* [1996] EWCA Civ 1310, Thorpe LJ memorably wrote:

“The area of expertise in any case may be likened to a broad street with the plaintiff walking on one pavement and the defendant walking on the opposite one. Somehow the expert must be ever mindful of the need to walk straight down the middle of the road and to resist the temptation to join the party from whom his instructions come on the pavement. It seems to me that the expert’s difficulty in resisting the temptation and the blandishments is much increased if he attends the trial for days on end as a member of the litigation team. Some sort of seduction into shared attitudes, assumptions and goals seems to me almost inevitable.”

47. That was 16 years ago. But the judicial remonstrations have persisted. A report in the Law Society’s Gazette on 20 May 2022, entitled “*Partisan experts can be fatal, Supreme Court justice warns*”, recorded Lord Hamblen making the following remarks, in an almost identical vein, at a legal conference:

“A Supreme Court justice today told experts that they must avoid the risk of taking sides and advocating for their instructing party. Lord Hamblen told the Expert Witness Institute that cases where experts were admonished for being partisan by the court had occurred ‘far too often’ in recent years – each time to the detriment of those they speak for.

[Lord] Hamblen said witnesses should refrain from becoming an advocate themselves and give evidence in such a way that you would not know which side has instructed them. ‘There is nothing more fatal to the acceptability of an expert’s evidence than the questions of independence and impartiality,’ he said. ‘It will taint all [and] it is therefore vital to avoid any hint of partiality.

‘It is counsel’s job to argue a case – that is not the role of an expert. If you give evidence in an argumentative manner that will undermine your independence.’”³

48. While I have no concerns at all about the impartiality of Ms Longworth I have to record my clear conclusion that Mr Singleton walked on the pavement hand-in-hand with the husband. I acknowledge that Mr Singleton is a highly proficient, knowledgeable, intelligent, and articulate accountant who has fully immersed himself in the detail of the operation of Galldris. I also acknowledge that for an expert to give his or her oral

³ <https://www.lawgazette.co.uk/news/partisan-experts-can-be-fatal-supreme-court-justice-warns/5112572.article>.

evidence forthrightly in support of his written opinion is not of itself indicative of partiality. I further acknowledge that some might say that the forceful judicial demands for impartiality are tinged with unworldeanness. It seems to me to be not unlikely that subconscious forces may well incline an expert, who is being handsomely paid by one of the parties, to give evidence favourable to that party. Solemn statements have been made for decades about the duty of experts to be impartial, but I have yet to see in a financial remedy case an expert, instructed and paid for by one party, give evidence adverse to that party's interests and strongly in favour of the other party's.

49. Even so, I agree with Mr Southgate QC that Mr Singleton did not deal with Ms Longworth in an open, impartial way but rather in a strategic defensive manner that has all the hallmarks of the mentality of an advocate. I agree that his attendance throughout the two-day private FDR is highly suggestive of *de facto* membership of the husband's team. He also wrote an email on 26 September 2021 to Mr Kerins about a possible comparable transaction stating "it is a great comparable and we can argue that the contracts it has are longer term and more secure than those within Galldris" (my emphasis). This laid bare his perceived membership of the husband's team. His written evidence put forward figures for A and B which were as low as he could tenably go without falling off the spectrum altogether. They were not impartial figures.
50. The evidence of the experts was hot-tubbed and I allowed them politely to interrupt each other. Mr Singleton's interruptions were forthright, abrasive and adversarial, even degenerating on one occasion to him rebuking the court for allowing Ms Longworth to descend, in his opinion, to excessive detail.
51. I therefore do regard Mr Singleton as *parti pris*. However, as indicated above, I am satisfied that he has accurately recorded the nature and respective functions of Tier-1 and Tier-2 contractors and has accurately recorded the reasons why Galldris has made the decision to transition to Tier-1. Had he been more impartial I believe that he would have insisted on forecasts for 2023 and subsequent years being produced. However, the absence of those forecasts is not to be laid at his door.
52. Even absent my conclusions about his partiality, I would not have accepted his figures for A and B. But I agree with Lord Hamblen that his partiality deals a fatal blow to his use of those figures.

Future maintainable earnings

53. I have explained above why I cannot accept Ms Longworth's future maintainable earnings figure of £8,117,000. I do not dispute the logic of her arguments in favour of that prediction but I am convinced, for the reasons set out above, that profits of this quantum have been sacrificed by the company in favour of lower figures which are stable and certain, in good times and bad.
54. I also cannot accept, for the reasons set out above, Mr Singleton's figure of £2,655,161, being the simple average of 2021 and 2022. Those were of course transitional years when, notwithstanding the husband's rather surprising bullishness, the business must have been affected by the pandemic and where the problems of supply of materials and labour caused by Brexit were beginning to take effect. Put simply, I regard it as extremely unlikely that future profits will be as low as £2.6 million even following full transition of the business into Tier-1.

55. This is a business with a turnover of more than £100 million. It is surprising, to put it mildly, that there are no forecasts of turnover and profit for 2023 and beyond. I am not in a position to make a finding that the absence of forecasts is a deliberate forensic strategy in these proceedings, although my suspicions have been aroused.
56. In my judgment, in the absence of forecasts, the best model for predicting future maintainable earnings is Mr Webster's Column O (2020-2022 *weighted (1:2:2)*) within the schedule produced for his final submissions. I think that in an arms-length negotiation to sell the business the husband would certainly insist that the results of 2020 should be brought into account. I agree with Mr Webster that a weighting to bring into play only 50% of the 2020 result fairly reflects its distance in time and that those profits were earned in a period where transition had scarcely begun.
57. Mr Webster's calculation on this basis gives a figure for future maintainable earnings of £3,747,425, which, doing the best I can, I regard as a fair prediction of the likely future profits of this business following transition to Tier-1.

Multiplier and value of the business and the husband's interest

58. For the reasons set out above I reject Mr Singleton's multiplier of 4. I accept Ms Longworth's evidence on the appropriate multiplier which was conscientiously researched and logically presented. My only disagreement with her is that I am convinced that in a negotiation to sell the business the parties would adopt the heuristic of a single multiplier for the entire business rather than separate multipliers for separate parts.
59. The blended single multiplier used by Ms Longworth is 5.87. This figure was agreed by Ms Longworth and Mr Webster QC. The calculation is as follows:
- | | | |
|--|------------|-----------|
| Element No 1 future maintainable earnings | 6,600,000 | A |
| Element No 2 future maintainable earnings | 1,517,000 | B |
| Total future maintainable earnings | 8,117,000 | A + B = C |
| Total enterprise value previously calculated | 47,677,500 | D |
| Thus blended single multiplier | 5.87 | D ÷ C |
60. I am satisfied that a multiplier of 5.87 is a fair and reasonable figure to use. The evidence clearly suggests that in a negotiation the purchaser would ultimately be prepared to pay somewhere between five and six years of profits upfront. My use of 5.87 signals that I am accepting unequivocally Ms Longworth's evidence on this issue.
61. In my judgment 5.87 captures all relevant risks attaching to the business including its liquidity (which, unusually, is scarcely relevant in this case given the large amount of cash - £34,495,864 - at the bank). In my judgment, it would not be appropriate in the for me to accept Mr Webster's submission that I should arbitrarily reduce my calculation of the wife's award to reflect the "friability" of the valuation or her receipt of cash. On the facts of this case that would, in my judgment, be to take into account those factors twice.
62. The enterprise value of Galldris is therefore £3,747,425 x 5.87 = **£21,997,385**.

63. To this must be added the value of the surplus assets which the parties have agreed at **£34,779,286**.
64. The equity value of the business is thus £21,997,385 + £34,779,286 = **£56,776,671**.
65. The husband's half share is therefore worth **£28,388,335**. The business is indisputably a quasi-partnership so there is no question of discounting his 50% interest. Notional capital gains tax of £5,677,667 must be deducted, giving a net value of his interest of **£22,710,668**.

Other business assets

66. The husband has an overdrawn director's loan account with Galldris of £337,000. He has two property owning companies with agreed net values of £5,080,713 and £6,855,811 respectively. He has purchased a tax mitigation instrument, which may or may not achieve its intended effect, for £247,000 including purchase costs. These items total **£11,846,524**.

Contingent debts

67. The figure which will be used in the final assets schedule for the value of contingent debts is **£3,117,139**. That figure is explained and calculated in the Confidential Annex to this judgment.

Remaining disputes

68. I am satisfied that the figure that I should take for the value of the matrimonial home is that advanced by the single joint expert, Mr Woodgate, but on the basis that the planning problems will be resolved. The evidence of Mr Woodgate was well-researched, rational and professionally expressed. There is no good reason not to follow it. An email from Tom Graham of Route One Planning dated 6 May 2022 addresses each of the planning problems, and expresses confidence that they will be resolved. An updating email from Mr Graham was sent on 18 May 2022 which implies further support for his previous analysis. The husband gave evidence about this, and I am satisfied on the balance of probability that his confidence that the planning problems will be resolved, is justified. Net of notional costs of sale, mortgage and notional capital gains tax the figure I take is **£2,620,586**.
69. I am satisfied that the figure I should take for the husband's home in Barnet, and the adjacent land purchased for £250,000, is the aggregate of the purchase prices less the conventional deductions for mortgage and the like, giving **£813,643**. I do not apply a house price index to the purchase figure because the date of purchase is not appreciably different to the date of the valuation of the matrimonial home.
70. The final asset schedule will include the value of the husband's classic car and tractor collections, as well as the value of his Bentley. It is reasonable to treat that car as cash in circumstances where the husband has a valuable Mercedes-Benz for everyday use. Otherwise I do not take into account the value of any chattels and I certainly do not introduce the value of a missing bracelet in respect of which I do not have sufficient evidence to find the husband guilty of appropriating and secreting it.

71. I do not include the value of the Unfunded Unapproved Retirement Benefit Scheme established by Galldris as it is agreed that the case should be approached on the footing that this scheme will be set aside *ab initio*. I ignore the wife's de minimis teacher's pension.

Final asset schedule

72. The final asset schedule is therefore as follows:

Non-business assets

Former matrimonial home, Barnet	2,620,586	
H's home in Barnet and adjacent land	813,643	
Irish property No 1	157,059	
Irish property No 2	131,045	
Irish property No 3	746,236	
Irish property No 4	65,523	
H's vehicle collections and Bentley	203,500	
Joint funds	2,631	
H's funds	(9,286)	
H's contingent debts	(3,117,139)	
W's funds	(714,106)	
	<hr/>	
	899,692	A

Business assets

H 50% interest in Galldris	22,710,668	
Property company No 1	5,080,713	
Property company No 2	6,855,811	
H's director's loan account	(337,000)	
Tax mitigation instrument	247,000	
	<hr/>	
	34,557,192	B

Total assets **35,456,884** A + B

Pre-marital property

73. The husband asserts that in two respects certain pre-marital property should be recognised, valued, and deducted from the total assets to derive the matrimonial property.
74. First and foremost, he relies on the incorporation of Galldris in March 1998. In his witness statement on the subject the husband wrote:

“14. When I was working with a company called Active Tunnelling, in the summer of 1997, I met Sean O'Driscoll, my current business partner. Sean was working as an Engineer, and I was brought in as a Project Manager. We got on well, and Sean

knew of my skills and work ethic. Sean's strengths were writing up method statements and risk assessments, and formulating tenders. My skills were methodology (i.e. the underpinning and tunnels), sourcing skilled manpower and delivering the projects with quality, and within budget. Sean suggested that we set up in business together.

15. We set up Galldris (a combination of our surnames) on 23 March 1998. I was only 26. Sean is 6 months older than me. Sean had to continue working for his employer, as he couldn't afford not to have a wage. I had made money from my sole trading projects, and could afford not to be paid until the first tranche of money came in from the contracts we secured. I financed and ran Galldris alone for the first 18 months of its existence. Sean only came on-board fulltime at Christmas 1999 (after we had won our first two major contracts).”

75. In my judgement, it would not be fair or reasonable to take a start date for Galldris earlier than 1 January 2000. Only by then had Mr O’Driscoll come on board and the first two major contracts of the company won. Only by then had Galldris taken shape as a partnership reflective of its current state. Prior to January 2000 the husband certainly had by virtue of his work become fully fledged as a constructor. He brought the intangible benefit of that experience to Galldris when it started operating as a partnership. But fledging as a factor influencing the exercise of the court’s powers has been ruled out by the Court of Appeal and the House of Lords.
76. I adopt the linear method of calculating the extent, and therefore the value of the premarital element of Galldris. The linear method is not the only method for making that assessment, but in my judgment it is the most logical and is likely to be the most fair technique for the reasons explained in my decision of *WM v HM* [2017] EWFC 25.
77. 8,182 days elapsed between 1 January 2000 and 27 May 2022 when I heard final submissions. 2,008 days elapsed between 1 January 2000 and 1 July 2005, being the date I take for the commencement of cohabitation. Therefore 24.5% of the value of H’s share in Galldris is to be excluded as pre-marital ($2,008 \div 8,182 = 0.245$).
78. In para [64] above I calculated the value of the husband’s share in Galldris at £22,710,668. 24.5% of this is **£5,573,579**. This is the first item of non-matrimonial property to be excluded from the pool of total assets.
79. The second claimed amount relates to three properties which the husband had acquired before July 2005. The first is a plot of land in Hertford worth only £19,179, which I disregard as *de minimis*. The second is Irish property No 2 worth £131,045 in the asset schedule. This was used as much loved matrimonial holiday home and has become “matrimonialised”. The third property is a former dance studio in Hornsey which the husband acquired for £700,000 just before the start of cohabitation but which was developed into apartments during the relationship using matrimonial funds. That property is held by one of the property owning companies referred to in [66] above. I agree with Mr Southgate QC that I should take the purchase price of £700,000 as non-marital. However I consider that it should be uprated by the Greater London House

Price index to **£1,408,059** (according to AAG Cloud). This is the second item of non-matrimonial property to be deducted from the pool of total assets.

80. The total deduction referable to pre-marital property is therefore £5,573,579 + £1,408,059 = **£6,981,638**.

Matrimonial property, distribution and award

81. The calculation of the matrimonial property is therefore: £35,456,884 – £1,408,059 – £5,573,579 = **£28,475,246** .

82. It is agreed that 50% of the matrimonial property should be awarded to the wife and I concur fully with that consensus. The equal division of the matrimonial acquest is quintessentially fair on the facts of this case. The headline value of the wife’s award is therefore £28,475,246 ÷ 2 = **£14,237,623** .

83. It is agreed that the wife will retain the former matrimonial home. I have found the net value of that property to be £2,620,586. The wife seeks the transfer to her of Irish Property No 2 but I accept the evidence of the husband that this would be completely inappropriate as that property is surrounded by dwellings occupied by his relatives. I agree with Mr Southgate QC that the wife should receive one of the Irish properties and that if she cannot have Property No 2 she should be awarded Property No 1 which is 7 miles away. The value to be attributed to the wife, on the basis that the husband pays his own capital gains tax, is £201,934.

84. The net values of these properties will be deducted from the headline value of the wife’s award. However, as the final asset schedule shows, the wife has significant net debts amounting to £714,106, largely referable to a substantial litigation loan on which she is paying 14% interest. It is emblematic of the wastage of money that it seems has plagued this case that the wife should have been forced to take out a high interest litigation loan rather than being provided with monies on account of her award. That amount of £714,106 has to be added when calculating the lump sum that is to be paid.

85. The calculation of the lump sum is as follows:

Headline value of the award	14,237,623
Less matrimonial home	(2,620,586)
Less Irish property No 2	(201,934)
Add net debts	714,106
lump sum	<u>12,129,209</u>

86. Mr Webster QC suggests that the husband could raise £2 million within the next four weeks. This will be achieved through temporarily over-drawing his director’s loan account. In my judgment the husband could comfortably provide by this means around £3 million. The husband says that he will need three years to pay the balance. In my judgment he does not need longer than two years, although it will be open to him to apply to vary the date of payment of that instalment.

87. I therefore order a lump sum of **£12,129,209**, payable by instalments as follows:

- i) £3,129,209 by 1 July 2022; and

- ii) £9,000,000 by 1 July 2024.

Pending payment of the second instalment of the husband will pay the wife periodical payments of £225,000 per annum. These shall be paid at the rate of £18,750 per month commencing on 1 July 2022. The periodical payments will be rateably reduced on any part payment of the second instalment before 1 July 2024. On payment in full of both instalments there will be a clean break between the parties.

88. In the event that the husband defaults in payment of either instalment then judgment debt interest will arise in the normal way although the wife shall give credit against such interest for the periodical payments I have ordered. I do not order that if the husband defaults in payment of the first instalment that the second instalment becomes immediately payable. The reason for the default would have to be looked at before such a decision was made.
89. I am satisfied that an award of the wife of cash and properties totalling £14,237,623 fully reflects the factors I am required to take into account under ss. 25 and 25A Matrimonial Causes Act 1973. It goes without saying that with £14,237,623 the wife will be able amply to meet her needs and that with £21,219,261 and his earnings the husband will be able to meet all of his. The question of needs did not feature as a material part of either party's case.

Child support

90. It is agreed that the husband will pay the school fees for the children. I agree with Mr Southgate that he must also pay the extras on the school bills. For general maintenance the wife seeks £25,000 per annum per child; the husband proposes £12,000.
91. The husband does not receive a regular monthly salary. Galldris pays him a nominal amount, sufficient to entitle him to a state pension but no more. He meets his daily needs by using his director's loan account and by other, not unlawful, means which I do not need to go into. Mr Singleton assesses a reasonable level of remuneration for each of the husband and Mr O'Driscoll at £420,000 per annum. Ms Longworth posits a lower figure. In this regard I agree with Mr Singleton. Indeed, my impression of the value of the work done by the husband is that a fair reward could well be argued to be higher still. Indeed, it probably will need to be set at a significantly higher figure in order that he can pay the spousal periodical payments which I have ordered.
92. If the child support formula is applied without the operation of the statutory cap to a deemed income of the husband of £420,000 then his liability, after bringing into account the adjustment referable to the time the children spend with him, is £46,000 per annum. In my judgment that is a fair headline starting point.
93. However, that figure should be adjusted to reflect the fact that the husband is paying all of the school fees. With 60% of the total assets and the ability to earn, as I have found, even more than £420,000 per annum it is right that the great majority of the school fees should be payable by him. The school fees presently come to £47,721. In my judgment a reasonable contribution to the school fees to be made by the wife (to be deducted from the headline child support liability of £46,000) is £10,000, leaving £36,000 to be paid or £12,000 per annum per child. That is to be paid at the rate of £3,000 per month, with the first payment to be made along with the spousal maintenance on 1 July 2022.

94. The payment to be made each month by the husband by standing order commencing on 1 July 2022 is therefore £21,750.
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