Neutral citation No: [2018] NIMaster 13 *Judgment: approved by the Court for handing down* *(subject to editorial corrections)**	*Ref:* 2018NIMaster13 *Delivered:* **8/11/2018**

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

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FAMILY DIVISION

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BETWEEN:

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Petitioner;

and

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Respondent

(Valuation Hearing)

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MASTER SWEENEY

[1] The parties are invited to consider this judgment and unless they inform the Matrimonial Office in writing within two weeks of any reason why the judgment should not be published on the Court Service' website, or anonymised further before publication, then the judgment will be published in its present form.

[2] This case came before me for a Valuation Hearing on Wednesday 24 October 2018, continued on 25 October 2018 and was adjourned for judgment today.

[3] For the sake of convenience I refer to the Petitioner as "the Husband "and the Respondent as "the Wife".

[4] The Valuation Hearing relates to an Individual Financial Advice practice set up by the Husband in July 2012 which I hereafter refer to as "the company".

Preamble

[5] Given the disappointing history of disagreement and delay I asked counsel for both parties whether there was any merit in allocating court time for an FDR hearing or whether a hearing is inevitable. I have been told a hearing is inevitable and therefore I shall fix this case for hearing without it having the benefit of a

Financial Dispute Resolution Hearing enjoyed by so many parties who come before this court.

[6] The success of a Financial Dispute Resolution Hearing very much depends on the parties and their legal advisors committing to trying to agree a fair resolution. If they are determined not to agree, they will usually not agree. When the contrary applies, the process has an increased chance of achieving an agreed fair resolution.

[7] It is particularly disappointing that the background facts, in many respects straightforward, do not obviously afford justification for the escalating costs which can have done nothing to reduce the acrimony in this case.

The Facts

[8] When the case first came before me I noted that it was a case where the Husband was then aged just 36 years and the Wife aged just 34 years. The parties had married on 18 August 2006 and disagreed about whether they separated in February 2012 or October 2012. Either way, they were together in marriage for around 6 years, a reasonably short period of time and they had been separated for several years. The Husband secured a decree nisi of divorce on 27 April 2015 on the grounds that the parties had lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the Wife consented to a decree being granted.

[9] The parties have one child, their daughter, who was then aged 6 years and they shared her care. The Wife gave birth to another child from her relationship with her partner, who was a Bank Manager. The Decree Absolute has issued. Both parties had moved on with their lives.

[10] At the time, I further noted that the Husband was a company Director/Financial Advisor and the Wife was a Systemic Practitioner. The assets appeared to comprise:

- the very modest proceeds of the former matrimonial home (before any deductions to account for asserted loans given by each of the parties' parents)
- The parties' modest interest in another property held with another couple.
- The parties' very modest pensions.
- The Husband's business which provided his income.
- The Wife's business which contributed to her income.
- The parties' savings.

[11] It was noted that the Husband had previously been in partnership with the Wife's mother operating an Independent Financial Advice Practice. The practice was one of a considerable number of practices which operated under the insurance, protection and regulation of Burns Anderson who were part of the Honister Capital group. In 2009 the Husband's then partner expressed the wish to retire and the Husband bought his mother in law out of the partnership for the price of £120,000 which was agreed to be paid in monthly instalments of £1,000 over a period of 10 years. In return the Wife's mother completely retired and deregulated. It appears therefore that the partnership at that time was roughly accorded a value of £240,000. Thus far no issue has been taken with that general premise.

[12] On 3 July 2012, the Honister Capital group went into administration apparently as a result of costly litigation arising from the alleged misconduct of one of its appointed representatives which resulted in the group's inability to obtain professional indemnity insurance. This had an obvious and considerable impact on the practice operated by the Husband which in a sense was cut adrift from its insurer and protector and no longer had the authority to trade that had been afforded by Burns Anderson.

[13] There is a difference of opinion about the extent of the impact. Mr Neill FCA of HNH Partners Limited, who gave evidence on behalf of the Wife, described the event as being akin to two events happening at the same time (1) having a bad debt and (2) one's computer server going down. Mr Neill said it would have had an impact on trade but it would not have been a cessation event. The Husband was unable to novate new business for a period. The Husband's counsel however said that the previous partnership had been rendered worthless because of the administration. She said that in addition, the Husband at the time still owed the Wife's mother £84,000 in relation to her sold share of the partnership.

[14] It is the Husband's case that he lost his client book as a result of the administration. Grant Thornton, were appointed administrators and wrote to all of the affected practices. The Husband's case is that he received a letter on 4 July 2012 from Grant Thornton outlining the position arising from the administration and stating that all files were to be returned as the clients and files belong to the principal firm and therefore the administrators. The Husband also makes the case that by letter dated 21 August 2012, Grant Thornton advised that the cost to purchase the assets from the principal was £21,377.01 based on recurring income of £40,333.99. Discounting monies received reduced the cost to £14,010.25 which the Husband either could not or would not pay.

[15] There is a dispute about what the Husband would be buying. The Husband's case was that the client list, also described as the client roll, was being offered for sale. Mr Neill was very clear however that it was the commission which was being offered for sale and it seems, offered at very poor value for money which may explain why so few accepted Grant Thornton's offer. Mr Nell in essence described how although the administrators were mindful of their obligation to recover as

much as they could for the creditors, they weighed in the balance the real impact of and difficulty in trying to claim ownership of clients. It was therefore not the client list which was being offered for sale but instead the commission. Having heard the evidence, I accept that account.

[16] Nevertheless, I believe the impact on the Husband was more serious than described by Mr Neill. The Husband's counsel said the Husband had to start afresh reaching out to clients old and new in order to get the company up and running. The Husband started a business under the same name but as a Limited Company. The Husband's new company was authorised to trade on 11 September 2012 under a new capital group, Tenet Connect.

[17] The Wife's case is that groups such as Tenet Connect were actively seeking to sweep up the businesses which had been cast adrift as a result of the administration. Mr Neill, on behalf of the wife, referred to another local IFA which he maintained continued trading under the new Capital Group. Without more detail it is not possible to properly assess that. It is clear that there was certainly a hiatus for the Husband between 3 July 2012, the date of the Honister Capital Group going into administration and the Husband's company becoming authorised by Tenet Connect.

[18] It is the Husband's case that the administration caused the demise of the partnership and left him in a position of debt to the Petitioner's mother. It is also the Husband's case that the new Limited company represents an after acquired asset and that in valuing the company, it is really the Husband's future income stream which is being valued. It may be that in making that case, the Husband pays little or no regard to the weight, if any, to be attached to value of the clients who had been clients of the partnership and kept faith with the Husband's new company. Whether it is a new asset, an existing asset or whether fairness is found somewhere between those two positions falls to be considered after all of the evidence has been heard.

[19] Since the Husband started the limited company, it appears to have grown in turnover and value which will be weighed in the balance when addressing the fairness of this case. Mr Neill valued the company at £276,106 in his January 2018 report whereas he now values the company at £683,983.

Delay

[20] Early in the case the Wife's counsel noted a sharp rise in turnover but indicated an intention to be proportionate and to draw a line if sufficient information was secured. Unhappily the case deteriorated thereafter. Grave concern was expressed that the Wife had shown the Husband's confidential accounts to another Financial Advisor who was alleged to operate in competition with what was then described as the Husband's fledgling company. This necessitated my directing the return of the Husband's confidential information. Happily, no obvious detriment appears to have resulted.

[21] The 30 June 2016 presented a real opportunity for progress. I had reflected on the possible difficulty presented by the Husband's then valuer valuing the company at a negative value in the context of his perceived closeness to the Husband as the said valuer was a client and the company accountant. The Wife's valuer/accountant in filed minutes of the accountants' meeting had considered the possibility of the court ultimately valuing the company at a figure between both accountants' valuations. Notwithstanding the Wife's counsel's reservations about the prospect for resolution, on that day both the parties and the said accountants confirmed to me their willingness and wish to use that day to try to resolve their differences about valuation to enable the case to progress and to save costs. Disappointingly and for reasons which I do not fully comprehend, thereafter it became apparent that the exercise was a waste of time. The Husband then agreed, up to a stated figure, to pay the cost of an agreed valuer's report. An effort to agree a joint valuer also came to nothing. It serves no useful purpose to rehearse the reasons.

Valuations in general

[22] For many years it has been regarded as good practice in the ancillary relief court for the parties to make every effort to try to agree a single joint expert.

[23] The 2006 *Ancillary Relief Guidance Notes and Practice Directions* recite at paragraph 3.8:

> "Expert valuation evidence is only necessary where the parties cannot agree, or do not know, the value of come significant asset. The cost of a valuation should be proportionate to the sums in dispute. Wherever possible, valuations of properties, shares etc. should be obtained from a single valuer instructed by both parties. To that end, a party wishing to instruct an expert (the first party) should first give the other party a list of the names of one or more experts in the relevant speciality whom he considers are suitable to instruct. Within 14 days the other party may indicated an objection to one or more of the named experts and, if so, should supply the names of one or more experts whom he considers suitable."

[24] *Duckworth Matrimonial Property and Finance* (July 2018 update edition) B1 at [67A] reflects on the fact that:

> "It is prudent to bear in mind that valuations are not written in stone; they represent at most, an expert's estimate of what an asset may fetch if exposed to a particular market or bidding process. It follows that caution needs to be exercised when relying on experts

> reports; and in general, the more esoteric or idiosyncratic the asset, the greater the degree of caution required"

and later:

> "With businesses, there is a further layer of complexity in that:
>
> - Experts may report a wide range of values, even when using the same techniques or methodologies. This is frequently seen with the valuation of companies on an earnings basis, where one may say that a multiplier of six is appropriate, while the other says 10.
> - Experts tend to be subtly influenced by the view of the party instructing them. Even a SJE may find his sympathies lie with one side.
> - Consequently, the whole exercise may seem subjective and flawed."

and later:

> "Be that as it may, everything has its price, and so 'market value' remains the norm."

[25] Lord Nicholls said in Miller v Miller; McFarlane v McFarlane [2006] UKHL 24; [2006] 2 AC 618 [26]: "valuations are often a matter of opinion on which experts differ. A thorough investigation into these differences can be extremely expensive and of doubtful utility".

[26] In the case of H v H [2008] EWHC 935 (Fam) Mostyn J was judging a disputed valuation of a business in respect of which the husband and wife each had shares. Both parties had provided expert evidence and the experts differed including in respect of the multiple to be applied.

[27] Mostyn J surmised:

> "I understand, of course, that the application of the sharing principle can be said to raise powerful forces in support of detailed accounting. Why, a party might ask, should my "share" be fixed by reference other than to the real values of the assets? However, this is to misinterpret the exercise in which the court is engaged. The court is engaged in a broad analysis in the application of its jurisdiction under the Matrimonial Causes Act, not a detailed accounting exercise. As Lord Nicholls said, detailed accounting is expensive, often of doubtful utility and, certainly in respect of business valuations, will often

> result in divergent opinions each of which may be based on sound reasoning. The purpose of valuations, when required, is to assist the court in testing the fairness of the proposed outcome. It is not to ensure mathematical/accounting accuracy, which is invariably no more than a chimera.
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> Further, to seek to construct the whole edifice of an award on a business valuation which is no more than a broad, or even very broad, guide is to risk creating an edifice which is unsound and hence likely to be unfair. In my experience, valuations of shares in private companies are among the most fragile valuations which can be obtained."

[28] Ancillary relief cases will generally see reference to one or more of three different valuations methods employed when valuing a business or enterprise. They are:

(1) The Net Assets value approach. This values the assets, tangible and intangible of the business and deducts the liabilities to provide a net value of the company. It will often be used where one is leaving the business or where the business is asset rich rather than where one is trying to reflect the economic potential of the company and as such would not be deemed appropriate for application in this case.

(2) The income approach takes the cash flow projections and discounts for risk. In essence involves calculating a multiple of the real recurring income. This has been favoured as an appropriate method of calculating the value of small IFA's (Independent Financial Advisors).

(3) The Market value approach. This uses a multiple of EBITDA (Earnings before interest, taxes, depreciation and amortization).

[29] This business valuation method is predicated on the idea that a business's true value lies in its ability to produce wealth in the future. The valuer therefore determines an expected earnings level for the business using the business' record of past earnings which the valuer then normalises accounting for unusual revenue or expenses, and applies a multiplier to the expected normalised cash flows to calculate the enterprise value. The multiplier used reflects what rate of return a reasonable purchaser could expect on their investment taking some account of the risk that expected earnings may not be achieved.

[30] In the case of A v A [2004] EWHC 2818 (Fam) which was referred to by Horner J in the 2013 case of APD and RD, Charles J dealing with the valuation of shares in a private company said:

> "By way of background I was referred to a number of cases in which issues had arisen concerning the approach that should be taken in cases where a party to a marriage owns shares in a private company (namely Evans v Evans [1990] 1 FLR 319 , Cowan v Cowan [2001] 2 FLR 192 , N v N (Financial Provision: Sale of Company) [2001] 2 FLR 69 , Wells v Wells [2002] 2 FLR 97 , G v G (Financial Provision: Equal Division) [2002] 2 FLR 1143 , F v F (Clean Break: Balance of Fairness) [2003] 1 FLR 847 and Parra v Parra [2003] 1 FLR 942 ."

[31] I respectfully agree with the comment of Coleridge J in N v N that the court must be creative and sensitive to achieve an orderly redistribution of wealth and that the practicalities involved in valuing, dividing up, and/or realising certain species of assets make the achievement of the White objective sometimes either impossible or only achievable at a cost which may not overall be in the family's best interests. The other cases cited support these comments and demonstrate that difficulties arise concerning holdings in private companies.

[32] At the risk of being accused of seeking to revisit issues in Parra I make the general comment that it seems to me that in ancillary relief proceedings it is important for the parties and their advisers to look at issues concerning private companies through the eyes of both (a) persons with experience in and of matrimonial litigation, and (b) persons with experience in and of business and business litigation."

[33] At paragraph [64] Charles J further stated:

> "In an assessment of a fair division of assets under the MCA problems obviously arise in respect of "snap shot valuations". The greater the volatility in value, or the potential for a wide range of valuation, the greater the problem. In respect of private companies, and shareholdings therein, the difficulties and potential unfairness of a "snap shot valuation" clearly arise and can do so in a stark form. Such valuations turn in large part upon opinions as to prospects, and what multiple and discount should be used in the valuation method adopted. They suffer from the background difficulty that there is generally no open market for the shares. This can regularly give rise to large differences between highly reputable valuers even when they are using the same methodology and these can be compounded by differing views on prospects and methodology. All this, and other problems, flow from the nature of the asset."

[34] Reflecting on all that was contained in Charles J's said judgment, Horner J in the 2013 case of APD and RD where he was considering the valuation of minority shareholdings in SME's ("Small Medium Enterprises") said:

> "I consider that Charles J was advocating a broad approach to be adopted so that the valuation of a shareholding in an SME would reflect the reality of the situation so as to try and achieve a fair division of the matrimonial property."

[35] This case does not involve minority shareholding but the principle applied is certainly relevant.

The valuers

[36] The Husband relied on the evidence of:

- Mr Henry Blunt of Retiring IFA; and
- Mr Tony Nicholl of GMcG, Chartered Accountants.

[37] The Wife relied on the evidence of:-

- Mr James Neill of HNH Partners Ltd.

The accounts

[38] The turnover rose from £160,781 in 2013 with a net profit of £24,796 to

£336,272 in 2015 with a net profit of £45,222 to
£597,828 in 2016 with a net profit of £179,694 and
£543,813 in 2017 with a net profit of £95,656

[39] The valuers differed in their valuations and subsequent valuers' meetings did not narrow the gap between Mr Blunt and Mr Neill. A more recent meeting between Mr Nicholl and Mr Neill resulted in some meeting of minds. However, in the main, the valuers differ in relation to the value of the company based on the latest balance sheet for year ending 2017 with Mr Nicholl and Mr Blunt (according to the filed Scott schedule) valuing the company at £303,938 and Mr Neill, valuing the company at £683,983.

[40] As described above, Mr Neill had previously valued the company at £276,106 in January 2018. The more recent increased value takes account of the increase in the net cash of the company from £27,886 at the time of the January 2018 report to the current agreed cash figure of £230,634.

[41] In essence the valuers continued to differ in relation to:

(1) EBITDA.

(2) The Multiplier to be used.

(3) Mr Nicholl provided the estimated tax to provide a net figure.

(4) Mr Blunt and Mr Nicholl considered the relevance of the valuation of the company at the date of separation with Mr Blunt valuing the company as nil. Mr Neill did not value the company at the date of separation.

EBITDA

[42] Mr Neill on behalf of the Wife calculated EBITDA as £100,744 while Mr Nicholl calculated EBITDA as £58,433.

[43] Mr Nicholl adjusted for a replacement salary for the Husband on the basis of a basic salary of £60,000 plus a bonus of one third of any income over £150,000 earned. Mr Nicholl allowed for £10,000 in the basic salary to reflect the work undertaken by the Husband as managing Director.

[44] This took some account of the fact that one of the self- employed advisors in the subject company was paid around £69,900 in 2017 despite generating less income than that generated by the Husband. Mr Nicholl also said his calculation was in line with information the Husband received from an Edinburgh based specialist recruitment agency called Johnston Greer. He took further account of the Salary and Benefits Census 2017/2018 conducted by BWD in relation to the UK Financial Services Sector (albeit that there was a low sample size in relation to NI which may have skewed the figures.) Finally, he relied on his own advice about what was realistic for a senior sales advisor with additional responsibilities.

[45] Moreover, Mr Nicholl included an additional pension figure to reflect the pension and health care situation

[46] Mr Neill had originally considered a salary figure of £40,000 but he was agreeable to adjusting the figure upwards to £60,000 which he believed was reasonable in his experience and opinion.

Multiple

[47] Mr Neill on behalf of the Wife used a multiple of 4.5 while Mr Nicholl and Mr Blunt applied a multiple of 1.5.

[48] Mr Nicholl relied on the multiple considered to be appropriate by Mr Blunt who was a broker experienced in a market that was specialised. Mr Nicoll said that

he had never dealt with the sale of an IFA company and was aware that the vast majority were dealt with by brokerage companies.

[49] Mr Neill in his January 2018 report said in selecting the multiple range, consideration would be given to:-

(a) Illiquidity: He said the subject company was a relatively small business and its shares were likely to be harder to trade than those of a larger business

(b) Size discount: He said that generally larger companies attract higher multipliers than smaller companies as they are deemed to be less risky investments. Therefore, a further discount would be required.

Tax

[50] Mr Neill did not calculate tax for the purpose of valuing the business but he did accept that raising a lump sum would have a tax implication and so far as that was concerned he did not take issue with Mr Nicholl's tax percentage. The latter took the view that in assisting the court in ultimately determining the ancillary relief claim, the tax calculation is of assistance. I share the view that though not being strictly relevant to valuation at this stage, it will be of assistance in the overall ancillary relief case.

Valuation at time of separation

[51] Similarly I agree that it is helpful in the general context of the ancillary relief case to have the experts' view of the value at the date of separation. The value at that time does not determine the case but it is useful information in the context of a reasonably short marriage. Mr Neill did not value the business at the date of separation despite Mr Blunt arguing for its relevance. Mr Blunt valued the business at nil at the time of separation.

Mr Blunt

[52] Mr Blunt was instructed after Mr Nicholl's advice had been initially been sought in relation to valuing the company. Mr Nicholl believed that the valuation of an IFA and particularly the appropriate multiplier was a specialised area and he recommended that a broker who sold IFAs was best placed to provide a market value. As a result, Mr Blunt was engaged, that being the precise nature of his work. It is fair to say that Mr Blunt does not have the accountancy knowledge or expertise of either Mr Nicholl or Mr Neill. He said that he knew his way around a set of accounts, or words to that effect. It was not clear that he knew the finer details of accounting. He had used an office template in preparing his report. He provided a valuation using a market type valuation structure but not deploying the normal ingredients of EBITDA which weakened his valuation.

[53] His evidence was useful in relation to his involvement in or knowledge of actual sales of IFAs, the current market forces in relation to IFAs and their relevance in relation to the Husband's company. It was this knowledge which informed the multiplier he said ought to be used with specific reference to the market value of the Husband's IFA company.

[54] It was put to Mr Blunt that he gave an interview reported in The FT Advisor in which he said "Multiples are definitely not coming down. If anything, for a business interested in finding the opportunity for the right price, they are increasing." In his evidence Mr Blunt dismissed the report as a marketing strategy.

[55] Mr Blunt focused on a number of factors which he felt negatively impacted on the value of the Husband's company, this list including:

- The geographical location. He felt most of the UK would not be interested in purchasing an NI IFA practice as a hub. Most favoured businesses located closer to central London. Of the 5270 UK practices giving pension and financial advice, a very small portion were located in NI, a smaller portion were interested in acquiring the business and an even smaller portion had the money. Therefore, the valuations were smaller.

- He was the Managing Director of Retiring IFA, involved in over 250 sales of IFAs and personally involved in over 100 sales. More than 85% involved actual retirement. Retirement or death, he said, were the biggest factor in the sales. The retirement of the Husband was questionable and this impacted on sale value.

- The Husband's company had an over reliance on one particular client which said client the Husband looked after. That translated into an increased risk for a purchaser as there was a real risk the client would opt out of the purchase and the revenue generated by that client represented a significant portion of the company's turnover.

- The Husband's business employed self-employed practitioners, one of whom was responsible for a significant amount of the recurring revenue. There was always a risk that self-employed advisors would leave and take the client's they were servicing. Mr Blunt said he was dealing with 2 IFA's that were worth nothing. One had a recurring' revenue of £1.6m but both were worth nothing as the reality on the ground was that the self- employed advisors held the client bank. (This has a resonance of the Wife's argument about what realistically happened when the original partnership business closed and the Husband started the limited company) A business where the advisors are self-employed is a very different prospect to a business with employed advisors.

- Given the risks, deferred consideration was likely to be essential for a purchaser. The longer the period of deferment affected the multiplier. There had to be a period of deferment so that money could be clawed back if the anticipated level of client retention was not met.

- A purchaser would want the retiring Managing Director of the IFA not to work in the business but to work on the business. In some businesses, the MD in anticipation of retirement would have introduced employed or self-employed advisors to the existing client. This had not happened with the Husband's business and that represented a risk which negatively impacted on value.

- The purchasers of the Husband's business would rely on gradual owner exit which was a risky scenario.

- The introduction of MiF1D11 ("Markets in Financial Instruments Directive"). This is the EU regulation that regulates firms which provide services to client linked to financial instruments and the venue where those instruments are traded and it took effect in January 2018. Under the old system the IFA was able to bulk migrate clients but now if buying business in a network, the IFA has to sign each client and agree payment of recurring revenue. Because the Husband's business is part of the Tenet network each client would need to sign into the new purchaser's operation as otherwise they are not part of the recurring revenue. The new directive has caused such concern in the IFA market place that they have had to adapt and it has had an adverse impact on values.

- Given the Husband's young age there was an extremely high risk he would compete. The purchaser would likely require him therefore to de authorise, sign a non-compete and non -solicit clause and exit the industry. The maximum allowable period if usually considered to be 3 years.

It was for the above reasons that Mr Blunt believed an appropriate multiplier was 1.5.

Mr Nicholl

[56] Mr Nicholl provided a report having, considered the valuation reports of both Mr Blunt and Mr Neill and seen the minutes of the valuers' meetings. He agreed with Mr Neill in some respects specifically:

- Mr Nicholl agreed that in considering EBITDA, it was appropriate to use a weighted average figure.

- He also considered that it was appropriate to adjust the amounts in the profit and loss account in relation to the payments in relation to the debt the

Husband owed to his mother in law in respect of his purchase of her interest in the partnership but he adjusted Mr Neill's calculation to accurately reflect the payments made.

- Mr Nicholl further agreed with Mr Neill that it was inappropriate for Mr Blunt to deduct £14,346 from the EBITDA figure in relation to the £14,346 PI balance. Instead, Mr Nicholl considered any deduction for PI balance ought to be made to the net cash figure in determining the equity value.

[57] However, in deducting for a replacement Managing Director salary, whereas Mr Neill had adjusted by £40,000 (which he then increased to £60,000) and Mr Blunt had adjusted by £44,000 with additions which increased basic salary to £60,000, Mr Nicholl considered a higher adjustment was appropriate to take account of replacement salary, the work undertaken as Managing Director and also a bonus of one third on all income in excess of £150,000.

[58] Mr Neill felt Mr Nicholl's replacement salary figure was too high. I have already described the research used by Mr Nicholl to support his treatment of the replacement salary. Mr Neill relied on his knowledge and also the Brightwater Salary Survey of 2017. However, that survey related to Financial Advisors in the banking industry. Ultimately the separate treatments of replacement salary created a difference of £38,548 between Mr Nicholl's figure and Mr Neill's figure in relation to replacement salary.

[59] The accountants also differed in relation to the treatment of healthcare. Mr Neill had added back healthcare cost on the basis that the profit and loss charge related to the Husband. However, Mr Nicholl considered this inappropriate on the basis that the healthcare charge related primarily to staff and that the staff portion was treated as a salary sacrifice. Ultimately there was a difference of £473.00 between the accountants in relation to this matter.

[60] Furthermore, Mr Nicholl opined that EBITDA required adjustment of 3% in relation to serp, not only in relation to replacement salary but also in relation to all staff salaries. Furthermore he believed an additional 3% was appropriate for the replacement salary. At the valuers' meeting, Mr Neill agreed to an increase of 3% across all the salaries but not the additional 3% in relation to the replacement salary. I was advised that ultimately the difference between the accountants in this regard was £3,292.

Mr Neill

[61] Mr Neill throughout valued the business on the basis of a willing buyer and a willing seller. In doing so he did not focus on the risks highlighted by Mr Blunt. He considered that Mr Blunt's valuation was predicated on the Husband being an unwilling seller. Therefore, he did not place much relevance on the concerns

outlined by Mr Blunt because he believed that these would be absorbed by a willing buyer and a willing seller.

[62] He did not share Mr Blunt's foreboding about the difficulties in novating clients across to the new purchaser. It was put to Mr Neill that there was a considerable difference between a networked business such as the Husband's and a directly authorised business where novation would not be such a concern. Mr Blunt had felt that this had a marked impact on sales of IFAs and was reflected in the fact that he himself had only sold four since 2016. However, Mr Neill felt that the novation of the existing clients would ordinarily be done as part of the purchase process.

[63] He accepted that he personally had not been involved in selling IVA's but his firm had. He believed that a willing seller would work with the purchaser in transferring clients and non-compete clauses and non-solicitation clauses would address issues of concern.

[64] Moreover, Mr Neill believed it could be an advantage rather than a disadvantage to have a client who generated the revenue of the Husband's main client

[65] Mr Neill did not seem to dispute the issue of deferred payment. He also accepted the likelihood of the Husband even having to deregulate and effectively leave the business for a period during which time he felt he could do other work in the same field albeit not be in competition or alternatively, he could work within the new company. Mr Neill surmised that after the non-compete time had expired the Husband would be free to operate again. Mr Neill considered that a willing purchaser would realise that they had a certain period to bed in the client base to ensure that they remained with them for the future.

The comparables

[66] The valuers referred to different comparables but it is fair to say that they were all of only general usefulness. None of the comparables closely compared with the Husband's company.

[67] Some comparables related to directly authorised rather than networked businesses or to businesses where the seller was retiring or to businesses in different geographical areas. On behalf of the Wife reference was made to an advertised IFA business in the Fermanagh area being sold by Mr Blunt's firm which appeared to use a much greater multiplier than that used by Mr Blunt in relation to the Husband's company. However, Mr Blunt said the comparable was of no use because the seller wanted to retire, it was a directly authorised business, the seller had fixed the price himself and the business had been on the market for 4 years and had not sold.

Conclusion

[68] Having heard the totality of the evidence it became increasingly clear that valuation is not a science. Essentially the market value will be the value which a purchaser is willing to pay for the company. The benefits and the risks form part of that process. As Horner J said in APD and RD:

> "In fact the open market valuation of a minority shareholding may well include a discount because the purchaser who buys the shareholding will be at the mercy of the majority shareholder(s)."

[69] The same helpful logic applies in this case. The open market valuation by reference to the multiplier embraces the benefits and the risks. It establishes in how many years, a purchaser would expect to recover the sum they have expended and some. This is a small company currently with healthy profit margins.

[70] Considering all the evidence, I am persuaded by Mr Nicholl's treatment of pension and health care but do not wholly accept his replacement salary figure. I therefore adjust the EBITDA figure to £80,000. I believe a multiplier of 3.25 is appropriate which gives a figure of £260,000. I add the most recent cash figure of £230,634 to make £490,634 and deduct PI of £14,346 leaving a balance value of £476,288.

Going forward

[71] The valuation is of course no indication of the fair resolution of the parties' ancillary relief claims. Instead that case shall now be listed for hearing when having heard all the evidence I shall consider the parties' respective interests taking account of the specific facts and circumstances of this case and the legal principles to be applied.