



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 80

F60/16

OPINION OF LORD BRAILSFORD

In the cause

LV

Pursuer

against

IV

Defender

**Pursuer: Brabender QC; Turcan Connell
Defender: Speirs; SKO Family Law Specialists**

31 July 2018

[1] This was an action of divorce in which proof was heard over five days between 3 October and 20 November 2017.

[2] The parties were married in Scotland on 20 April 1996 and separated on 22 November 2014, the latter date being agreed as the relevant date for the purposes of section 10(3) of the Family Law (Scotland) Act 1985 (“the 1985 Act”). The pursuer was at the date of marriage a UK national. The defender was at that date, and remains, a Dutch national. There were two children of the marriage both of whom were over the age of 16 at the date of proof. Notwithstanding that fact both children were in full time education at the

date of proof. The elder, a son, was at university and the younger, a daughter, at a private boarding school in Scotland.

[3] The pursuer sought (i) decree of divorce on the grounds of the defender's unreasonable behaviour, (ii) payment of a capital sum by the defender of £87,626, (iii) payment of periodical allowance (a) in the sum of £4,500 per calendar month from the date of decree of divorce until the completion of the sale of the former matrimonial home, (hereinafter referred to as "the former matrimonial home") and (b) thereafter, in the sum of £3,000 per calendar month until 1 August 2020, (iv) payment of the whole cost of the monthly secured loan repayments in respect of the said former matrimonial home until sale of these subjects, (v) for an order finding the defender liable to meet the whole cost of the monthly secured loan repayments to Lloyd's Bank, Hong Kong in respect of a property jointly owned by the parties at an address in Stonehaven (hereinafter referred to as "the flat"), (vi) for an order finding the defender liable to meet the whole fees and invoiced expenses incurred in consequence of the attendance of the parties daughter at the boarding school which the child attends, (vii) to order the sale of the former matrimonial home but to defer said sale until September 2019.

[4] The defender sought (i) orders for sale of two heritable properties jointly owned by the parties (a) the former matrimonial home and (b) the flat in Stonehaven and to direct that the free proceeds of sale be divided equally between the parties, (ii) for payment of a capital sum by the pursuer to the defender of £22,554, (iii) in the event of an order or transfer being made in favour of the pursuer in respect of the defender's interest in either or both of the aforesaid properties then for payment of a capital sum by the pursuer to the defender to reflect one half of the net value of either or both of the said properties, (iv) an order finding the parties liable for the payment of their daughter's fees and invoiced extras at the boarding

school she attended in such proportions as the court should consider appropriate, (v) for incidental orders in terms of the defender's fourth conclusion in the event that the value of the defender's pension with Royal Dutch Shell (hereinafter "Shell") administered through pension provider Stichting Shell Pensioenfond (hereinafter "SSPF") is brought into account for the purposes of making orders for financial provisions in favour of the pursuer. The incidental orders in the defender's fourth conclusion were in the following terms:

"(1) to find and declare that the pursuer has elected to have an entitlement to share in the defender's interest in his occupational pension scheme with Royal Dutch Shell through pension provider Stichting Shell Pensioenfond including her entitlement to a partner's pension or special partner's pension in terms of said scheme brought into account in accordance with an entitlement to financial provision under and in terms of the Family Law (Scotland) Act 1985. (2) For interdict against the pursuer making a claim under Dutch law against the defender's interest in his occupational pension scheme with Royal Dutch Shell through pension provider Stichting Shell Pensioenfond including her entitlement to a partner's pension or special partner's pension in terms of said scheme. (3) for an order requiring the pursuer to execute the official form produced by the Dutch Ministry of Security and Justice "Mededeling van scheiding in verband met verdeling van ouderdomspensioen" being 7/88 of process (of which there is a certified translation at 7/97 "Notification of divorce for apportionment of retirement pension") in terms to confirm that she waives her entitlement to seek any shares of the defender's interest in his occupational pension scheme with Royal Dutch Shell through pension provider Stichting Shell Pensioenfond, conform to the style forms completed for signature and lodged at 7/145 and 7/146, being the Dutch version and English translation thereof respectively. (iv) For an order requiring the pursuer to execute the "Divorce Agreement in relation to Pension" lodged at 7/147 and 7/148, being the Dutch version and English translation thereof, respectively, whereby she waives her entitlement to claim on the defender's retirement pension and the special partners pension through pension provider Stichting Shell Pensioenfond following divorce."

[5] In addition to her own evidence the pursuer adduced evidence from FT, the Head of Games at the school attended by the parties daughter, Alan Robb, chartered accountant, FM, the pursuer's sister and HT, a friend of the pursuer. With the exception of Mr Robb all of these persons produced affidavits which they spoke to and upon which they were cross-examined. Mr Robb gave evidence as a skilled witness in relation to the valuation of

share options held by the defender. He produced a report in the form of a letter.¹ In addition to the foregoing witnesses who attended and were subject to cross-examination the pursuer tendered affidavits from Saskia Christine Brown, a Dutch lawyer, Sandra Margaret Anne Terras, an actuary, James Chorley, a mortgage advisor and Dr Vaishali Sonanis, a medical general practitioner. These persons were not present at proof and were consequently not available for cross-examination.

[6] The defender swore an affidavit which he spoke to in evidence and was subject to cross-examination. In addition he adduced evidence from Irene Lansen, a Dutch lawyer who spoke to two reports.²

Joint minutes

[7] The parties entered into a substantial joint minute³, in terms of which the value of significant elements of matrimonial property were agreed. At the time of proof a supplementary joint minute was lodged⁴, essentially updating certain valuations. These two Minutes are for the purpose of clarity repeated in full:

“JOINT MINUTE OF ADMISSIONS

1. The parties were married at Edinburgh on 20th April 1996.
2. The parties have two children, [L] and [P], who are both over the age of sixteen.
3. [L] was born on xx/xx/xxxx. He will be 18 years old at the date of proof. He is a student at the University of [.....], studying marine science.
4. [P] was born on xx/xx/xxxx. She will be 16 years old at the date of proof. She is a fifth form pupil at School. She is due to complete her education at

¹ No 6/120 of process

² No 7/142 and 7/148 of process

³ No 36 of process

⁴ No 60 of process

[.....] in June 2019. [P] is a gifted sportswoman. She has been selected for one of the four ... highperformance squads in Scotland since the age of 13. She had been selected ... for the 2018 national team for her age group following a trial weekend which took place in June 2017.

5. The parties separated on 22nd November 2014.
6. The relevant date for the purposes of section 10(3) of the Family Law (Scotland) Act 1985 is 22nd November 2014.
7. At the relevant date, the parties' matrimonial property included the following:
 - (a) The parties' jointly owned heritable property at [.....]. The property was worth around £500,000 at the relevant date. It was worth around £450,000 on 29th March 2017. The property is subject to a secured loan with TSB plc. The mortgage is in the parties' joint names. As referred to below, at the relevant date the sum outstanding on the said mortgage was £359,809. The sum outstanding on 1 April 2017 was £322,997. The repayment basis for the mortgage is capital and interest.
 - (b) The contents of the parties' rented accommodation and in storage. The contents have been divided between the parties. They should be left out of account in dividing the parties' matrimonial property on divorce.
 - (c) The parties' jointly owned heritable property at [.....]. The property was worth around £160,000 at the relevant date. It was worth around £145,000 on 29th March 2017. The property is subject to a secured loan with Lloyds Bank. As referred to below, the sum outstanding at the relevant date was £60,288. The sum now outstanding is around £37,565. The repayment basis of the mortgage over the property is capital and interest. Since the relevant date the said property has been let by the Pursuer as serviced accommodation and she has retained all of the rental therefrom. In or about late August 2017, a longstanding leak from the bathroom in the said property caused substantial damage to both the parties' property and the property below. An insurance claim has been submitted. The parties' property will require substantial repair to the bathroom, to the flooring and the floor joists below. It is likely the repairs to the flooring and floor joists will include works to the kitchen and other areas of the property. The insurance claim is unlikely to cover the whole of the repairs required in the property.

- (d) The parties' bank accounts including:
 - (i) The parties' joint Lloyds TSB account number ***** with a credit balance of £6,829.
 - (ii) The Pursuer's TSB account number ***** with a credit balance of £482.18.
 - (e) The Defender's shares in Royal Dutch Shell. At the relevant date he held 2,607.108 vested shares with a Sterling equivalent value of £59,528.
 - (f) The parties' vehicles as follows:
 - (i) A Range Rover Sport motor vehicle driven by the Pursuer. The vehicle was worth around £7,500 at the relevant date.
 - (ii) A Porsche vehicle owned by the Defender. The vehicle was sold in or about February 2015. The sale price was £8,100 which should be taken to the value of the vehicle at the relevant date. The Defender deposited the sum of £4,050 into the parties' joint Lloyds TSB account on 4 February 2015. The value of the vehicle can be left out of account in the division of the parties' matrimonial property.
 - (g) The Defender's personalised number plate ** *** worth around £600.
 - (h) The Pursuer's jewellery. The items forming matrimonial property were gifted to the Pursuer by the Defender and comprise a pearl and diamond necklace, a bracelet and a diamond ring. The pearl in the necklace was purchased by the Pursuer with vouchers gifted to her by friends as a leaving present. The Pursuer gave a small pair of diamond earrings (given to her by the Defender) to P before the relevant date. After the relevant date, the Pursuer returned her wedding ring to the Defender.
 - (i) The Pursuer's additional state pension in so far as attributable to the parties' marriage.
 - (j) The Defender's additional pension provision in so far as attributable to the parties' marriage.
8. At the relevant date, the parties had the following matrimonial debts:
- (a) The parties' joint secured loan with TSB plc over [.....] as referred to in paragraph 7 (a) above. At the relevant date

the sum outstanding on the said loan was £359,809. The sum outstanding on 1 April 2017 was £322,997.

- (b) The parties' joint secured loan with Lloyds Bank over [.....] referred to in paragraph 7 (c) above. At the relevant date the sum outstanding on the said loan was £60,288. The sum now outstanding is around £37,565.

9. Without prejudice to the parties' respective arguments as to whether the Defender's interest forms matrimonial property, the Defender had an interest in Royal Dutch Shell plc (RDS) performance share plan awards not vested by the relevant date as follows:

(a) In or about February 2012, the Defender was awarded performance share plan RDSA shares with a qualifying date of 1 January 2015, the extent to which the award would vest being dependent on the outcome of two Performance Conditions relative to RDS, namely the Group Business Performance Factor (BPF) and the Comparative Performance Condition (CPF) between 1 January 2012 and 31 December 2014. In respect of said award, 1,032 shares vested, 537 shares were deducted to cover tax and 495 vested shares were transferred to the Defender's Vested Share Account on 3 March 2015;

(b) In or about February 2013, the Defender was awarded performance share plan RDSA shares with a qualifying date of 1 January 2016, the extent to which the award would vest being dependent on the outcome of two Performance Conditions relative to RDS (BPF and CPF) between 1 January 2013 and 31 December 2015. In respect of said award, 744 shares vested, 387 shares were deducted to cover tax and 357 vested shares were transferred to the Defender's Vested Share Account on 9 March 2016;

(c) On 11 February 2014, the Defender was awarded performance share plan RDSA shares with a qualifying date of 1 January 2017, the extent to which the award would vest being dependent on the outcome of said two Performance Conditions relative to RDS (BPF and CPF) between 1 January 2014 and 31 December 2016.

10. At the relevant date, the Defender had an interest in a defined benefit occupational pension scheme arising from his employment with Royal Dutch Shell. He joined said scheme on 25 January 1993. The pension scheme is administered by Stichting Shell Pensioenfonds (hereafter 'SSPF') in The Netherlands and is subject to Dutch law.
11. The Defender has an interest in a further pension arising from his employment with Royal Dutch Shell. The pension scheme is administered by Shell Nederland Pensioenfonds Stichting (hereafter 'SNPS') in The

Netherlands and is subject to Dutch law. He joined the scheme on 1 January 2015 and began contributions into it in May 2016,

12. The said interests in the SSPF and SNPS schemes, as referred to in paragraphs 10 and 11 are subject to Dutch Law in terms of the Dutch Equalisation of Pension Right in the Event of Divorce Act. In terms of said statutory scheme the Defender's retirement pension is subject to division with the Pursuer by operation of law without a court decision. The standard division is equal division between the spouses of half of the retirement pension built up by the Defender between the date of the marriage and the date that the marriage is dissolved. The marriage is dissolved when the divorce of the parties is registered in The Netherlands. Division of the pension interests in other than equal division can be effected but only by agreement between the parties. In terms of Dutch law, it is also possible for the parties to agree to opt for conversion of the pension interests, again in equal or other proportions. Conversion has different consequences for each party, particularly in the event of death. No agreement has been reached by the parties either in respect of unequal division or in respect of conversion, whether equally or unequally.
13. All copy documents lodged in process shall be treated as principals."

**"SUPPLEMENTARY
JOINT MINUTE OF ADMISSIONS**

1. With reference to paragraph 7 (a) of the Joint Minute Admissions (no. 36 of process), the current value of the parties' jointly owned heritable property at [.....] is £450,000.
2. With reference to paragraph 7 (c) of the said Joint Minute of Admissions (no. 36 of process), the current value of the parties' jointly owned heritable property at [.....] is £135,000.
3. With reference to paragraph 10 of the said Joint Minute of Admissions (no. 36 of process) the value of the Defender's interest in the defined benefit occupational pension scheme administered by Stichting Shell Pensioenfond (‘SSPF’) specified there was as follows:
 - a. On 22 November 2014 (‘the relevant date’), the value of the Defender's interest was €756,005.52 (with a Sterling equivalent of £598,334). This comprised the retirement pension of €638,707.61 (with a Sterling equivalent of £505,500) and the partner's pension of €117,297.91 (with a Sterling equivalent of £92,834);
 - b. On 1 September 2016, the value of the Defender's interest was €1,140,553.60 (with a Sterling equivalent of £961,973). This comprised the retirement pension of €955,973 (with a Sterling

equivalent of £806,293) and the partner's pension of €184,580 (with a Sterling equivalent of £155,680); and

- c. On 6 September 2017, the value of the Defender's interest was €1,459,412 (with a Sterling equivalent of £1,294,986). This comprised the retirement pension of €1,214,572 (with a Sterling equivalent of £1,077,731) and the partner's pension of €244,840 (with a Sterling equivalent of £217,255)."

Merits

[8] This aspect may be dealt with briefly. The pursuer sought decree of divorce on the basis that the parties' marriage had broken down irretrievably as a result of the unreasonable behaviour of the defender. This was spoken to in her affidavit.⁵

Corroboration of the pursuer's position was provided by the evidence of her sister FM⁶ and her friend HT⁷. This evidence was not challenged. The defender accepted that the marriage had broken irretrievably and that decree of divorce should be granted. Having regard to the evidence I have referred to I was satisfied that the marriage had broken down irretrievably and that it would be appropriate to grant decree of divorce.

Evidence

(a) the pursuer

[9] The pursuer spoke to her affidavit.⁸ She adhered to the terms of her affidavit. She deponed that she had met the defender in 1994. At that time she had been working for over 10 years, been employed by a number of companies and had in 1992 achieved the position of regional sales manager of a company named Initial Textile Services in Aberdeen. She stated

⁵ No 45 of process between paragraphs 3/12.

⁶ Affidavit No 51 of process at paragraphs 4–10

⁷ Affidavit No 52 of process at paragraphs 9–17 and 20

⁸ No 45 of process

this was a responsible position, was paid well and that as a consequence she had been able to purchase a property in 1990 at an address in Stonehaven. When she first met the defender he was a PhD student studying at Aberdeen University. At that time he had no employment history and did not own any property or any other assets. In 1995 the pursuer sold the property she owned netting some £30,000. She stated that part of this money was used to pay for the parties' marriage in 1996. She also provided the defender with financial assistance during the final part of his studies at Aberdeen University. In 1995 the pursuer enrolled in an MSc course at Aberdeen University. Shortly prior to the parties' marriage in 1996, and during the time when the pursuer was undertaking her MSc course, the defender's mother died. At this time the defender was in the process of completing his PhD thesis. In order to assist the defender with the stress created by a need to complete his thesis and his mother's death the pursuer gave up her MSc course prior to completion.

[10] The defender completed his thesis and was awarded his PhD in 1996. He obtained employment as a geologist with Shell, in the company's international division. It was the defender's preference to be employed in the international division. Both parties appreciated that employment in the international division of Shell would entail the defender working predominately abroad and that a consequence of this was that the parties would have to live outwith Holland or the United Kingdom.

[11] The defender's work history with Shell was not contentious. The defender worked and the parties lived outwith the United Kingdom between 1996 and 2008. During that period of time they lived in Country A, Country B and Country C. In 2008 the parties returned to live in Scotland. The defender continued to be employed by Shell, working in Aberdeen, but applied for a number of positions in international locations with Shell as such positions became available. In August 2014 the defender procured a new position with Shell

in Country D to commence in December of that year. The pursuer deponed that in anticipation of moving to Country D as family preparations were made. In particular boarding places were secured for the parties two children at a private boarding school in Scotland. It was anticipated that the fees for the school would be paid by Shell.

[12] In October 2014 the parties and the two children went on a cruise. During the course of the cruise the defender informed the pursuer that he wished to separate. He also said that he was going to go to Country D to take up his overseas posting with Shell on his own. He indicated, notwithstanding his knowledge of the pursuer's preparations for a move, that he had never intended that she should accompany him to Country D. He indicated that he had informed Shell that he was moving to Country D on his own. He informed the pursuer that he had discussed with Shell the effect separation might have on his career. The pursuer deponed that "the news hit me like a tonne of bricks"⁹. She had no knowledge that this move was coming. The defender also made a number of comments expressing, as a matter of generality, his dissatisfaction with the pursuer and with their marriage. The pursuer was shocked by all these events. On their return to Scotland after the cruise the pursuer made efforts to save her marriage. These were unsuccessful and in February 2015 the defender moved to Country D. The parties have not lived together since that time. The defender's job in Country D was completed in 2016 at which time he was posted to the offices of Shell in London. He has resided in London since that date and continued so to do at the time of proof.

[13] Although both children of the marriage are over the age of 16 the younger child, a girl, remained a school pupil at a Scottish boarding school at the date of proof. As already noted this is a private, fee paying, boarding school. The pursuer deponed to certain aspects

⁹ Affidavit No 45 of process at paragraph 6

of the arrangements for the child's schooling and her performance at school. The child is academically bright and it is anticipated by the school that she will obtain examination results which will enable her to pursue her desire and intention to study either physics or medicine at university. In addition to academic ability the child displays considerable sporting aptitude. This was the subject of agreement in paragraph 4 of the Joint Minute number 36 of process. Supplementing this the pursuer deponed that her daughter "...is a remarkable sportsperson".¹⁰ This assessment was evidentially supported by FH, the head of games at the school. The child is a skilled sportswoman and has represented Scotland in a number of age groups. She was, at the date of proof, in the Scotland national squad for her age group. These sporting activities all have to fit round the child's heavy academic curriculum. This involves what was described as an enormous commitment on her part. It also entails considerable effort and expenditure on the part of the pursuer. The child plays the sport four days out of five each week and on most weekends. She requires to travel from school to Glasgow or Edinburgh for national training sessions. All this involves the pursuer in considerable travel taking the child by car to and from such events. The travel has considerable cost implications in paying for fuel for the pursuer's motor vehicle, which is currently a large 4 wheel drive car.

[14] The pursuer also gave evidence in relation to the parties' assets. The parties jointly owned the former matrimonial home. The property was purchased in joint names in July 2008. The purchase price of the property was £499,000. The property was purchased with the assistance of a loan procured over the property and granted by TSB Bank. The loan was in the joint names of the parties. The repayment basis was capital and interest. As at the relevant date the outstanding balance on the mortgage was some £359,809. The sum

¹⁰ Affidavit No 45 of process at paragraph 15

outstanding at 1 April 2017 was £322,997.¹¹ The property had a market value at 29 March 2017 in the region of £450,000. The house comprises a relatively large property in a rural location.

[15] In addition the parties owned the “flat” in Stonehaven. The property was purchased in March 2007 for a sum of £147,000. The property was purchased with the assistance of a loan from Lloyds Bank secured by standard security over the property. The loan was in the joint names of the parties. At the relevant date the outstanding sum in respect of the loan stood at £60,287.¹² As at the date of proof the outstanding sum on the loan was £37,565. The value of the property at 29 March 2017 was estimated at £134,000.

[16] In relation to income the pursuer stated that apart from the rent she receives from the flat in Stonehaven she was dependent upon alimentary payments from the defender.

(b) FH

[17] FH is the Head of Physical Education and Games at the school attended by the younger, female, child of the marriage. She provided an affidavit¹³ which she adhered to and about which she was subject to cross-examination.

[18] She confirmed that she knew both the parties younger child and the pursuer. The general tenor of her evidence in relation to the child’s sporting abilities corroborated the evidence given by the pursuer. FH described the child as “...a phenomenally able sportsperson”.¹⁴ She confirmed that the child specialised in that sport, had played that game at a representative level since the age of 13 and had been involved with the national team

¹¹ No 36 of process at paragraph 7(a), paragraph [7] herein.

¹² No 36 of process at paragraph 7(c), paragraph [7] herein.

¹³ No 48 of process

¹⁴ Affidavit No 45 of process at paragraph 5

squad since 2016. She also deponed that the child's sporting activities were "...hugely intensive...".¹⁵ She stated the child required to attend school sports training sessions each weekday and then national training sessions at the weekend.

[19] FH deponed that the pursuer was "...one of the most supportive parents of all the pupils at the school."¹⁶ In addition to attending all of the child's school matches it was within FH's knowledge that the pursuer assumed the responsibility of taking the child at weekends to national training sessions in Glasgow. She expressed the view that the pursuer's support of the child in her sporting endeavours was highly beneficial and improved the child's performance.

[20] FH stated that prior to the parties' separation the defender "...used to occasionally come to watch..." the child's matches.¹⁷ She thought that she had not seen the defender for over two years at the time she swore her affidavit. This view was reiterated in cross-examination.

(c) FM and HT

[21] These witnesses swore affidavits which dealt primarily with the merits of the action. As I have already indicated by the time of proof this was no longer contentious, the defender accepting that the marriage had broken down irretrievably. I was satisfied with the contents of the affidavits and need say no further about the evidence of these witnesses.

¹⁵ Affidavit No 48 of process at paragraph 10

¹⁶ Affidavit No 48 of process at paragraph 12

¹⁷ Affidavit No 48 of process at paragraph 14

(d) Saskia Christine Braun

[22] An affidavit sworn by Ms Braun was tendered as her evidence.¹⁸ Ms Braun is a qualified lawyer specialising in the law of persons and family law in the Netherlands. No challenge was made to her evidence being taken by affidavit without being subject to cross-examination. The general tenor of Ms Braun's evidence was, further, consistent with matters now agreed in paragraph 12 of the Joint Minute number 36 of process. Ms Braun's evidence focused on the approach under Dutch law to the treatment on divorce of the defender's interest in pension funds administered in the Netherlands and subject to the laws of that country. In the context of the present proceedings in financial terms the most significant pension involved was the defender's interest in a defined benefit occupational pension scheme arising from his employment with Shell, the SSPF pension. She deponed that the defender's accrued pension rights consisted of a retirement pension and also include a partner's pension. Her evidence was that under Dutch law following divorce the partner's pension will be referred to as "the special survivors pension". She further explained that

"This special survivors pension is the pension the ex-partner will be (automatically) entitled to in the event that the other ex-partner (which has accrued a retirement pension prior to the divorce) dies."¹⁹

These two categories of right, the retirement pension and the partner's pension are, under Dutch law, regulated by two different and distinct statutory provisions.²⁰ In essence Ms Braun's evidence was that under Dutch law the retirement pension rights accrued between the date of marriage and the date of divorce will be split equally between the parties to the marriage.²¹ This is termed "Standard Division". It followed that the pursuer,

¹⁸ No 46 of process dated 20 September 2017

¹⁹ No 46 of process at paragraph 5

²⁰ No 46 of process at paragraphs 5 and 6.

²¹ No 46 of process at paragraph 7

as a matter of Dutch law, was entitled to half of the pension rights the defender had accrued in “SSPF”.

[23] Ms Braun gave further evidence in her affidavit to the effect that Dutch law permitted deviation from standard division on divorce, but both parties must agree to a departure from standard division and a statutory form must be signed by both parties.²² She further indicated that a further non-standard method of pension apportionment was available, conversion. This could be operated to convert part of the defender’s retirement pension and the special survivors pension into a personal retirement pension for the pursuer.²³ The exercise of this option would require the agreement of both parties and is subject to the further constraint that a pension provider cannot be forced to implement conversion.

(e) David Alan Robb

[24] Mr Robb is a chartered accountant, and partner in the firm of Robertson Craig, Chartered Accountants and Tax Advisors, Glasgow. He stated that he had been a partner in that firm for 16 years. In that time his professional practice had included providing valuations of shares in limited liability companies and interests in partnerships for use in litigation. He had previously given evidence as an independent expert in court cases.

[25] His brief in the present case was to value share awards made to the defender by his employer which had not vested at the relevant date. His opinion on this question was stated in a letter to the pursuer’s agents.²⁴ His methodology was stated in the third and fourth paragraph of that letter, essentially amounting to discounting the share price at the date of

²² No 46 of process at paragraph 11

²³ No 46 of process at paragraphs 12 and 13

²⁴ No 6/120 of process, letter dated 22 May 2017

vesting to reflect "...the risk of the shares changing in value between the relevant date and the date the shares subsequently vested." The discounted value of the shares at the relevant date was stated in the opinion of Mr Robb as £19,773.

[26] In cross-examination Mr Robb expressed the view that his methodology was in conformity with acceptable accounting practice and, moreover, one he had employed in similar circumstances in other compatible valuations he had undertaken. He did however accept that the shares accruing to the defender had no realisable value at the relevant date. He also accepted that the defender's interest in the share bonus scheme was a non-realisable asset at the relevant date.

(f) Sandra Margaret Ann Terras

[27] Ms Terras is an actuary and a director in a firm of actuaries. In her affidavit,²⁵ which was not challenged, she gave evidence as to the widow's benefits that would accrue in the context of a defined benefit occupational pension arising from employment and administered in the UK.

(g) James Chorley

[28] Mr Chorley is a Mortgage and Protection Advisor. He confirmed in his affidavit that he had discussed with the pursuer the property jointly owned by the parties and comprising "the flat" in Stonehaven. He stated that he was aware that the property was subject to a mortgage, that he was informed of the outstanding sum due under the mortgage and that the property was currently let to tenants. He stated the opinion that on the basis of the

²⁵ No 47 of process

information provided to him there would be no difficulty in the pursuer re-mortgaging the property.

(h) the defender

[29] The defender swore an affidavit²⁶ which he adhered to in examination-in-chief. He was cross-examined. At the date of proof the defender was 51 years of age. He deponed that he was employed as a Manager by Shell in London.

[30] In his affidavit the defender confirmed that he was a Dutch national, the date of his marriage to the pursuer, that there were two children of the marriage and the date when he and the pursuer separated.

[31] In relation to the children of the marriage the defender deponed that he supported the elder child financially whilst he attended university. In relation to the younger child, who still attended school he deponed that he got on well with her. That he had a close relationship with her. He indicated that he was "...very, very proud..."²⁷ of her sporting achievements and was wholly supportive of them. He stated that at the time of swearing his affidavit the child had two academic years to complete at school and that in his view "it is crucial that stability continues and [the child] is able to finish her remaining years at [her current school]".²⁸ In relation to payment of school fees the defender stated that his employers had in the past paid tuition fees for the child. When he was posted to Country D they paid boarding fees. He said that his understanding was that when he was divorced his employers would no longer pay school fees for the child. He proposed that payment of the school fees following divorce should be shared equally between him and the pursuer.

²⁶ No 59 of process

²⁷ Affidavit No 59 of process at paragraph 6

²⁸ Affidavit No 59 of process at paragraph 8

[32] In relation to his work history the defender deponed that in January 1996, close to the end of his PhD degree, he commenced a month's training period with Shell in Holland. In examination in chief he conceded that the pursuer provided secretarial services to help him finish his PhD, but maintained that he could not remember given the lapse of time if she provided any financial support at this stage. In May 1996, which was the month following the parties marriage, the defender and the pursuer moved to Country A where he commenced work for Shell. He stated that after working in Country A he worked for Shell on E in Country C. The pursuer again accompanied him on this posting. Thereafter the parties lived for 6 years in Country B again a posting in the course the defender's continuing employment with Shell. After the posting in Country B the defender's employment with Shell took the parties to the UK, the defender working in Aberdeen until May 2012. Thereafter the defender required to work in London where he remained until the posting to Country D in late 2014. He remained in Country D until 2016 when he returned to London. At the date of the proof the defender continued to work for Shell in London.

[33] The defender did not agree with the pursuer's view that the family's moves had all been to benefit his career. He thought that he had remained in some posts longer than was optimal for his career and that such delays had been for family reasons. When pressed on this matter he conceded that it was "difficult to say" how this may have affected his career with Shell.

[34] The defender gave evidence about the pursuer's previous employment. He indicated that he commenced a relationship with the pursuer in 1994 and confirmed that at this time she was employed by Initial Textile Services. He deponed that in either late 1994 or early 1995 she left that job, he thought after a "fall out" with her manager, and commenced employment with Fed Ex as a sales representative. That employment lasted

about 6 months in 1995 following which the pursuer returned to university in order to pursue an MSc course. In evidence-in-chief supplementing his affidavit the defender stated that the pursuer had formed a trading company selling local artefacts to either ex patriots or returning ex pats when the parties resided in Country A. He also stated that following the parties return to the United Kingdom in 2008 she had been employed on a number of occasions. He stated that she had been employed for a short period as the manager of a cafeteria in Stonehaven. He also said that she had had employment for a short period in a theatre in Aberdeen. On the basis of this employment history he considered that the pursuer would be able to find well remunerated employment after the parties were divorced.

[35] In relation to the parties assets the defender agreed that they jointly owned the former matrimonial home, and the flat in Stonehaven. The relevant values of these properties are the subject of agreement in the joint minutes.²⁹

[36] In relation to the former matrimonial home the defender noted that the pursuer stated that she wished to retain that property for a period following divorce. He did not consider that she could afford to do that. He stated that his preference would be that the property would be sold and "...the net free proceeds of sales divided between us in accordance with the proportions that the court considers appropriate."³⁰ He did not consider that the pursuer required a property of the size of the former matrimonial home and, further, that this property would be excessively expensive to run. He stated that the younger child boarded regularly at school and, moreover, spent part of her holidays away from the pursuer. He accepted that the pursuer required a place to live near to the child's

²⁹ No 36 of process at paragraph 7(a) and (c).

³⁰ Affidavit No 59 of process at paragraph 54

school until she completed her studies. He thought that there were many suitable properties within a reasonable travelling distance from the school which would be available to the pursuer.

[37] In relation to the flat in Stonehaven the defender indicated that the property was purchased in 2007, essentially as an investment. He thought that the pursuer wished to retain the property but again considered that she could not afford to do so. He again considered that the property should be sold and the net free proceeds of sale divided between the parties in proportions which the court considered appropriate.

[38] The defender gave evidence as to two pensions he had as a consequence of his employment with Shell. Both pensions were subject to the provisions of Dutch law. Certain matters were agreed in relation to these pensions. The agreement in relation to those pensions is found in paragraphs 10, 11 and 12 of the Joint Minute number 36 of process and paragraph 3 of the Joint Minute number 60 of process. It was submitted by the defender, on the basis of legal advice he had obtained in Holland, that the pursuer would retain rights in relation to pensions. The defender's position was, "I think that it would be fair if in these proceedings there is recognition of the default position under Dutch law by which [the pursuer] will be entitled to share this pension..."³¹

[39] The defender gave further evidence in relation to certain bonuses he had received from Shell. The agreement in relation to the bonus is found in paragraph 9 of the Joint Minute number 36 of process. In relation to bonuses received relative to the period prior to separation the defender's position was that these had been paid into bank accounts held jointly by the parties but to which the pursuer had access, and which she had used. He

³¹ Affidavit No 59 of process at paragraph 72

maintained that in relation to bonuses vesting after the date of separation no part of them should be regarded as matrimonial property.

[40] The defender deponed as to his salary package from Shell.³² He incorporated a table in his affidavit which he said illustrated his net income in the nine month period preceding the proof (ie January – September 2017). The total net income in this period was £199,837, which on an annualised basis would amount to a net income of £266,449. He further deponed that he had been paying the pursuer £4,500 per month as aliment, assumed responsibility for the mortgage payment on the parties two jointly owned properties and had made payment in respect of school extras for the younger child of the marriage and provided an allowance for the elder child. He calculated that his monthly free income, after deduction of these outlays, amounted to £10,661.

[41] The defender was cross-examined in relation to his income. He accepted that in producing the figures I have referred to in the preceding paragraph he had not taken allowance of certain taxable benefits, primarily in relation to accommodation allowances, that he received as part of his Shell salary package. He accepted that these allowances would constitute taxable benefits. It was put to him that his most recent tax return disclosed a gross income of £442,500 per annum, a figure he accepted was accurate.

(i) Irene Lansen

[42] Ms Lansen is a Dutch lawyer. She produced a report.³³ In this report she explained the operation of Dutch law in relation to the defender's pensions with Shell and the position in relation to the pursuer's entitlement to share in the defenders Dutch state pension. She

³² No 59 of process, paragraphs 48-52

³³ No 7/142 of process

was cross-examined. I need not rehearse her evidence which essentially confirmed that previously given by Ms Braun.

Pursuer's submissions

(a) Reliability and credibility

[43] Senior counsel for the pursuer challenged the reliability and credibility of certain aspects of the defender's evidence. She observed that liability for payment of school fees at the boarding school attended by the younger child of the marriage had been an issue in the case since the commencement of the action. The defender's position was that his employers had paid the school fees. The pursuer recovered invoices relative to fees and extras paid to the school. Pay slips relative to the defender were also recovered. On the basis of this information the pursuer deponed that the defender had paid school fees and claimed reimbursement from his employer. She further deponed that "at times, he has claimed more money from Shell than he pays to [the school]."³⁴

[44] On sight of this passage in the pursuer's affidavit the defender produced further documentation on 29 September 2007³⁵, the Friday before the start of the proof. The inventories contained an invoice³⁶ which it was submitted the defender knew had never been paid to the school but was provided to Shell in support of a claim by the defender for the payment of school fees. On the basis of this invoice the sum claimed and received from Shell by the defender amounted to some £2,185. The defender was examined and cross-examined on this document. The pursuer's submission was that the defender's explanation that he used the money to pay additional boarding fees which appeared on the

³⁴ No 45 of process at paragraph 35

³⁵ Nos 7/183, 184, 185 and 186 of process

³⁶ No 7/183 of process

subsequent invoice was not totally accurate. It was further submitted that even if this was correct, there was still a sum of £1,021.25 from the monies claimed from Shell which the defender did not account for. Counsel for the pursuer pointed out that in his affidavit dated 22 September 2017³⁷ the defender refers to invoice 7/113 and untruthfully minimises the fees reimbursed by Shell and untruthfully inflates the sums he claims he has paid from this own resources. It was submitted that when asked about this in cross-examination his evidence was that he had referred to “the wrong invoice” in the spreadsheet.

[45] The submission of counsel was that these explanations were “wholly unsatisfactory”, and accordingly undermined both his reliability and credibility as a witness.

(b) Applicable law

[46] The pursuer’s submission was that in divorce there was a two stage test required in order to quantify any financial provision to be awarded. Stage one involved the identification of matrimonial property and determination of the net value of each item. Stage two required a fair division of matrimonial property, with the presumption of equal sharing, justified by the principles set forth in section 9 of the 1985 Act having regard to special circumstances and being reasonable having regard to the parties resources.

[47] Section 9 of the 1985 Act provided inter alia:

“9(1) The principles which the court shall apply in deciding what order for financial provision, if any, to make are that—

- (a) the net value of the matrimonial property should be shared fairly between the parties to the marriage...
- (b) fair account should be taken of any economic advantage derived by either person from contributions by the other, and of any economic disadvantage suffered by either person in the interests of the other person or of the family...”

³⁷ No 59 of process at paragraphs 10 and 12

Thereafter stage one of the process, identifying and determining the value of net

matrimonial property, involved the application of the following provisions of the 1985 Act:

- “(10)(4) Subject to subsections (5) and (5A) below, in this section and in section 11 of this Act ‘the matrimonial property’ means all the property belonging to the parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—
- (a) before the marriage for use by them as a family home or as furniture or furnishings for such home; or
 - (b) during the marriage but before the relevant date.
- (5) The proportion of any rights or interests of either person —
- (a) under a life policy or similar arrangement; and
 - (b) in any benefits under a pension arrangement which either person has or may have (including such benefits payable in respect of the death of either party),
- which is referable to the period to which subsection (4)(b) ... refers shall be taken to form part of the matrimonial property ...”

The net value of matrimonial property is defined in section 10(2) of the 1985 Act as follows:

- “(2) Subject to subsection (3A) below, the net value of the persons property shall be the value of the property at the relevant date after deduction of any debts incurred by one or both of the parties to the marriage—
- (a) before the marriage so far as they relate to the matrimonial property, and
 - (b) during the marriage, which are outstanding at that date.”

Section 10(3A) of the 1985 Act provides:

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

- (a) in subsection (2) above, for ‘relevant date’ there were substituted ‘appropriate valuation date’;
 - (b) after that subsection there were inserted—
- ‘(2A) Subject to subsection (2B), in this section the “appropriate valuation date” means—
- (a) where the parties to the marriage ... agree on a date, that date;
 - (b) where there is no such agreement, the date of the making of the order under section 8(1)(aa).

- (2B) If the court considers that, because of the exceptional circumstances of the case, subsection (2A)(b) should not apply, the appropriate valuation date shall be such other date (being a date as near as may be to the date referred to in subsection (2A)(b)) as the court may determine.’; and
- (c) subsection (3) did not apply.”

[48] Senior counsel’s interpretation of those provisions was that there was a presumption in favour of equal sharing of matrimonial property, but that was subject to a discretion from the court to exercise in a manner which was consistent with achieving the primary aim of the 1985 Act, fairness (*Jacques v Jacques*³⁸).

[49] The pursuer’s position was that most of the assets constituting matrimonial property and their value were a matter of agreement between the parties but there were five items which remained the subject of dispute. These disputed items were (i) the sums due to the defender from his sister in relation to a loan granted to that person; (ii) the defender’s SSPF pension; (iii) the defender’s entitlement to Dutch state pensions benefit; (iv) the defender’s Performance Share Awards; and (v) bonus payments made to the defender.

(i) Repayment of loan owed by defender’s sister

[50] One of the disputed items, the sum’s due by the defender’s sister to him in repayment of a loan, was dealt with concisely. On the basis of the pursuer’s affidavit evidence the defender loaned sums to his sister and her husband during the course of the parties’ marriage. Some of those sums were repaid but at the relevant date “...at least €35,000 (Euros) was outstanding.”³⁹ That sum was said to amount to £27,200, which sum was said to constitute matrimonial property.

³⁸ 1997 SC(HL) 20 at 22 approving *Little v Little* 1990 SLT 785

³⁹ No 45 of process, paragraph 89

(ii) and (iii) The defender's pension interests

[51] The pursuer presented arguments in relation to the defender's SSPF pension and the defender's entitlement to Dutch state pension benefits. It is convenient to deal with the arguments in relation to pension as a whole.

[52] The pursuer's position was that the defender's SSPF pension fell within the definition of matrimonial property but this was subject to the consideration that the pension was administered by a Dutch company which was not subject to the jurisdiction of a Scottish court and, further, that administration of the pension in the context of those proceedings required to be regarded as subject to Dutch law. Similarly the defender's entitlement to Dutch state pension was accepted as being subject to an administrative regime governed by the laws of the Netherlands. Having regard to those considerations the pursuer's submission was that the nature of the division of Dutch pension provision in accordance with Dutch law was a special circumstance which required to be taken into account in the second stage of the quantification of financial provision in the present case that is in assessing a fair division of matrimonial property. There was, on the evidence available, no means of directly comparing the division of the defender's pensions in terms of Dutch law with the sharing of UK administered pensions under Scots law. It followed that the defender's entitlement to pension where provision for those was subject to Dutch law could not simply be included in a schedule of matrimonial property and divided in accordance with Dutch law. The submission was that having regard to these considerations the defender's entitlement to pensions subject to Dutch law should be left out of the schedule of matrimonial property but that the division of those pensions according to Scots law should be taken into account in determining the overall division of the parties' matrimonial property.

[53] The pursuer's reasoning for advancing this approach was that if the defender's Dutch pensions were simply included in a schedule and an assumption made that division under Dutch law was akin to pension sharing under Scots law there could be substantial unfairness to the pursuer. This argument was advanced by reference to the evidence of an actuary, Sandra Terras in an unchallenged affidavit.⁴⁰ The actuary's evidence was that if the defender's pensions were administered in the UK and subject to Scots law the figure for inclusion as matrimonial property would include the widow's pension or contingent dependent's pension. The agreed evidence was that on the relevant date the defender's interest in the SSPF pension, including the partner's pension or contingent dependant's pension, was valued at £598,334.⁴¹ The defender joined that scheme on 25 January 1996. The total period of his membership of the SSPF scheme to the relevant date was 6,876 days. The period of membership from the date of marriage to the relevant date was 6,790 days. The apportioned value of the pension which would form matrimonial property if it were subject to Scots law would be £590,850, which figure would form the starting period in consideration of the treatment of the asset on divorce in accordance with the principles set forth in the 1985 Act. This required to be contrasted with the defender's position that division of the Dutch pension according to the law of that country would be in equal proportions and would provide the pursuer with a pension share which was more advantageous than she would receive than would be the case if division were under Scots law. This occurs primarily as a result of what is termed a "standard division" in Dutch law resulting in equal division of the retirement pension accrued between date of marriage and the date of registration of the parties divorce. That would entail a longer period than would

⁴⁰ No 47 of process at paragraph 6

⁴¹ No 60 of process at paragraph 3(a)

be applied in calculating the pursuer's entitlement under Scots law which would consider division between the date of the marriage and the relevant date.

[54] The pursuer's submission was that the defender's argument was incorrect and that because Dutch law in contrast to Scots law does not include in the figure which is subject to "standard division" any allowance for the contingent dependent's pension. Moreover a pension sharing order for half the value of the pension attributable to the period of marriage under Scots law would provide for the pursuer receiving a pension credit of £295,425.

Under Scots law, depending on the rules of the relevant scheme, the pursuer would either be able to transfer that pension credit to a scheme of her choosing or have a pension created in the existing scheme which formed her sole property. In either event if the fund were subject to Scots law she would be able to draw on the pension, receive a tax free lump sum and receive a pension payable on retirement, the details of such entitlement being determined by the pension product. In the present case however where the pension under consideration is subject to Dutch law, sharing in a manner similar to that which would arise as a matter of legal entitlement under Scots law would only be available by agreement between the parties. The evidence was that even if agreement were reached between the parties deviating from the "standard division" provided by Dutch law then benefits to the pursuer would not be payable immediately on divorce. The pursuer would not be able to draw down the pension earlier than the date of the defender's retiral. Moreover she would be unable to receive a tax free lump sum. She would not have a pension which was in her sole name and was not dependent upon the circumstances of the defendant.

[55] In the present case no agreement had been reached between the parties either in respect of unequal division or in respect of conversion, whether equally or unequally. In the absence of agreement between the parties as to the defender's SSPF pension the pension

would simply be subject to standard division in accordance with Dutch law. As a result the pursuer would receive pension benefits different from those she would be entitled to under Scots law. She would not have a pension created in her own right. The payment of the pension would be substantially dependent on the circumstances of the defender.

[56] The evidence available in relation to standard division under Dutch law came from two sources, the unchallenged evidence of Saskia Braun⁴² and the evidence of Irene Lansen who also prepared a report, spoke to that report in oral evidence and was cross-examined. That evidence was, it was submitted by the pursuer, clear. The provision of the defender's retirement pension built up during the marriage will take place after the parties divorce is registered in the Netherlands and following submission by one of the parties of a required form to SSPF's pension administrators. The standard division would result in the defender's retirement pension accumulated during the marriage to the registration of divorce being divided 50/50 between the parties. The most recent valuation of the defender's retirement pension available was in the sum of £1,770,731⁴³. That sum would require to be reduced to reflect the period prior to the marriage when the defender was a member of the scheme. It was pointed out that the court has no evidence before it of how the scheme reduces the sum to take account of the period before the marriage. If an assumption is made that it was time apportioned then the total period of membership of the scheme at 6 September 2017 would be 7,895 days. The total period of membership within the marriage would be 7,809 days. The resulting applicable sum would be £1,065,991. In the event of the defender reaching retirement age the pursuer would at that time receive a monthly pension calculated by a reference to her share of the retirement, which split 50/50 would be £532,995. Whilst it was

⁴² Affidavit of Saskia Braun – Affidavit No 46 of process

⁴³ No 60 of process at paragraph 3(c) as at 6 September 2017).

accepted that this was greater than the sum she would receive if the pension was subject to Scots law it was observed that, first, the pursuer would not have a pension in her own right. Second, the pursuer would not be able to draw the pension down in any form. Third, the pursuer would not be eligible to receive a tax free lump sum. Fourthly, if the defender died before reaching retirement age the pursuer would not receive the retirement pension at all. She would only receive a pension based on the partner's pension at the date of registration of the divorce. Fifthly, if the defender died after reaching a stipulated age the pursuer would no longer receive the retirement pension. She would only receive a pension based on the partner's pension at the date of registration of the divorce. Sixthly, if the pursuer died before the defender reached the stipulated age then the defender would retain his entire pension as if it had never been divided.

[57] Having regard to all those considerations the submission was that the nature of standard division under Dutch law was substantially different to the nature of pension sharing in Scots law. It was submitted that this required to be taken into account in dividing the parties' matrimonial property. The defender's Dutch pensions constituted a special circumstance under section 10(1) of the 1985 Act. As previously noted the submission concluded that the fairest way to deal with this issue was to exclude the value of the defender's Dutch pensions and make allowance for the same in overall consideration of fairness.

(iv) The defender's performance share awards

[58] The dates of the awards and the circumstances of the award are matters of agreement in paragraph 9 of the Joint Minute No 36 of process. The pursuer's submission was that the awards were made during the marriage and were therefore acquired during the marriage.

The level of award made was based, at least in part, on the defender's work performance up to the date of the award. The value of the award was dependent upon the employer company's performance over the three years period following the award. Having regard to these features it was contended that the issue was not, as was submitted by counsel for the defender, whether or not the award formed matrimonial property but one of how the award fell to be valued at the relevant date. In this regard the evidence of Mr Robb, a chartered accountant, was relied upon. His evidence was to a methodology of valuation based on discounting the final value of the known award to a hypothetical, but reasoned, value at the relevant date.

(v) Pursuer's proposition based on the evidence

[59] On the basis of her foregoing analysis senior counsel for the pursuer advanced nine propositions. These were that special circumstances existed justifying sharing of the net value of matrimonial property unequally in favour of the pursuer. That the pursuer has suffered economic disadvantage in the interests of the defender and the family. That the defender has, by contrast, enjoyed economic advantage as a result of the contribution of the pursuer in caring for the children of the marriage. That the pursuer has been substantially dependent upon the financial support of the defender and will require to adjust to the loss of such support on divorce. That the sale of the former matrimonial home should be deferred until the younger child completes school education and is likely to commence attendance at university. That the flat in Stonehaven should be transferred to the ownership of the pursuer with the payment of sufficient capital sum to enable her to repay the outstanding mortgage on that property. That payment of the mortgages in respect of both the former matrimonial home and the flat in Stonehaven should be made by the defender. That the

school fees and extras in respect of the younger child, attendance at the school she currently attends should be met by the defender. Finally, that the defender had sufficient resources to make payment of the financial provision sought by the pursuer.

Defender's submissions

(a) Credibility and reliability

[60] I was invited to treat the defender as a reliable and credible witness. Counsel for the defender contended that the pursuer's adverse submission on the defender's reliability and credibility was "...too sweeping and inappropriate..." if regard was had to the totality of his evidence. It was submitted that the factual inaccuracies in the defender's accounting for monies received from his employer in respect of school fees were "errors in relation to the timing and payment of fees." All relevant information had been lodged by the defender, from which submission I inferred that I was being invited to consider it unlikely that the defender would lodge material disclosing wrongdoing on his part. If the totality of the defender's evidence and the financial documentation lodged on this matter was considered it was submitted that it could be seen that there was no intention to mislead on the part of the defender.

[61] The court was further invited to approach certain aspects of the pursuer's evidence "perhaps with some caution". The language employed by counsel, which I have just quoted, appeared tentative. The aspects of the pursuer's evidence I was invited to approach with caution related to (a) the pursuer's personal finances after the date of separation, (b) her evidence in relation to the defender's involvement in his children's lives, and, (c) her evidence in relation to her work and employment history both before the marriage and since the date of separation.

[62] I should note at this stage that the submission on the pursuer's credibility and reliability did not amount to an outright challenge to either her veracity or her reliability in relation to specific, identified, aspects of her evidence.

(b) Outstanding issues

[63] Counsel for the defender indicated that regard should be had to the consideration that notwithstanding the fact that both children of the marriage are over the age of 16 the defender voluntarily continued to provide financial support for them. He supported the parties' son at university and would continue such support until conclusion of his degree course. He intended to continue his financial support to his daughter, including allowance for the cost of her sporting activities.

[64] The defender identified a list of outstanding issues which had a degree of overlap with the issues identified by the pursuer. On the defender's submission the outstanding issues were: (i) the net value of matrimonial property; (2) the issue of how what was described as "the principal asset", that is the defender's SSPF pension, should be dealt with; (iii) whether there was any reason to divide the net value of net matrimonial property other than equally; (iv) to what extent if any should the pursuer receive a payment of periodical allowance following divorce and (v) the orders that should be made having regard to the principals in section 9 of the 1985 Act and the issue of the resources of the parties.

[65] As I understood the submission no issue was taken with counsel for the defender's approach to the applicable legal framework which is as I have narrated in paragraph [34] hereof, and therefore to the principles which governed financial provision in the context of this action.

(c) Matrimonial property

[66] In relation to this aspect the defender identified three issues. First, whether the defender's interest in the unvested Shell performance share plan awards were matrimonial property. Second, the parties loan to the defender's sister and brother-in-law. Third, issues arising from the defender's interest in the SSPF pension.

[67] In relation to the first of these issues, the unvested Shell performance share plan, the defender's position was straightforward. It was accepted that a chartered accountant, Mr Robb, had given evidence on behalf of the pursuer in relation to the valuation of unvested share plan awards. It was pointed out that Mr Robb had in cross-examination accepted that the exercise of valuation he had carried out was a retrospective one. It was not a valuation of actual awards that had been made and had therefore vested with the defender prior to the relevant date but a hypothetical valuation at the relevant date of shares that vested after that date. It was submitted that in terms of the relevant scheme the shares that ultimately vested could be more or less than the amount of the unvested award. It was also pointed out that it was possible that no shares might vest. On that basis the submission was that the shares that ultimately vested in the defender after the relevant date had not been acquired at that date nor was the amount and value of them known at that point. It was therefore submitted that there was no evidence that the defender's unvested performance share plan awards had any value at the relevant date. It was further pointed out that unvested share awards had no realisable value nor could they be sold or transferred. Having regard to all these considerations it was submitted that unvested share awards had no value at the relevant date and should therefore be left out of account in determining the net value of matrimonial property at the relevant date.

(d) Loan to the defender's sister and brother-in-law

[68] The defender accepted that money had been loaned to his sister and brother-in-law. It was not accepted that the outstanding loan was in the sum of €35,000 (Euros), the submission was that the outstanding loan was in the order of £28,000. More importantly however the submission was that in circumstances where the defender's sister and brother-in-law were the subject of insolvency proceedings in Belgium and where no claim had been made in that process by the parties to the present litigation there was as a matter of fact no prospect of recovery of any monies owed by the defender's sister. Having regard to that consideration this factor should be left out of account in computation of matrimonial property.

(e) The defender's SSPF occupational pension

[69] The defender's position, which was accepted by the pursuer, was that the SSPF scheme was governed by Dutch law. It was accepted by the defender that in terms of Scots law the defender's interest in the scheme insofar as referable to the period of the marriage would constitute matrimonial property. Had these pension funds been governed by Scots law it was accepted that the option of a pension sharing order would have been available to the pursuer. It was recognised that even if the funds had been subject to Scots law the defender could not force the pursuer to take a pension share but it was submitted that if that had been the situation her failure to accept a pension sharing arrangement could have consequences in relation to how the court would divide the remaining matrimonial property having regard to the defender's present and foreseeable resources. Such considerations were however, it was submitted, irrelevant.

[70] The submission then proceeded to consider the situation in relation to the defender's pension interests under Dutch law. It was said that under Dutch law the pursuer was entitled to an equal division of the defender's retirement pension referable to the period of the marriage up until the date when a decree of divorce was registered under Dutch law. It was noted that treatment of pension rights in this way under Dutch law did not form part of determination of a financial regime on divorce but arose separately therefrom. It was drawn to the court's attention that in the defences there had been calls upon the pursuer to state whether she intended to insist upon her pension rights under Dutch law and whether she was prepared to enter into an agreement recognised by Dutch law to share the value of the defender's pension. The submission was developed to say that the pursuer's "...failure or refusal..." to answer these calls had created a "conundrum" as to how the defender's interest in the scheme should be dealt with.

[71] In relation to this "conundrum" the defender's submission was that assistance could be obtained from consideration of the evidence of the two Dutch lawyers, Ms Braun and Ms Lansen. In that regard the defender's expert, Ms Lansen, did not take issue with the contents of Ms Braun's affidavit as to the rights of the parties under Dutch law to the following effect:

"According to Dutch legislation, both parties are, - in the event of a divorce – entitled to a half of the retirement pension rights accrued between the date of the marriage and the date of divorce. This is called standard division. LV did not accrue any pension rights during the marriage. She is entitled to half of the retirement pension rights IV accrued during the marriage at SSPF."⁴⁴

[72] Whilst the issue of standard division under Dutch law was agreed by the parties respective experts on Dutch law the defender's submission was that the pursuer's expert

⁴⁴ Affidavit No 46 at paragraph 7

witness in this subject did not analyse the implications of this any further. By contrast the defender's expert Ms Lansen had in her report spoken to in evidence considered further issues and given further evidence designed, it was submitted, to avoid the possibility of double counting of the value of the defender's interest in the SSPF pension in these proceedings and on any application of standard division which the pursuer was entitled to under Dutch law. Ms Lansen's evidence in this regard took the form of certain agreements drafted by Ms Lansen and approved by Shell and reflected in the orders sought in this action by the defender.

[73] On the basis of the foregoing submissions counsel for the defender's position was initially that

"...in the event that the pursuer is not content to simply leave the value of the SSPF pension out of account as already divided under Dutch law that the defender would seek the incidental orders set out in his fourth conclusion."

This position was, in the course of submissions, modified. As I understood his position counsel for the defender ultimately accepted that the pursuer's entitlement to equal division of the defender's Dutch pension entitlement on registration of a decree of divorce in the Netherlands would be exercised. He therefore accepted that the defender's fourth conclusion could be dismissed and the plea-in-law repelled. His only remaining position in relation to the defender's pension interests in the Netherlands was that

"...it remains relevant and appropriate to consider the increase in value of the pension interest since the relevant date in assessing parties respective economic advantages and disadvantages up to the date of divorce."

Critical examination of evidence and submissions

(a) Reliability and credibility

[74] I deal first with the issue of reliability and credibility. The pursuer challenged the reliability and credibility of the defender's evidence as a result of one aspect of his evidence,

his accounting for the payment by Shell of sums paid by that company in respect of his daughter's school fees and extras in one school term. The evidence on the point was brief. The defender had, on the basis of documentation lodged on his behalf, received an overpayment from Shell in respect of extras of something in excess of £1,000 in one term. In evidence he offered no adequate explanation in relation to the overpayment. I questioned him on the matter and, on his accepting that there had been an overpayment, asked if he had repaid that money to Shell. He indicated he had not and said it was impossible to do so. On being pressed as to how this could be he said that Shell had no mechanism to receive repayment. If I understood it correctly the defender's counsel's submission on this matter was that if I had regard to the totality of the defender's evidence on his finances, and his production of the documents relative to sums received from Shell, it was unlikely that he would be untruthful about these matters.

[75] I do not consider I can accept counsel for the defender's submission on that matter. In my view the documentation available demonstrated that there was an overpayment in respect of extras by Shell in one school term. The defender accepted he had not repaid this sum. The documentary evidence did not demonstrate that the overpayment had been used to meet subsequent accounts for extras. As a matter of practical common sense I consider it inherently unlikely that Shell have no mechanism for receiving payment of money when there has been an overpayment by them. In the absence of cogent supporting evidence I am not prepared to accept the oral evidence to that effect of the defender. It follows that in this respect of his evidence I find the defender unreliable and incredible.

[76] It is a necessary consequence of this conclusion that I scrutinise other aspects of the defender's evidence with care and, if contentious, be cautious about accepting the same unless supported by corroborative evidence which I consider reliable and credible.

[77] The defender made a challenge to the reliability and credibility of the pursuer. As already noted the challenge was, in my view, tentative and based on no aspect of her evidence specifically identified. I reject this challenge. In my opinion the pursuer gave her evidence openly, and, for example, accepted matters that might not in general reflect favourably on her character, such as that she had in the past submitted CV's to prospective employers which exaggerated her academic credentials. Having regard to these considerations I formed the view that I was entitled to regard the pursuer as a reliable and credible witness.

(b) Matrimonial property

[78] On the basis of the submissions, the matters agreed in the Joint Minutes and the evidence available it is possible to determine the value of the majority of assets constituting matrimonial property at the relevant date in the following way:

Jointly owned assets

1. The matrimonial home	£500,000
Less mortgage	<u>£359,809</u>
Net	£140,191
2. The flat	£160,000
Less mortgage	£60,288
Net	£99,712
3. Lloyds TSB account number	£6,829

Pursuer's assets

1. TSB account number	£482.00
2. Range Rover car	£7,500

Defender's assets

- | | |
|--|---------|
| 1. Royal Dutch Shell Shares, vested at relevant date | £59,528 |
| 2. Personalised registration number | £600.00 |

[79] In the above computation I have not taken account of two items about which I heard some evidence and submissions. The first of these items is the pursuer's jewellery. The pursuer's position was that this was of no real value constituting essentially costume items. Counsel for the defender sought to place a value of £1,000 on the pursuer's jewellery, albeit this was not based upon any professional appraisal produced to the court and therefore, in my view, falls to be regarded as the defender's own subjective valuation.

[80] I have determined that having regard to the foregoing considerations I have no proper basis to place any value on the jewellery and therefore have not taken it into account.

[81] Secondly, the pursuer sought to take into account the defender's Dutch state pension. There was, quite simply, no evidence as to the value of this item. I accordingly leave it out of account.

[82] There remain three assets the value, or, in the case of pension funds, categorisation of which require to be determined. First, whether a debt owed by the defender's sister falls to be taken into account as an asset in the parties matrimonial property at the relevant date. Second, whether any part of the defender's performance share awards bonus falls to be regarded as matrimonial property and, if that question is answered in the affirmative, what value is placed on the element that constitutes matrimonial property. Third, and in financial terms most significantly, the approach which should be taken to the defender's SSFP pension.

Outstanding loan to defender's sister

[83] It is clear from the evidence that the defender loaned a significant sum of money to his sister during the course of the marriage. It is equally clear that the funds from which this loan was advanced arose from income earned by the defender during the course of the marriage. It follows that these funds would, but for being advanced by way of loan to a third party, have been available in the normal course of events for either expenditure or investment during the course of the marriage. It is further clear from the evidence that whilst some of the loan had been repaid a significant sum, probably some £27,000 or thereby, remains outstanding. I am satisfied that but for the factor I am about to discuss the outstanding balance on that loan would have constituted a matrimonial asset and it would have been appropriate to include the same in the calculation of matrimonial property.

[84] The other matter which I refer to is the fact, spoken to by the defender and not challenged by the pursuer, that the defender's sister and her husband were rendered insolvent in Belgium some years ago during the period before the parties separation and, therefore, before the relevant date. Whilst there was no evidence beyond that given by the defender he stated that as a result of the insolvency there was no prospect of any recovery of outstanding monies owed by his sister to him. Having regard to my finding on the defender's reliability and credibility I have to consider this evidence with care. In that regard I take into account the accepted fact that the defender's sister and her husband's insolvency occurred during the tenure of the parties' marriage. It therefore seems to me likely that the pursuer would have had knowledge of these events. There was no suggestion in her evidence that she was unaware of her in-laws insolvency. Her position in her evidence appeared to be that she knew her in-laws had been rendered insolvent but was unaware of the precise details. I also take into account the fact that this insolvency occurred

some considerable time ago and that the outstanding balance has been due for a number of years. Having regard to these factors I do not consider that it would be fair to treat this debt, which appears to me on the balance of probabilities unlikely to be recoverable, as an asset in the computation of matrimonial property.

The defender's performance share awards bonus

[85] The evidence in regard to this item is clear, and insofar as the nature of the relevant scheme is concerned not materially disputed. The defender was as a matter of his contract of employment entitled to participate in a bonus share scheme. The scheme was regulated by rules, which were produced as productions. The essential facts for present purposes are that the bonus payment was determined at the end of a three year cycle. Elements relative to the level of the bonus earned by the defender in any given three year period included the overall performance of the employing company and the defender's own performance. No issue between the parties arises out of those factors. Equally no issue arises between the parties in relation to awards made prior to the relevant date. They are agreed to constitute matrimonial property. The contentious issue was that the level of the defender's bonus applicable for a period covering the parties' separation was determined at a date in February 2017 some three months or thereby after the relevant date in this action. The result of this fact, as was accepted by the pursuer's valuation expert on this aspect of matters, was that at the relevant date the defender's interest in the bonus share scheme for that period had no realisable value and was, further, non-realizable. The issue between the parties was whether having regard to those considerations the defender's interest in the element of the award referable to this period was an asset which could, as a matter of law, be included as an item of matrimonial property in relation to financial provision on divorce.

[86] In answering the foregoing question I observe that had the relevant date occurred after the defender's interest in the performance share scheme for this period been determined there would, in my view, have been no doubt that the asset constituted matrimonial property. I further have regard to the fact that as at the date the present proceedings were instituted the defender's interest in the performance bonus scheme for this period had been determined. In these circumstances I am of the view that whilst the defender's interest in the scheme was at the relevant date contingent it was known by the time these proceedings were instituted that the interest had ceased to be contingent. I also have regard to the consideration that the asset was earned, or had accrued, throughout a period when, save for the last three months, the parties were living together in the course of a marriage. It accordingly appears to me that to disregard the defender's interest in this scheme for this period would be to deprive the pursuer of any interest she may have in what should be characterised as a matrimonial asset. If the foregoing reasoning is correct then the issue becomes, as was submitted by counsel for the pursuer, one of valuing the defender's interest in the asset for this period at the relevant date. In that regard the court has the benefit of evidence from a chartered accountant, Mr Robb, which was clear and placed a value at that date on the asset. Mr Robb explained his methodology and, further, indicated that he had used this approach to valuing assets of a similar nature in the past. I accept Mr Robb's reasoning and his evidence and accordingly treat his valuation of the performance share awards bonus for that period at the relevant date of £19,773 as constituting matrimonial property.

Defender's pension interests

[87] The issue in relation to the defender's pension interests is not one of valuation but rather of the approach the court should take in consideration of the appropriate treatment of this valuable asset in the context of the present case. The evidence, not ultimately disputed, was that the SSPF pension fund is subject to Dutch law. Dutch law provides for division or sharing of a spouse's pension fund on divorce in a way which is different to that in Scots law. Viewed objectively the differences cannot be said to make the Dutch approach either superior or inferior to that provided in Scots law, simply different. In order to avail herself of a division other than the "standard division" provided by Dutch law the pursuer would require to enter into an agreement in that jurisdiction with the defender. She has declined to do so. There was no dispute as to her right to adopt this stance.

[88] Against that background the pursuer's position was that it was impossible to include the defender's interest in the pension fund as matrimonial property, but that regard should be had to it when considering the division of matrimonial property and the issue of the defender's resources. By contrast the defender, in his pleading and initial submission, asked the court to effectively compel the pursuer to comply with the provisions of Dutch law and enter into a pension sharing arrangement under the law of that country.

[89] In my view the defender's submission as framed in his fourth conclusion could not have been acceded to. The first, and most blunt objection to it, is that the pursuer has already declined to enter into the arrangement necessary to enable her to share the Dutch pension in a manner other than by standard division as that concept is defined in Dutch law. The court has no knowledge of what, if any terms, were proposed in reaction to any departure from the standard division of pension under Dutch law. It was accepted that the pursuer was entitled to take the approach she did in this matter. In these circumstances I do

not consider that this court can compel her to adopt an option she has, quite legitimately, already rejected. Second, as I have already observed, it is impossible on the basis of the evidence before me to reach a conclusion that the Dutch pension provision is either superior or inferior to the position had the pension funds been governed by Scots law. Senior counsel for the pursuer articulated a number of respects in which the Dutch pension provision differed from the position that would prevail in Scotland. These included the age at which the pursuer would become entitled to a pension, the fact that if the defender were to die before reaching his pensionable age of 67 the pursuer would not receive a retirement pension based on the value of the SSPF pension fund at the date of registration of a decree for divorce but only a partner's pension based on a smaller fund⁴⁵, the inability to take a tax free lump sum from the pension and the inability to create a separate pension with her share of the pension funds. In my view these factors are, objectively judged, both reasons why the pursuer might decline to enter into a sharing arrangement so far as the Dutch pension fund is concerned but also constitute reasons why this court would decline to force her to do so. A third consideration is that I would have had doubts as to the enforceability of the conclusions which the defender advances.

[90] In the end I did not however require to consider the defender's fourth conclusion. The final position of parties was that the value of the defender's interest in the SSPF fund should be left out of account in the calculation of matrimonial property. That does not however mean that this asset has no significance. First, it seems now to be a matter of agreement, and is in any event in accordance with the evidence of the two Dutch lawyers, that the pursuer will enjoy a standard division of the defender's retirement fund on the date

⁴⁵ No 60 of process at paragraph 3(c). The relevant figure upon which the partner's pension would be based is £217,255

of the registration of the parties divorce in the Netherlands. This will amount to a significant sum which will form the basis of an income stream available to the pursuer, albeit this income will not be immediately available to the pursuer. Second, I accept senior counsel for the pursuer's submission that the SSPF pension falls to be regarded as a resource available to the defender. In my opinion the foregoing considerations constitute "special circumstances" within the meaning of section 10(1) of the 1985 Act and accordingly require to be considered in determining the fairness of the division of matrimonial property.

Division of matrimonial property

[91] Both parties advanced arguments for economic advantage and disadvantage in the context of this marriage. I have, relatively easily, come to the conclusion that the pursuer's submissions in this regard are preferable. On the evidence available I am satisfied that prior to the parties' marriage the pursuer had a successful career in distribution and services. Whilst she had at least temporarily given up this career path in order to pursue an MSc course at university the evidence satisfies me that she departed from that career course permanently on marriage, primarily because she knew that as a result of the nature of the defender's employment she would be living abroad on a long term basis. As a consequence she lost the opportunity to acquire an occupational pension. I further accept that the immediate cause of her discontinuance of the MSc course was to assist the defender complete his PhD in what were, due to the death of his mother, stressful times for him. I also accept that in this period she provided some financial support to the defender, albeit that at this remove in time no quantification can be given. Between 1996 and 2008 the parties lived as a married couple abroad in order to permit the defender to pursue a well-paid job with a large multinational company. In this period, the pursuer had,

effectively, no formal employment. I also have regard to the fact that in this period the parties had two children and that the pursuer suffered a period of serious illness.

[92] The pursuer stayed at home to care for the children, which was in accordance with the defender's wishes, but detrimental to any career prospects she had.⁴⁶ Since the parties return to the UK in 2008 the defender has continued to enjoy his employment with his multinational employers. This included being able to undertake further overseas work between 2014 and 2016. This was initially intended to be employment where the pursuer accompanied him but this did not occur due to separation. In relation to that aspect of matters I accept the pursuer's evidence that the separation was, so far as she was concerned, both unexpected and unwanted. Since separation the pursuer has had a number of jobs. I accept the evidence that these were of short term duration and do not form a reliable guide of her ability to obtain well remunerated employment following divorce.

[93] In my consideration of relative advantage or disadvantage experienced by each party I have also had regard to the fact that it is clear from the evidence that the pursuer has devoted, and will continue to devote, considerable time in assisting the parties daughter develop her talent at sport. She has devoted many days and weekends taking her daughter to training, matches and tournaments. This has entailed both sacrificing her time and incurring financial cost in the form of paying for car fuel and hotel accommodation. Since 2014 the defender, as a consequence of his residence first in Country D, latterly in London, has had no significant input in this aspect of his daughter's life. This pattern of the pursuer assisting her daughter's development, and indeed life prospects, will continue until her daughter finishes school education in the summer of 2019. The heavy time burden consequent upon providing this level of support to a child of the marriage is a further factor

⁴⁶ No 45 of process at paragraph 46

detrimental to the prospects of the pursuer obtaining well remunerated employment, at least in the period up to the summer of 2019.

[94] I do not accept the proposition that the defender's career has been disadvantaged by his marriage. He did give evidence that he "may" have stayed in some foreign postings longer than was optimal for the development of his career, but, importantly accepted that he himself could not determine what effect, if any, this might have had on his career. It is also to be noted in this regard that he acknowledges his career had been satisfactory in terms of progression, although not in his estimation "stellar". I further observe that on any objective basis he had achieved a position in Shell where he enjoys a very substantial remuneration package, has an apparently safe and secure job and will in due course reap the benefits of a substantial pension fund. Judged objectively I do not consider that he has sustained any economic disadvantage as a result of the marriage. Moreover I consider that on a fair consideration of the evidence the pursuer's provision of a stable home, her very considerable input into the raising of children by staying at home whilst the defender worked and advanced his career with Shell, and disproportionate involvement with the parties daughter's education, all constitute advantages and benefits that have accrued to the defender as a result of the marriage.

[95] Having regard to these features I am satisfied that the pursuer has suffered economic disadvantage as a result of the marriage. By contrast it appears to me that the defender's career prospects have been unaffected by the marriage, and that he has in other respects derived advantage from the marriage.

Conclusions

[96] On the basis of the foregoing I have been able to reach the following conclusions.

First, having regard to the fact that the defender's pension is subject to administration under Dutch law and, further, that the parties have reached no agreement in relation to the division of that asset, it will be divided according to the principles of standard division under the law of the Netherlands. This will mean that if and when the defender reaches the appropriate retirement age, which I understand is agreed to be 67, the pursuer, assuming she has survived, will become entitled to a pension calculated by reference to her share of the defender's retirement pension. The relevant sum upon which the pension will be calculated and based is £532,995. This pension will not be in the pursuer's own right. She will not be able to draw the pension down in any form. Moreover she will not be able to receive a tax free lump sum. In the event that the defender dies before reaching the age of 67 the pursuer's entitlement will be limited to receiving a pension based on the partner's pension at the date of registration of divorce. The relevant figure for this purpose on the basis of the material available to the court would be £217,255.⁴⁷

[97] The next matter requiring determination relates to the two heritable properties jointly owned by the parties. The first of these is the former matrimonial home. By the time of submissions the pursuer accepted that she could not afford to sustain mortgage payments on the property. The parties were accordingly agreed that this property should be sold and the free proceeds of sale divided equally between the parties, the difference being that the defender sought immediate sale whilst the pursuer sought postponement of the sale until 1 August 2019, when the parties daughter left school, with the defender being responsible for payment of the mortgage on the property until that date. The pursuer's proposal was

⁴⁷ No 60 of process at paragraph 3(c).

based upon the proposition that she required to retain a property suitable for both her own needs and the need of the younger child of the marriage whilst that child remained in education. In my opinion on the basis of the evidence I heard the proposition was reasonably founded. I take into account the fact that the defender did not demur from the proposition that appropriate accommodation was required for the child during the tenure of her education, his submission being limited to the suggestion that cheaper properties were available and could be purchased when the former matrimonial home had been sold. I was provided with no evidence about alternative properties. In these circumstances I conclude that the pursuer's submission, that the sale of the house be postponed until 1 August 2019 is well-founded and should be upheld. In relation to the payment of the mortgage until the date of sale the defender's proposition was that the pursuer should meet half the costs thereof. This was based on the submission that the pursuer should be able to obtain well remunerated employment following divorce and could therefore afford to contribute to mortgage repayments. In my view the defender's submission is both unrealistic and inconsistent with the evidence I heard. The pursuer, a person aged 52 at the date of proof, has not held a fulltime position of employment on a permanent, long term, basis since her marriage in 1996. She accordingly has no relevant or recent work experience which would suggest that she has any realistic prospect of obtaining well paid employment. Efforts she had made to obtain employment since separation have, on her essentially unchallenged evidence, met with very limited success and only produced short term periods of temporary employment none of which was particularly well paid. In addition the pursuer has devoted since at least 2014 very considerable amounts of her time in assisting the development of the parties' daughters potential as a sportswoman. This commitment will continue until that child leaves school in 2019. It is detrimental to the pursuer's prospects of obtaining

employment. I note that the defender professed his support for his daughter's sporting activities, which given that he resides in London must be taken as at least tacit acknowledgement that these activities require the support given by the pursuer. By contrast the defender enjoys employment which generates, on the basis of his most recent tax return, a gross income in excess of £400,000. In these circumstances I consider that the defender should be responsible for the mortgage repayments until the property is sold.

[98] The appropriate determination of the parties competing submissions on how to deal with the flat in Stonehaven, having regard to the overriding principles of fair division set forth in the 1985 Act has caused me considerable hesitation. In relation to the property in Stonehaven the defender contended that the same should be sold and the free proceeds of sale divided equally. By contrast the pursuer's position was that this property could, if she obtained ownership, provide her with a small income derived from rent. Having regard to the special circumstance of the standard division of the defender's Dutch pension an order for transfer was, it was submitted, justified. It was, further submitted that under the provisions of section 2(4)(b) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 an order should be made finding the defender responsible for mortgage repayment on the property until the sale of the former matrimonial home enabling the pursuer to repay the outstanding mortgage in respect of the Stonehaven flat. The pursuer was prepared to concede that the mortgage should be converted to "interest only" pending the sale of the former matrimonial home, thereby reducing the defender's outlay.

[99] I consider the competing arguments in relation to the appropriate treatment of the flat in Stonehaven to be finely balanced. I am prepared to accept that the defender has the required resources to fund the mortgage for this property for the relatively short period until the former matrimonial home will be sold, particularly if the mortgage could be

converted to “interest only” payments in this period. I am also satisfied that the pursuer’s arguments in relation to the defender’s pension interests constitute a special circumstance. I am however also required to have regard to the other considerations which suggest that a transfer of the defender’s interest in the property to the pursuer might not be consistent with the objective of achieving fairness between the parties. These are that the pursuer has no immediate need for the property as a personal residence. Further, the property requires repair and could not therefore be immediately let out and would not provide her with any income in the short term. Perhaps most pointedly it would require the defender to make mortgage payments, for a limited period and even if on an “interest only” basis would mean that the defender was, at least potentially, increasing the pursuer’s assets at his expense after the date of divorce. I do not consider this to be consistent with the principle of seeking to achieve a clear break on divorce. Whilst the matter is finely balanced I consider fairness is best served by requiring the sale of the property.

[100] In relation to the net value of matrimonial property available for division there was little disagreement between the parties. The pursuer’s valuation was in the sum of £334,615 the defender’s in the slightly lower sum of £315,352. Having regard to my calculation of agreed matrimonial property values set forth in paragraph [75] hereof and my conclusions in relation to the disputed assets I agree with the pursuer’s figure of the available net matrimonial property in the sum of £334,615, that being the figure set out in paragraph [75] plus the inclusion of the defender’s bonus share rights.

[101] So far as the division of matrimonial property was concerned the pursuer’s position was, for the reasons explained in this opinion, that she had suffered economic disadvantage as a result of the marriage. Moreover the, in financial terms, principal asset of the parties, that is the defender’s SSPF pension fund, could not, again for the reasons explained in this

opinion, be divided in accordance with the principles which would apply in Scots law. For these reasons it was submitted there should be an unequal division of matrimonial property in the proportion of 80% to the pursuer and 20% to the defender. By contrast the defender's position was that he had suffered economic disadvantage as a result of impaired progress in his career with Shell and his greater financial contribution to the parties throughout the course of the marriage. In these circumstances it was submitted there should be an unequal division in his favour.

[102] As I have already indicated I consider that there is merit in the pursuer's case that she has suffered economic disadvantage as a result of the marriage. I am equally satisfied that there is no merit in the defender's case to the effect that he has suffered economic disadvantage. It follows that in order to achieve fairness of division in accordance with the principles of the 1985 Act, an unequal division of matrimonial property is both justified and required in the present case. The exact division is essentially a matter for judicial discretion, albeit that must be determined with the objective of achieving fairness to the forefront. In my opinion that would be achieved by a split 60% in favour of the pursuer and 40% to the defender. The figure which would therefore fall due as a payment from the defender to the pursuer would be £69,421.⁴⁸

[103] There remains the issue of payments to be made by the defender following divorce. The first of these is in relation to the payment of school fees for the younger child of the marriage. The pursuer submitted that the defender should be responsible for these, the defender's position was that they should be shared equally between the parties. I am bound to state that I consider the defender's proposition to be wholly unrealistic. The pursuer, apart from relatively modest sums of income derived from periodic renting of the flat in

⁴⁸ That is, $334,615 \times 60\% = 200,769$; $200,769 - 13,348 = £69,421$

Stonehaven, has been entirely dependent upon alimentary payments from the defender since separation. As I have already discussed I consider her prospects of finding employment to be, at the very least, precarious. It is, as both parties accept, advantageous for the younger child to continue at her present place of education. This will require the payment of school fees. The defender's own evidence was that they will, following divorce, cease to be met by his employers. I note that his evidence on this matter was uncorroborated. No evidence was provided from Shell either by way of document or witness to support the defender's proposition. For reasons already explained in this opinion I have to approach this evidence with caution. In the event I can treat this evidence neutrally because I conclude that having regard to the pursuer's relative impecuniosity and the defender's very substantial income he should assume responsibility for the payment of these fees.

[104] Similar considerations apply in relation to the pursuer's claim for periodical allowance. She seeks a continuation of the interim payments at the rate of £4,500 per calendar month until the sale of the former matrimonial home and thereafter reduced payments in the sum of £3,000 until 1 August 2020. The need for alimentary payments in these periods is to enable her to adjust to the loss of spousal support and to attempt to re-enter employment. Both these aims will take time. For the reasons I have already discussed I consider that this claim has been established. I shall accordingly order payment of periodical allowance in the sums I have already stated.

[105] An interlocutor reflecting my foregoing decision on the matters in dispute will be issued.