



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 71

F10/22

OPINION OF LADY CARMICHAEL

In the cause

ANNE MARGARET KELLY OR MCCALL

Pursuer

against

GRAHAM KENNETH MCCALL

Defender

Pursuer: Brabender KC, Wild; Drummond Miller LLP

Defender: Hayhow KC, Donachie; DAC Beachcroft Scotland LLP (for Levy and McCrae)

26 July 2024

Introduction

[1] This is an action for divorce in which both parties seek orders for financial provision.

[2] The parties were married on 9 April 1994. They separated on 28 August 2020 which is the relevant date for the purposes of the Family Law (Scotland) Act 1985. Unless otherwise specified, references to statutory provisions are to provisions of that Act.

References to “CB” are to page numbers in the core bundle of documents.

Issues

[3] The extent and value of the matrimonial property at the relevant date was the subject of extensive agreement in a joint minute and supplementary joint minute. The former matrimonial home had been sold with the net proceeds of £790,773 held by the selling agents in an interest bearing account.

[4] The following matters were not agreed.

Extent of matrimonial property

[5] Although it was not the subject of agreement, the defender accepted in the course of his evidence that he had an Aviva Pension relating to his employment during the marriage. Its CETV at the relevant date was £9,095.24, vouched by 6/136 of process. The defender's schedule of matrimonial property included it at £9,509, but there is no evidence to support that higher value, and the figure looks to result from a mistranscription of the digits 5, 0 and 9.

[6] There was a dispute as to whether the defender had at the relevant date a liability to pay £500,000 to Bradley Beard.

[7] The pursuer's position was that a sum of £19,500 in her Bank of Scotland account xxx9468 was not matrimonial property because it was the remainder of a gift from her mother. The defender disputed that. The defender maintained in evidence that the parties loaned money to the pursuer's mother and that the sum either derived from payment of that loan or from savings accrued by the pursuer from sums earned by the parties during the marriage.

Value of matrimonial property

[8] There were a number of disputes as to the relevant date balances of bank accounts, and as to the amounts retained by the defender. There were also disputes in relation to the contents of the matrimonial home, two motor vehicles (a Land Rover Defender, and an Audi), and other items of moveable property.

[9] The most significant dispute was as to the value of the parties' interests in Assynt Holdings Limited ("Assynt") and in particular the director's loan due to the defender. The following factual matters are not in dispute, although the significance of them, and the inferences to be drawn from them, are.

[10] At the relevant date Assynt's assets included two commercial loans, one to EKO Grays Ltd ("EKO") for £747,740 and one to Radley House Investments Limited ("Radley") for £1,537,250. EKO were redeveloping existing property in High Street, Grays, Essex so as to produce both residential apartments and commercial premises there. The property included a former public house known as the Pullman Tavern. Radley were redeveloping a listed building in St Cross Road, Winchester, to create residential apartments.

[11] The pursuer and the defender were both directors of Assynt, as were their three children. The defender gave notice of a Special General Meeting ("SGM") to be held on 16 October 2020. The pursuer's directorship was terminated with immediate effect at that meeting. On 28 September 2020, without reference to the pursuer, the defender extended the company's accounting period from 31 March 2020 to 31 August 2020. The accounts for that period contained a write down of assets which generated a loss of £1,877,013 for the period. The EKO loan was written down by 90% and the Radley loan was written down by 80%. The decisions about writing down the loans and by how much were decisions made by the defender. He signed off the accounts on 19 October 2020.

[12] Whether the written down loan values truly reflected the value of the company's assets at the relevant date was the principal matter of contention.

[13] There was a dispute also as to the value of the defender's shares in Drink Warehouse UK Limited ("Drink Warehouse").

Division of property

[14] The only respect in which either party suggested as his or her primary position that I should depart from equal sharing was in relation to a submission by the defender as to the economic advantage he said the pursuer derived from his help in setting up her business.

Summary of decision

[15] I am satisfied that the marriage has broken down irretrievably and will grant decree of divorce.

[16] I concluded that the writing down of the loans to EKO and Radley by 90% and 80% respectively was an artificial exercise undertaken by the defender with a deliberate view to defeating in substantial part the pursuer's legitimate claims for financial provision on divorce. There was no proper basis for writing down the loans in that way. The defender's director's loan to Assynt was by far the most valuable asset at the relevant date. I found that the values of the matrimonial property at the relevant date are those set out in the table below.

	Joint	Pursuer		Defender
Assets				
Property				
Overhall Farm	£790,733			
Contents of Overhall Farm	£15,000			

Boat	£10,000			
Trailer		£2,000		
Inverkirkaig	£197,500			
Pensions				
EY Pension		£227,638		
SPPA Pension		£40,811		
EY Standard Life Pension		£11,708		
USS Pension		£15,136		
Standard Life SIPP		£186,077		
Standard Life SIPP				£841,431
MGN Pension				£236,574
MGN AVC				£11,531
Johnston Press Pension				£65,561
Aviva Pension (Johnson Press)				£9,095
Bank accounts				
NS&I 7741	£935			
NS&I 7357		£241,875		
NS&I 2657		£500		
NS&I 2554				£527,233
NS&I 7221				£25,701
RBS 3939	£8,461			
RBS 5459	£7,369			
RBS 3778	£3			
RBS 0045	£3			
RBS 2435	£0			
RBS 7644	£0			
Nationwide 4991		£6,288		
Bank of Scotland 2867		£4,148		
Bank of Scotland 7367		£1,264		
Bank of Scotland 8267				£3,179
Investments				
Standard Life Shares				£998
Walker Crips	£62,937			
Standard Life Portfolio (joint)	£109,928			
Standard Life Portfolio (personal)		£423,658		
Standard Life stocks and shares ISA		£147,958		

Standard Life stocks and shares ISA				£145,914
Shares in McCall & Co		£199,750		
Director's loan due from McCall & Co		£4,201		
Shares in Assynt Holdings Ltd		£8,088		£86,657
Director's loan due from Assynt Holdings Ltd				£2,276,536
Personal loan to Zebra Homes Ltd capital				£500,000
Personal loan to Zebra Homes Ltd interest				£70,726
Shares in Last Mile Limited				£860,267
Shares in Drink Warehouse UK Ltd				£0
Cars				
Land Rover				£50,000
Audi				£19,250
Totals	£1,202,869	£1,521,100		£5,730,653
	Total matrimonial property		£8,454,622	

[17] Fair sharing of the matrimonial property will be achieved in this case by equal sharing, namely an allocation to each party of £4,227,311.

[18] I have treated, as both senior counsel did, the parties as having retained in equal shares their interests in Overhall Farm; Inverkirkaig; the very small sums in Royal Bank of Scotland ("RBS") accounts xxx0045 and xxx3778; their Walker Crips investment; and their joint Standard Life Portfolio. I have treated them as having retained equal shares in the boat. For reasons explained elsewhere in this opinion, I found that the defender had retained home contents worth £14,500 and that the pursuer had retained contents worth £500. I found also that the defender had retained a horse trailer worth £2,000.

The balances retained by the parties respectively in NS&I account xxx7741 and RBS accounts xxx3939 and xxx5459 are set out in paragraphs 274 and 276.

[19] The pursuer has therefore retained £2,105,686. In order to achieve fair sharing, the pursuer requires a balancing payment of £2,121,625. I have determined to make an order for transfer by her of her interest in Inverkirkaig. She will be required to transfer her interest when she has received the whole sum due to her from the defender. The agreed transfer value of her interest in Inverkirkaig is £98,750. Accordingly, the total sum payable to the pursuer will be £2,220,375.

[20] Of that sum, a proportion can be met by making the orders sought by the pursuer regarding the sums held on joint deposit receipt in respect of the sale of Overhall Farm; the sums held jointly with Walker Crips; and the sums held jointly with Standard Life. I am satisfied in principle that I ought to make those orders.

[21] The sum held on deposit receipt was, in total £790,733. Interest may have accrued on that sum. The values of the two investments as at 7 September 2023 were, respectively, £63,369.80 and £117,703.25. Half of those sums is £485,903. I am conscious, however, that the current values may be different, and accordingly, I cannot specify precisely how much of the capital sum will have to be paid other than by payments to account from those sources.

[22] Neither party wishes to retain the boat, and I am content to order that it be sold, and that the net proceeds be paid equally to each party.

[23] For the reasons set out in paragraphs 315 to 319 I am satisfied that interest should run on the sum of £1,179,055. Both parties recognised that further submissions would be required in relation to the period during which interest should run, and that will be addressed at a by order hearing.

The evidence

[24] The pursuer gave evidence and led evidence from Greg Rowand, forensic accountant, and Alan Bathgate, a motor vehicle examiner. She relied on the affidavit evidence of Kristine Dickson, and of Anne Wilson. The defender gave evidence and led evidence from Alan Robb, forensic accountant, and from Patrick Vanderhyde.

[25] Both forensic accountants were qualified to give the evidence that they did, and no issue was taken as to the expertise or independence of either.

The pursuer's case

The pursuer

[26] The pursuer is a chartered accountant and is 56 years of age. I summarise her evidence so far as relevant to the breakdown of the marriage elsewhere in this opinion.

[27] The pursuer had hip surgery on 22 August 2020, and was an in-patient for 4 nights. Shortly after that, on 28 August 2020, when the defender was away at the parties' property at Inverkirkaig, the pursuer left the matrimonial home. She was still using crutches at that time. When the defender got back he changed the locks. He told the pursuer that she could have a key when she stopped being silly and came home. She had no access to the property without seeking the defender's approval and obtaining a key from estate agents dealing with the sale of the property.

[28] The pursuer qualified as a chartered accountant in 1991 and worked with Ernst and Young, where she had trained, until 1995. When she left she was an audit manager, earning £30,000 per year. Between 1995 and 1997 she was the chief accountant for the University of Strathclyde and earned £38,000 per year. She returned to Ernst and Young

as a senior manager in the business risk division earning £45,000 to £50,000 a year. She was promoted to director of the firm's Scotland and Northern Ireland division of their national business risk service line, and earned about £65,000 a year. The parties' twins were born in 2000. When she returned from maternity leave she worked for 3 days each week. The parties' third child was born in 2002. Her evidence was that her salary at that stage just about covered childcare costs. She took a career break in 2005. She was a candidate on the firm's partnership admission programme. She had completed assessment for the programme in 1999 and had a detailed schedule of development for admission to the partnership within 2 years. In taking a career break she seriously inhibited her career opportunities and earning potential. Two colleagues who undertook the same assessment and stayed with the firm became partners.

[29] When all the children were at school in 2007 she returned to work 3 days each week as a lecturer, earning around £38,000 pro rata. She continued to do that until 2015.

[30] The defender worked away from home extensively. Between 2006 and 2009 he would leave home in the early hours of a Monday morning and return on the Friday evening. Between 2009 and 2014 he was based in Essex. He left home at 5.30am on Monday mornings and returned around 6.00pm on Thursday evenings. The pursuer offered to move to Essex with the children or to return to a chartered accountant role. If she had earned more, then the defender could have worked locally without impacting on the family finances. He was adamant that he did not wish to split the career load and that he wished to pursue his chosen career path.

[31] In 2015 the pursuer decided to set up her own accountancy practice as a means to return to higher earnings and the job for which she had been trained. She is the sole director of McCall & Co Professional Services Limited.

[32] In 2014 the defender's employment with Forefront Utilities came to an end when that company was sold. He held an equity stake in it, and realised £1.4m from the sale. £1m was put in NS&I account xxx2657 in the pursuer's name as she was a lower rate taxpayer. Two payments in to the account of £999,500 and £500 in August 2014 were shown in 6/121 of process. Royal Bank of Scotland statement for the parties' joint account xxx5459 (6/122) showed a payment in of £999,500 on 8 January 2020, a payment out on the same day of £995,075 to Assynt Holdings and a payment out of £4,445 to a NS&I income bonds account the following day. Bank of Scotland statement for account xxx2268 in the name of Assynt showed a payment in of £995,055 on 8 January 2020.

[33] After that arguments between the parties involved the defender demanding to have the money transferred back to him. He controlled the parties' finances closely and required a bank reconciliation from the pursuer each month with an explanation of spending and savings.

[34] In 2015 the defender got a job with ICR Ltd. He worked in Aberdeen from Monday to Thursday. He moved to Energetics in Hamilton in 2016 and worked in Hamilton and from home. Energetics was sold in 2016. The defender again had an equity stake and realised £4m from the sale. A sum of £750,000 was rolled over into a new shareholding with the new company, Last Mile Hold Co 1 Limited. The defender placed the funds from the sale in various NS&I accounts in the individual and joint names of the parties.

[35] When the pursuer left for a period in 2019, the defender accessed the pursuer's NS&I account and changed the password. He reinstated it on her return. When the pursuer left on 28 August 2020, the defender transferred the funds from their joint NS&I account to his individual account. The following day he opened a new NS&I account and transferred all

the monies held in his name to the new account. Transfers in to the new account xxx2752 were shown on 29 August 2020 in 7/129.

[36] The defender invested most of the money from the proceeds of the business sale from which he benefited in property developments in the south east of England. His former partner in Forefront Utilities, Bradley Beard, introduced the defender to a financial adviser, Patrick Vanderhyde. The pursuer suggested that it would be more tax efficient for the defender to invest through a limited company. He agreed and set up Assynt Holdings Limited on 5 April 2019. On incorporation the defender held 75 % of the shares, the pursuer 7% and their children 18% equally among them. The company made investments in the form of loans to property developers.

[37] On 6 September 2020 the defender asked the pursuer to resign as director. He made the same request by email the next day. On 17 September 2020 the pursuer received notification of a SGM to be held at the home of the defender's parents and a notice of resolution seeking her removal from office as a director. The SGM was held on 16 October, and her directorship was terminated with immediate effect. The pursuer did not attend the meeting because it was being held at the home of the defender's parents. The accounts for 2021 narrated that she had resigned, but that was not true. The increase in the defender's shareholding had prevented her and her children from asking for the accounts to be audited.

[38] On 28 September 2020 the defender extended the company's accounting period from 31 March 2020 to 31 August 2020 without telling the pursuer. There were at that time no draft accounts for the year to 31 March 2020. Normally a period of 9 months from the year end was allowed for the production of accounts, but during the pandemic that period had been extended to 12 months. That meant that if the year end had stayed as 31 March, the

company would have had until 31 March 2021 to provide accounts. With a year end of 31 August, the company would have had until 31 August 2021.

[39] In the course of September 2020 the defender issued an allotment of share capital increasing his own shareholding to 98%.

[40] The pursuer and the defender funded Assynt by way of a director's loan from their NS&I accounts. Assynt's strategy was to invest only in the redevelopment of existing properties, so as to mitigate risk. The sums loaned were relative to the value of the original land and property, and Assynt would take the first security over the land and property. The defender often emailed documents to the pursuer for her to print off. She saw documents relating to the Radley House loan and discussed the matter with the defender. She knew the sums loaned were less than the value of the property over which security would be taken. Had she anticipated that the losses were to be of the nature that the defender contended they had been, she would have recommended having the properties surveyed with a view to calling in the securities.

[41] Assynt loaned Radley £1,537,250 by agreement dated 29 January 2020. The loan was due for repayment on 29 January 2022. Assynt held a security over the land and property of that company dated 29 January 2020 (6/95). After the defender wrote down the loan, Assynt advanced a further £220,000 to Radley on 12 April 2021. The pursuer learned from a response by Dean Honeyman, the director of Radley, to a specification of documents, that that sum was repaid on Radley's behalf by one of their clients, HS Building and Maintenance in lieu of settlement of an outstanding invoice (6/95, page 441 of Core Bundle). Mr Honeyman's letter, dated 8 September 2023 also confirmed that interest of £138,352.50 had been paid on 1 April 2022. The payments from HS Building and Maintenance were made not to Assynt, but to a personal HSBC account xxx8222 in the joint names of the

defender and Georgina Williams, as shown in 6/63 of process. The defender used the money to fund the purchase of residential property at Campsie Glen in his sole name, as shown in 7/118 and 6/21 of process.

[42] The pursuer did not believe that the investment was risky and might not be repaid. Radley's property, which was the subject of the charge, was purchased for a total of £2,365,000, vouched by extracts from the Land Registry (6/59 and 6/60). The pursuer visited the sites of both developments in February 2023 and took photographs of the developments, which she produced. The pursuer's evidence was that all but one of the apartments in the Radley development had been sold. The photographs show developments that look complete and either fully or partly occupied. The pursuer produced marketing material from Charters Estate Agents in Winchester, showing that the apartments at the Radley development were marketed for between £450,000 and £750,000.

[43] The repayment of the £220,000 on behalf of Radley was omitted from the accounts of Assynt for the periods. In the 2021 and 2022 accounts the additional advance of £220,000 did appear, but both the loan and the interest were written down by 80%.

[44] The pursuer had herself made inquiries at the Land Registry regarding the discharges of securities associated with the loans by Assynt. The release of certain properties from the charges in favour of Assynt had been pending since April 2022. She checked as to whether they remained pending. She produced a list issued by the Land Registry in relation to an inquiry on 7 September 2023. Shortly before the proof she saw that Plot 4 at Radley House had been released consequent to a discharge signed by the defender and witnessed by the defender's father on 10 May 2022. She had obtained the discharge dated 7 March 2023 releasing the property at 61 High Street, Grays, from the charge in favour of Assynt, again signed by the defender and witnessed by his father.

[45] The loan agreement between EKO and Assynt is dated 26 September 2019 (6/53). The loan was of £1,059,000 payable in two instalments. It was to be repaid on 26 September 2020. At the relevant date Assynt had advanced £747,740. The defender made a further advance in September 2020. The pursuer maintained that the defender had no contractual obligation to make a further advance, as EKO were by that time in breach of the original agreement. Assynt had a security over the land and property held by EKO. The Land Registry recorded a purchase price of £860,000 on 26 September 2019. EKO sold the property for £1,600,000 on 7 March 2023. When the pursuer visited the site in 2023 a business was trading from the ground floor retail unit, and there was evidence that people were living in the flats. The security in favour of Assynt was discharged on 7 March 2023. Assynt received funds on 29 June 2023 in respect of payments of capital (£1,075,185) and interest (£364,779), shown on Bank of Scotland statement 6/96, page 601CB. EKO was struck off for non-compliance with filing requirements and dissolved on 15 August 2023. There were no objections from creditors, which caused the pursuer to think that settlement with Assynt might have occurred at an earlier date.

[46] The additional capital of £73,119 advanced in September 2020 was written down by 90% in the 2021 and 2022 accounts. The interest on the loans to EKO was written down by 100% in the 2022 accounts, not taking into account that 90% of the interest had already been written off in earlier years. That resulted in an understatement of the company's assets.

[47] The full value of the director's loan was still declared outstanding in the accounts for 2020, 2021 and 2022 despite the write off of the EKO and Radley loans, and the going concern statement in the accounting policy notes asserted that the loans remained fully recoverable.

[48] Before Assynt was incorporated, the defender had invested by lending as an individual. At the relevant date he was owed £500,000 by Zebra Homes Limited. The loan was repaid with interest.

[49] The defender did not mention to the pursuer making any commitment to Enterprise House Limited. In the course of these proceedings she had seen only a letter dated 1 June 2020 from Patrick Vanderhyde countersigned by Bradley Beard which appeared to indicate an intention to enter into an existing investment made by Bradley Beard for which security was held over a property (Enterprise House) in Portsmouth.

[50] The pursuer said that she had not received half of the contents of the matrimonial home as the defender claimed. On 12 April 2021 she provided a list of the items she wanted to recover. She was not given them. A schedule for sale of the property contained photographs taken in October 2020 (6/101) showing furnished rooms. The furniture was all new. The defender did not provide the pursuer with a key until 27 April 2021, 3 days before the date of entry. At that time there was little furniture, the property was dirty and a lot of rubbish had been left. There was some children's bedroom furniture left, and a desk. She found and took wedding china and what was left of the parties' crystal. The pursuer took photographs of the property (6/102). The defender claimed to have put items in storage, but had not produced an inventory. She had not consented to items being put in storage. The pursuer had researched the cost of replacing the furniture and applied a discount of 50%, arriving at a figure of £12,250. The defender had retained a trailer acquired new in 2019 and a ride-on lawnmower, acquired new in 2017. She estimated the value of those items at the relevant date at £6,300.

[51] The defender also retained a boat which had an insurance value of £25,000. The parties owned a horse trailer which was stored at a farm near Kilmarnock. It was purchased

new in 2016 and had an insurance value of £4,000. The defender removed it from the farm. He claimed to have donated it to Riding for the Disabled. The pursuer produced a letter from Glasgow Riding for the Disabled Association (6/58) stating that they had not received a donation of a horse trailer in 2020/21. The pursuer had horses at the same farm where they remained after the relevant date. She had not abandoned the horse trailer. It was in good condition, seldom used, and undamaged. She needed it to transport the horses for veterinary treatment. It had had a wheel lock fitted at the time that the defender removed it. The pursuer and the defender had met on a number of occasions after separation with a view to trying to resolve their financial affairs. He told her that he had a story that she might find funny: since she had left no clothes behind for him to cut up and burn, he had given her horse trailer away to riding for the disabled.

[52] The defender had retained £25,380 from joint NS&I account xxx7741 by transferring two sums of money, including the £25,000 already referred to, into accounts in his sole name (xxx7221) on 28 and 29 August 2020. The relevant date balance was £935, vouched by 6/8 and 6/128 of process. The same items vouched the balance of the defender's account xxx7221 as £25,701.41.

[53] The parties had a joint RBS account xxx3939. A bank statement (6/11) showed the balance as £8,461.26. The statement disclosed a payment dated 28 August to a NS&I income bonds account of £7,500, but that had not been debited from the RBS account until 1 September. They also had a joint RBS account xxx5459 with a balance of £7,369 retained by the defender as shown on a bank statement 6/12.

[54] The pursuer's evidence about the Land Rover Defender was that it was the defender who drove the car when it was delivered. She had only driven it once, from Sandford to Strathaven and back, about 4 weeks after it was delivered. It had a working engine. She

never saw any signs of oil leaks in the garage. It had been stripped and rebuilt by 4X4 Fabrication in Shropshire. The defender had designed it and specifically requested that it be fitted with a Cummins diesel engine. The defender had produced two emails from Dave Lea, the owner of 4X4 fabrication (7/49). In an email dated 19 December 2022 to the defender's former solicitors, Mr Lea wrote (sic):

"I am David the director of 4x4 fabrication ltd

Grayham shipped his car into me with a fault on 28th July 2020 it's been with me since,

The vehicle suffered catastrophic engine failure. Requiring an engine rebuild.

Id value the current car in its condition at £9-12,000 depending on sale.

The value is based on its non running condition and the car is in parts currently as a non runner.

If you require anything else just ask thanks David."

Mr Lea repeated his view as to valuation in a further email dated 1 January 2023, specifying that the figures he had supplied applied as at the relevant date. The pursuer said that it was untrue that the engine had failed. The defender was unhappy with the Cummins engine and wanted it changed. He arranged to return the car to Mr Lea in September 2020 for a replacement engine. The pursuer produced a text exchange from 8 and 9 September 2020 (6/120) between the defender and his friend, Donald Wilson, regarding arrangements to drive the car down to Shropshire and progress during the journey there. She also produced screenshots of posts bearing to be from the Facebook page of 4x4 Fabrication showing the car and work being done on the car (6/119). One was dated 10 September. Another, dated 5 December 2020, showed the car and read, "This beautiful 90 is one of our favourite builds we love it that much that we are going to build a 110 version". A further

post, on 10 December 2020, showed work being done to the car with the text, "It's been a crazy week transforming Puma Defenders into 330D reliable Work horses".

[55] The parties had engaged together in building a property at Inverkirkaig. By the time of the proof the relevant date value of the property was agreed. There was an outstanding dispute as to the costs to complete the property, with the defender saying that it would cost £180,000 to complete it. The pursuer gave evidence about this matter. She had prepared a spreadsheet analysing the cost of the project and had calculated that the cost to complete it was about £31,400. Tarmacking had never featured in the costings and she had not understood it to be a condition of planning permission.

[56] The defender had made a number of loans in his own name in 2022. The pursuer produced three loan agreements. The borrowers were Altavia Homes Limited, Lion's Den Developments, and Shaun Pridmore. The transactions followed a pattern similar to other investments made by the defender and Assynt, in that the loans were secured by charges granted over heritable property. The combined total of the loans was £4.09m. The defender had managed to maintain a balance of £1.7m in various NS&I accounts. It was not clear where he had obtained the money necessary to fund the loans.

[57] The pursuer said that a balance of £19,500 in her Bank of Scotland account xxx9468 was the remainder of a gift to her from her mother, derived from her late father's estate. Her father died on 19 January 2010, and her mother gave her the money on 20 December 2013. She gave the pursuer and her brother £50,000 each. The defender knew about the gift. The pursuer's mother was moving from a large bungalow to a small flat. She wanted the pursuer to open a Bank of Scotland account in her own name and went with the pursuer to the Motherwell branch of the bank. The pursuer used the gift predominantly to buy a menage for horses. The pursuer was worried that her mother did not have enough money

and used £9,000 of it to make up a shortfall when her mother was purchasing property on a further move from her flat to another bungalow. That move took place in 2017. The defender had been aware of the construction of the menage and knew where the money had come from for it. The menage was built before the pursuer's mother moved house in 2017.

[58] There might have been discussion about the pursuer's mother repaying the £9,000, but the defender understood that the pursuer had given the money to her mother. The pursuer and defender, their children, and the pursuer's brother landscaped the garden of the house, and that the defender had paid for plants. The pursuer said that the defender had asked for, and received, reimbursement from her mother for the plants. The house had not been sold at the time of the proof, and the pursuer's mother was in a care home.

[59] In cross-examination the pursuer confirmed that after the parties separated she required to ask the permission of the defender to have access to the matrimonial home. In response to the suggestion that she might have obtained keys from the selling agents, she explained that the defender had cameras installed at the property, and would have known if she had accessed the property without his consent. She accepted that the property took time to clear for sale, and that clearing it would have taken some time. She said that the defender had tried to renege from the sale, and the bargain was not concluded until the day before the date of entry. She had not wished to antagonise him. The pursuer did not accept that the defender had required to put items into storage.

[60] The pursuer accepted that she had no particular expertise in valuing second-hand items of moveable property. Much of the furniture had been less than a year old at the relevant date. She had been able to look at the invoices at the time the parties separated. The pursuer did not know what the boat was worth. The defender had offered it to her,

but she did not want it. She would not mind if it were sold, but had not known that was what the defender wanted.

[61] Asked about the £19,500 in her Bank of Scotland, the pursuer said there was no evidence available from her mother, because her mother had dementia. She had not ordered up bank statements to show the source of the funds because she had discovered only at a late stage that the defender was contending that the money was matrimonial property. She denied that the funds were either money she had saved during the marriage or a loan repaid by her mother.

[62] In relation to the cost of completing the work at Inverkirkaig, the pursuer accepted that costs might have risen as a result of inflation and the increased costs of materials consequent on factors such as the war in Ukraine.

[63] The pursuer said she had originally intended to take only a 2 year career break in order to look after the children. She had enjoyed her time at home with them. Senior counsel suggested that the defender's application of funds from the sale of Forefront to pay down the parties' mortgage could be regarded as a donation of capital to her. The pursuer responded that the defender could only work away from home as he had done because she was at home with the children.

[64] The financial security provided by the defender had assisted her to set up her own business. She had taken a year's sabbatical. She had herself, however, also taken an interim finance position to bankroll that sabbatical. She did not accept that the defender had assisted with her business using his professional expertise about due diligence. The pursuer was herself well-versed in due diligence, and had lectured on the subject. The only advice he had given her about the business in question was to make sure that the clients kept their "eyes on the prize". Senior counsel suggested that the pursuer could sell her business when

she retired. She responded that as she was the only principal in the business, there would be a limited market.

[65] In relation to the loans made by Assynt holdings, the pursuer accepted that the characteristics of the property being redeveloped would change in the course of the redevelopment. She observed that Radley House was Grade II listed, so that there would be some limitations on the alterations that might be made to it. The pursuer was shown 7/115 of process, which read (sic):

“Assynt Holdings Ltd

Date 12/8/20

Purpose of paper

To consider the current global economic environment under Covid-19 and the potential impact on the carrying value of investment loans outstanding

Macro economic view

The UK government and other governments have publicised that the global covid-19 pandemic will see economies fall deep into recession like no other in history. The UK government has openly said that the UK will see the deepest recession in post war history. In addition, the level of public borrowing is at its highest in living memory and will impact generations to come. Recovery is now expected to be a deep U shape and not the V that was hoped. Analysts are quoting at least 10 -12 years before the economy returns to pre covid -19 levels.

Micro economic view for the UK

Construction in the UK has all but ceased and despite attempts by the UK government to stimulate the sector, unemployment is escalating with several national names announcing thousands of job losses. It is likely that it will take at least 10 years for the sector to recover. A similar timescale to the banking crisis in 2008. The new build housing sector has some latent inertia where properties that were nearing completion pre covid-19, are now completing. Bottom up new build has all but stopped with house constructed from March 20, down by over 80%. The longer term concern is increasing unemployment and continued recession with low public confidence in job security to support new mortgage applications. Major house builders have noted a reduction in house sales of over 80% in the past 3 months and are laying off trades and construction staff.

The retail sector is on its knees with high street names closing as footfall and spend continues to fall. The prospect of localised lockdown for example Leicester and Yorkshire continues to exacerbate the issue. Retail in the high street has had to deploy product sales tactics at a time that they otherwise would not have to, to generate cash. This has had little success.

About 745,000 businesses have received loans from banks backed by the government - with more than £3.8bn going to 94,000 companies in the past week alone. Although the loans come with a 100 per cent government guarantee on the capital and interest, banks fear a 'PR disaster' if they were ever forced to pursue thousands of family businesses through the courts. Banks are already writing off these loans from their balance sheets

Assynt Holdings Loan agreements

Loan 1 - (£747k) is in the retail sector. Construction has but stopped and does not look like continuing anytime soon. The loan is due to be repaid on the 25th September. It is extremely unlikely that the borrower's retail business will be able to generate enough cash to repay the loan. Equally a forced sale of the assets is unlikely to cover the loan value. It is recommended that under the current economic climate and the state of the retail industry that the loan value is written down by 90%

Loan 2 - (£1.5m) is in the luxury housing sector. The loan is not repayable until January 2022. The borrower's construction business has been using the government furlough scheme to stay afloat and has since laid off most of its trades and construction staff. There are no signs of the borrower recruiting and no signs of the borrower being able to generate enough cash from its business in the required timescale to repay the loan. A forced sale of the property is unlikely to realise enough cash to clear the loan. For this reason it is recommended that the loan value is written down by 80%"

It was said to be a paper prepared by the defender and reflecting his views. The pursuer said she could not comment on various parts of the information in it, as she did not know the source of the information. In relation to the passage starting, "The banks are already ..." she said that it had been plagiarised from George Osborne in the Financial Times. She thought it had appeared in the Financial Times in March 2020. She did not know how the material bore any relation to the write down the defender had determined. All assets required to be assessed as to their balance sheet value, and Covid had certainly produced challenges. She would not have made the same judgments that the defender had. The decision should have

been one for the board, and she had been a director. It should have been a decision for the directors whether to instruct a survey of the sites with a view to calling in the loans. She accepted that Assynt did not have experience of selling abandoned development sites. It would be legitimate to allow the developers to see if they could complete the projects, if it was thought that the loans were recoverable.

[66] The pursuer accepted that the defender had received repayments in September and November in relation to his loan to Zebra, and that funds were paid to Mr Beard, but had no knowledge of any arrangement in relation to Enterprise House. In relation to the loans made by the defender after separation, when it was put to her that the total of the loans was £2.048m, she pointed out that he held securities to a value in excess of £4m.

[67] In re-examination the pursuer explained that she would have been concerned about the defender learning from CCTV that she had accessed the matrimonial home. She was wary because of her experience of the defender's behaviour during the marriage. She had not requested a list of property because she had not wanted to antagonise the defender.

The parties had entered into an interim Minute of Agreement for the sale of the matrimonial home, but she then received an email saying that the defender was withdrawing consent for the sale. He then kept pushing back the date of entry. By that point she was communicating with the defender by email only, to minimise contact. The last email she received from him berated her for allowing the children to take out student loans.

[68] Although the defender had been at Inverkirkaig for a period from 14 August 2020, he had been living in the matrimonial home on 12 August 2020. He did not discuss anything regarding impairment of the EKO and Radley loans with the pursuer at that time. He did not talk to her about the state of either the construction industry or the retail sector. She had researched the content of the 12 August 2020 document and found an identical passage in an

article from the Financial Times. The defender did not provide her with draft accounts to August 2020.

[69] The writing down of the loans to EKO and Radley had affected the value of her shareholding in Assynt. She had never seen any document showing that Radley did not require to repay the loan until all the flats were sold.

Mr Greg Rowand

[70] Mr Rowand provided two reports, numbers 6/26 and 6/100 of process. He was instructed to value McCall & Co Professional Services Limited (the value of which was the subject of agreement by the time of the proof). He had not been instructed to value Assynt, but to comment on the report of Mr Robb (7/41 of process) regarding Assynt.

[71] Both he and Mr Robb had access to a Debtors Lead Schedule for Assynt for the period to 31 August 2020, to photographs later spoken to in evidence as being photographs of the EKO development, and to a table relating to the EKO and Radley loans.

[72] Mr Rowand was provided with the 12 August 2020 document. He noted that Mr Robb did not refer to it as a source in his report. The paper provided no rationale for, or calculation of a recoverable amount for either loan. He would have expected to see, but had not seen, the following in support of the write down:

- An assessment of the borrower's likely cash flow and ability to repay the loan including how this differed from the position when the loan was advanced.
- An assessment (ideally from an external party such as a surveyor instructed by the lender) of the likely amount of the loan to be repaid if Assynt enforced the security over the properties.

- Supporting explanation for and calculation of the recoverable amounts of £80,878 and £322,964 with reference to the above assessments of likely cash flow and amount recoverable from enforcement of the securities.

[73] He would want to see management accounts and financial projections for the borrower in order to understand its cash position. Mere assertion from the borrower that he could repay would not suffice. One would expect there to be discussion between the borrower and the lender in relation to the borrower's cash flow. That would be preferable to the lender trying to estimate what the cash flow position might be.

[74] It would be relevant to consider the terms of the loan agreement. In particular he would wish to see whether there was a term limiting the amount that could be advanced relative to the works carried out. One would then know how further loans might be made or restrictions on what further loans might be made.

[75] If Mr Rowand had been valuing the shares in Assynt, he would have looked at the reasonableness of the impairment of the loans, because they were the assets of the business. He would want to understand what information the director had in order to come to view that the defender did about the value of the loans. One would always look for independent information. If the director had something to gain from the impairment that would be even more important. If the director advanced further loans to the same borrower having written down the value of existing loans one would want to understand why.

[76] Mr Rowand noted that RSM UK Tax and Accounting Limited had been engaged on 2 September 2020 to prepare the accounts of Assynt to 31 August 2020 (6/78, CB page 297) and that the pursuer had been removed as a director on 16 October 2020. If valuing Assynt, he would wish to know the background to her removal. If it was because she had had a different view about the value of the loans, that would be relevant to valuation. If accounts

for later years had shown a reversal of the impairment then he would wish to have information about that.

[77] Assynt's accounts for the year to 31 August 2021 (6/79) contained an accounting policy in these terms:

"Financial assets, other than those held at fair value through profit and loss, are assessed for indicators of impairment at each reporting end date.

Financial assets are impaired where there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows have been affected. If an asset is impaired, the impairment loss is the difference between the carrying amount and the present value of the estimated cash flows discounted at the asset's original effective interest rate. The impairment loss is recognised in profit or loss.

If there is a decrease in the impairment loss arising from an event occurring after the impairment was recognised, the impairment is reversed. The reversal is such that the current carrying amount does not exceed what the carrying amount would have been, had the impairment not previously been recognised. The impairment reversal is recognised in profit or loss."

There was nothing unusual about that policy. Those accounts disclosed that the director's loan account had increased by about £300,000 from the previous year. So far as assets were concerned, the sum shown for debtors falling due within 1 year was £491,629, which was more than the total for debtors due within both 1 year and 2 years in the preceding year. The called up share capital had increased as a result of shares being allotted in the course of the financial year. Mr Rowand could not think of a reason why the repayment of a loan would not be recorded in the accounts. There might be a reason, but an explanation would be required. Similarly, it would be difficult to understand why a loan that had been repaid should be written down.

[78] In the accounts for 2022 interest for both loans had been written off without taking account of the earlier impairments. The result was that more had been written off than was originally due.

[79] Mr Robb's view was that the director's loan was not recoverable at the relevant date. Mr Rowand and Mr Robb agreed that the recoverability of the loan depended on the recoverability of the EKO and Radley loans. Even if one accepted that the defender's writing down of the loans was reasonable, it did not follow that his director's loan was worth nothing. The impaired amounts were still available to repay it.

[80] Mr Rowand considered that the defender's shares in Drinks Warehouse had a value in the range negligible to £50,000. There was insufficient information to say where in that range it lay. There had been transactions in shares in Drinks Warehouse in January 2020 and June 2022, but Mr Rowand did not know the price at which those had taken place or the background to them.

[81] In cross-examination Mr Rowand accepted that creditors of Assynt could use its accounts as a source of information. The defender was the only creditor of the company. He accepted also that a company holding loans in the construction industry in August 2020 would consider whether to write those loans down. It would have been reasonable to assess the recoverability of the loan. Senior counsel referred Mr Rowand to an extract from the financial reporting standard in force in 2022, which was said to be identical to that in force in 2020, and in particular to paragraph 2.9 relating to the need for prudence to avoid the overstatement of assets. The passage indicated that the exercise of prudence did not permit bias either as to deliberate understatement or overstatement, a proposition which Mr Rowand accepted.

[82] Mr Rowand reiterated that he had not seen any calculations to support how the defender had arrived at the 80 and 90% write-downs. Although the loans were not repayable in August 2020 he would have expected the borrower to respond to inquiries from the lender about cash flow, with a view to maintaining the working business

relationship. He acknowledged that there would have been uncertainty in August 2020, but said that people would at that time have been preparing projections. It would have been better to have cash flow figures prepared by a borrower in a context of uncertainty than to have no information at all. All projections were attended with some uncertainty, although in the context of the pandemic the degree of uncertainty would have been more significant.

[83] He accepted that if the loans had been called up that would have been at a stage when the developments were incomplete, and Assynt would have had to sell the sites or complete the projects. If one had a view from a surveyor about the value of the site on calling up of the security, and then wrote the loan down to a lower value, one might be in danger of not reflecting a true and fair view of the value of the asset. Mr Rowand accepted also that directors might legitimately have regard to information from a variety of sources when considering impairment of an asset. In general terms he did not find the contents of the 12 August document surprising, but he could not recall whether some of the specific contentions in it were commonly being aired in August 2020. By August 2020 matters had evolved since the start of the pandemic. Furlough was well-established, and the country may have been coming back out of lockdown. There was uncertainty, and there were job losses in some sectors.

[84] Senior counsel referred Mr Rowand to photographs of the EKO developments, and emails from individuals connected with the EKO and Radley sites setting out issues that they said had been encountered in the projects. Those emails bore to have been sent on 13 July 2022 and 12 August 2022. The latter related that lockdown rules had started to lift on 10 May 2020 and that work from home measures were reimplemented on 22 September

2020. Mr Rowand accepted that a director in August 2020 would take into account information from a borrower about where the project stood.

[85] In relation to Drinks Warehouse, Mr Rowand took no exception to the background as narrated by Mr Robb in paragraphs 2.1-2.5 of his report. He thought it was correct that the company had borrowed £2m; that some of that money had been used for acquisitions before the pandemic and that there had been some further borrowing, perhaps in the form of a bounce back loan. Mr Rowand accepted that an earnings basis of valuation was appropriate. Where he disagreed with Mr Robb was in ascribing some hope value to the defender's shares. The hope was one that there would be a purchaser who ignored the economic situation and both the earnings and net asset values of the company, but attribute value to the shares. Hope value was something normally associated with start-up and early stage companies. They were sometimes purchased for a value even without a trading record, because the buyer assessed that the business would develop and be worth much more in the future.

Mr Alan Bathgate

[86] Mr Bathgate is 68 years of age and trades as T & T Technical Services. He is a consulting automotive engineer and accident claims assessor. He provided opinions in relation to the values of two motor vehicles, a Land Rover Defender and an Audi. Most of his work related to the valuation for insurance purposes of vehicles involved in road traffic accidents. He estimated that he had examined more than 60,000 vehicles.

[87] The Land Rover had a D registration plate. Mr Bathgate had not been able to examine the Land Rover, but had been provided with pictures of it taken during the rebuilding process and documents detailing the costs incurred in refurbishing the car.

They were breakdowns of cost provided by 4x4 Fabrication, of Whitchurch in Shropshire, to the defender (numbers 6/133, 6/134 and 6/135 of process). The documents bore dates in 2018 and 2020. Number 6/135 was a complete version of an incomplete document produced as 6/133. Mr Bathgate's approach to valuation had been to add up the cost of the work detailed and add that to the value of the vehicle before work was done to it. He assessed the value of the vehicle before refurbishment at £5,000 on the assumption it had an MOT and was roadworthy. The resulting total was £68,485, and Mr Bathgate valued the vehicle as worth between £68,500 and £70,000. He said that was a legitimate approach to valuation because there were no guides as to the market value of similar vehicles. The car had been very heavily modified at the request of its owner, which had enhanced its specification and value. The car was therefore worth whatever the owner was prepared to pay for it. The worth to the owner was what the owner had been prepared to spend on it. Given the unique specification there would have been no depreciation since 2020.

[88] Land Rover Defenders had a strong following. Whether they were standard or modified, once they reached a certain age many people would wish to retain them, but there were as many who would wish to modify them whether to a limited extent or more extensively. Mr Bathgate described the extent of modification of this car as rare. It was not unusual for modifications to be made, but the defender had not only fitted a large capacity engine but had undertaken a full refurbishment of the body and chassis. Specialist magazines carried listings for modified vehicles. Depending on the specification the asking prices were in the range £50,000 to £100,000. That was not necessarily an indication of the transaction price.

[89] Mr Bathgate valued the Audi in the range £19,000 to £19,500. It was an Allroad Sport TDi Quattro with a 66 registration. He had been told the recorded mileage was 75,000 miles.

Glass's Guide for August 2020 quoted the value as £20,550 in retail condition and £17,580 in trade condition. He had taken a figure between those two figures. He had not seen the vehicle.

[90] Mr Bathgate accepted that it was better to see a vehicle when valuing it. In cross-examination he said that the information about refurbishment of the Land Rover was detailed and provided a clear picture of the work done. He had not relied on MOT records for the vehicle. Its mileage was not relevant given the extent to which it had been renewed. It would be necessary to know the mileage of a vehicle in standard condition, but this was not a standard vehicle and its components had been changed. He accepted that in assessing what the vehicle was worth to its owner, he was describing the value to a special purchaser with a particular interest, rather than the market value of the vehicle. He had been unable in specialist publications to find a comparator vehicle modified to the same extent as the car in question. He had assumed that the refurbishment had been carried out competently and that the vehicle was capable of being used on the road.

[91] Number 7/16 of process was an invoice showing that the Audi had been traded in (in the context of the purchase of another vehicle) for £9,500 on 6 October 2021. The document showed a mileage of 75,000. Mr Bathgate observed that that would indicate that the mileage at the relevant date, some 14 months earlier, was lower than he had assumed. He acknowledged that the value of the vehicle at the relevant date would have depended on its condition. He did not know the terms of the deal in which the trade-in price had been negotiated.

Kristine Dickson

[92] Ms Dickson was a colleague of the pursuer's at Ernst and Young. They started working in the same team in 1995. Both entered the pathway to partnership programme in 1999. Ms Dickson opted out of it after a 3 day assessment course, because she had young children, and the pursuer opted out shortly afterwards. Both continued as directors in the firm. Ms Dickson was working part-time. While the pursuer took a career break, Ms Dickson continued to work with Ernst and Young and achieved the position of non-equity partner. She could not say whether the pursuer would have done so if she had stayed, as there were a number of variables. As a part-time director she earned the pro rata equivalent of a full-time salary of £70,000. When she returned to full-time work in 2014 she was promoted to executive director and earned £125,000. At the relevant date she was earning £155,000, and by 2022, as a non-equity partner, £163,000. In July 2023 that figure increased by £7,000. She also benefited from membership of a pension scheme.

Anne Wilson

[93] Ms Wilson's evidence was directed only to the grounds for divorce and is summarised elsewhere in this opinion.

*The defender's case**The defender*

[94] The defender is a chartered accountant. He is 58 years of age.

[95] He was very shocked when pursuer left. He went to his parents' house. His father expressed the view to him that the pursuer had been planning her departure for some time. The defender said that he was not thinking straight and that it was in that context that he

moved funds from joint accounts in the names of the parties to accounts in his sole name. He was panicking and thinking that he needed access to money. The defender was concerned that another man might be involved. He was imagining all the things that might have happened. With all of that in mind he decided to change the locks and placed security cameras around the house. He believed that someone other than the pursuer had been aware of her plans to leave because police arrived to remove guns that he held (with the appropriate certificate) from the house.

[96] The pursuer had not liked the pressures of working for Ernst and Young in the audit department. He would have been happy to step back from his career if she wanted to be a partner there while raising a family. The pursuer did not want to employ a nanny. She left Ernst and Young to work at Strathclyde University with a view to starting a family. Part-time working was not an option at Strathclyde University. The pursuer believed that the business risk department of Ernst and Young would be more flexible around part-time working and she moved to work there in 1997. She was against returning to full-time work and employing a nanny and scorned her peers, including Ms Dickson, for doing so.

[97] It was difficult for the defender to find a job after leaving a post in 2008. At that time the pursuer was working as a part-time lecturer. The parties changed their mortgage to an interest only product and reduced their outgoings. The pursuer did not want a full-time job. The defender found work in the south east of England. He was very upset and concerned about the impact that would have on his family. He found working away from home emotionally challenging, but the pursuer encouraged him to carry on. After a short consultancy period it became clear that his "only option for employment" was to become the CEO of Forefront, and he commuted to Essex and London each week for 5 years. The pursuer was not keen to relocate to Essex.

[98] The proceeds of sale from Forefront were used to clear the mortgage on the matrimonial home and £400,000 was invested in a pension for the pursuer. The parties' financial adviser recommended that for tax and pension reasons the money should be put in the pursuer's name.

[99] The defender supported the pursuer financially while she was setting up her own business in 2015. The pursuer had no experience in advising through a sale transaction or doing due diligence for a sale transaction. With his private equity experience he was able significantly to assist in the background, allowing her to gain credibility. In his oral evidence he indicated that the pursuer had needed no assistance from him in relation to carrying out an "audit-type" role. They were accountants who had different skill sets. They had regular discussions and conversations. The business had been set up to allow the pursuer to have a lifestyle business, and with a view to her reducing her hours of work at some point so that the parties could spend more time together. He could not understand why the pursuer had not allocated any shares to him, as they did everything together.

[100] From 2016 the defender worked for Energetics, later known as Last Mile. The business was owned by a bank, Macquarie, who were an extremely aggressive and demanding equity capital investor. The role was stressful and the pursuer did not support the defender either emotionally or "as an accountant".

[101] In 2018 defender received £4.75m for his shares in Energetics, on which he paid capital gains tax of £387,194. It was a condition of the deal that he reinvest £750,000 in the new entity and sign a shareholder investment agreement tied to his employment contract for a further 5 years. The shares he had to roll over into the new entity (Last Mile) were worth less than their original value for 2 years until the future sales projected in the business plan had been achieved. He was not entitled to realise the value of his B, C or preference

shares until October 2023, his death, or on leaving his employment with the company. He was disappointed that the pursuer did not appear pleased or excited when he told her the outcome of the transaction. She was unhappy that he had not kept her informed as to what was happening.

[102] After the sale of Energetics the defender started discussions with Bradley Beard, formerly of Forefront about making loans to the construction industry. Mr Beard introduced him to Patrick Vanderhyde of Flagstone Capital, who had brokered loans for Mr Beard. The defender went on to make loans personally. He advanced £500,000, as did Mr Beard, to Zebra Homes Limited (“Zebra”) for a development called Gable Farm. It was due to be repaid in June 2020.

[103] On 5 March 2020 the defender met Mr Beard and Mr Vanderhyde in Glasgow “before [the] COVID-19 pandemic hit”. They discussed the loan to Zebra. At the meeting the defender also learned that Mr Beard had made a loan of money and in that connection held a security over Enterprise House. The loan was referred to in the evidence as the Enterprise House loan, or the Enterprise House investment. The defender agreed that he would lend money. The defender would provide a £500,000 loan which would be used to “reduce the amount of [Mr Beard’s] loan over Enterprise House”. The defender’s evidence was that at that point on 5 March 2020 he had an obligation and had committed himself to “pay the sum of £500,000 as a loan to Enterprise House in June 2020”. He said he had discussed this with the pursuer. The money to be repaid by Zebra Homes was earmarked for this purpose. Zebra did not repay in June, but did so in September. The defender instructed the solicitors who received the funds from Zebra to pay £500,000 to Mr Beard. The defender produced emails dated 3 September 2020 including one from Ms Amelia Hayes of Jeffries, solicitors,

asking him to confirm whether funds from the sale of a plot or plots at Gable Farm should be released directly to Mr Beard.

[104] It later proved difficult for the defender to be provided with security for the money he had advanced. Mr Beard subsequently made a loan to St Cross Homes (Winchester) Limited. This had nothing to do with the defender. Mr Beard decided to name the defender as a creditor on the charge which he obtained for the loan to St Cross Homes. He did that to provide the defender with security in lieu of the security that could not be provided by Enterprise House in case the defender lost money on the loan for Enterprise House. He did not pay any money directly or indirectly to St Cross Homes.

[105] The defender produced a letter (7/13) dated 1 June 2020 from Mr Vanderhyde to him, in the following terms:

“Enterprise House Investment

Dear Graham,

Following my meeting with yourself and Bradley in Glasgow on the 5th March 2020 then our various ongoing communication to discuss the current investments and future opportunities. Please see below the details of the agreed £500,00 (sic) investment by yourself in the current loan held by Bradley Beard.

- Address of security: Enterprise House, Isambard Brunel Road, Portsmouth, Hampshire PO1 2RX. (Please note the security is currently held in the sole name of Bradley Beard, this will be updated in due course as agreed).
- Loan Amount: £500,000
- Interest Rate: 8% per annum (Interest due on the anniversary of the loan 6th January unless the lender agrees to roll the interest up)
- Loan to be funded by the redemption of your half of the Gable Farm Loan and send directly to Bradley Beard via the borrower’s solicitor.

If you have any queries relating to any of the above do not hesitate to contact me. If in agreement please sign where indicated to confirm you are happy to proceed I will get Bradley to do the same the (sic) send copies to you both for your records.”

Signatures appear above the typed names of the defender and Mr Beard on the copy document produced.

[106] In 2019 the defender set up Assynt as a vehicle for providing loans to construction companies. He held 75% A shares, the pursuer held 7% B shares and each of the children held 6% in C shares. The C shares carried no voting rights.

[107] Assynt was committed to lending EKO £1,059,000 of which £747,740 had been advanced at the relevant date. A further instalment of £73,119 was advanced on 18 September 2020. The defender said that the pursuer had removed funds that were needed for the work at Inverkirkaig. He had to apply his own funds to that work and was left without enough money to fund Assynt to honour its lending commitments. Mr Beard had stepped in to provide £326,000 because otherwise Assynt would have had to default on its obligation to lend money to EKO. He did so on the basis that he would be paid before Assynt.

[108] The loan to Radley was not due to be repaid until 22 January 2022, with interest at 9%, and the loan was to be repaid on the sale of all of the apartments. In examination in chief the defender accepted that the loan agreement did not contain any provision that the loan was to be repaid only on the sale of all the apartments. He had had a conversation with Mr Vanderhyde shortly after the loan was put in place. Mr Vanderhyde told him that Radley had asked if the defender would be "OK" if the loan was redeemed on the sale of all the apartments. The defender was not concerned by that. It meant that Assynt would receive more interest. The rate of interest specified in the agreement was 9% per year. The date of repayment specified in the agreement was not a hard and fast date. In this type of loan there was every chance of delay in repayment, but the loan would not be repaid before the specified date. If the final flat was never sold and Radley were taking advantage of the situation he would at that point call in the loan. When the defender was giving evidence in chief, he said that Assynt had received only one interest payment in respect of the loan.

[109] Last Mile, for whom the defender was working at the relevant date, installed and operated utility infrastructure in the commercial and housing property sectors. It was heavily exposed to the downturn in those sectors caused by the pandemic. Last Mile's directors received market updates from a number of sources, and updates from the financial media. There was a consensus that the United Kingdom would suffer a deep recession. Financial media predicted an 80% drop in property transactions. It was in the light of pessimistic predictions from those providing market updates, and issues related to the two particular redevelopment projects that the defender determined to write down the value of the loans to the extent that he did. The EKO development had a number of problems in relation to build quality, compliance with building regulations and shortages of labour and materials associated with the pandemic. The Radley development was affected by the finding of human remains by archaeologists, and similar difficulties associated with the pandemic. Flatted property, which both developments involved, was not popular during the pandemic. The defender produced a report from the Guardian, dated 26 August 2020 indicating that larger rural properties were more popular than apartments at that time.

[110] The defender's source of information about the progress of the developments all came from Mr Vanderhyde. When the country went into lockdown he immediately called Mr Vanderhyde. After that, they spoke two or three times every 2 weeks. Mr Vanderhyde was based in Essex. The EKO development was in Essex, and the Radley Development in Hampshire. The defender considered he had accurate information from Mr Vanderhyde, and relied on it. He never visited the sites himself.

[111] He had not discussed the impairment of the loans with the pursuer at the time when he prepared the 12 August document. Both of them were at the matrimonial home but he had gone to Inverkirkaig 2 days later. The conversation never happened because the

pursuer left the defender. It was a conversation they would have had if they had come to spend time together at Inverkirkaig after the pursuer's operation as originally planned.

Asked by his own senior counsel about the pursuer's contention that he had plagiarised part of the content of the 12 August document, he responded that at Last Mile he would have seen many reports, including financial commentary in the Financial Times. There were many documents that had led him to the conclusions he had reached.

[112] The defender advanced more money to EKO in September 2020 because otherwise Assynt would have been in default. He also advanced the funds, and did so also in relation to the request from Radley for £220,000, because he had the hope that doing so, and supporting the projects financially, would enhance the prospects that the existing loans would be repaid. It would have been commercial suicide to do otherwise, as he was not equipped to take over and deal with a partially completed site.

[113] EKO did not sell the development until June 2023. Assynt advanced a further £220,000 to Radley, but Radley had a change of heart and returned the money almost immediately. The defender was having trouble with Assynt's Bank of Scotland business account and could not access it. He attributed that to the circumstance that the bank were using the address of McCall & Co for correspondence with Assynt, and the pursuer had not forwarded mail. As he could not access the account, the defender asked for the money to be sent to an account in the joint names of himself and a Ms Williams.

[114] The defender accepted in examination in chief that the 2021 accounts reflected the payment of £220,000 to Radley, but wrongly omitted to show that it had been repaid. He described it as a shabby error on his part. It would have to be corrected in the next accounting period. He accepted also that interest had, wrongly, been written down by 100%, without

recognising the existing write-down. Those errors had no bearing on the truth or accuracy of the 2020 accounts.

[115] The defender had been unable to obtain evidence as to what a willing buyer might have paid for an assignation of his director's loan at the relevant date. The director's loan and the underlying loans to EKO and Radley were unrealisable at the relevant date.

[116] The defender said that he had considered it necessary to terminate the pursuer's directorship because they had just separated. He found the idea of speaking to her difficult. The marriage was finished, and that was not his doing. It did not seem possible to him to have a board meeting to discuss matters. He spoke to RMS accountants and they recommended that he remove her as a director. He emailed and asked her to resign but there was no response so he had to proceed formally. The pursuer was communicating with him at the time but it was clear that from her perspective the marriage was over. The pursuer did not make representations that she should be allowed to remain as a director, so it appeared to him that she did not want to remain. He would have expressed his concerns had she made representations, but he would have considered them.

[117] It was easier to extend a first accounting period than to do so in later years. He had extended the accounting period for a variety of reasons that had nothing to do with the parties' separation. The country had gone through a major pandemic. RMS required him to produce a view on the value of Assynt's assets. It had not been a ploy to evade scrutiny of the accounts by the pursuer when she was still a director. The alteration of the share structure had been to capitalise in order to meet accountancy fees. There was no point adding to a director's loan that was already unlikely to be repaid. It was not to disable the pursuer and the children from insisting on an audit.

[118] Drinks Warehouse was profitable in 2019 when the defender invested in it. It was an equity investment made with Percipient Capital. The pandemic brought the hospitality industry to its knees. A July 2023 report from Percipient Capital suggested that any sale of the business would be 3 to 4 years in the future. The business had been restructured and was showing signs of improvement.

[119] The parties started constructing the property at Inverkirkaig in 2019. On 4 August the pursuer asked the defender to transfer funds of £174,529, which had been allocated to the project, to her. He did so. After the parties separated the pursuer told him that the children wished him to complete the project, and he expended money trying to do that, until his then solicitors advised him to stop. If he had stopped all work the state of construction was such that the structure would not have survived the winter. He had spent £272,162 since the relevant date. Further expenditure would be needed to complete the project.

[120] The pursuer's mother had moved to a flat following the death of her husband, but then wished to purchase a bungalow near her former family home. The parties provided funds of between £20,000 and £25,000 to allow her to do so. The pursuer told the defender that she had discussed matters with her brother and had agreed that on the death of her mother, or sale of the property, the parties would receive first repayment of the sum they had loaned before any equity was split between the pursuer and her brother. The pursuer's mother was in a care home and the defender did not know whether the house had been sold or remained as part of her estate.

[121] The defender had been very distressed to find that the pursuer had a bank account with £19,500 in it about which he knew nothing. He had no idea where the funds came from. It might be money that the pursuer had managed to put away with his knowing anything about it, or might be repayment of the loan made to her mother. The pursuer

never told him she had received any money deriving from her father's estate. During the marriage the parties had always tried to save. He could not understand why they were not saving more when he was at Last Mile, earning between £150,000 and £182,000 each year. The pursuer always provided detailed accounts of their expenditure and he never questioned it. He never considered the possibility that she held a separate bank account. He had not required the pursuer to justify her spending, but they had sat down regularly to reconcile their finances, and he would ask her what they were spending and what they had saved.

[122] In oral evidence he said he was aware of money left by the pursuer's father for her when he died. It was used to fund stables, not a menage.

[123] The parties' boat was purchased for £13,000 and was insured on a new for old basis for £25,000. The defender thought it was worth £10,000 at the relevant date.

[124] The defender disposed of the pursuer's horse box because she clearly had no further use for it. It was unlocked outside the farm where she left it. He donated it to Riding for the Disabled. The trailer was damaged and several years old and the defender thought its relevant date value was in the range £1,000 to £1,500.

[125] Clearing the matrimonial home for sale had been distressing. He placed a number of items of furniture in storage, as well as items of sentimental value, a dinner set, some artworks, and two televisions. He paid for storage until May 2022. He had not been able to sell the second hand furniture. He retained a bed, a storage unit, part of a sofa, a television set, his own belongings and his cycling equipment. He had left some items of furniture, wedding china, crystal, some artworks and white goods in the matrimonial home. The pursuer could have collected those items at any time. Their value was similar to that of the items he had retained.

[126] The pursuer had owned three Land Rover Defenders over the years. The defender decided to commission 4x4 Fabrication to rebuild a Defender as a special gift for her. The cost of refurbishing it was about £55,000. He thought it was a “forever” car for the pursuer. When it arrived she was indifferent to it. The Cummins engine fitted to it made it difficult to drive, and leaked oil, which he was told was normal. The defender agreed to drive the car to Shropshire so a different engine could be fitted. When the engine was removed he was told that it had seriously malfunctioned.

[127] So far as the Audi was concerned, the only difference between its condition at the relevant date and when it was sold was that a warning light had come on for the suspension, and the AdBlue sensor was not working properly.

[128] Although the defender had placed a deposit of £220,000 on a property, it was not the sum repaid on behalf of Radley, but was paid from NS&I account xxx2554.

[129] On 10 May 2022 the chairman of the board of Last Mile told the defender that his employment was being terminated because he was not performing effectively as a CEO. The defender said this happened because he suffered from depression as a result of the pursuer’s “deceitful actions” in ending their relationship. He lost the ability to enhance his share value significantly. He had to wait until 23 October 2023 for his shares to vest. Had that happened, the shares would have been worth £6m. He lost that because he lost his job. He was treated as a good leaver and received a payment of £258,960 for the loss of his employment, and £3,274,100 for his shares. His capital gains tax liability was £636,480. The defender said he had been unable to obtain work since then, but received a nominal payment for acting as a non-executive officer for the Board of Scottish Brain Science.

[130] The defender produced a spreadsheet detailing his resources. It showed that he had made three loans totalling £2,048,196. The funds for those loans came from the proceeds of

his shares in Last Mile. He had security for the loans up to £3.11m, but he had not advanced that much. He did not know and was not interested in whether other lenders had securities over the same subjects.

[131] In cross-examination the defender said that the first thing he did when he discovered the pursuer had left was to check the NS&I accounts, including those in the pursuer's sole name, to which he had access. He could not see the sum he had transferred to her. He accepted that at the time the parties separated he had access to more than £500,000 in a personal NS&I account xxx2554. That was after having transferred £119,529 to the pursuer on 6 August 2020 from that account. On 29 August 2020 he transferred £527,526 from the same account to a new Income Bonds account. He had no idea why he had done that. He accepted also that he had opened a new Bank of Scotland account on 18 September 2020.

[132] He had changed the locks on the matrimonial home and installed two cameras with a motion sensor so that images would be sent to his mobile phone. He did not give the pursuer a key, but told her he had changed the locks. He later gave keys to an agent. He did not recall telling the pursuer that she could have a key if she stopped being silly and came home. He did offer her access, on the basis that she would have to ask him for it. He accepted that she owned the property jointly with him.

[133] When he removed the horse trailer, he had knocked at the door of the farm but there had been no answer. He had made a comment to the pursuer that she had not left him with any clothes that he could throw away or burn, but he had not made that comment in the context of a conversation about the horse trailer. He did not obtain a gift aid certificate from the charity to which he donated the trailer.

[134] Senior counsel suggested to the defender that he had told 4x4 Fabrication to say that they had had the Land Rover Defender since July 2020, which he denied. The defender was

shown the email from Mr Lea (7/49) which related that he had “shipped his car into [Mr Lea] with a fault on 28th July 2020”. The defender said that that was absolute nonsense. He had no idea why Mr Lea would say that he received the car in July 2020. He could not explain why his previous solicitors had lodged the email on his behalf as a production, or why the email was incorporated by reference to the production number at paragraph 35 of the affidavit that he had sworn. He had been relying on the valuation provided by Mr Lea, and had not paid attention to the reference in the email to July 2020. There was no intention to have Mr Lea lie on his behalf. The defender accepted that he had been able to drive the car 235 miles on 9 September 2020. He had been paying £108 a month to store the car in Shropshire since 2020, although it was worth only £9,000. It had been intended for the pursuer and he still had no issue with her having it. The engine had made the car hard to drive, but he had not had it replaced. He did not know whether the Cummins engine was presently in or out of the car.

[135] The defender accepted that the funds provided to Assynt to make loans were matrimonial property. When it was put to him that on the Saturday following separation he instructed RSM to prepare accounts, he did not answer the question directly. He said that the first instruction to them was not on 2 September 2020; they had been involved with the company since its inception, and he had been talking to them continuously since then. RSM had advised him to allocate a share to his father. He needed his father to assist him with the company, as he was removing the pursuer as a director. He did not know why Ross Stupart, of RSM, was on his witness list, or why he had not been called as a witness.

[136] He could not envisage the pursuer remaining as a director. He had lost all trust in her because she had ended the marriage and deceitfully persuaded him to transfer funds to her shortly before by saying that she needed funds because horses required to be moved so

that they could be schooled and ridden. The defender had not held the SGM at his parents' house with a view to excluding the pursuer, but for the convenience of his father, who could hardly drive any more. His parents were very welcoming to the pursuer, and had never said a bad word about her, other than on 28 August 2020 when his father said, "We saw it coming, Anne has been planning this for a long time son".

[137] The defender reiterated his explanation for increasing the share capital on 18 September 2020 rather than increasing the director's loan account. He had not told his fellow directors that he was going to do that, because he did not have any obligation to tell them. Similarly, there was no obligation on him to tell the pursuer that he planned to extend the accounting period. He had written to Assynt on 7 October indicating he would not seek repayment of his director's loan within 12 months. Again, he had not told any of the other directors about that because he was not required to. On 29 October he had signed the accounts in which the EKO and Radley loans were written down, but he had made the decision to write them down before that. He said there was no rush to sign off the accounts.

[138] The defender could not remember whether he had served the notice of SGM and resolution to remove the pursuer as director on the same day that he had sent flowers to her office seeking to persuade her to go to Inverkirkaig and talk matters through. He was trying to save his marriage, but also to run a business.

[139] Senior counsel suggested that the defender had not disclosed his Aviva pension when served with a specification of documents. He said he had not realised he had it. It was only after proceedings were raised that he realised that his additional voluntary contributions had been invested with Aviva.

[140] When senior counsel asked the defender about the former matrimonial home and its contents he repeatedly referred to have been made homeless. He said that he should not

have agreed to sign the Minute of Agreement passed to him by the pursuer. He accepted that he had rented another home, but said it had been difficult to do so because he had two dogs. He considered that the pursuer's valuation of the house contents was excessive. He had tried unsuccessfully to sell some of it. He did not take the lawnmower, but left it in the boat shed. He took the boat which was now stored in the boat shed at Inverkirkaig.

[141] The defender said he had not been party to any conversation about a gift to the pursuer from equity released by the sale of her mother's family home at the time that her mother moved to a flat. He accepted that a menage was built at the matrimonial home, and that a plaque was erected at it, reading "G and G arena". Senior counsel suggested to him that "G and G" stood for gran and grandad. He responded that he thought that it was the stables that had been built with money from the pursuer's father's estate. The defender could not say whether the sum supplied to the pursuer's mother to help her move from the flat to a bungalow was £9,500. He thought it was more than that. It had not come out of his bank account as far as he could recall. He could not say whether it had come from an account in the joint names of the parties.

[142] The Audi had been traded in in Wigan. The defender often located good value cars in England, using the AutoTrader website. When the purchasing business fixed a price for the Audi, they did so using photographs, and without seeing the car. He could not believe that the pursuer would have allowed him to spend £68,000 plus VAT on refurbishing the Land Rover. He was sure that the total had not been as high as that. The Land Rover was not currently taxed, and he had not instructed Mr Lea to put it through its MOT.

[143] The defender received payment of the principal sum and interest in relation to the Zebra Loan in September and November 2020. He denied telling the pursuer in

November 2020 that he had not received payment and that the loan might fail. The whole capital proceeds were paid to Mr Beard.

[144] The defender was shown an email from his former solicitor to the pursuer's solicitor dated 15 February 2023, saying the following:

"The position is as pleaded - Graham made a loan to Zebra Homes Limited of £500,000 due to be repaid by June 2020 for which there was a Loan Agreement put in place. Graham does not have that loan Agreement because it was removed along with other papers in a blue folder around the time your client vacated the property.

In March 2020 Graham agreed with Bradley Beard to take part in a loan arrangement between Mr Beard and Enterprise Homes Limited [Graham does not know the company number] with Graham's commitment to lend £500,000, said monies to be repaid in June 2020.

In June 2020, Graham did not have the money repaid to him by Zebra Homes and so did not have the money to pay Enterprise Homes Limited.

Mr Beard agreed with Graham that Mr Beard would provide the whole loan to Enterprise Homes Limited and he did so. Mr Beard acquired the whole entitlement to repayment and securities provided to him by Enterprise for the whole sum. Graham's loan of £500,000 was with Bradley and therefore unsecured.

At relevant date, Graham is thus due £500,000 by Zebra Homes Limited and has contracted that immediately on its receipt he will pay £500,000 to Mr Beard. Crucially at relevant date, the net position is zero.

Separately Mr Beard invested £500,000 in St Cross Homes in December 2020. Neither Graham nor Assynt Holdings transferred any monies either directly or indirectly to St Cross Homes.

Mr Beard, however, obtained with Graham's cooperation a security in favour of Graham for the sum of £250,000. Graham had not made the link in this respect until receipt of the Companies House documentation you forwarded to me in your email, and his subsequent conversation with Patrick Vanderhyde in which Mr Vanderhyde recalled that the reason Mr Beard obtained this security was a means of giving Graham security on the Enterprise loan deal albeit only for one half of his investment.

St Cross is not featured in any of Grahams loan correspondence or with Assynt Holdings loan correspondence other than knowing Radley House Investments Ltd [11412873] bought the property (St Michael's House) from St Cross."

The defender did not know why there was a reference to Enterprise Homes Limited.

Enterprise House was not a site under development. Mr Beard held a security over the property.

[145] The defender accepted that he was a creditor in relation to the loan agreement dated 1 December 2020 among himself, Mr Beard and St Cross Homes, notwithstanding the email sent by his solicitor stating that St Cross did not feature on the defender's "loan correspondence". He said that there was a difficulty in "getting him on" to the security over Enterprise House. He had not "joined the dots" in relation to a conversation to the effect that Mr Beard was making a further investment, and that the defender would be put on the security in relation to that in lieu of his "security over Enterprise House". The defender had not provided funds to St Cross Homes. The defender accepted also that he had advanced £500,000 in relation to Enterprise House in the expectation that that sum would be repaid. There was no contract between himself and Mr Beard. He had known Mr Beard since 2009 and he had become a trusted friend and partner. He did not have any other agreements with Mr Beard about loans that had not been reduced to writing.

[146] Mr Beard was unavailable to give evidence, according to the defender. He had had a heart attack after the defender left Forefront in 2014. The defender had not seen him for a while. Mr Beard's health was not great and he suffered dreadfully from stress. He had made it clear that he would provide information in relation to the action for divorce, but under no circumstances was he going to put himself through being questioned in court. Senior counsel referred the defender to a certificate signed by Mr Beard and dated 12 September 2023 in which he certified he had no documents falling within a specification that had been served on him. The defender reiterated that Mr Beard had said he would help with "whatever process was required". He disputed the suggestion put by senior counsel

that Mr Beard was absent because he had not been prepared to give untruthful evidence to support the defender's assertions about the investments in which they had been involved together.

[147] The defender said that when he met Mr Beard in Glasgow on 5 March 2020 he was unconcerned about Covid and that there was no indication that there would be any lockdown. He was not taking Covid too seriously at that time.

[148] Mr Beard had not been involved in the loans to EKO or Radley, but had advanced funds on Assynt's behalf because Assynt was in danger of being in default. There was no written agreement in relation to Mr Beard's involvement in that respect. Regarding the repayment of the loan by EKO, the defender knew that the money had to be returned to Mr Beard. The funds had to be paid in the first instance to Assynt, as the legal mortgage holder. Mr Beard however had told the defender to keep the money, and that they were "square" so far as the Enterprise House matter was concerned.

[149] The defender had never inquired as to who the borrower was in relation to Enterprise House. There had been no repayment date in relation to his investment. Mr Beard had invested £2m, which was earning income. The defender had wanted the opportunity to have his money earning income. When he wanted to get the money back he would give notice and say he would like to have the funds back. The defender was shown 6/47 and 6/48, which showed that the registered proprietor of Enterprise House was Axis Associates Limited (Axis), and the existence of a charge in favour of Mr Beard dated 6 January 2017. The defender had not received a quarter of the annual interest on the loan by Mr Beard in exchange for his investment of £500,000. He had been willing to take interest annually on the basis that he would be put on the mortgage. When he was put on the agreement with St Cross Homes, St Cross repaid Mr Beard, and the defender then obtained

funds from that. He had been repaid his capital investment of £500,000 but could not give an exact figure in relation to interest. The money was repaid in 2022 or maybe in 2023.

[150] Shown the loan agreement between Axis and Mr Beard, the defender accepted that the loan was due to be repaid on 6 January 2019 and was therefore 14 months overdue when he agreed to contribute £500,000. That did not bother him, as “you have got security over an asset”. Mr Beard had kept the loan running after the development was completed. He did not know if Mr Beard had called in his loan to Axis, or whether it was ever repaid. He was unaware that Axis had been struck off the register in December 2023.

[151] Number 6/51 of process was a charge granted by St Cross Homes (Winchester) over the Winchester Snooker Centre, St Cross Road, Winchester dated 1 December 2020 in favour of the defender and Mr Beard. The defender said that he had been unaware until the present proceedings that those subjects formed part of the same site as that involved in the Radley development. The property specified in the charge was that held under title HP517470.

[152] On 29 and 30 June 2023 the defender received a series of payments with the reference “Assynt Holdings Li Ent House part pay” (CB 568), totalling £326,559 and a further payment on 4 July 2023 (“Assynt Holdings Li Ent House interest”) of £62,567. At the date of the proof the defender no longer had a security over the Winchester Snooker Centre. He could not recall when he had discharged that.

[153] In relation to his director’s loan with Assynt, the defender denied that he had been repaid. The EKO loan had been repaid in June 2023. Some of that represented repayment of the £500,000 that he had put into Enterprise House. The defender had asked his solicitors, Bramsdon and Childs, to send the money in two tranches, one with interest due to Assynt,

and secondly the sum associated with his investment in Enterprise House. EKO had repaid to Assynt the £741,000 due at the relevant date, a further loan of about £73,000 and interest.

[154] The defender did not accept that it was in his interest to write down the Radley and EKO loans as at 31 August 2020, that he had exhibited bias in doing so, or that he had deliberately presented false and misleading accounts.

[155] The defender reiterated that he had had difficulties with Assynt's bank account in April 2021 and that was why he had had a sum of £220,000 remitted to a personal HSBC account. Shown his personal Bank of Scotland account statement for account xxx0868, he accepted that he had been able to pay sums from that account to Assynt between 1 April and 9 April 2021 carrying the reference "Radley". The account for Assynt (xxx2268) showed payments in corresponding with the payments out of the defender's personal account in early April 2021. On 12 April there was a payment out to Radley House of £220,000. On 26 April 2021 the defender made a further small payment into the Assynt account, and made more payments into the account between September and December 2021. The defender said it was easy to think looking at those statements that the bank account had been operating normally, but that was not the case. His online App had not been recognising his login, and his card reader worked only intermittently.

[156] The defender accepted that correspondence from the Bank of Scotland dated February and August 2023 indicated that the Assynt account had been closed because it had been inactive since April 2022. The bank had sent notice of its intention to close the account in September 2022. The defender could not remember when he had instructed Mr Vanderhyde that the £220,000 should be paid into the HSBC account held by the defender and his then girlfriend, Ms Georgina Williams. The sum was paid in two tranches on 12 and 20 April 2021 (6/63). The defender denied that the account had been opened for

the purpose of receiving that money, but seemed to accept that there had been no earlier transactions on the account. He could not recall when he had opened the account.

[157] Bank records for H S Building and Maintenance, the party that repaid the money on Radley's behalf showed payments out with the reference "Miss G Williams". The defender was unaware that the director of H S Building and Maintenance was Ben Fooks, although Mr Fooks' name was familiar to him as the author of an email forwarded to him by Mr Vanderhyde. He accepted that the £220,000 had been used as part of the funding for his current home. He accepted also that the sum shown as his director's loan in Assynt's 2021 accounts included the additional advance of £73,000 to EKO, the £220,000 advanced to Radley and about £2,000 in accountancy fees. He said he had passed all relevant information on to his accountants, but accepted that there was a glaring error that he had not spotted regarding the repayment of the £220,000. He accepted that not only had the repayment not been reflected, but that the value of the advance had been written down by 80%. He could not comment on why his accountants had done that. He accepted that his affidavit contained no explanation for the error.

[158] Senior counsel asked the defender why the sums advanced by Mr Beard to EKO on behalf of Assynt, so that Assynt would not be in default, were not reflected in the accounts of Assynt as a debt to Mr Beard. The defender said that that was not how the transaction worked. He accepted that he received £134,000 from Assynt in April 2022, and that the accounts for 2022 demonstrated a repayment of £132,000 in respect of the director's loan. A different firm of accountants had prepared the 2022 accounts. The debtor schedule included in the account indicated that information about the loans to EKO and Grays had come from the client. The entries for interest on the EKO loan read "Interest w/back of 2020 due to loan default". The defender could not recall telling the accountants that the EKO loan was in

default. He had not been comfortable with reversing the impairment because there had been significant issues on site and he believed the project had to be refinanced. Senior counsel suggested that at the time he signed off the accounts EKO were about to repay the loan in full with interest. He responded that he had heard on a number of occasions that EKO were about to repay. He accepted that by 11 May 2023 when he signed off the accounts, he had already discharged the security granted by EKO. He said that although he had signed form DS1 relating to the cancellation of entries relating to a registered charge in respect of the property at 61 High Street, Grays, on 7 March 2023 he had not received the funds. He explained that EKO had not in fact refinanced, but had sold the property. He was shown a charge over the same property also dated 7 March 2023 in favour of Lloyds Bank granted by EFC Investments Limited, who appeared to have been the purchaser of the property. He accepted that based on that information it appeared to be correct that he knew when he signed off the accounts that Assynt would indeed be repaid by EKO. After receipt of capital and interest from EKO the balance of Assynt's bank account in July 2023 was £1,050,738.

[159] The defender accepted that a spreadsheet prepared by him (7/43) and lodged in process on 11 January 2023 was inaccurate in that it failed to reflect the repayment of the sum of £220,000.

[160] Before committing to lend money to EKO through Assynt he had had a conversation with Mr Vanderhyde who told him who the owners were, what the end value of the site was likely to be, and that the developers who were buying the property intended to develop a former pub into ground floor retail premises and flats above. Mr Vanderhyde was acting for the sellers in the sale transaction. Mr Vanderhyde did not tell the defender that he had been one of the sellers of the pub through an entity called Fat Goose. The defender received no

accounts from the borrowers. No credit checks were carried out. The first document he received was the proposed loan agreement. The defender could not remember whether he had received any valuations. There would have been a conversation that left him feeling comfortable with the relationship between the loan and the end value of the site. He could not recall having any information about the current value of the site.

[161] The defender said that the terms of the loan agreement were important to him and that he read the detail, but that he had never taken advice about a loan agreement. When he started on the journey of investing in construction he had been successful with a small loan, and subsequent loans had all followed the same “standard process”. Although there was a repayment date, Mr Beard’s experience had been that such loans could run on. One would be happy to wait because interest would continue to accrue. The charge and loan agreement were 6/53 of process. The agreement provided for an advance of £559,000 with a further advance of £500,000 by instalments in the manner set out in Clause 5. Clause 5.1 read:

“LENDER’S COVENANT FOR FURTHER ADVANCES

5.1 Covenant to make Further Advances

Subject to the provisions of clause 5.2, clause 5.3 and clause 5.4 the Lender covenants with the Borrower to advance to the Borrower from time to time the further sum of not exceeding in the aggregate (exclusive of the Present Advance) £500,000 (Five hundred thousand pounds) by such instalments on as many occasions and at such time(s) as the Lender in its absolute discretion shall decide, on request from the Borrower.

5.2 A request for each Further Advance and site inspection.

5.2.1 Any request for a Further Advance shall be before 26 July 2020 and made in writing by the Borrower to the Lender together with payment by the Borrower to the Lender of £250.00 plus VAT (if any) in respect of a site inspection fee on each occasion and at least 14 days prior to the requirement of the release of the same.

5.2.2. Before being required to release any Further Advance the Borrower shall deal with any requirements the Lender may have to the satisfaction of the Lender

in the Lender's absolute discretion, including (without limitation) the Borrower shall allow on each occasion a site inspection of the Property.

5.3 Enforceability

The covenant by the Lender in clause 5.1 shall not be effective or enforceable unless at the time of the proposed further advance the Borrower has in all respects and at all times observed and performed his obligations under this deed.

5.4 Total of further advances

The total of the advances for the time being made under this security shall not at any time before the completion of the Development exceed 50% of the value of the work done up to that time on the construction or works incidental to the construction of the Development including the value of the interest of the Borrower in the Property. The valuation is to be at the absolute discretion of the Lender. Should the Loan exceed this the Loan (together with all interest and other sums due under this deed) is to be immediately repaid by the Borrower to the Lender or at the absolute discretion of the Lender, the Lender may agree to take additional security from the Borrower.

5.5 Registration

The Lender is under an obligation to make further advances and application is made to the Registrar for a note to be entered on the register to that effect."

In relation to Clause 5.4 the defender said that he was comfortable that Mr Vanderhyde would give him updates as to the work done. He was not sure when EKO had requested a further advance but it would have been after 25 July 2020. It was not made in writing and was not accompanied by a cheque for £250. No site inspection took place before the further advance was made. Mr Vanderhyde provided regular updates. No valuations were carried out.

[162] Although accepting that Clause 5.2.2 would have permitted Assynt to ask for cash flow projections before advancing further funds, he would not have asked for those. The loans would only ever be repaid by sale or refinance. He would get photographs from Mr Vanderhyde of the stage the development was at.

[163] Before making the loan to Radley the defender would have had a conversation with Mr Vanderhyde. Mr Vanderhyde had worked with the builders in the past. He assured the defender that it was a good opportunity. No credit checks were undertaken in relation to the borrower or its director, Dean Paul Honeyman. There would have been a conversation about the value of the land. Assynt's investment was to fund the purchase of the land. The defender was not sure whether the borrower was the builder or whether a contractor was the builder. The loan agreement was 7/104 of process. The property over which security was taken was described as:

"All that freehold property known as Radley House, 8 St Cross Street, Winchester SO23 9HX and registered at Land Registry under title HP613962 and the Blue Land formerly part of land registered with title absolute at Land Registry under title number HP517470 and the whole of the Blue Land is transferred from the Borrower by way of the Transfer and the Borrower's title to the Blue Land is in the course of registration by the Borrower's Conveyancer at Land Registry pursuant to the form of the Transfer."

7/105 was a transfer of part of a registered title by St Cross Homes (Winchester) Limited to Radley House Investments Limited of the Winchester Snooker Centre, which was being transferred out of title HP517470 and to be registered against HP613962. It was over the Winchester Snooker Centre that the defender had obtained a security on 1 December 2020. The defender knew that the St Cross Homes development and the Radley development were all part of the same site. The whole site was being developed into luxury housing.

[164] There was no term in the loan agreement requiring repayment only when all of the flats had been sold. The defender did not know when the conversation about that took place with Mr Vanderhyde, but it was before March 2020. The defender accepted that the photographs taken by the pursuer in February 2023 showed a complete development. He was aware that six of the seven flats had been sold by the time of the proof. He had released six properties from the security held by Assynt. The security remained in place only in

respect of one flat. He assumed that Radley had obtained money from the sales. Assynt was owed about £1.5m and had not received any interest since April 2022, but he was comfortable with that situation and had not taken any advice about obtaining repayment. He initially professed to be unconcerned that Radley had delayed filing its accounts. He was shown documents demonstrating that Radley had extended its accounting period so that it ended not on 30 June 2022 but on 31 December 2022. It had then shortened it so that it ended on 30 December 2022. Radley had last filed accounts on 30 June 2021. He said that considering matters in the light of that information he would want to know why that was. He was sure that if there were an issue Mr Vanderhyde would have told him.

[165] Ross Stupart of RSM accountants advised the defender that in the light of the parties' separation it would be advisable if the pursuer resigned as a director. RSM had been involved in auditing Last Mile. Mr Stupart was the tax and managing partner, rather than the audit partner.

[166] The exercise the defender undertook in valuing the assets of Assynt "joined on" to the work RSM had done for Last Mile. From about February or March there were discussions around any impairment Last Mile might see in capex in installing utilities in housing and commercial developments as a result of Covid and the restrictions they were seeing. The defender's view on impairment was influenced by what he was doing at Last Mile. He had been thinking about the impact of the pandemic from whatever date it was that the country had gone into lockdown. He had carried out the assessment of Assynt's assets ahead of mid-August, when RSM had asked him to prepare a paper supporting his views. He had probably emailed it to them. The defender accepted that Assynt had a different asset profile from that of Last Mile.

[167] Senior counsel referred to an email exchange between from the pursuer's agent and defender's former agent dated 13 and 18 January 2023. The pursuer's agents made the following request, in relation to the loans to EKO and Radley:

"If the loan was written down in the Company's balance sheet at 31 August 2020 an explanation of the reason for doing so and the basis/supporting documentation for the reduced value at which the loan was included in the balance sheet."

The defender's agent responded: "Graham does not have any notes between Assynt Holdings and RSM in connection with the recoverability of the loan advances of EKO Grays Limited." The defender maintained in his evidence that he did in fact have the 12 August document at the time of that email exchange. He acknowledged that there was very little information in that document about the specific situations of Radley and EKO, and that it did not refer to any information he had received from Mr Vanderhyde. He had not been aware of the precise nature of the commercial premises that were to form part of the EKO development and did not think that would be important in assessing the likelihood of sale or refinance. Last Mile had experience of dealing with house builders and some smaller developments had come to nothing after the installation of infrastructure. He acknowledged that his assessment so far as EKO was concerned did not take into account the contractual term about the ratio of loan to value or to any of the terms of the loan agreement.

[168] As to his assessment of the Radley loan in the 12 August document, he said he could not remember what entity he had meant when referring to the "borrower's construction business". Mr Vanderhyde had told him that "they" were using furlough. He could not remember the conversation that had given rise to the reference to furlough. The defender had by 12 August 2020 seen the images produced as 7/42 of process. He initially said that his understanding was that those were pictures of Radley House, showing the inside of a

Georgian building. He later acknowledged that they were in fact photographs of the EKO development. He said he had provided photographs of Radley House to his former solicitors. All the photographs he had came via Mr Vanderhyde.

[169] Senior counsel asked the defender about the paragraph in the 12 August document beginning "About 745,000 businesses ...". He said that at Last Mile he had daily conference calls with Infracapital, and received daily reports from Moody's and the Office for National Statistics. He was aware of what had happened to fund values in 2008. Part of the debt in Last Mile was syndicated to Santander, and he had been in regular contact with Santander. Santander knew that other banks were looking at government backed loans and how they would deal with a PR disaster. He "would not disagree" that all but the final sentence of the paragraph was "lifted" from an article in the "Financial Times"; he could not remember where it came from. An article dated 3 June 2020 was produced (6/147) and he was asked about it. He accepted that he had not referenced the article, and said that what he had been provided with was calls with Infracapital. He had had the information that came to be in the 12 August document.

[170] The defender did not accept that he had failed to disclose the loans he had made after separation, in the context of a specification of documents aimed at discovering his current resources. He had considered it sufficient to disclose the sum he had received for the sale of his shares.

[171] In re-examination the defender emphasised that he had been Chief Financial Officer of Last Mile with access to a group finance director, a commercial director, and several quantity surveyors. He had had access to all the information provided to Last Mile's auditors. He had seen difficulties with small developments particularly. If he had known that he would need in the future to justify his decision to write down the loans he would

have produced a “voluminous” document. The defender did not answer directly a question from his own senior counsel as to whether RSM had asked him to set out his reasoning in more detail, but said that he had had “two hats” one, one as a Chief Financial Officer for Last Mile, and the other, in relation to Assynt, as an individual. He insisted that he had not had accessed the “Financial Times” to find the passage. Ninety per cent of his information had come from Infracapital.

[172] The commercial justification for lending £220,000 to Radley in April 2021 had been that it would increase the chances of his recovering his money in due course. He had understood that Radley had decided to make changes to the development. Mr Vanderhyde had then called him and said that the developer had had a change of heart. He had been in a “silly phase in his life” when he opened a joint account with Georgina Williams. There had been an opportunity to buy a house with her, but he had not been in a fit state of mind to make decisions of that sort.

Patrick Vanderhyde

[173] The diet of proof did not conclude in the days assigned, and as a result Mr Vanderhyde gave evidence about 3 months after the defender did. As a result he was able to provide information about repayment of the Radley loan that had occurred after the defender had given evidence.

[174] Mr Vanderhyde is 50 years of age and has worked as a financial adviser since 1999. He gave evidence that he held CEFA1, CEFA2, and CMAP 1, 2 and 3 qualifications, and that he was authorised by the Financial Conduct Authority as a mortgage and protection adviser. He said his main work was brokering deals between borrowers and lenders.

[175] The witness first met the defender in 2019. Both of them knew Mr Beard.

Mr Vanderhyde knew the people who owned Radley and had done deals with them in the past using different business entities. They wanted funds to buy Radley House. He did “some due diligence” on the project and put the deal to Assynt. Assynt loaned moneys and were provided with a first charge. Mr Vanderhyde only visited the site on two or three occasions out of curiosity to see how things were developing. Those visits were at a very early stage of the project, just before and after the loan was made. It was not part of his remit to monitor the work. He did obtain information about progress from Radley’s project manager and discuss it with the defender.

[176] The original agreement had been for repayment within 2 years. The borrower requested to repay on the sale of the last flat. Mr Vanderhyde put that proposal to the defender and he agreed. Radley repaid about £1.4m in February 2024. There had been no repayment before then, other than of the £220,000 advanced in April 2021. There was approximately £100,000 of capital still outstanding, and no interest had yet been paid. There was still one flat on the market.

[177] Mr Vanderhyde had passed to the defender an email dated 12 August 2022 from Ben Fooks. It contained an account of difficulties encountered in the development of Radley House. It said that in and around August 2020 the property had been stripped out in preparation for construction and was in a state of disrepair. It also included a timeline of events. Some, including a delay to works in February 2020 when human remains were found and an archaeological dig assessment was required, predated the relevant date. The timeline also included a number of items that did not. The author narrated that lockdown measures had impacted staff availability until 10 May when the rules started to lift, and that when the work force started to return, there were still issues with suppliers. As far as

Mr Vanderhyde was aware the dates in the time line were accurate. He would have spoken to Mr Fooks at the relevant times and relayed the information to the defender. So far as the archaeological issues were concerned, Mr Vanderhyde did not know what internal and external work had been allowed to continue while those were being investigated. He thought the issue was on a particular part of the site and arose during excavation of some of the foundations.

[178] Mr Vanderhyde had not previously dealt with the owners of EKO but they were introduced to him by the sellers of the site, who were his clients. Again he did some due diligence and Assynt agreed to lend money. He visited the site on twenty occasions as part of his job was to monitor the works. He had no formal qualifications in assessing the progress of building works, but had experience through ten projects in which he had been involved himself, and in relation to loans arranged by him. There were two types of visits. The first would be to deal with reported problems or changes relating to the project, and the second would be a stage payment visit when further money was provided to continue with the build. Mr Vanderhyde would produce photographs for the defender, particularly in relation to staged payments. He had taken the photographs in 7/43 in summer 2020.

[179] A lot more of the building needed shored up than had been thought initially, and that increased costs. In August 2020 the development was at an early stage and the building was an open carcass. He would speak to the defender once every 4 to 6 weeks. He went on to say that they spoke more often during the pandemic. That was typically by phone. They did not meet in person to discuss either the EKO or Radley site. They had some email discussions.

[180] Mr Vanderhyde had passed an email from Ozgur Orman, dated 13 July 2022, to the defender. Mr Orman was one of the directors of EKO. He was not known personally

to Mr Vanderhyde. The email set out a list of difficulties encountered in the project.

Amongst other things, it narrated that Covid had caused delays in materials and labour; and as at August 2020 the building was a “shell and core”, subject to delay, and over budget.

Mr Vanderhyde said that the contents of the email accorded with his own knowledge of the project and that he had been informed about the issues at the times they arose. An issue that caused the contractor to leave the site, and require to be replaced, had arisen at an early stage in the project. The first lockdown occurred, and that gave rise to increased costs and difficulties between the contractor and the client about agreeing a revised price. The client had to fund shortfall in about July 2020. Mr Vanderhyde had made the defender aware of all these issues at the time. An issue narrated in the email about the roof structure had occurred after summer 2020, as had an issue about retrospective compliance with building control requirements.

[181] EKO had been close to refinancing with Barclays at one point but had not achieved that. The defender had been pressing for repayment.

[182] Mr Vanderhyde met the defender and Mr Beard in Glasgow on 5 March 2020. They discussed various business opportunities. Mr Beard had loaned £2m for a project to develop Enterprise House in Portsmouth. The defender agreed to lend £500,000 to reduce Mr Beard’s exposure in the development. Following that meeting Mr Vanderhyde sent the letter dated 1 June 2020. As a result of what was agreed the defender was committed to lending £500,000 although he did so later than had been planned because of the timing of repayment from Zebra Homes. Mr Vanderhyde’s role was to broker the arrangement.

[183] As the defender had not provided money for the project at the outset he was not given a security over Enterprise House. Mr Beard thought he really should try to give

the defender some form of security, so decided to put his name on a security granted by St Cross Homes.

[184] In cross-examination Mr Vanderhyde said that he operated principally through Flagstone Capital Limited. When brokering deals of the sort in which the defender was involved Mr Vanderhyde was not regulated by the Financial Conduct Authority. He nonetheless had regard to the regulations concerning money laundering when doing unregulated work. When asked specifically about whether he would discuss with his client, in the course of unregulated work, the risk profile of the loans and the appetite of the lender for risk, he said that that would not be addressed specifically, but be encompassed in a broader discussion of the loan in question. Mr Vanderhyde would provide information about the proposed loan to the defender, with no additional information coming from the borrower.

[185] He worked with quite a few solicitors in relation to such deals, but had used Bramsdon and Childs on some occasions. When a loan was redeemed the funds would be remitted to the lender's solicitor. If a borrower was in default he would liaise with the lender and provide information on what the current situation was with the borrower. That would be to help understand why the project had taken longer, and to learn whether the lender wanted to enforce the security. He would try to work with both parties. Both EKO and Radley had not repaid on the due date, and Mr Vanderhyde had acted as go-between for borrower and lender. In a number of loans there was a provision for annual interest or for a roll up of interest if the lender agreed. He would be involved in requests for the rolling up of interest.

[186] Mr Vanderhyde accept that, as evidenced by emails produced as 7/109 and 6/45, he had been involved in the redemption of the Zebra loan, and in communications about

to whom the funds were to be paid, and the discharge of the security in September and November 2020. He characterised the nature of the Enterprise House transaction as a loan by the defender to Mr Beard, and which Mr Beard required to repay to the defender. The interest rate was to be 8% per year, and there was no date of repayment. Asked whether interest was to be paid annually, Mr Vanderhyde replied that it was “annually on review”. He said that meant that as long as Mr Beard got his 8% interest he would pass that on to the defender. That meant that the defender’s receiving interest depended on Mr Beard’s receiving interest. Mr Vanderhyde had received a broker’s fee. Asked who had paid that fee, he said it had been paid by the borrower. He did not mean Mr Beard but “the ultimate borrower”. He could not remember who that was.

[187] The arrangement was discussed at the meeting on 5 March 2020 and was “pretty much agreed at the meeting”, and the parties agreed the “final points” afterwards by phone. There had not been a three-way phone call. There may have been a Zoom call. The ultimate borrower was not involved. They had paid a fee when the initial loan of £2m was arranged. They thereafter paid an annual brokerage fee. The original plan had been to speak to the “original solicitor” and get the charge amended to show both Mr Beard’s name and that of the defender. No thought was given to assigning part of the loan to the defender, and no solicitor had been asked to advise about that. Mr Beard usually took payment of interest annually, on the anniversary of the loan. It was at that point that Mr Vanderhyde would receive a further brokerage fee.

[188] When asked why there was a delay between the meeting of 5 March 2020 and the letter dated 1 June 2020, Mr Vanderhyde said that he guessed that he, Mr Beard and the defender were still in discussion. Mr Vanderhyde accepted that the loan had been due for repayment in January 2019 and that the borrower was already in default in March 2020.

The borrower and Mr Beard had, however, agreed that the loan would be ongoing. Asked whether he had, as the go-between, talked with the defender at the meeting about the site, the circumstances of the borrower and the exit strategy, he responded that there was no exit strategy, as the loan was ongoing and that they would have spoken about that at the meeting. It was his practice to provide advice about unregulated products verbally rather than in writing, although there might be email correspondence as well. He would not provide a client with a document setting out the risks and information about the borrower. Those matters would be discussed verbally and the legal advisers would provide any necessary documentation. He did not think there had been a discussion with the defender about his attitude to the fact that the loan was already overdue. He thought that the defender found the arrangement for interest to be acceptable. He had not mentioned that there had already been a missed repayment date.

[189] The inclusion of the defender's name as a creditor on the agreement with St Cross Homes created an obligation on Winchester Homes to pay not only Mr Beard but also the defender. Mr Vanderhyde did not think that the attention of St Cross Homes was drawn to that before the loan agreement was drawn up. He would "just have instructed the paperwork". He was aware that the property was adjacent to Radley House.

[190] Mr Vanderhyde said that the loan to Axis had not been repaid, but that the defender had been repaid the £500,000 he had advanced. The defender had been repaid some money from the proceeds of the loan to St Cross homes when that loan was redeemed. Mr Beard had provided part of the funding for the EKO loan and on the redemption of the EKO loan Mr Beard had settled the remains of the advance that the defender had made to him in respect of the Enterprise House transaction.

[191] TC Project Management (TC) had introduced Mr Vanderhyde to EKO.

Mr Vanderhyde was the sole director of Fat Goose Property Developments Limited (Fat Goose). Fat Goose provided TC with a second charge loan to help them finish the development of the Pullman Tavern (the site of what became the EKO development). TC had “done the site behind”. They had been supposed to be “doing the front”. The site had been repossessed by the holder of the first charge. Fat Goose lost its investment. When EKO purchased the site, the first charge holder received their capital, and wrote down a substantial sum in interest. Fat Goose received nothing on that purchase, but recovered £185,000 of a £500,000 investment “in an arrangement with the sole director”. Asked whether he had disclosed to the defender that he had a financial interest in the sale of the site, he responded that there were two separate sites. The interest of Fat Goose was in the site behind. He did not think it was relevant to tell the defender of that interest.

[192] Mr Vanderhyde was shown 6/83, a record from HM Land Registry relating to 61 High Street, Grays. As at 12 March 2023 it showed the proprietor as EFC Investments Limited. The register of charges included an entry narrating that a transfer of the land in the title dated 26 September 2019 made between TC, EKO, CPB Residential Finance Limited and Ian Wallaker (Builders) Limited contained restrictive covenants.

[193] When preparing to offer Assynt the opportunity to lend money to EKO, Mr Vanderhyde had a valuation from Savills. He could not remember what the valuation of the Pullman Tavern had been, but he thought the site was valued at £1.5-£1.7m with a finished value of more than that. He had seen the contractor’s quotations and he had also had discussions with Barclays, who were EKO’s bank about providing an exit strategy. He believed he had provided the defender with the valuation from Savills, but could not say without checking his records. He could not confirm whether he had shown the defender

the contractor's quotations. He had nothing in writing from Barclays, but would have had a conversation with the "bank managers". The exit strategy was to rent out the five flats above the retail unit, and the developers, who operated a chain of supermarkets, would run the retail unit as one of their own stores.

[194] In relation to payments after the first advance of £559,000, Mr Vanderhyde said that the contractor would have split the building into stages and there would have been stages to trigger further draw downs. He had satisfied himself that the stages had been met to allow further payments by Assynt. As to the payment of £73,119 on 18 September 2020, he could not say what stage had been met to trigger that payment. He would not have told Assynt to make a payment if the appropriate stage had not been achieved. He could not remember whether, in terms of the loan agreement, there was to be a calculation of the value of the loan to works ratio before further advances were made. He thought it was standard terminology in the contracts. The 18 September 2020 payment would have been requested by EKO "shortly before" that date. Information that they had reached the appropriate stage would have been provided about a week before the payment. He would be invited to the site and would provide photographs and an update as to the description of the works to the defender to enable Assynt to make the payment. There would be an email trail in relation to stage payments and there would also be verbal communication.

[195] Mr Vanderhyde kept a spreadsheet in relation to the loan in order to assist with the calculation of interest. He recorded on it matters such as the dates of further advances provided by the lender. He thought he had provided it to the defender. Both the lender and the borrower were his clients in a transaction of this sort. He did not consider that he was providing advice to a lender when seeking from the lender a further advance requested by the borrower. He was simply giving information as to the stage the project had reached.

He could not say on whose behalf he monitored the progress of the works. He said that he guessed that “it [was] a bit of both ultimately”, which I took to mean that he was acting for both borrower and lender in doing so. In relation to the twenty visits he had made to the site, he said that that was more for the lender’s benefit, although the lender did not pay him for that service.

[196] Mr Vanderhyde did not know why the defender had asked him to obtain the information contained in Mr Orman’s email of 13 July 2022. His own covering email to the defender narrated that he was attaching an email with photographs from the contractor, but he believed that the photographs he sent were the ones that he personally had taken and which were lodged as productions. He did not know why payment from EKO had come only in June 2023 when the property had been sold and the security discharged in March 2023.

[197] The loan provided to Radley was to acquire property, and not to fund its redevelopment. Mr Vanderhyde could not remember the name of Radley’s director, but accepted that it was Dean Paul Honeyman. He had known Mr Honeyman for 7 or 8 years, and also Ben Fooks, whom he described as a shareholder in Radley. Mr Fooks was generally Mr Vanderhyde’s point of contact. Radley were referred to Mr Vanderhyde by other clients, but he had also previously done regulated work for Mr Honeyman and Mr Fooks. Mr Fooks was a director of HS Building and Maintenance Limited, who were the builders involved in the Radley development. Mr Vanderhyde had advised the defender on the pros and cons of agreeing to repayment only on sale of the last flat. The pros were the amount of interest that would accrue, and the cons were that the value of the security would get to a level where it would be less than the amount loaned. He had given that advice by phone, but could not remember when he had done so. He did not advise him that there might require to be a

variation of the loan agreement or advise him to seek legal advice about that. There was no direct communication between borrower and lender about the matter. Radley had started selling the flats by May 2022. It had been a concern that the loan was not repaid at a point when six of the seven flats had been sold, but Mr Vanderhyde had done business with the same people before and they had always repaid their loans. There had been a personal guarantee from Mr Honeyman.

[198] In April 2021 Mr Fooks requested a further advance to assist with cashflow for proposed additional works. There was no paperwork provided to the defender in relation to that request. There would have been an email trail in relation to the request involving himself, Mr Fooks and the defender. Radley changed their mind and so did not need the funds, and returned them to the defender. The conversation relating the change of heart had occurred between 10 and 12 April 2021. Mr Vanderhyde provided the details of the account to which the money was to be returned. The defender provided him with that information, and must have done so between 10 and 12 April 2021. The defender said he had an issue with the account he wanted the money to be sent to and provided alternative account details. That had not triggered any concern in Mr Vanderhyde in relation to any obligations he might have relating to the prevention of money laundering.

[199] The defender started pressing for payment. He had been stressed in relation to court cases but had “got his head straight”, and the magnitude of the loan in relation to the remaining security started to become a concern for him. The conversation started when the last flat remained unsold. The defender had been asking for payment all through 2023.

[200] Mr Vanderhyde’s covering email sending Mr Fooks’ email of 12 August on to the defender wrongly narrated that Mr Fooks was the director of Radley. Mr Fooks was managing the works on the development and had a better understanding than the director

of the issues with it. The timeline Mr Fooks provided, although extending into 2022, did not mention the marketing of the flats for sale in 2022.

[201] Mr Vanderhyde had not brokered a loan that the defender provided to St Cross in November 2023. He had brokered loans to Altavia, Lion's Den Developments and Shaun Pridmore. The payments were made by and to Bramsdon and Childs, solicitors. Although he had spoken to the defender since the defender gave evidence, he had not discussed the case with him. Their discussions had been about lending by the defender to Mr Fooks.

Alan Robb

[202] Mr Robb provided reports regarding Assynt (7/40 and 7/149) and Drinks Warehouse (7/44 and 7/149). He adopted those reports.

[203] It was up to Assynt to choose its year end. It would usually be 12 months after the company started trading. It had not started trading until August, and it would not be unusual to run the accounts for 12 months after that. Directors of a company had an obligation not to overstate the asset value of the company, because that might mislead creditors. They had to state a fair value, which was a market value or realisable value. The need for prudence was reflected in paragraph 2.9 of the financial reporting standard.

[204] Mr Robb had asked about the basis on which the decision to write down the loans had been made. He was provided with the emails from Mr Orman and Mr Fooks. The state and stage of development of the properties was relevant because the company would only be able to repay the director's loan if it were it able to receive repayment of the loans to EKO and Radley. Mr Robb had not made any inquiry into the accuracy of the information in the emails from Mr Orman and Mr Fooks. He had seen the photographs of the EKO

development. He understood the information in those emails to have been information that the defender had when he was considering writing down the loans.

[205] Mr Robb included those emails as appendices to his report. He did not include the 12 August document as an appendix. He said that that was because it was not information from a third party. He thought it was “just [the defender’s] paper to support his decision of writing down the loans”. He did have the 12 August document when preparing his report, which was dated 21 December 2022. There was nothing in the macro-economic view set out in that document with which he disagreed, nor in the section headed “Micro economic view for the UK”. The information in the paragraph beginning “About 745,000 ...” was information that was in the public domain. If it turned out to be information taken from an article which senior counsel described as “by the former chancellor”, that would not change Mr Robb’s view.

[206] The document showed that the defender had considered the cash position of the borrower and the possibility of a forced sale, so far as EKO was concerned. In relation to Radley the document showed that he had considered the ability of the borrower to generate cash, and the underlying value of the property developed. In relation to Radley there would be no cash coming in until the property was developed and sold, and that was not imminent. It was also difficult to see how any cashflow could be predicted for EKO with certainty or accuracy. It would have been difficult to get a surveyor to value either project at the relevant date because no-one knew how things would turn out when the pandemic was over. The value of the director’s loan was nil. Mr Robb was told that the defender’s solicitor had tried to find an expert to give an opinion on the value that a buyer would have been prepared to pay on the open market to take an assignation of the defender’s director’s

loan, but had been unable to do so. That might suggest that the value of such an assignation would have been nil at the relevant date.

[207] Drinks Warehouse was a drinks wholesaler based in Kent which supplied the hospitality industry in South East England. It raised £2m of equity funds to expand its existing business. In the year to 31 May 2019, when the investment was made, it incurred a loss of £460,566. The accounts for the following accounting period to 31 December 2019 reported a profit of £109,851. Thereafter the company incurred losses of £1,115,000 in the period to 31 December 2020. That was reported in the Percipient investor report. It reported a loss of £2,186,318 for the 18 month accounting period to 30 June 2021. The defender had invested in the company as part of a fund raising exercise by Percipient, a wealth management enterprise, who raised private equity funding for small and medium sized companies like Drinks Warehouse.

[208] In Mr Robb's view the company had no value either on an earnings or assets basis at the relevant date. It was incurring significant losses, and the prospects of the hospitality sector were uncertain. He accepted that at around the relevant date the government had provided assistance to the hospitality industry in the form of the "Eat out to help out" scheme. That was, however, a temporary scheme designed to prevent mass unemployment in the sector. Mr Robb did not think that there was a quantifiable value associated with "hope value". No one would have paid anything for the defender's shares at the relevant date.

[209] In cross-examination Mr Robb accepted that if it were appropriate to write down assets in a particular manner for accounting purposes, the value to which they were written down might not reflect their value as between a willing buyer and a willing seller. The information he had as to the value of the EKO loan was that to which he had referred in his

report. He could not remember what he had been provided with when first instructed. He thought he had been given the accounts of Assynt. He had then asked for information about the loans and been given a spreadsheet and the emails from Mr Orman and Mr Fooks. He received the 12 August document at about the same time, when he requested information.

[210] Mr Robb would have been interested to know that the change of accounting year end and increase in share capital had been effected without the knowledge of the pursuer. Mr Robb had not considered how long it had taken the defender to sign off the 2020 accounts. He accepted that if one had very limited information it would be necessary to exercise caution when that information derived from an individual with an interest. He accepted that it would be relevant to know that a director who had written down a loan by 90% proceeded only weeks later to advance a further sum to the borrower. He did not know if he had been told about the further advance to EKO, but said that a lender would have to consider whether to withhold funds, which might further impede the project, or advance them in the hope the project would proceed. There had been a great deal of uncertainty at the relevant date. Mr Robb had not been provided with any reports by anyone who had been monitoring the condition of the developments.

[211] He would normally be interested in the existence of a security, but at the relevant date it had been difficult to get surveyors to provide valuations. The value of the land before the pandemic was irrelevant. He could not comment on whether it would have been prudent for the directors to wait longer than the defender did to finalise the accounts. Mr Robb had been unaware that the final two issues narrated in Mr Orman's email, in relation to building control and a design fault with the roof, were not known at the relevant date. He had been unaware that Mr Fooks was not a director of Radley. There was not sufficient information in the emails to permit any assessment of the values of the properties.

He did not know to which property the photographs he received related. He assumed they related to both. Mr Robb accepted that a property under construction was not without a value. His report narrated that a third party investor provided funds to continue the EKO development and that their security ranked in priority to that held by Assynt. He did not know whether that had been the case at the relevant date.

[212] Mr Robb had been unaware of the inaccuracies in the accounts of Assynt in later years, and of the arrangements for repayment of the £220,000 advanced to Radley in April 2021. He did not know that the security granted by EKO was discharged before the defender signed off the 2022 accounts, or that the loan had been repaid in full. He had not been told that six of the seven flats at the Radley development had been sold by the time of his report.

[213] In re-examination Mr Robb accepted that he had been given information to indicate that the photographs related to the EKO development. It would have been irrelevant to consider whether the loans were repaid or the condition of the developments in 2022, because that was not known at the relevant date.

Submissions

[214] There was no dispute between the parties as to the law that I required to apply.

Pursuer

[215] The pursuer sought orders for divorce and for payment of a capital sum of £2,265,000 payable within 28 days of date of decree of divorce with interest at the rate of 8% per annum from the date of service of the summons on 14 February 2022 until payment. She also

sought incidental orders ancillary to the order for payment of a capital sum in the following terms:

- (a) Ordaining the release to the pursuer of the whole sums held on joint deposit on behalf of the parties by Gebbie & Wilson LLP in respect of the sale of Overhall Farm and to order that one half of the total sums paid to the pursuer constitute a payment to account of the capital sum due by the defender to the pursuer;
- (b) Ordaining the sums held by the parties jointly with Walker Crips to be paid to the pursuer and to order that one half of the sums paid to the pursuer constitute a payment to account of the capital sum due by the defender to the pursuer; and
- (c) Ordaining the sums held by the parties jointly with Standard Life to be paid to the pursuer and to order that one half of the sums paid to the pursuer constitute a payment to account of the capital sum due by the defender to the pursuer.

[216] She recognised that there was an issue as to whether the court should make an order for the transfer by the pursuer to the defender of her share in Inverkirkaig, and as to whether the court should order the sale of the parties' boat. If there were to be an order for transfer in respect of Inverkirkaig, the pursuer should receive her full capital sum in exchange.

[217] The defender had not established in evidence that he had a liability of £500,000 at the relevant date in respect of an obligation to pay that sum to Mr Beard in relation to Mr Beard's loan to the developers of Enterprise House. If he had, there was a corresponding obligation on Mr Beard to repay the sum. The pursuer had established that the £19,500 in

her Bank of Scotland account was not matrimonial property. The defender had no record for any loan to the pursuer's mother, and there was no evidence to support the proposition that there was such a loan.

[218] I set out below my conclusions in relation to the balances on various of the parties' bank accounts and do not rehearse the submissions about these here. Senior counsel invited me to accept Mr Bathgate's evidence about the value of the Land Rover Defender and the Audi, and Mr Robb's evidence about the defender's shares in Drinks Warehouse.

[219] Assynt's assets derived from matrimonial property and in particular from an NS&I account in the sole name of the pursuer. The loans were funded by a director's loan account in the name of the defender. The company owed the defender £2,276,536 at the relevant date. The defender had no proper basis for writing down the loans to Radley and EKO. There was no evidence to support his having done so, or to support the view that the loans were not recoverable. The basis for writing down the loans proceeded on the assertion of the defender. He was not a credible or reliable witness. His evidence was not supported by that of Mr Vanderhyde, who offered no view in his evidence as to the recoverability of either loan. The pursuer had calculated that the tax after profit that Assynt should have declared to 31 August 2020 was £115,542.

[220] The pursuer did not suggest that I depart from equal sharing, but submitted that in the absence of equal sharing of the full fruits of the economic efforts of the parties during the marriage she would suffer economic disadvantage, and the defender would benefit from economic advantage. The defender was seeking to deprive the pursuer of an equal share in the value of his director's loan at the relevant date, in circumstances where EKO had repaid in full with interest at 9% per year, and Radley had repaid around £1.4m. The pursuer had made sacrifices in her career to look after the children of the marriage. That

enabled the defender to take roles of his choosing which generated capital gains. After separation she used funds in her accounts to support the adult children of the marriage.

[221] The defender had liquid assets available to him from which to make payment.

The schedule produced with his affidavit was misleading and incomplete. It did not include current values for his pension, the sums held on joint deposit receipt with Gebbie & Wilson, or the funds available to Assynt to repay his director's loan following repayment of the EKO loan. He had also received, since compiling the schedule, around £1.4m from Radley.

Senior counsel disputed the submission for the defender that the sum would be subject to corporation tax, in the context of repayment of the director's loan.

[222] The defender had been using matrimonial assets since separation and had earned interest on them, and I should award interest on the capital sum. In the course of discussions counsel recognised that the sum on joint deposit receipt had been earning interest, and that it might be desirable to address the question of the sum on which interest might run at a by order hearing.

Defender

[223] The defender moved the court:

- (a) to sustain his second plea in law and to order the transfer by the pursuer to the defender of her whole right title and interest in the parties' jointly owned heritable property at Inverkirkaig;
- (b) of consent to sustain the pursuer's second plea in law and that to the extent only of finding the pursuer entitled to payment of a capital sum by the defender of £756,803 payable within 8 weeks after the date of decree

- of divorce to follow hereon; with interest on any unpaid part thereof at the rate of 8% per year from the date same falls due until payment; and
- (c) to make an order under s 14(2) of the Family Law (Scotland) Act 1985 for the sale by the defender of the parties' jointly owned 6.5m "ES" rib boat and 150hp Mercury engine and for the equal division between the parties of the net free proceeds of the sale.

[224] The pursuer's attacks on the credibility and reliability of the defender were unfounded and misconceived. She had formed, erroneously, the impression that since separation he had conducted his financial affairs in a manner such as to deprive her of her entitlement to fair financial provision on divorce. The defender was a credible and reliable witness who accepted that he had made some errors in relation to Assynt's accounts. There were elements of informality in his business dealings, but that was not a proper ground for suspicion when the individuals involved operated on a basis of mutual trust.

Mr Vanderhyde had no interest in the outcome of the proceedings. Although advice given in his unregulated business brokerage appeared to have been less rigorously recorded than one would expect in relation to regulated business, Mr Vanderhyde would not be able to operate in business were he not considered honest, truthful and reliable by those with whom he dealt.

[225] Neither party had established the value of the contents of the matrimonial home, and the precise division between them had not been established. Both parties had removed and retained items. The court should proceed on the basis that an equal division had been achieved. The parties' boat should be sold, and the value of the horse trailer at the relevant date had not been proved.

[226] The pursuer had failed to prove that the £19,500 in her Bank of Scotland account was part of a gift from her mother. She had not produced bank statements that might have vouched the position, or led evidence from her brother.

[227] The court should reject the evidence of Mr Bathgate. He had assessed the value of the Land Rover Defender to a special purchaser. He had acknowledged that adapted vehicles of that marque were advertised in specialist publications, but had not attempted any comparison with such vehicles. Mr Bathgate had not seen the Audi, and it sold for much less than his valuation in October 2021.

[228] Interest had been applied to the joint NS&I accounts only after the relevant date and should be left out of account.

[229] The defender was uniquely well-placed to assess the realisability of the loans to EKO and Radley, given his role as CFO of Last Mile, which provided him with access to relevant market information. Last Mile had itself carried out an asset impairment exercise in relation to the impact of the pandemic. The defender properly took into account information he had about the development sites from Mr Vanderhyde. It would have been difficult to obtain valuations from surveyors and in any event the value of the sites would have decreased in the destructive phase of development. Cash flow assessments would have added nothing because the companies had no cash flow at the relevant date and funds depended on the sale of the developments. Further lending was justified because it might enhance the prospects of recovering the loan eventually. Mr Robb regarded the write-downs as “not unreasonable”, but thought the defender should have gone further and written the loans down to nil. I should prefer the evidence of Mr Robb to that of Mr Rowand so far as Drinks Warehouse was concerned.

[230] The evidence established that at the relevant date the defender had an obligation to pay Mr Beard £500,000.

[231] Parties were agreed that if the pursuer were to transfer her share of Inverkirkaig, the value of her interest in the title at current values was £98,750.

[232] The defender submitted that there was no justification for a departure from equal sharing in favour of the pursuer. There was no basis on which to conclude that the pursuer would have become a partner in Ernst and Young had she continued to work there. She chose to give up work for a period. She had in any event continued to work for most of the marriage. She now had a successful business of her own. The court should depart from equal sharing by recognising to the extent of £15,000 the advantage derived by the pursuer from the assistance the defender gave her in the initial stages of her own business.

[233] By the stage at which submissions were made the defender no longer advanced any argument that his resources would not permit him to meet an award. Assynt had by then received funds in respect of the Radley development. Senior counsel was instructed that those funds, which had been referred to in evidence as being in the region of £1.4m, were in fact £1,479,230. They would be subject to corporation tax. Senior counsel for the pursuer disputed that, on the basis that the director's loan would be repaid. That would not give rise to corporation tax. Only the income derived from the loan would represent profit to the company.

[234] So far as interest was concerned, there was no debt readily ascertainable at the date of separation or service of the summons. Part of the matrimonial property, namely the net proceeds of sale of the matrimonial home had been accruing interest for both parties. There had been a discharge of a diet of proof on the motion of the pursuer and the defender ought not to have to pay interest for the period by which the proof had been delayed.

[235] The defender insisted in an objection to a line of evidence that in advancing funds to assist Assynt make payments to EKO after the relevant date Mr Beard was lending money to Assynt, and that such a loan should have been reflected in Assynt's accounts. There was no record for that suggestion.

Conclusions on the evidence

Credibility and reliability of witnesses

[236] I regarded the pursuer's evidence as generally credible and reliable. She was wrong in relation to two matters in her evidence. She suggested that she was entitled to 41% of the net profits of Assynt. That is wrong. Her shareholding at the relevant date was one of 7%. She also suggested that Assynt should have written down the director's loan account because it had written down the assets of the company. Senior counsel for the defender was correct to point out that she was wrong about that, and that that analysis failed to recognise the distinction between Assynt's position as a debtor and its position as a creditor.

[237] The pursuer had, however, correctly identified a number of discrepancies in the accounts of Assynt, occurring over a number of years. The defender criticised her for being unduly suspicious about the conduct of his financial affairs since separation, and suggested that her evidence was coloured by that. I have found a number of her suspicions to be well-founded.

[238] I did not regard the defender's evidence as credible and reliable in relation to matters which bore on his financial interests. I reached that conclusion mainly for reasons given more fully in the part of this opinion dealing with his writing down of the EKO and Radley loans under the heading "Assynt".

[239] A number of passages in the defender's evidence demonstrated a tendency to exaggeration. He referred having been left homeless when the pursuer left. He vacated the matrimonial home, agreed to its sale, and rented property in which to live. He was not left without living accommodation. He had money at his disposal. He has since purchased a house.

[240] The pursuer submitted that I should place some weight on the non-declaration of the defender's Aviva pension in assessing the defender's credibility. I have not done so. The pension is a small one deriving from a period of employment many years ago. Its existence emerged from a valuation lodged by the defender himself. I do not consider that the defender intended to mislead the pursuer or the court in relation to it, and I attribute the non-declaration to inadvertence.

[241] It is difficult to understand why the defender should have referred to and relied on the email from Mr Lea in his affidavit when its content is at odds with his own account in the same affidavit of both how and when the Land Rover came to be delivered to Shropshire in 2020. Mr Lea's emails relate that the vehicle was shipped to him in July with a fault, whereas the defender's account is that he drove the car to Mr Lea in September 2020 and experienced some unusual engine noise on the way. I have not required to determine how this may have come about, or why, and have not placed any particular weight on it in assessing the defender's credibility.

[242] The evidence of Mr Vanderhyde provided relatively little assistance to me in relation to the matters disputed between the parties. I was cautious about accepting his evidence as accurate and reliable. Parts of his evidence related to business enterprises in which he was involved. He said that he had a role in monitoring the works in the EKO development but had no qualifications in valuing works, and his evidence was not assisted by any records

of site visits or valuations of the works. He did not document his discussions with the defender about unregulated investments to which he introduced him, or about any risks associated with them.

The merits

[243] I am satisfied that the marriage has broken down irretrievably and that I should grant decree of divorce. The pursuer's case is that the irretrievable breakdown of the marriage should be found to be established because the defender behaved during the marriage in such a way that she could not reasonably be expected to cohabit with him. The defender did not admit the pursuer's averments, but offered no submissions in relation to the merits.

[244] The pursuer's case was that the defender was verbally, physically and emotionally abusive to her. The pursuer's evidence was supported by the affidavit of Anne Wilson to whom the pursuer gave accounts of incidents that had taken place involving the defender. Ms Wilson also witnessed the aftermath of some incidents.

[245] In his affidavit and oral evidence the defender denied assaulting the pursuer. In his oral evidence he was cross-examined about the circumstances in which he had instituted a resolution to remove the pursuer as a director of Assynt Holdings Limited at a meeting to be held at the home of his parents, and the knowledge of his parents as to the state of relations between the parties. In the course of that passage of cross-examination he denied assaulting the pursuer. In relation to the proposition that he had assaulted another person he was warned that he need not give evidence that might indicate that he had committed an assault. He said that there had been an incident he regretted, but in light of the warning did not know what to do about answering further about it.

[246] I accepted as credible and reliable the evidence of the pursuer and Ms Wilson and rejected the defender's evidence so far as inconsistent with it, so far as the grounds for divorce were concerned.

Extent of matrimonial property

The "Enterprise House" loan

[247] The defender's case on record was that in March 2020 he and Mr Beard "committed to make a ... loan to Enterprise House Limited". The defender had planned to use the funds due to him from his personal loan to Zebra to fund the loan. He was unable to meet his "loan commitment with Enterprise House Ltd" because repayment from Zebra was delayed. In June 2020 Mr Beard agreed to fund the loan himself. He and the defender agreed that on payment by Zebra, the defender would advance the sum of £500,000 to Mr Beard. He therefore had a personal agreement with Mr Beard obliging him to pay Mr Beard £500,000. After the defender paid Mr Beard £500,000, Mr Beard provided him "with the benefit from a security in favour of Mr Beard over property held by St Cross Homes (Winchester) Limited", a company that owed Mr Beard money.

[248] The pursuer's case on record was that the defender had an interest in an investment with Mr Beard relating to Enterprise House. She referred to the defender's "assertion" that he had committed to a loan with Bradley Beard in Enterprise House before the relevant date. She averred that in December 2020 the defender or Assynt undertook a new investment in St Cross Homes (Winchester) Limited together with Mr Beard and called on him to produce vouching in respect of his investment in Enterprise House and St Cross Homes (Winchester) Limited.

[249] The defender's affidavit evidence was not entirely in accordance with his case on record. That evidence was to the effect that in March 2020 the discussion was not about a joint commitment by him and Mr Beard to lend money to Enterprise House, but, even at that stage, about a situation in which Mr Beard had already loaned money to Enterprise House, and held a security in relation to that loan. The defender was to provide a loan to "reduce the amount of [Mr Beard's] loan". The defender's affidavit evidence went on to narrate that on 5 March 2020 he had committed himself to pay £500,000 "as a loan to Enterprise House", whereas his case on record, and ultimately in his oral evidence, was that it was to Mr Beard that he came to be obliged to advance money.

[250] The correspondence from the defender's former solicitor in 15 February narrated that Mr Beard agreed with the defender to fund "the whole loan to Enterprise House Limited ... and did so."

[251] There is no doubt that the loan by Mr Beard to Axis and secured over Enterprise predated March 2020. That is apparent from 6/47 and 6/48 of process. A charge over Enterprise House in favour of Mr Beard was created on 6 January 2017 as security for a loan by him to Axis of £2m, which was due to be repaid on 6 January 2019.

[252] It is curious that the case on record and the correspondence from the defender's former solicitor suggest otherwise, although I attach relatively little weight to that. The defender's central proposition both on record and at the conclusion of the evidence was that by the relevant date he was obliged to pay Mr Beard £500,000. The effect of that was to eliminate from the matrimonial property at the relevant date the defender's loan to Zebra. His oral evidence was that he had advanced £500,000 in the expectation that it would be repaid. I note that that is consistent with the description in the letter dated 2 June 2020 of the advance as a loan. The defender said that he had been repaid the capital sum in 2022

or 2023. The pursuer argued that if there were such an obligation to provide a loan of £500,000, it gave rise to a corresponding obligation on the part of Mr Beard to repay the sum. On the defender's own evidence he had received the capital when St Cross Homes (Winchester) Limited paid Mr Beard.

[253] The defender's case, although he did not articulate it in precisely this way, must be this. At the relevant date the defender had an obligation to pay Mr Beard £500,000, which was a liability. As he had not yet paid the sum to Mr Beard on the relevant date, there was not at that time a corresponding obligation on Mr Beard's part to make repayment. The obvious and inevitable result of paying £500,000 as a loan is to give rise to a corresponding obligation on the part of the borrower to make repayment of that loan, which, if in existence at the relevant date, would be an asset forming part of the matrimonial property. Had I found it established that on the relevant date the defender had an obligation to lend £500,000, and that there was not yet a corresponding obligation on the part of the borrower to make repayment, there would have been a question as to how to treat:

- (a) the obligation that later came into being to make repayment,
- (b) the circumstance that the source of funds for the loan was a matrimonial asset in existence at the relevant date, namely the outstanding loan to Zebra; and
- (c) the circumstance that the defender had benefited since the relevant date from the repayment of the loan.

[254] I have, however, been unable to make a finding on the basis of the available evidence that at the relevant date the defender was liable to pay Mr Beard £500,000.

[255] The evidence about the "Enterprise House" loan is vague and unsatisfactory.

The defender was untroubled as to who the borrower was, and apparently unaware that repayment of the loan by Mr Beard to Axis was already nearly a year overdue. He said he

was comforted by the prospect of receiving interest. The terms of the agreement between the defender and Mr Beard are obscure. There was no agreement as to when the loan was to be repaid. The letter of 1 June 2020 describes an “investment in the current ... loan held by [Mr] Beard”, and also refers to the advance itself as a loan. An investment in the current loan might have suggested an assignation of part of Mr Beard’s interest in the loan in exchange for the sum of £500,000, rather than a loan to Mr Beard. Although the letter referred to interest at 8% per year, which would suggest that Mr Beard, if the borrower, would require to pay that, Mr Vanderhyde’s evidence was that what was intended was that the defender would receive interest only if Mr Beard received interest from Axis. If that was indeed the arrangement, it would tend to undermine the assurance to which the defender referred that he would receive interest.

[256] The defender said he was unconcerned about Covid on 5 March 2020 when he said he had made a bargain to provide £500,000, and that no restrictions were being indicated at that time. At another point in his evidence he said that Last Mile had been considering the impact of Covid on capex from February or March of 2020. He placed some emphasis in his evidence on what he said was his reliance on the approach taken by Last Mile to the pandemic and its consequences, and the information to which he was privy in his work at Last Mile. It is on the face of matters odd that on the one hand Last Mile should have been considering the impact of Covid in February or March of 2020, but that the defender should have been unconcerned about it when, on his account, committing funds of £500,000 to reduce Mr Beard’s exposure in relation to a loan that was already overdue for repayment.

[257] The manner of documenting the transaction spoken to by the defender and Mr Vanderhyde was very informal, when compared with the documentation associated with the loans provided by Assynt. It is an unusual instance of the defender’s providing a

loan without receiving security at the time of the advance from the party to whom the advance was provided. It is not obvious why St Cross Homes (Winchester) Limited should have agreed to provide a security to the defender in relation to an advance of money by him to another party.

[258] The absence of evidence from Mr Beard about the transaction in question is a matter of concern. He could have provided evidence as to the nature of this transaction and which would have informed my consideration of whether and why there was any obligation incumbent on the defender as at the relevant date to pay him the sum of £500,000. His name appeared on the defender's list of witnesses but no affidavit from him was lodged.

The defender referred to the state of Mr Beard's health as an explanation for his unwillingness to give evidence, but there was no medical certificate, or any application for measures that might have permitted Mr Beard to give evidence other than in person in the courtroom.

[259] I am unable to make a finding as to whether and when any obligation on the defender to pay money to Mr Beard may have come into existence. It may have been contingent on his receipt of funds from Zebra. It appears he did not in fact pay anything until he got those funds. It appears also from the letter of 1 June 2020 that any agreement to provide funds was predicated on the defender's being provided with a security over Enterprise House. He was not in fact provided with that security.

The balance in Bank of Scotland account xxx9468

[260] The pursuer averred that the balance in this account was a gift to her from her mother from the estate of her late father. Her evidence was that her father died in 2010 and that she received £50,000 in 2013 when her mother moved from the family home to a

small flat. The source of the sum is not vouched. There is also some force in the defender's submission that it should have been possible to obtain evidence from the pursuer's brother, who was said also to have received a sum of money in 2013. It did not appear to be disputed that the pursuer's mother had dementia and lived in residential accommodation. I have, however accepted the evidence of the pursuer about this matter as credible and reliable and concluded that the balance in this account was not matrimonial property. I regarded her evidence generally as credible and reliable. In assessing her evidence about this particular matter, I have also taken into account the following matters.

[261] There was no dispute that after the death of the pursuer's father the pursuer's mother sold what had been a family home, moved to a flat, was unhappy in the flat, and thereafter moved to a bungalow. There was no dispute that funds were provided to the pursuer's mother to help her move from the flat to the bungalow, although the defender thought the sum was more than £9,500. His evidence was that the payment had not come from his bank account, and he could not say whether it had come from a joint account. Had the funds come from a joint account I would have expected the defender to know about it. He took a close interest in the family's financial affairs and on his own evidence sat down regularly with the pursuer to reconcile their finances. I consider that it is more likely than not that the money came from the pursuer's personal account and that it was money that the pursuer felt her mother should receive essentially because her mother found herself short of money having made a generous gift to the pursuer.

[262] Although the defender did not accept that the menage had been funded by money deriving from the pursuer's father's estate, he did accept that other spending relating to horses had been funded in that way. He also accepted that there was a plaque erected at

the menage which read "G and G arena". He did not demur from the proposition that those initials referred to the pursuer's parents.

[263] The defender suggested that the sum derived either from repayment of a loan made by the pursuer to her mother, or from savings that the pursuer had accrued without his knowledge. Given the defender's close interest in the parties' finances and the regular reconciliations of finances in which both parties were involved, it is unlikely that the pursuer would have been in a position to do that without the defender's knowledge.

[264] The defender averred that the balance on this account included repayment of a loan made by the pursuer to her mother following the death of her father. It is unlikely that the sum in this account derives from the repayment of a loan by her mother. On the defender's own account, the "loan" was to be repaid on the death of the pursuer's mother, or the sale of her home, and neither event has yet occurred. It is not obvious from what funds the pursuer's mother would have repaid such a loan. Although there was a dispute as to how much was provided to her, both parties spoke to payment made to fund a shortfall when she was buying a house.

[265] I consider it unlikely that these parties, who are both accountants, would have made a loan of this sort without some document to substantiate it. To do so would risk difficulties after the death of the pursuer's mother so far as there would be an undocumented debt said to be due from her estate requiring to be paid out before division of the estate. I did not accept as credible and reliable the defender's account in evidence that he and the pursuer loaned between £20,000 and £25,000 for this purpose and on the agreed basis that it would be repaid before division of the pursuer's mother's estate.

[266] The defender did not advance any separate positive case that there was a loan by the pursuer to her mother which was an asset in existence at the relevant date.

Value of matrimonial property

Contents of the matrimonial home

[267] There is no professional valuation of the contents of the matrimonial home. The pursuer estimated the values of the internal and external contents at respectively £12,250 and £6,300 and said that the defender had retained them. While I am not in a position on the basis of the evidence to make detailed findings as to how the contents were divided, I accept in general terms that the defender retained more than the pursuer did, and retained most of the contents. The schedule for sale shows a furnished house. The photographs taken by the pursuer in April 2021 show a largely empty house. The pursuer retained china and crystal. The defender appeared to accept he had retained a number of items, and that he had kept items in storage until May 2022. He said he had not been able to sell the furniture, which implies an acceptance that he had retained it.

[268] The pursuer's estimates were based on discounting the replacement costs of furniture by 50%. It was not clear on what basis she estimated the values of the trailer and lawnmower.

[269] The contents internal and external will have had some value, and I am satisfied that the defender retained by far the greater proportion of the property. The pursuer retained some china and glassware which are likely to have been of modest value. I can deal with matters only on a very broad basis. I have assessed the value of the contents, internal and external as £15,000, which involves discounting further the replacement values spoken to by the pursuer. I have proceeded on the basis that items retained by the pursuer were worth no more than £500 and that the defender retained the remainder.

Boat and trailer

[270] The pursuer valued these items at £14,000 and said they had been retained by the defender. In submissions senior counsel for the defender valued them at £10,000 and characterised them as jointly held. The defender's oral evidence was that the boat was worth about £10,000 and the horse trailer worth £1,000 to £2,000.

[271] I am satisfied that the boat is worth about £10,000. There did not appear to be a material difference between the parties on that matter. Neither party wished to retain the boat.

[272] The insurance value of the horse trailer was said to be £4,000. I am not satisfied that that represents its market value at the relevant date, and on a broad basis value it at £2,000. I treat it as having been retained by the defender, as his own evidence was that he removed it from where the pursuer had left it and gave it away.

*Bank balances*NS&I accounts xxx7741 and xxx7221

[273] The pursuer said the relevant date balance on joint account xxx7741 was £935, and the defender said it was £833. The dispute is in relation to the interest on the account. The account attracted interest annually which was applied on 1 April 2021. It is true that the relevant date balance of the account was £832.99, and that capitalised interest was applied on 1 April 2021. That balance was what was left after the defender removed £25,000 from the account on 28 August 2020. On 29 August he removed a further £830, leaving a balance of £2.99. It is evident that the interest applied on 1 April 2021 derived entirely from the sums held in the account up to, but not after the relevant date. I treat the relevant date

balance as £935.00, which is the sum reported by NS&I as the value of the investment on the relevant date.

[274] It is not in dispute that the defender retained £830 of the balance. It is not clear on the evidence what happened to the remaining £105. I have treated it as having been retained in equal shares by each of the parties.

[275] The nature of the dispute was similar so far as the defender's account xxx7721 was concerned, with the competing figures being £25,701 and £25,508. Of that balance £25,000 is the sum which the defender removed from account xxx7741. NS&I reported the value of the investment on the relevant date as being £25,701 and it is evident that in doing so the institution apportioned interest. I see no reason to do otherwise.

Joint RBS accounts xxx3939 and xxx5459

[276] By the time of submissions there was no dispute that the balances on these accounts were £8,461 and £7,369. There was no dispute that the pursuer and the defender retained, respectively, £480 and £7,981 in respect of account xxx3939 and that the defender retained the whole balance of £7,369 on account xxx5459. The dispute as regards the sums retained by the defender had arisen because of various transactions on those accounts close to the relevant date.

Cars

[277] In relation to the Audi, I accept the evidence of Mr Bathgate. He carried out a conventional valuation by reference to Glass's guide, and picked a value in the middle of the range. I do not consider that the value placed on the vehicle in relation to a commercial

part-exchange deal more than a year after the relevant date is a reliable indication of its market value at the relevant date, or that it undermines Mr Bathgate's valuation.

[278] Valuing a bespoke converted vehicle such as the Land Rover is not straightforward, and it is understandable that Mr Bathgate should have had regard to cost to the defender of obtaining and modifying the vehicle. I accept that it appeared to have been modified and renovated extensively and to a high standard. I do not accept, however, that that provides a reliable basis for assessing the market value of the car at the relevant date. Mr Bathgate accepted in his evidence that he had assessed the value of the vehicle to a special purchaser, rather than on the open market. It may be correct, as he said, that even specialist publications did not feature vehicles with exactly the same modifications as the car in question, and that they would not necessarily show the eventual price paid for the item. The absence of an exact comparator is not usually a bar to the consideration of comparators in other areas of property valuation. What the valuer does is consider the similarities and differences between the subject of valuation and the comparators and provide a rationale for assessing the subject in the light of the information about the comparators. Having acknowledged the existence of a market for modified Land Rovers and of specialist publications offering them for sale, I should have expected some evidence about comparator vehicles and the prices at which they were offered for sale, and specialist assessment of the ways in which the subject vehicle was similar to or different from them.

[279] Notwithstanding the valuation of £9,000 to £12,000 provided in writing by Mr Lea and referred to and relied on by the defender at paragraph 35 of his affidavit, the value offered by the defender for the purposes of submissions was £50,000. I have indicated that I do not accept Mr Bathgate's valuation as representing the open market value of the vehicle,

and the figure of £50,000 appears, on a broad basis, to be reasonable having regard to the extent, cost and apparent quality of the modifications to it.

Drinks Warehouse

[280] I am not satisfied that the defender's shares in Drinks Warehouse had any value at the relevant date. Mr Rowand accepted that he did not have sufficient information to place any value on what he described as hope value, which could lie in the range zero to £50,000. There is no basis at all in the evidence, even if one accepted the proposition that there might be a "hope" value, for locating it at any particular point in that range. Although there had been "real world" transactions in shares in Drinks Warehouse in 2020 and 2022 there is no evidence about those transactions.

Assynt

[281] I have considered the defender's decision to write down the value of the loans to EKO and Radley in the context of other actions that I am satisfied he took on or very shortly after the relevant date and that he has taken since the relevant date. I have formed the view that the evidence demonstrates that he has acted consistently in such a way as deliberately to try to disadvantage the pursuer, and to defeat her legitimate claims for financial provision. The decision to write down the loans, and the extent to which to write them down was his alone.

[282] He changed the locks on the matrimonial home. The pursuer did not have access to it until April 2021. It was not reasonable for him to expect her to accept that she should access it only with his permission and in a context in which he had fitted CCTV cameras. It

was her property as well as his. She did not get access to the property until 27 April 2021, by which time the defender had removed most of the contents.

[283] The defender removed the pursuer's horse trailer from the farm where she had left it. He did so without her permission. I accept the pursuer's evidence that he told her that he had done so because she had not left any items of clothing for him to destroy. He disposed of it without her permission. I infer that he did so spitefully and that he intended to deprive her of the horse trailer in the knowledge that she wished to keep it.

[284] The defender moved a number of sums of money from joint accounts to accounts in his sole name on or shortly after the relevant date. His oral evidence was that the first thing he did when he found the pursuer had left was to check the NS&I accounts, including those in the pursuer's sole name.

[285] The defender had accounts prepared for Assynt very shortly after the relevant date. On 2 September 2020 he engaged accountants to prepare the accounts to 31 August 2020. Those accounts included revaluations of the loans to EKO and Radley involving writing them down to the extent of 90% and 80% respectively.

[286] There was no pressing need to extend the year end, or to sign off the accounts. The company still had, at that point, more than 6 months to complete its accounts, by virtue of the extended period available in the context of the pandemic. With the extended year end upon which he decided, it had until 31 August 2021 to do so. There was no obvious imperative for the speed with which the defender proceeded to instruct the making up of the accounts and to sign them off, other than the defender's desire to create evidence of very markedly diminished matrimonial assets as at a date only 3 days after the relevant date.

[287] On 6 September 2020 the defender asked the pursuer to resign as director. He made the same request by email the next day. On 17 September 2020 the pursuer received

notification of a SGM to be held at the home of the defender's parents and a notice of resolution seeking her removal from office as a director. The SGM was held on 16 October at the home of the defender's parents, and the pursuer's directorship was terminated with immediate effect. On 28 September 2020 the defender extended the company's accounting period from 31 March 2020 to 31 August 2020. During September 2020 he also issued an allotment of share capital which increased his shareholding from 75% to 98%, thereby preventing the minority shareholders from seeking an independent audit of the accounts in the future.

[288] Section 476 of the Companies Act 2006 provides:

- “(1) The members of a company that would otherwise be entitled to exemption from audit under any of the provisions mentioned in section 475(1)(a) may by notice under this section require it to obtain an audit of its accounts for a financial year.
- (2) The notice must be given by –
 - (a) Members representing not less in total than 10% in nominal value of the company's issued share capital or any class of it, [...]
- (3) The notice may not be given before the financial year to which it relates and must be given not later than one month before the end of that year.”

[289] By changing the year end and increasing his shareholding the defender prevented the minority shareholders both from timeously giving notice in relation to what they would otherwise have expected to be the accounting period including the relevant date (ie 1 April 2020 to 31 March 2021) and prevented them from requiring an audit in future years.

[290] By the time the defender signed the accounts on 29 October 2020, he had already secured the termination of her directorship.

[291] The 12 August document was said to record the thinking of the defender as at that date in 2020. It includes, unacknowledged, text identical to that in an article in the UK Politics section of “The Financial Times”. The defender did not volunteer that he was not

the original author of the text. He did not acknowledge that, or acknowledge a source for it in the body of the document. An obvious inference, and the one that I have drawn, is that the defender cut and pasted the passage of text into the document. I do not accept that the document is a genuine and contemporaneous record of the defender's thinking as at 12 August 2020, informed, as he claimed, principally by reports he had seen when working for Last Mile. Viewed in the context of the evidence as a whole, and in particular the matters to which I refer in the foregoing paragraphs, the 12 August document is more likely than not one concocted for the purpose of these proceedings to attempt to justify in retrospect the decision to write down the loans. According to the defender, RSM accountants asked him to prepare the document. Mr Stupart of that firm was on the defender's list of witnesses but did not give evidence. On the defender's account of matters his former accountants would have been in a position to support his account of the circumstances in which the document came to be prepared. I draw an inference negative to the credibility and reliability of the defender from the fact that he did not lead evidence from Mr Stupart.

[292] I noted that the defender's agent, on his behalf, represented on 18 January 2023 that the defender did not have any notes "between Assynt ... and RSM in connection to the recoverability of the loan advances [to] EKO". I do, however, accept the evidence of Mr Robb that he had the 12 August document at the time he prepared his report. His report was lodged on 11 January 2023, and I conclude that the 12 August document was in existence before that date. On Mr Robb's evidence, the 12 August document was not provided to him initially, but when he asked for more information about the loans.

[293] There is no rationale in the 12 August document for the particular percentages by which the defender elected to write down the value of the loans. There is no explanation as to why one is impaired to a greater extent than the other. The consideration of the

individual loans in the document is extremely brief. The defender accepted that he did not take into account the terms of the loan agreements. The terms of Clause 5 of the agreement with EKO is plainly of potential relevance. There was no valuation of either site, or site inspections. There was no reference to the work done on either site, or the stage of completion. There was no reference to the valuation of the EKO site at the point at which the loan had been made, which on Mr Vanderhyde's evidence had been between £1.5m and £1.7m. There was no rationale for the decisions about the extent of impairment of each loan advanced in the defender's evidence. Such justification as he provided was only in the most general terms.

[294] Within only a few weeks of the relevant date the defender had by his unilateral assessment of the value of the loans written down very substantially the relevant date value of the most significant matrimonial assets.

[295] No basis for writing down the loans to the extent of 80% and 90% respectively emerged in the evidence. Such information as there is about the particular developments is contained in the emails from Mr Fooks and Mr Orman from August and July 2022. Those emails were written nearly 2 years after the relevant date in response to a request, the terms of which were not disclosed, from Mr Vanderhyde. They were supplied to Mr Robb when he asked for more information about the loans. I infer that Mr Vanderhyde requested information from Mr Fooks and Mr Orman for the purposes of these proceedings. No contemporaneous documentation regarding the developments or any particular issues with their progress was produced, other than photographs of the EKO site said to have been taken in summer 2020. It is not clear who took them. Mr Vanderhyde's evidence that he did is not consistent with the contents of his covering email to the defender sending on Mr Orman's email. Mr Vanderhyde provided oral evidence that the issues disclosed in

those two emails accorded with his personal knowledge and understanding. He visited the Radley site only at the very beginning of the project, although he visited the EKO site on a number of occasions. His evidence was not supported by any contemporaneous notes or records taken or kept by him relating to the period up to the relevant date.

[296] I accept in general terms that the Covid pandemic caused delay and difficulties in relation to the supply of labour, at least between 20 March and 10 May 2020, and in relation to the supply of materials thereafter.

[297] Taking the contents of Mr Orman's email at face value, the EKO project was delayed and the budget increased by the relevant date because of the pandemic. His email does not specify at what date a disagreement emerged between the developers. The difficulties he lists about building control and the roof post-date the relevant date. The defender through Assynt made a further advance to EKO of £73,110 on 18 September 2020. I can accept that there is a dilemma for a lender who may perceive that a project is in difficulties as to whether to advance more funds. He may on the one hand be throwing good money after bad, but on the other hand may be assisting the developer in a way that will enhance the prospect of his recovering the loan in due course. In this case, however, there was certainly no obligation on Assynt to make a further advance in circumstances where the terms of the loan agreement regarding further advances had not been complied with. Assynt did so without insisting on any of the measures open to it to protect its interests in terms of Clause 5 of the loan agreement. That tends to undermine the notion that the defender had a genuine basis for writing down the loan to the extent that he did in the accounts. Mr Vanderhyde's evidence was that he recommended to the defender that he should make further advances when he, Mr Vanderhyde, had observed progress on the

site. That would tend to suggest that some discernible progress had taken place by September 2020.

[298] Looking at Mr Fooks's email regarding Radley, only a limited number of entries relate to the period between the advance (27 January 2020) and the relevant date. The email says that all work stopped for an archaeological dig assessment on 21 February 2020. The next mention of attendance by archaeologists is on 12 April 2021, but it is implicit that work was going on between those two dates, as the email mentions, without any particular specification, labour shortages and supplier issues between March and September 2020, and the placing of an order for lifts.

[299] I am unable to make any finding as to the extent to which Mr Beard may have provided funds for further advances to EKO. The defender said that he had provided £326,000 to prevent Assynt from being in default. It is not clear on what basis Assynt would have been in default in the absence of compliance by EKO with the requirements of Clause 5 of the loan agreement. If there were a further advance of £326,000 then the total advanced to EKO would have been £1,146,859, which exceeded the agreed facility of £1,059,000. There is no vouching for the sum of £326,000. It is not recorded as a loan to Assynt in Assynt's accounts. Senior counsel for the defender objected to questions concerning the absence of reference to such a loan in the accounts. I allowed the line subject to competency and relevancy, and senior counsel renewed the objection in submissions. He said that the premise that there was a loan by Mr Beard to Assynt had not been established on a fair reading of the defender's oral and affidavit evidence. I repel that objection. Unless the sum advanced by Mr Beard which was said to have been advanced in order to fulfil Assynt's obligations were intended as a gift to Assynt, it is difficult to see what else it might be than a loan. To suggest that it might have been a loan, and, that, if it were, it should have

been accounted for in some way in Assynt's financial statements, are legitimate and logical lines of inquiry so far as the pursuer is concerned, and arise from the defender's evidence about the advance.

[300] A number of matters arise from the accounts post-dating the relevant date. Even assuming in the defender's favour that the errors in the accounts for 2021 regarding the treatment of the advance of £220,000 to Radley were simply the result of inadvertence, those errors would call into question the reliability of the financial statements prepared for Assynt. The accountants who prepared the accounts have not given evidence. Repeated inadvertent inaccuracies are all the more surprising given that the defender is himself a chartered accountant who worked as the chief financial officer of Last Mile. The pursuer identified the inaccuracies herself without the assistance of a forensic accountant. Looked at in the context of all the evidence, however, I am not prepared to accept that the errors were the result of inadvertence. The matters I regard as relevant to that assessment are the following.

- (a) The defender instructed repayment of £220,000 to a personal HSBC account held by the defender and Ms Williams, at a time when payments in and out of Assynt's account were operating satisfactorily. There is correspondence from the Bank of Scotland relating to difficulties with the Assynt account, but it concerns a period after the time at which the £220,000 was repaid. I accept that correspondence from the bank probably did go unanswered because the address had not been changed, but the correspondence in question was a notice of intention to close the account sent out in September 2022. The correspondence also vouches difficulties with logging in, although it is not clear when those occurred. It is clear, however, that Assynt's account was able to send and receive money in April 2021. Sums of money were paid

into it to achieve a balance of about £220,000 in the early days of that month, and that sum was paid out to Radley on 12 April 2021. The activity on the account is inconsistent with the proposition that it was incapable of receiving the sum of £220,000 between 12 and 20 April 2021, when the sum was paid into the HSBC account.

- (b) The defender's affidavit evidence as to the source of funds for his house purchase is misleading and incomplete. It suggests that the source was a NS&I account, whereas, as he admitted in oral evidence, some of the funds derived from the HSBC account.
- (c) The accounts not only failed to reflect the repayment of £220,000, but also wrote down the value of the advance of £220,000.

I infer that the defender wished to conceal the fact that he had received the sum of £220,000 from Radley, but not the fact that Assynt had made a payment of £220,000 to Radley. Not only were the accounts inaccurate in this respect, but so was a spreadsheet prepared by the defender for the purposes of these proceedings, and produced as 7/43 of process.

[301] The failure in the 2022 accounts to reverse the impairment of the EKO loan is also very difficult to explain. The defender signed off the accounts on 11 March 2023 after having discharged the security for the debt in question. I find that he knew by 11 March that the loan was going to be repaid in full, and that the way the loan was treated in the 2022 reflected deliberately misleading information that he provided to the accountants who prepared those accounts. I infer that he wished to maintain the impression in March 2023 that the EKO loan was without value to Assynt. A proof in this case was due to be heard on 7 March 2023 and was discharged on the pursuer's motion on 22 February 2023.

[302] Although the defender at one stage during cross-examination said that he had not received repayment of any part of his director's loan, he accepted that Assynt's bank account statements disclosed on 1 April 2022 a payment in from Radley of £138,352.50, a payment out to his own personal account of £5,000 with the reference "Loancap Rad". On 4 April 2022 there was another payment to him with the same reference of £79,014.50. He also accepted that he had received just over £132,000 by way of repayment of his director's loan and that that was disclosed in the 2022 accounts.

[303] The evidence about the purported agreement with Radley that payment should be deferred until all the apartments was sold was unsatisfactory. By the close of the proof a substantial payment had in fact been made, although it appeared from Mr Vanderhyde's evidence that one apartment remained on the market. There was no evidence of any direct communication with the borrower about this arrangement, or any documentation produced to vouch it. Notwithstanding the defender's professed satisfaction with the prospect of interest accruing, an arrangement of the sort described gave rise to risk to the lender. It involved discharging securities over most of the development before any capital was paid back, and to an extent that the remaining security would have been very significantly diminished. Mr Vanderhyde said that there was a personal guarantee from the director of the borrower, but again, that was unvouched.

[304] I have concluded that there was no proper basis for the defender's decision to write down the loans to EKO and Radley to the extent of 80% and 90% and that he did so with a deliberate view to eliminating a significant matrimonial asset from the fund available for division.

[305] The evidence of Mr Vanderhyde provided very limited support for that of the defender, and notably did not include any view of his own, based on his knowledge of the

developments in question, as to whether the loans ought to have been written down, or by how much. Mr Robb's opinion was based on the very limited information with which he was provided, and in particular the assertions of the defender - which I have rejected - about the basis for writing down the loans. He acknowledged that a number of the factors that I have found to be significant and of which he was unaware were matters in which he would have been interested as potentially significant where the person writing down the loans might be perceived as having a financial interest in doing so.

[306] I have therefore disregarded the writing down of the EKO and Radley Loans and have included the director's loan at full value, namely £2,276,536.

[307] Senior counsel for the pursuer submitted that I ought to include a value of £8,088 for her shares in Assynt, and a value of £86,657 for the defender's shares. In her affidavit the pursuer said that the value of her shareholding should be assessed by reference to her share of the value of the interest owed on the loans made by Assynt. She said that that interest amounted to £148,055, and which would have generated a net profit of £115,542 after tax. In her evidence she said that she would be entitled to 41% of that figure. That was incorrect, as she was a 7% shareholder at the relevant date. In cross-examination the pursuer's evidence was challenged in relation to that inaccuracy. It was also challenged on the basis that she had taken the loans at full value, rather than written down. Her reasoning and methodology were not otherwise challenged, and I have accepted her evidence subject to apportioning in accordance with the parties' actual shareholdings.

Division of matrimonial property

[308] The pursuer did not suggest that any departure from equal sharing was necessary in order to achieve fair sharing, on the hypothesis that the relevant date value of the defender's

director's loan account was that for which she contended. I am satisfied that that is the correct approach in this case.

[309] The only suggested departure from equal sharing advanced in submissions was to the extent of recognising, to the extent of £15,000 that the pursuer had derived economic advantage from the defender's assistance when she was starting her own business. I can accept that the parties had conversations and discussions about the pursuer's business. It would be odd if they did not, as they were both accountants. I accept also that their respective skills and experience within the accountancy profession were different. There is no reason to doubt that each benefited from the conversation of the other in that respect. The evidence does not support a conclusion that there was anything more significant than conversations and discussions about topics of mutual interest between a couple who shared a profession but pursued different areas of practice within it. I am not satisfied that the pursuer derived any particular economic advantage from conversations with the defender about her business, although they may well have been professionally helpful.

[310] Had I been satisfied that there was no value attributable to the defender's director's loan account with Assynt at the relevant date, I would have had to consider the pursuer's submission that there would require to be a departure from equal sharing to recognise the economic advantage derived by the defender from the efforts of the pursuer. There was no dispute that the funds that Assynt invested in the loans with EKO and Radley derived directly from the economic efforts of the defender. He made a substantial amount of money working away from home over many years, and that generated funds for investment. His work away from home was directly facilitated by the pursuer. While she continued to work at least part-time during the marriage, she set up her own business only at a relatively late stage.

[311] I am satisfied that the pursuer was in a position where a career broadly similar to that of Ms Dickson would have been available to her. Ms Dickson's position and that of the pursuer were reasonably similar at the point before the pursuer took a career break.

It is impossible to know precisely what career path the pursuer would have taken had she remained with Ernst and Young, but is more likely than not that she would by now have been in a position to earn a salary in excess of £100,000 per year.

[312] There was a dispute between the parties as to whether the pursuer was or was not willing to work full-time at various points during the marriage, or whether she was willing to relocate to Essex. What in fact happened was that the defender spent protracted periods working away in the south of England, far from the family home. That would have been materially more difficult had the pursuer not been at home and working, as she did for many years, in a part-time role. If she had worked full-time there would no doubt have been additional costs by way of childcare to enable both parties to work full-time. It may be true that the pursuer wished to spend time with her children when they were young, rather than employing a nanny. I am satisfied that when it became established that the defender's work was away from home for long periods the ability of the pursuer to maximise her earning potential was limited in practical terms. I accept the pursuer's account that it was the desire of the defender to adopt the working patterns that he did. I reject his evidence to the contrary effect.

[313] A departure from equal sharing would have been necessary in order to achieve fair sharing in the event that the relevant date value of the director's loan had been nil. That is because the funds for the loans came from the economic efforts of the parties, and the defender has, ultimately benefited from the fruits of those loans. They have been repaid. I do not require to address the question of whether that is a matter that should be recognised

in the context of arguments under section 9(1)(b) or whether it would be better characterised as a special circumstance.

Resources

[314] By the stage of submissions, counsel for the defender advanced no submission that the resources of the defender limited his ability to pay a capital sum. He did so having recognised that Radley had repaid more than £1.4m in February 2024.

Interest

[315] Amongst the incidental orders that the court may make before, on or after granting or refusing decree of divorce is an order as to the date from which any interest on any amount awarded shall run: section 14(1), (2)(g). The court has a discretion to award interest from a date prior to the date of decree: *Geddes v Geddes* 1993 SLT 494. An award of interest is not compensation for wrongfully withholding the principal sum, but is to facilitate the fair sharing of the matrimonial property, and must be justified by the principles in section 9. The circumstances in which it might be appropriate to award interest from a date prior to decree include those where one party has had sole use or possession of the property since the relevant date or where the use or benefit has resulted in a benefit not otherwise included in the calculation of the financial provision.

[316] The matrimonial property invested in the EKO and Radley loans was accounted for by a director's loan to Assynt in the sole name of the defender. The EKO loan has been repaid with interest, and much of the capital has been repaid so far as the Radley Loan is concerned. It is likely that the defender will now also receive interest on that loan in due course. The rate of interest on each loan was 9% per year. It is unlikely that the pursuer will

benefit from the use of the matrimonial property in that way by virtue of her shareholding in Assynt. She had only an interest of 7% before the defender increased his own shareholding from 75% to 98%.

[317] Since the relevant date the defender's investments have been made as loans by him personally, rather than through Assynt. On his own account those loans totalled £2,048,196. There is no vouching as to the terms on which those loans were made. The defender's evidence is that the funds for those loans came from the proceeds of his shares in Last Mile, shares which themselves were matrimonial property, although worth much less at the relevant date than at the time the defender realised his interest in them.

[318] I am satisfied that the pursuer should receive an award of interest on one half of the value of the loans by Assynt to EKO at the relevant date, plus one half of the £73,119 advanced to EKO in September 2020, as the source of funds for that advance were matrimonial property that remained under the control of the defender. The loans generated interest. Although the defender retained other matrimonial property, to award interest on the whole of the £2,121,625 to which I have found the pursuer entitled as a balancing payment, would involve a measure of compensation for the absence of payment at an earlier date, which is not the purpose of interest under section 14(1) and (2)(j).

[319] Both senior counsel recognised that further submissions would be required as to the period over which interest, if awarded, should run. One factor that may be relevant is the discharge of a proof on the pursuer's motion. The issue of expenses for that diet remains outstanding. Questions as to whether the rate of interest ought to be modified for all or part of the period from the date of service of the summons may also arise.

Disposal

[320] The case will call by order for discussion of the precise terms of the interlocutor I should pronounce, the period over which interest should run, whether any modification of the rate of interest should be applied in respect of all or part of the period in question, and outstanding questions of expenses.