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BV18D31770

THE FAMILY COURT

At Leicester

Sitting Remotely

29 June 2021

(formal handing down 9 July 2021)

His Honour Judge Mark Rogers

Between:

**SD
- and -
GD**

Applicant

Respondent

Mr Roger Thomas (instructed by **Howes Percival LLP**) for the **Applicant**
Mr Thomas Brudenell (instructed by **Roythornes**) for the **Respondent**

Hearing dates: 16 to 18 March 2021

JUDGMENT

(Approved)

His Honour Judge Mark Rogers:

1. I apologise to the parties for the delay in delivering this reserved judgment. Unfortunately, a number of unavoidable matters prevented an earlier resolution. I had hoped to deliver judgment before my retirement from the Circuit Bench, but that proved impossible. Accordingly, strictly, I am now sitting as a Deputy Circuit Judge.
2. This is the culmination of the application for financial remedies arising out of the divorce of the parties in this case. They are Mrs SD and Mr GD (anonymous letters adopted). I propose to refer to them as wife and husband which is for convenience only. It can appear depersonalising and no offence to them is intended. Their case, like any other, is unique and personal to them.
3. I will adopt the approach endorsed by the President of the Family Division in *The Road Ahead*, as updated, and present a “short judgment”; that is a judgment without a lengthy recital of the background, without extensive quotation from the written and oral evidence and without detailed direct citation from the authorities. My task, however, is to provide an explanation for my decision which is comprehensible to the otherwise uninformed objective observer with the reasoning for the central matters in dispute spelled out.
4. Happily, although the proceedings over time have been fairly contentious, generating an alarming level of costs, much of the background material is now agreed and in relation to the computation of available assets, whilst it did not prove possible to have, as should be the case, a single document, the

documentary reconciliations of counsel became close enough for the differences, in the context of the value of this case, to become de minimis.

5. The principal arguments of counsel are set out in the position statement and case summary, respectively described, presented to me before the commencement of the hearing. Whilst the contents were refined and expanded upon in oral submissions in the light of the evidence given, the essential differences remained and so those documents can be regarded as the definitive expositions of the respective cases.
6. Whilst I do not propose a detailed background summary, I acknowledge the detailed material filed, in the form of the trial bundle and the supplementary bundle, together with a number of freestanding documents produced piecemeal. In addition, there were the main arguments of counsel supplemented by a series of schedules and calculations, some by counsel themselves and others generated by Capitalise. I was also taken to a number of sections of At A Glance to consider Duxbury calculation comparisons and other non-controversial financial data or assumptions. I hope that I have paid close attention to all the written material. When referring to the trial bundle I will use the electronic numbering, in brackets, as there was some inconsistency between versions used by different individuals.
7. A number of well known and some lesser known authorities were referred to in the written documents and in closing. I have considered carefully the legal arguments deployed and will refer to them as necessary.
8. By way of briefest background, it is sufficient to record the following. The parties were married in 1990, aged (ages given). They are now (ages given).

There are two adult boys, aged (ages given). The younger is working in the family business and has ambitions in the wider food sector. The elder is at University and still studying. His future lies in computing.

9. The wife was a student when the parties met but did not complete her degree when they married. Accordingly, she has no formal qualifications although is a capable woman. She has extensive experience helping in the family business but little beyond that.

10. The husband is the managing director of P Ltd (PL) and holds 75.1% of the shares. After some confusion it was conceded by the wife that the husband does not have access to or control over the remaining shareholding (although they are within family trusts) but clearly the husband is the driving force of the business with effective control. PL is not, despite its name, actively involved in farming, unlike its predecessors, but owns and rents out property some of which is farm related. There is, however, a long and detailed provenance going back just to the 19th Century. In his statement (153), the husband sets out the farming background, the acquisition of assets and the development of the various strands of the business into limited companies. It is perfectly clear that the business in its broadest sense was in existence well before the relationship commenced and that the husband's wealth in it was given to him over time. That is the foundation of his case.

11. The crucial date, argues Mr Thomas, however, is 1998 when PL was incorporated and inherited the assets of the earlier enterprise. Although, he accepts the shareholder position, which does not include the wife, he submits that the timing cannot be ignored and the company and its wealth should be

regarded as matrimonial property in respect of which the wife should be entitled to share equally or at least substantially. He further points to his client's role from time to time as a director and employee and the efforts she has made, not just for the family generally, but for the wellbeing and development of the company. I will need to discuss the issue of the nature of the business (and the husband's pension provision similarly) in due course.

12. The family home (TL) is an asset of the company, but, nonetheless, may need to be considered to have a special place at the heart of the marriage. It is common ground that upon final physical separation (they remain together pragmatically at present), the husband will remain at TL for the foreseeable future and will continue to run the business. The wife will move and so will need housing and an income stream. It is not suggested, for obvious reasons, that she should have any enduring connection with the company.
13. There are no particular health or other aspects of the case which need especial consideration. At its most simplistic, this is a long marriage, which produced now independent children where both parties made a full contribution to the welfare and development of the family. There is something of an age differential between the parties which makes future planning slightly unusual.
14. I remind myself that my task is to make an order which is fair and non-discriminatory. The basis of the jurisdiction is section 25 of the Matrimonial Causes Act 1973. There are no minor children and so my task is to make a fair distribution and/or adjustment of available assets between the parties, reflective of all of the factors of the case, including those specifically mentioned in section 25. I am also required to enable, so far as possible, the parties to move to

independence, making all such necessary adjustments as are achievable without undue hardship.

15. The statutory approach is, of course, interpreted in the light of the several seminal modern authorities of the House of Lords, the Supreme Court and the Court of Appeal which are so well known that they do not require specific citation in this judgment. In addition, there are many reported decisions at first instance. They are plainly unique and fact specific but offer examples of approaches with helpful commentary on the application of wider principles to factual situations.
16. In his document Mr Brudenell relies upon a series of relatively similar examples to the present case and argues that they give a strong indication as to the preferred approach, particularly on the issues of defining matrimonial, as opposed to non-matrimonial, property. He further argues that where, as here, there was a pre-existing family business element, that had a bearing on the approach and that was also consistent with the authorities he cited.
17. Leaving aside compensation, which is not in play here, as indeed it rarely is, the two familiar categories of sharing and needs feature prominently in the argument. They are extremely well defined and are second nature to practitioners in this jurisdiction. I will be forgiven for avoiding a scholarly analysis of these areas which will not add anything to the body of knowledge.
18. In short, Mr Thomas says that although his client's personal assets are clearly non-matrimonial and so in principle can be excluded from any element of sharing, the substantial items of the business value (represented by the

husband's shares) and his pension are fully susceptible to the sharing principle and therefore the division should at least start from the point of equality.

19. In contrast, Mr Brudenell, whilst conceding the non-matrimonial element of the wife's investments, says firmly that notwithstanding the length of the marriage and the wife's acknowledged contribution to the family, the value of the shareholding and a large proportion of the pension should be excluded from sharing as a result of effective pre-acquisition or unmatched contribution. He says that any sharing calculation is so limited in scope as to be irrelevant as on any view the basis of a fair award for the wife is one that meets her needs on a generous basis now and in the future.
20. Mr Thomas acknowledges that an award based on need will have to be calculated and although exact comparison is impossible because of the number of variables, he submits that the two approaches give rise to broadly equivalent outcomes. He does not seek a full 50% share which, although he did not concede as much in terms, is plainly a recognition that, even if his starting point is right, a departure from equality is fair in the circumstances of this case.
21. I am very grateful to counsel for refining the calculations, leading to a broadly agreed asset schedule. The Excel spreadsheets presented at the trial are in my judgment accurate and comprehensive. They are, of course, a snapshot as investment values and property prices fluctuate but a clear picture emerges. For that reason, I do not propose to set out each item in this judgment as reference to the schedule is convenient. Using crudely rounded figures, the following, I find to be the position.

22. The total of assets in this case, remembering they are in widely different forms and so cannot blithely simply be regarded as cash, is a figure in excess of £5m (£5.1m or £5.05m, the differential in context being less than 1% and so de minimis). The largest item is the husband's business interest valued at £3m+. He has a pension CEV of £1.1m+ (the wife's by comparison is very small). Each party has real property, or an interest in such. Each party has some investments. The largest single item is the wife's AT investments of £400k+ which with her savings give her freestanding capital of about £500k.
23. The parties' open positions are in the bundle at (12) and (16). The structure of the proposals is the same, namely that the wife should receive a lump sum payment and a pension sharing order for a clean break. The parties are very close on the pension percentage, either about 40%, offers the husband, (depending on what base figure is used) or 45% says the wife. They are substantially apart on the lump sum. The husband offers £400k. The wife seeks £970k.
24. In terms of an overall outcome, again not discriminating between the different categories of assets, Mr Brudenell calculates the husband's offer as representing an award to the wife of 28.72% whereas Mr Thomas calculates his approach as giving the wife 40.78%.
25. At (6) the Schedule of Issues lays out the conventional areas of debate in a case of this sort. I have identified the real issues requiring specific determination by me in a slightly different way. The issues seem to me centrally to be:
- i. Matters of fact and therefore credibility and/or reliability,

- ii. The standard of living and its impact on the outcome,
 - iii. The value of the family home,
 - iv. The wife's earning capacity,
 - v. The wife's income need,
 - vi. The wife's housing and other needs,
 - vi. The matrimonial and non-matrimonial assets and their relevance.
26. Having resolved those and any other specific issues, I then must carry out the familiar process of computation, assessment of overall needs of both parties and ultimately the fair distribution of resources to ensure security and independence moving forward.
27. Even in a needs-based case, as Mr Brudenell argues this is, it is important to ensure the ultimate award is affordable and fair in the wider sense of stepping back and looking at distribution and adjustment on a percentage basis.
28. I heard evidence from both parties. No other witness was called. There was not very much factual dispute. There was a certain amount of discussion of reasonableness and speculation about the future. However, for different reasons, both counsel were keen to highlight the qualities and merits of their respective clients and to demonstrate the shortcomings of the other.
29. There is not much to say about the husband's evidence. He was straight forward and honest about the business and its background. He was slightly grudging as to the wife's practical contributions to the work in the business and to her degree

of knowledge. He was also keen to emphasise the perceived generosity of his open position and implied that the wife's needs-based case was exaggerated. In my judgment, that was the not uncommon consequence of the adversarial nature of the proceedings. Overall, I have no difficulty in accepting the factual case put forward by the husband. The wife played a role in the work of the company, but I do not accept was an effective equal. As to the impressions of reasonableness, that, of course, is for me to judge.

30. For the large part the wife was similarly helpful and frank. Unfortunately, however, I have major reservations as to two aspects of her evidence. I found her whole account of the AT investments unconvincing and unbelievable. I am quite satisfied she was well aware of all the circumstances. She had access to financial meetings, to documents and to explanations. Her purported ignorance, both as to the existence and scope of the investments until late in the day, I reject. In the end, not without some difficulty, disclosure was largely achieved and so the figures are available and are in the schedules. In a limited sense her prevarications do not change much. They gave ample scope for effective cross examination on credibility which Mr Brudenell did not shirk taking up. His justification, as he argued in closing, is that the deficiency, which I have found, taints the rest of her evidence and should give the Court serious pause for thought.

31. The wife's lack of candour is puzzling. I can only assume that she felt these resources were morally outside the scope of the Court's enquiry, hence her reluctance. In fact, ironically, as they are largely untouched and distinct, the legal position broadly follows the moral and so perhaps she need not have

worried. There is no question that the husband should share in them and his case is not advanced in that way.

32. Secondly, the wife's evidence on alternative housing was woefully lacking in clarity or relevance. For reasons that I do not understand, the scope, geography and price range of the property particulars was so broad as to be unhelpful. I do not attribute malign motivation, simply an acute lack of focus. However, the upshot is that I am not greatly assisted in my determination of this issue. Of course, housing particulars are designed only as a guide, but the group in the bundle hardly even do that. What I do glean is that she would prefer a four bedroomed house which caters in particular to an active outdoor lifestyle, with suitable access to Leicester and Peterborough.
33. As to the balance of her evidence, she was truthful and as helpful as she was able. My reservation about her description of income needs, for example, is that, in reality, she had not had cause to apply her mind to them in a focussed way and many of the items were aspirational rather than founded in reality.
34. Overall, whilst I have some serious reservations, they do not so diminish her evidence for me so much as to disregard it or substantially discount it.
35. The key finding which I have already touched on is that I prefer the husband's evidence as to her role in the business. Her status was rather more apparent than real. She was not significantly involved in decision making or planning. That said, she was an enthusiastic and energetic worker, often in heavy practical ways. She was properly remunerated but her participation in that way as well as being the main stay of the family must be recorded and recognised.

36. Quite a bit was said about the standard of living and its impact on my approach. It was undoubtedly comfortable without being lavish. Both parties had their hobbies. The standard of living enjoyed is a statutory factor, but one of many. After separation, it is neither a legal requirement nor often a practical proposition for the party leaving the family home to enjoy an exactly equivalent situation in value or amenity. It is simply a factor which must receive proportionate and proper weight in the overall exercise in fair distribution. A profoundly detailed investigation into lifestyle is therefore unhelpful and so was not pursued in depth.
37. TL is not strictly an asset of either party but a company asset, but it would be artificial not to have regard to its situation or value in determining standard of living and housing need. It presents a difficulty. It is not a typical dwelling and so is difficult to compare. It is a pleasant enough house but in an odd position and overlooked. Its value is said to be £475k but Mr Thomas says that the truth is that the higher figure of £525k should be adopted as the perceived access issues are illusory since the possible objector is the husband's mother and she is not thought likely to be difficult. I find this dispute largely academic. The expert valuation is £475k and that must be the start. I accept that the issues are capable of resolution, but I reject Mr Thomas's assertion that they can simply be ignored. The inevitable compromise leads me to the conclusion that the property is worth at least £475k with potential, probably suggestive of a valuation at £500k. It is academic since the property is not likely to be sold and its actual valuation rather than an indicative range is not particularly helpful in judging the wife's housing need. To the extent that Mr Thomas appeared to submit that his client is entitled, come what may, to at least a property of

equivalent value, I reject that, as that would be to elevate the point to an absolute rather than a factor to be weighed.

38. The wife's earning capacity presents a dilemma. She is a woman in middle age with potentially a reasonable number of active years ahead of her. She is obviously intelligent and resourceful but lacks qualifications and/or substantial outside experience. The current pandemic adds to the complications. In many sectors there are acute staff shortages, but they are perhaps traditionally filled by the young and/or migrant workforce, particularly in the east of England. However, there are fears for the economy but at the same time some expectations of a rapid repopulation of the work force. It seems to me that I must balance the wife's obvious talents and attractions to some employers against her lack of relevant experience and the economic uncertainty in the current climate.
39. I accept that as a minimum it is reasonable to expect the wife to gain employment at the minimum wage rate of £8.91 per hour and I would expect her to be able to improve on that either by an employer paying the living wage or by promotion and enhancement of earnings. Of course, employment cannot be expected on every day from now until retirement at or near 67 but the troughs and peaks are likely to even out. I agree with Mr Brudenell's proposal that an earning capacity of about £15k per annum should be achieved and built upon.
40. There was much debate about the wife's income needs. Firstly, a comparison with the husband's is not especially helpful. It may give some idea of standard of living or expectation but a realistic calculation of need for an individual starting afresh in new accommodation is largely a free-standing exercise. It is not conducted, however, in a vacuum. Past behaviour is of relevance and the

determination of need has to be flexible to take account of actual rather than theoretical circumstances. Above all it must be reasonable and interpreted generously. It is not the Court's job to consign a separated spouse after a long and financially successful marriage to the bare necessities. That is so obviously unfair that I need say no more.

41. As already indicated the wife was vague on detail and the figures varied widely. In her Financial Statement (72) she calculates her needs at nearly £68k per annum. In paragraph 51 of his position statement Mr Thomas seeks to justify that figure but it is not tenable in the light of the wife's oral testimony. As indicated, her vagueness was striking and she did not seek to justify that level. In cross examination Mr Brudenell extracted a number of significant concessions and I am satisfied the Form E schedule is not an accurate assessment or even prediction of need, even generously interpreted. She agreed with Mr Brudenell that the bracket of £50k to £55k per annum would be sufficient and reasonable. I accept that this was a concession made, not in the heat of cross examination but fairly. Looking at the schedules and having heard the competing arguments, I am firm in my view that the starting point in Mr Brudenell's note at paragraph 11 of £35k to £40k is too low. It is never easy to be precise, but I am satisfied that a proper figure, including taking account of the level of housing need to which I will shortly turn, is £50k per annum. The shortfall is plainly £35k per annum after earned income is taken account of.
42. The appropriate level of housing provision for the wife presents a series of difficulties. I take account of the value of the family home at £475k with potential for greater value if the manageable access issues need to be resolved.

I also note its unusual features and the fact that it is not strictly the parties' immediate asset. To the extent I am able to, I take account of the range of particulars provided by both parties and the wife's explanations, preferences and reservations expressed orally. However, I am hampered in that exercise as explained earlier. I remain unclear as to her exact plans, particularly as to location. It is reasonable for her to make provision for the wider family to stay. A four bedroomed house is preferred but, of course, the exact specifications and amenities of individual houses on the market make them more or less attractive and the precise number of rooms is not always the key factor.

43. I do not dissent from Mr Thomas's analysis of the general legal position as set out in the paragraphs from 42 in his position statement. However, in my judgment, he is too dogmatic in arguing in paragraphs 49 and 50 for an award based on entitlement of exact valuation equivalence leading to a fund of £591k. That is too rigid and ignores the nuances of the exercise, particularly with an evidential deficit. Mr Brudenell at paragraph 13 argues for a range of £350k to £400k but allows some flexibility around the exact price, particularly if advantage was taken of the Stamp Duty relaxation during the pandemic. He justifies a purchase at £450k within budget. In fact, as any purchase is post 30 June 2021, unless in the meantime the wife has used her resources to fund a purchase in anticipation of her award, the Stamp Duty discount is still attractive but smaller. To the extent that the wife's housing needs are less than she argued for, there will be some modest reduction in her income needs which in part I explained earlier.

44. I find it reasonable that the wife should have sufficient capital for a further car purchase at some point in the future.
45. I am obliged to take a broad view on capital for the reasons already explained. In my judgment, the wife needs the sum of £500k to cover her needs of housing, motoring, moving and re-establishing herself.
46. Mr Thomas submits that the starting point is that his client is entitled to share in the husband's wealth represented by his shares and his pension. From paragraphs 17 to 37 of his position statement he sets out his submissions on the facts and says a proper application of the modern law will drive the Court to adopt his proposition. He relies, not exhaustively, on the chronology and in particular the events in the 1990s after the marriage culminating in the incorporation of PL, the efforts and contributions of his client, the concept of the "partnership of equals", the length of the marriage leading to an anachronistic approach being taken by the husband, through Mr Brudenell, to the fact that the business was the bedrock of the family finances, the fact that over time the character of assets can change and the misplaced (and he says unsustainably on the facts) reliance on any element of dynastic or intergenerational passage of wealth. He cites much well-known authority, drawing his points together in reliance upon the judgments of Moylan LJ in the relatively recent decisions of *Hart v Hart* [2017] EWCA Civ 1306 and *Martin v Martin* [2018] EWCA Civ 2866
47. Mr Brudenell's response is robust in his reply. At paragraph 12 of his document, he rejects any question of mingling and points to the pre-acquisition of the assets even if their precise legal character changed over time. Whilst acknowledging

the length of the marriage and the wife's work he submits that there is no change of character. He says any element of sharing is small and is insignificant when compared to a calculation based on need.

48. In my judgment and notwithstanding Mr Thomas's obvious scholarship, he places an over reliance upon the mere passage of time. The determination of what constitutes matrimonial property and what does not is not an exact science and involves an evaluation of many competing factors some of which are double edged or lead to grey or "hybrid" areas. In my judgment Hart recognises this difficulty and reminds Judges at first instance not to lose sight of the importance of an overall fair award notwithstanding exactly how the process to arrive at the award is addressed.
49. If I were absolutely required to resolve the point in this case, I would be compelled to find that Mr Thomas places undue emphasis on the simple fact of the length of the marriage. It is undoubtedly a long marriage. That is an immutable fact. However, his submissions, in my judgment, come close to an argument that that fact alone makes the concept of non-matrimonial property impossible to contemplate in a case of this sort. I am bound to take full account of the wife's contributions whether remunerated or not and I do. However, I do not find that they and the length of the marriage have transformed what are obviously pre-acquired assets into something they are not. Although the business is at the heart of the family finances (which is almost always the case) it has not, in my judgment, radically changed in character where it can properly be described as a product of the marriage.

50. My somewhat equivocal remark at the start of the last paragraph is prompted by the way the wife put her case through counsel. Sensibly, in my judgment, Mr Thomas recognised that this was never a case of a simple equal division, whether practically achievable or not. He conceded both by his open offer and in his arguments that a substantial departure from equality was right. He said, perhaps a little rhetorically, that the offer somewhat understated the case, but at its most optimistic would be nowhere near equality. He preferred to adopt a robust and generous approach to need which he says will lead to a not dissimilar outcome in any event. In a way this is a somewhat sterile distinction on the facts of this case as the focussed final arguments of counsel on the actual figures have been all about need.
51. I am quite satisfied that a needs-based award is the correct approach. I am sure that it would substantially exceed any award representing any element of sharing. It is trite that the fair award is in every case the larger of the two if they are in competition.
52. In setting my award I naturally bear in mind the open offers. Mr Brudenell, nevertheless, reminds me that the offers are not the parameters or outliers for the Court's decision and that the Court has a duty to make its own inquisitorial decision which may be outside the parameters of the offers. He mentions this to emphasise his case that the offer made by his client is ostentatiously generous not only in an attempt to produce settlement but as an insurance policy in relation to costs. I would respectfully say that such a submission has a somewhat rhetorical air to it, but his basic point is sound and supported by very reputable authority.

53. The parties agree that there should be pension sharing as, whatever the wife's earning capacity at present, her need for income continues after retirement. The disparity of pension provision is obvious. They are very close on the offers. Mr Thomas prays in aid *W v H (Divorce: Financial Remedies)* [2020] EWFC B10 and recognises the particular authority and expertise of His Honour Judge Hess in this field. He submits that there is now an expectation of equalisation of pensions in long marriage cases. Whether that is so (and it seems to me somewhat to overstate the position) or not, this case does not focus upon the point. The reality is that the provision of a lump sum and a pension sharing order are inextricably linked as it is the combination of orders which provides the future income security. If one part of the award diminishes, then, inevitably, the other would rise to achieve a similar result. In other words, I am not, in my judgment, required to scrutinise with acute accuracy the impact of a particular pension share as against another, rather I must look at the overall package of provision.
54. Having made the necessary findings in relation to the individual issues and having determined the approach to this case on a needs basis generously interpreted, I must make the total capital adjustment in order to achieve a clean break and determine the demarcation between lump sum and pension sharing. Although the figures are different depending upon the detail of the parties' cases the marked difference in proposed lump sum provision requires investigation. Counsel have approached this in completely different ways. A differential of £570k is not easy to understand.

55. Mr Brudenell has used conventional tools and properly sought to factor in the wife's earning capacity and the anticipated pension available to the wife from the state and from personal provision. There are uncertainties as to taxation as the wife has real property in Pakistan and the element of deduction properly to be made depending upon which sums are commuted. Helpfully he has used the flexible tool of Capitalise and produced alternative bases. At paragraph 14 of the note he sets out the calculations. Clearly the wife's own independent capital resources, including her modest pension are sufficient to meet her capital needs as I have found them to be. The controversial question is what combination of lump sum and pension sharing order will be sufficient to meet the income need of £50k as I have found it to be.
56. Using Mr Brudenell's schedule at the top of page 12 of his note, still in paragraph 14, but applying the housing and capital costs of £500k, the available sum for income (disregarding the Pakistan property and personal effects) reduces to about £900k. Although there are variables that produces, on the Capitalise model, an income stream of about £50k per annum or just above. The logic would be, given my more generous findings, that a modest adjustment upwards could be justified from the figures in the husband's open offer.
57. Mr Thomas adopts a radically different calculation. He refers to it in Duxbury terms, but it is a novel and, he hopes, bespoke approach, in my judgment. On the wife's much higher budget, which I have rejected, he submits a Duxbury figure in excess of £1m is needed. I have read and reread paragraph 52 of his document to try and understand the reasoning which would justify a shortfall of £55k per annum post retirement, even when the wife would expect to be in

receipt of her state pension and income from the personal pension comprising her own existing pension and the funds received under the pension sharing order. A simple Duxbury figure drawn directly from At A Glance does produce a figure of £1m+ to represent a lifetime income of £55k per annum. What, in my judgment, Mr Thomas's analysis fails to do is to give proper weight to the potential pension income. He calculates a potential figure of £26.5k per annum, on today's values but argues that that does not diminish the need for a full £55k per annum shortfall because of his assertion that the wife's income needs will have risen to £93k per annum as a result of inflation.

58. In that calculation there is, in my judgment, an important fallacy in that there is a danger of double counting the impact of inflation. A Duxbury award, I remind myself, is, according to the notes in At A Glance, a method of providing an amount which when invested to achieve capital growth and income yield can be drawn down in equal inflation proofed instalments. I am not persuaded that it is proper to reassess potential income needs at the point of retirement and recalculate the Duxbury award to take account of what are bound to be much greater figures. That is what, in my judgment, Mr Thomas has done leading to his submission that in order to meet his client's income needs a lump sum approaching £1m is required in addition to the substantial pension sharing order.
59. I reject that approach as flawed and inconsistent with conventional thinking and out of step with the calculations produced by Capitalise which are normally accepted as reliable. Accordingly, subject to an adjustment to reflect my findings and to provide, in my judgment, a fairer and more generous award to some extent, in principle I adopt Mr Brudenell's approach.

60. I have come to the conclusion that the proposed pension sharing order of £450k (expressed in percentage terms) is reasonable. I choose the lower figure of the two as a greater lump sum gives the wife more flexibility. I accept on a strict arithmetical basis Mr Brudenell's calculation is just tenable, but it lacks flexibility and any amount of room for manoeuvre. In my judgment, the proper and fair lump sum and the figure which I order is £550k.
61. The focus of the case has inevitably been upon the wife. It is important to acknowledge that the husband's needs must also be met from remaining resources. His position is very different. His housing and employment are in place and income generation is in his own hands. His retirement income will be a mixture of pension (obviously diminished as a result of the order) and capital released from the business when he chooses to sell or dispose of his interests in some other way. I am confident that the award to the wife will not adversely affect the husband's position.
62. Without dwelling on the point, I am quite satisfied that the additional sum which will be required is both affordable and capable of being released without detriment to the business or the husband's own situation. In this regard, Mr Thomas demonstrates in his position statement the mechanics and whilst I accept the husband has reservations, I am confident the award is capable of being satisfied.
63. Having calculated the award in the way I have, it is essential that I step back and double check the fairness by looking at the overall picture more objectively and broadly rather than by a micro scrutiny of the detail. My order will allocate approximately 31% of the assets, of different kinds, to the wife. That in my

judgment is fair and properly reflective of the circumstances of the case discussed in detail in the course of this judgment. It allows both parties to move forward and achieve financial independence.

64. Taking account of the costs generated by the parties and the balances in play, my proposal is that this order should be on the basis of no order as to costs. I would, if necessary, receive further submissions on this or any other ancillary point, if so advised.

65. Addendum – I sent this judgment to the parties in draft. Apart from a few suggested textual corrections which I have incorporated, I have received no substantive further submissions. Accordingly, this approved version of the judgment is now the definitive version and the order may be drawn on the basis of it, including that there shall be no order as to costs.