

<p>Neutral Citation No: [2024] NIMaster 6</p> <p><i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i></p>	<p>Ref: 2024NIMaster6</p> <p>ICOS No: 20/062141/01</p> <p>Delivered: 20/02/2024</p>
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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

PROBATE AND MATRIMONIAL OFFICE

BEFORE MASTER SWEENEY

BETWEEN

ELAINE CATHERINE HAMILTON

PETITIONER

AND

COLIN ALEXANDER HAMILTON

RESPONDENT

Introduction

[1] This case is listed for judgment today.

[2] The ancillary relief application was brought by the Respondent. For the sake of convenience, I refer to him hereafter as “the husband” while I refer to the Petitioner as “the wife”.

[3] The Petitioner/wife was represented by the Ms. Robinson BL and the Respondent/husband by Ms. O’Grady KC and MS L Kelly BL.

[4] After no resolution was achieved at the Financial Dispute Resolution hearing, the case was listed for contested hearing before this court. By the time it was agreed the case was ready for hearing, I was informed that the wife’s costs to date were around £65,000.00 + vat while the husband’s costs were around £86,000.00 inclusive of vat.

[5] On the first day of the hearing, counsel for each party advised the court that they did not intend to call evidence but instead they provided an agreed statement of facts and an agreed statement of assets. In addition, I have the written submissions on behalf of each party. As the differing narratives of the parties which appear in the papers were not tested in evidence, the court has to look to what has been agreed. The court has also considered the legal authorities referred to by counsel. The court is grateful to all counsel for their submissions.

The case

[6] In considering the application, the court notes the following:

- i. The parties were in a relevant cohabiting relationship for less than twelve years of which the period of marriage was less than nine years. Therefore, while this is not the longest marriage, the relationship is not short and produced four children all of whom remain dependant.
- ii. This is a farming case, and the parties agree that most of the wealth in the case, was brought to the marriage by the husband. The agreed pre- acquired wealth on the husband's side is mainly by way of inheritance or inter-vivo parental gift/ inheritance. The agreed value of the said so-called inherited land is £4,650,000.00. The wife brought a modest amount of land to the marriage which is now valued at €25,000.00 and which the wife wishes to retain.
- iii. The parties agree:
 - (a) the land acquisition increased during the course of the marriage with the expectation that the land would be handed down to the next generation and
 - (b) that this remains the case. In line with that expectation, they say, none of the inherited property was "cashed in" and spent. Notwithstanding that, the court was told that although the parties had considered ringfencing an amount of the land for the benefit of the children, ultimately this was not felt to be a viable option.
- iv. The lands bought during the parties' marriage/relationship have an agreed value of £1,205,000.00.
- v. The parties also agree that at the time of the separation, the wife removed £55,000.00 from the farm account without consent.
- vi. The wife is the primary carer of the children, having left her employment after the children were born and left again due to childcare issues. She was added to the farming partnership but resigned her position on separation and while she supported the work and helped out on the farm when required, the husband had the primary farming role, being a farmer in partnership with his

parents when the parties' married and continuing as a farmer to date. The wife re-trained as a classroom assistant and works in that field.

vii. The parties agree that,

"This is a farming case in which there are issues of law to be determined relating to the source of the wealth held."

viii. The parties further agree that this is a suitable case for a clean break and a full and final settlement.

Background facts

[7] The husband and wife are now aged 53 years and 47 years respectively. They married on 31 October 2009 when the husband was aged 39 years and the wife aged 33 years. They had been in a cohabiting relationship for 3 years before the marriage and in fact two of their four children were born during that period, a daughter on 5 June 2006 and another daughter, on 5 July 2009. The parties went on to have a son, born on 17 April 2011 and another son born on 4 January 2015.

[8] They agree that their marriage was over in March 2019, less than nine years after the date of the marriage. The husband remained in the former matrimonial home until October 2019. The parties were therefore in a cohabiting relationship for less than twelve years and have lived separately and apart for more than 4 years.

[9] The parties were granted a decree nisi of divorce on 19th October 2023 when, by agreement, cross decrees were awarded to each party on the ground that each party had behaved in such a way that the other could not reasonably be expected to live with them.

[10] They agree that the conduct issues in this case are not sufficiently serious to meet the threshold required for them to be taken into account, on either party's case.

[11] The parties' children are now aged 17 years, 14 years, 12 years, and 9 years respectively.

[12] They were aged 13 years, 10 years, 8 years, and 4 years when, following the breakdown of the marriage, the Husband moved from the matrimonial home to his parents' home.

[13] The four children remained living with their mother in the former matrimonial home and the children also enjoy contact with their father.

[14] The husband pays the sum of £1277.00 monthly for the children. He also makes additional payments upon request by the wife for school uniforms, school trips, school equipment, their eldest daughter's driving test fee and sports fees.

[15] The husband pays the wife's utility bills including rates and fuel. Electricity and home insurance costs are stated as being "covered through the farm".

[16] The husband is a self-employed farmer by occupation and continues to reside with his parents on the family farm. The wife, a classroom assistant, works part time on three days each week.

[17] On their marriage certificate the husband is recorded as being a farmer and the wife, a training consultant. The parties agree that the wife left employment after the children were born. She returned for a short time in 2012 but had to leave again due to childcare issues and remains the primary carer for the children. The wife returned to work from April 2018 until June 2020 in a local business before retraining as a classroom assistant.

[18] Both parties registered the births of the elder two children and the wife registered the births of the younger two children. The wife is not recorded as being a farmer by occupation on any of the birth certificates but instead, as a training consultant by occupation on the 2006, 2009, and 2011 birth certificates of the three elder children and a software trainer on the 2015 birth certificate of the youngest child.

[19] The husband is recorded as being a farmer by occupation on all of the children's birth certificates.

[20] That said, the parties agree that the wife supported the work on the farm and helped out whenever required and also that the wife was a partner in the farm but decided to resign her position on separation, the parties having separated in 2019.

[21] The parties further agree that a modest standard of living was enjoyed during the marriage with the farm account providing the source of income.

[22] In relation to other agreed facts, the wife applied for a non-molestation order against the husband, but it was not granted.

[23] The parties further agree that following allegations made by the wife, the husband was prosecuted for an alleged section 42 assault but was acquitted after a contested hearing.

Agreed facts in relation to the assets in dispute

[24] It is agreed by the parties that 70% of the assets in this case were inherited by the Husband.

[25] As already stated, the parties agree further land was acquired during the marriage and preserved with the mutual intention it would be passed on.

[26] At the date of separation, the wife removed £55,000 from the farm account without the husband's consent, and they also agree that the wife received a disputed sum of money from Covid grants paid through the farm partnership.

[27] It is agreed that premium bonds held by the husband, should be held for the benefit of the children and can either be encashed or sold and lodged to their existing Nationwide accounts.

[28] Both parties accept that the husband will require to sell land, to meet the wife's claims so any settlement to her will have to consider capital gains tax implications.

Disputed arguments

[29] The wife seeks to have machinery, livestock and farm equipment valued so that this can be considered in the overall asset base. The husband argues that the machinery and equipment should be excluded since these are the working tools of the business.

[30] There is a dispute between the parties over the ownership of plant and machinery which the farm bought but which the wife says was registered in the name of the husband's father.

Income

[31] The parties have agreed the income of the parties.

[32] They agree that the farm accounts for the tax year ending 5 April 2022 show the husband's share of the farm's net profit before tax to be £99,954.00 and which the husband does not draw as a regular income but applies to the discharge of bills as and when they arise.

[33] The wife's income varies. She earns an hourly rate of £11.70 gross and earns monthly wage of between £869.00 - £1125.00 (an average of £997.00) net depending on the hours when she is required. She is entitled to Universal credit and has received £1457.91 monthly from 27 September 2023. The husband pays child maintenance of £1277.00, and the wife also receives child benefit although a figure was not provided. Excluding child benefit, the wife's average income is therefore £3731.91. As already stated as agreed, the husband currently additionally pays the wife's utility bills and additional expenses for the children.

Property

[34] All of the land is unencumbered, and the parties agree that a significant portion was inherited by the husband and pre-acquired while the wife brought her land at Convooy, Donegal to the marriage. That land has an agreed value of €25,000.00.

[35] The parties agree that the total of the land inherited by the husband has a value of £4,650,000.00.

[36] The lands bought during the marriage or parties' relationship have a total value of £1,205,000.00.

[37] Excluding the wife's Convoy land, the husband's inherited and the bought land have a combined value of £5,855,000.00.

[38] In relation to valuations, the parties say that a joint valuation was agreed between the parties and carried out by Alexander Gourley in May 2021. The wife then sought her own valuation through Pollock Estate Auctioneers in February 2022. Agreed valuations were achieved between Mr Gourley and Mr Pollock in September 2023. I provide a breakdown of the land and said agreed values below.

[39] Agreed inherited land and property:

- The former matrimonial home at 26 Listymore Road, Castlederg, County Tyrone comprising house, farmyard and property surrounding land. This was bought by the husband and his parents in 1999. The land has an agreed value of £635,000.00.
- 62.8 acres of land and a farmyard at Crewe Upper originally purchased by the husband's parents while the husband was a youth and transferred into the husband's sole name in the years before marriage. It has an agreed value of £840,000.00.
- 77 acres of land in Castlederg. Some land was bought by the husband's father and other acres by his parents during the husband's childhood and variously in the husband's name while a youth or transferred into the husband's sole name in the year before marriage. This land has a total agreed value of £835,000.00.
- 18.77 acres of land behind Castlederg High School which was transferred into the husband's sole name in the year before the marriage and has an agreed value of £200,000.00.
- 15.7 acres of land at Castlegore Road and Drumquin Road was respectively purchased by the husband's father before and in the year of the husband's birth and transferred into the husband's sole name in the year before the marriage. The land has a total agreed value of £300,000.00.
- 30 acres of land at Grahamstown Road, Erganagh which was bought by the husband and his parents in 1999 and has an agreed value of £525,000.00.
- The husband's parents' house, farmyard, and land at 104 Strabane Road, Dunraven, Castlederg which the husband's father bought in 1965 and was transferred to husband's sole name in the years before the marriage subject to right of residence in favour of the husband's parents. This has an agreed value of £925,000.00.

- 47 acres of land at Mournebeg Road, Castlederg valued at £390,000 which the husband inherited from his uncle alongside his uncle's wife as limited owner and was transferred to the husband's sole name in 2002. This has an agreed value of £390,000.00.

Total: £4,650,000.00 (or £3,725,000.00 if the husband's parent's home is excluded).

- Land at Convoy in Wife's name €25,000.00.

[40] Agreed land bought during the parties' marriage /relationship:

- 93.2 acres of land at Kilmore Road, Drumquin valued at £925,000.00.
- 29.4 acres of land at Kileter Road, Castlederg valued at £280,000.00.

Total: £1,205,000.00

[41] Husband's Investments:

- Aegon with agreed value at 5th May 2023 of £110,892.00.
- Legal & General fund with agreed value at August 2023 of £36,319.00.

Total: £147,211.00

[42] Husband's agreed pension:

- Royal London CETV at December 2022 £32,998.06.

[43] The investment accounts for the children are not included in the agreed schedule of assets. The parties have agreed that the premium bonds which the husband holds can be encashed or sold and the proceeds lodged to the children's existing Nationwide accounts. From the papers, the court understand that the following amounts were held by the husband for the children:

Children Investment accounts held by Husband:

- Sophie at September 2022 £14,825.92
- Zara at January 2023 £16,884.99
- Jonathan at January 2023 £14,991.64
- Harrison at January 2023 £15,404.83

[44] Plant & Machinery:

Suggested valuation of £202,175 which excludes a Toyota Landcruiser.

[45] The husband says that the machinery, and farm equipment should be excluded as these are the working tools of the business. There is a dispute between the parties

about the ownership of plant and machinery bought by the business but which the wife says was registered in the name of the husband's father.

[46] Livestock:

396 cattle at August 2023 (wife's estimated value of £501,659).

Sheep.... Wife estimates at 400 and 400 lambs (wife's estimated value of £102,072).

Law

[47] As with every case this court strives to achieve a fair resolution for each party, having due regard to the law and mindful of the facts. No two cases are the same. Every case turns on its own facts.

[48] In this jurisdiction the primary legislation is the Matrimonial Causes (NI) Order 1978 and specifically Article 27(2). As the then Keegan J put it so succinctly in the case of *S v S and ES* [2016] NI Fam 2, this "therefore must be the starting point".

[49] The court is required to give first consideration to the welfare, while a minor, of any child of the family who has not obtained the age of 18. This does not mean that they are the only consideration or that they are necessarily the main consideration, depending on the other matters which the court has to consider. However, the fact that the court is required to give children first consideration speaks of their relevance. Although separation can cloud fairness, when reminded most parents understand the reason why an Ancillary Relief court ought to give dependent children first consideration.

[50] The parent with primary care of children will carry a considerable financial burden. They will bear the cost not just of ensuring the children have a secure home, clothes on their backs and food in their mouths but in addition, an unquantifiable financial burden will fall on the shoulders of that parent. This is because they may have to stretch or balance their budget to cover a myriad of other expenses whether it be computer or sporting equipment, school trips, classes for musical, sporting or extra-curricular interests, costs related to the birthdays of children and their friends, trips to the cinema and costs related to holidays. It stands to reason too that if the person with primary care bears that considerable financial burden, the other party saves it. That is not to say that the parent with contact will not spend money when the children are in their care. In this case, the court is also mindful of the maintenance and other expenses which the husband is paying for the children.

[51] In considering the circumstances of each individual case, Article 27(2) requires the court to take account of:

"(a) the income, earning capacity, property, and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity

any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire,

(b) the financial needs, obligations, and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future,

(c) the standard of living enjoyed by the family before the breakdown of the marriage,

(d) the age of each party to the marriage and the duration of the marriage,

(e) any physical or mental disability of either of the parties to the marriage,

(f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family,

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it,

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring."

[52] I take account of those facts in this case which pertain to those considerations.

[53] The wife in this case had her own employment/career but left to care for the children and manage the parties' household. The husband farmed in partnership with his parents. The wife did help on the farm when necessary and was added to the partnership, but she herself left the partnership upon the parties' separation and it appears that her contribution was more as homemaker than farmer while the husband's was more as farmer than homemaker. Utilising their time in such mutually beneficial way, they each brought value to their marriage. It appears too that the parties' children benefited from the arrangements operated by their parents and that the parties are devoted to their children.

[54] The farm account was the source of income for the family albeit that it was used carefully rather than extravagantly, the parties agreeing that they enjoyed a modest standard of living. Surplus money was reinvested to acquire more land and both parties expected that the land would be handed down to the next generation.

[55] It is not disputed that the 70% of assets brought to the marriage by the husband represent the majority of the assets. It is also clear that the husband

acquired most of those assets either by inheritance or inter-vivo gift/early inheritance from one or both of his parents.

[56] Both parties accept that land will require to be sold in order to meet the wife's claims and agree that any settlement may have capital gains tax implications and the said tax implications will require to be taken into account. No evidence was called in relation to what land might be sold in order to reduce any tax implications.

[57] In the case of *Lambert v Lambert* [2002] EWCA Civ 1685 in considering the recognition of contributions made by one party who was the home maker and the other who was the provider, Thorpe LJ stated that:

"From these authorities in this and related jurisdictions two consistent themes emerge. First it is unacceptable to place greater value on the contribution of the breadwinner than that of the homemaker as a justification for dividing the product of the breadwinner's efforts unequally between them."

[58] Thereafter, In the 2006 case of *Miller v Miller* Baroness Hale at para 140, referred to,

"compensation for relationship-generated disadvantage, on the basis that the economic disadvantage generated by the relationship may go beyond.... the need".

[59] Such disadvantage can occur where one party has interrupted their career path to devote themselves to being a homemaker. In the present case, it appears clear that the wife's career path was interrupted for precisely that purpose.

[60] In the *Lambert* case, Thorpe LJ reminds us that,

"A distinction must be drawn between an assessment of equality of contribution and an order for equality of division. A finding of equality of contribution may be followed by an order for unequal division because of the influence of one or more of the other statutory criteria as well as the over-arching search for fairness."

[61] He went on to say later in the judgment that,

"A formula for the equal division of assets on divorce is justly criticised for producing crude and unfair outcomes. It might be unfair to the one who inherited those assets years before the marriage. It might be unfair to the one who needs all the available assets to provide a secure home for the children."

[62] The case of *White v White* [2001] 1 AC 596 which decision was affirmed in the House of Lords, was a farming case and was often colloquially referred to as the equality case. However, the assets were not divided equally. The parties' marriage

had endured for more than 30 years, both parties came from farming backgrounds, had an interest in farming and theirs was regarded very much as a partnership. However, the court took account of the fact that a farm had been inherited by Mr White before the separation and the fact of that inheritance resulted in Mr White receiving a greater share of the assets in dispute.

[63] In *P V P (Inherited property)* [2004] EWHC 1364, a farming case involving a 16 year marriage, the court recognised the significant part the wife played in the operation of the farm but also the fact that the vast bulk of the family assets were brought to the marriage by the husband from his inheritance. In balancing those facts, the court awarded the wife a lump sum representing little over 25% of the asset pool.

[64] In a 2017 lecture to Bristol University about changes over the centuries in the financial consequence of divorce, Lord Wilson, talked about the principle of equal sharing heralded by Lord Nicholls in the case of *White v White*. He was at pains to point out his view that the principle of equal sharing primarily related to matrimonial property being property accumulated by one or other or both of the parties during the marriage. This, he said, provided an extended recognition of the crucial part usually made by the homemaker in the creation of wealth during the marriage, one of the specified factors which the statute requires the court to take into account. Lord Nicholls had made clear that his yardstick also applied in principle to non-matrimonial property, in other words property which one or other party had brought to the marriage or had acquired by gift or inheritance during it, although he observed that departure from an equal sharing of that type of property might more often be appropriate.

[65] Non matrimonial property will more obviously be looked at to address needs so where for example a husband brought a mass of property into a long marriage, but where no further property was accumulated during it, at the end of the marriage the wife would for example still need a home and this would need to be addressed from the available assets even if they are non-matrimonial in origin.

[66] In the case of *Scatliffe v Scatliffe* [2016] UKPC 36, the Judicial Committee of the Privy Council comprising Lady Hale, Lord Wilson and Lord Carnwath concluded that one should properly apply the sharing principle to matrimonial property and then, taking account of the statutory criteria and paying due regard to the principles of need and compensation to consider whether a fair income requires additional distribution from the non-matrimonial assets. Non matrimonial property is not to be ring-fenced. Instead, if having shared the matrimonial property the outcome is fair and meets the needs of the parties, there will be no need to distribute the balance.

[67] In the case of *JL v SL (no.2)* [2014] EWHC 360 Mostyn J analysed the developing jurisprudence:

“In the application of the *sharing* principle (as opposed to the needs principle) matrimonial property will normally be divided By contrast, it will be a rare case where the sharing principle will lead to any distribution to the claimant of non-matrimonial property. Of course, an award from non-matrimonial property to meet needs is a commonplace, but as Wilson LJ has pointed out we await the first decision where the sharing principle has led to an award from non-matrimonial property in excess of needs.

[68] Mostyn J also pointed out that the sharing of matrimonial property does not always mean the equal sharing. At paragraph 27:

“...matrimonial property will not invariably be divided equally”

The matrimonial home will in the main be treated as matrimonial property whatever its source as the relevance of the source can diminish over time though won't automatically be ignored as is evident from the case of *Vaughan v Vaughan* [2008] 1 FLR 1108.

[69] In considering inherited wealth which has been brought to the marriage the court will normally have regard to the source, the nature, the value, whether it is personal, the length of the marriage, whether the wealth became intermingled with matrimonial property and enjoyed by the parties. The more it has been enjoyed and intermingled, the more difficult it will be to secure a separate valuation and the less likely it will be that it ought be ringfenced. The court will also have regard to the extent to which inherited property has not been intermingled and can be easily identified and capable of separate valuation.

[70] In the case of *Robson v Robson* [2011] FLR 751. [43] Ward LJ helpfully set out guidance:

“How then does the court approach the 'big money' case where the wealth is inherited? At the risk of oversimplification, I would proffer this guidance:

(1) Concentrate on Section 25 of the Matrimonial Causes Act 1973 as amended because this imposes a duty on the court to have regard to all the circumstances of the case, the first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18 and then requires that regard must be had to the specific matters listed in Section 25(2). Confusion will be avoided if resort is had to the precise language of the statute, not any judicial gloss placed upon the words, for example by the introduction of 'reasonable requirements' nor, dare I say it, upon need always having to be 'generously interpreted'.

(2) The statute does not list those factors in any hierarchical order or in order of importance. The weight to be given to each factor depends on the particular facts and circumstances of each case, but where it is relevant that factor (or circumstance of the case) must be placed in the scales and given its due weight.

(3) In that way, flexibility is built into the exercise of discretion and flexibility is necessary to find the right answer to suit the circumstances of the case.

(4) Like every exercise of judicial discretion, the objective must be to reach a just result and justice is attained when the result is fair as between the parties.

(5) Need, compensation and sharing will always inform and will usually guide the search for fairness.

(6) Since inherited wealth forms part of the property and financial resources which a party has, it must be taken into account pursuant to sub-section 2(a).

(7) But so must the other relevant factors. The fact that wealth is inherited and not earned justifies it being treated differently from wealth accruing as the so-called 'marital acquest' from the joint efforts (often by one in the workplace and the other at home). It is not only the source of the wealth, which is relevant, but the nature of the inheritance. Thus, the ancestral castle may (note that I say may not) deserve different treatment from a farm inherited from the party's father who had acquired it in his lifetime, just as a valuable heirloom intended to be retained in specie is of a different character from an inherited portfolio of stocks and shares. The nature and source of the asset may well be a good reason for departing from equality within the sharing principle.

(8) The duration of the marriage and the duration of the time the wealth has been enjoyed by the parties would also be relevant. So too their standard of living and the extent to which it has been afforded by and enhanced by drawing down on the added wealth. The way the property was preserved, enhanced or depleted are factors to take into account. When property is acquired before the marriage or when inherited property is acquired during the marriage, thus coming from a source external to the marriage, then it may be said that the spouse to whom it is given should in fairness be allowed to keep it. On the other hand, the more and the longer that wealth has been enjoyed, the less fair it is that it should be ring-fenced and excluded from distribution in such a way as to render it unavailable to meet the claimant's financial needs generated by the relationship.

(9) It does not add much to exhort judges to be 'cautious' and not to invade the inherited property 'unnecessarily' for the circumstances of the case may often starkly call for such an approach. The fact is that no formula and no resort to percentages would provide the right answer. Weighing the various factors and striking the balance of fairness is after all an art not a science."

[71] In *WX v HX* [2021] EWHC 241 assets inherited by the husband but used during the parties' long marriage were treated as matrimonial assets capable of

division between the parties, whereas an inheritance by the wife secured before and early in the marriage and an inheritance received by the husband towards the end of the marriage were respectively treated as being non matrimonial, having been retained separately by each and as such were not shared. The net result was that the wife received the greater share of the asset pool.

[72] The wife proposes she gets:

- Two thirds of the former matrimonial home and surrounding land valued at £635,000 providing the wife with £423,333 and the husband £211,666 +.
- 50% of the 93.2 acres at Kilmore valued at £925,000.00 and the 29.4 acres at Killeter Road valued at £280,000 which were bought during the marriage so £462,500.00 and £140,000.00 being £602,500.00 for each party.
- 30% of the other land (total £4,015,000.00) providing the wife with £1,204,500.00 and the husband with £2,810,500.00.
- 50% of wife's estimate of plant and machinery so £175,825.00.
- 50% of the wife's estimate of stock value so £301,865.50.
- 50% of investments.
- This equates to a total sum of £2,708,023.83 in addition to half of the investments. In satisfaction of her claim the wife seeks the former matrimonial home and lands along with 30 acres at Grahamstown valued at £1,160,000.00 and capital.
- The wife removed £55,000.00 at separation and she would wish to retain that, and she also wishes to retain the land at Convery with a value of €25,000.00.

[73] The husband proposes the wife gets:

- 70% of former matrimonial home and surrounding land so £444,500.00 to the wife and £190,500.00 to the husband.
- 70% of non-inherited matrimonial assets so £843,500.00 to the wife and £361,500.00 to the husband.
- Nothing of the inherited assets so the husband would retain those assets to the value of £4,015,000.00.
- 50% of Aegon policy with an agreed value of £110,892.00 so each would receive £55,446.00.
- 50% of the Legal and General policy with an agreed value at £36,319.00 so each would receive £18,159.00.

- This would result in the wife being entitled to a total lump sum of £1,361,605.00 plus she would retain the Convery property in her name valued at €25,000.00.
- While the husband would retain assets to the value of £4,640,605.00 plus livestock, machinery, and pension fund.

[74] Therefore of assets valued at £6,002,210.00 (which excludes machinery, livestock and the husband's pension all of which the husband would retain) the wife would receive more than 22% and less than 23%. While the proposal made on the wife's side may be too high taking account of the circumstances and amount of assets transferred to the husband by his parents who are still alive, to my mind the proposal made on the husband's side is unrealistically low, given land was transferred while the parties were in a committed cohabiting partnership, that the wife was added to the partnership and particularly if the husband continues to have the benefit of the livestock and machinery.

[75] In reaching my decision, I am very mindful of Ward LJ's words in the *Robson* case to the effect that weighing up all the factors and finding fairness is an art rather than a science. In the case in this jurisdiction of *M v M* (Financial Provision: Evaluation of Assets) (2002) 33 Fam Law 509, McLaughlin J talked about the reverse check for fairness. On the husband's proposal, he would retain more than 77% of the assets which I do not accept as fair in all of the circumstances.

[76] In this case the fact that the wife's career path was interrupted as a result of her taking responsibility for primary care of the children and the home, was recognised by the wife being added as a partner to the farming partnership and the farm account provided for the family. The inherited land formed part of the background utility resource which enabled the acquisition of the land purchase during the marriage and therefore there was some extent of intermingling or as sir Jonathan Cohen put it in the case of *DE v FE* [2022] EWFC 71, in relation to a property owned by the husband before the marriage, there was a "matrimonial element" resulting in the wife in that case being afforded a 30% interest.

[77] I am mindful that some of the "inherited land" was held by the husband's parents and only transferred to the husband in the year prior to the marriage and while the parties were in a seamless cohabiting relationship. I am also aware that some of the inherited land which was transferred to the husband relates to the husband's parents' home where the husband lives with his parents. Whatever the transfer of title, there is nothing to suggest that this property was regarded other than as the parent's home during their lifetime and in reality, the husband's legal interest was regarded as secondary to the parent's actual interest. Without the husband's parents' contribution, it presents as clear there would be little in this case. It is sad against that background that the wife does not appear to have a good relationship with the husband's father.

[78] I consider that the husband's parent's home, bought by the husband's father in 1965 is wholly non matrimonial in nature and notwithstanding that it was transferred into the husband's name by way of inter-vivo inheritance planning and therefore was included in the list of so-called inherited assets, it should be retained on the husband's side. It has a value of £925,000.00.

[79] The farm machinery and the livestock are part of the working farm, which was started by the husband's parents and which the husband now operates in partnership with his mother. The machinery is required for the farm and is not likely to be sold. Therefore, while it is important to recognise that the machinery and livestock do have a value which is far from insignificant, they can be seen in that context. I weigh the livestock and machinery in the balance and set them off against the wife's interest in the Donegal land which the wife wishes to retain and the £55,000.00 which the wife removed from the account.

[80] In relation to the assets I assess the wife's share as being:

- 50% of the former matrimonial home, yard and land being £317,500.00.
- 50% of the non- inherited land being £602,500.00.
- 30% of £4,650,000 inherited assets, which, after deducting the value of the former matrimonial home, yard, and land at £635,000.00 and the husband's parent's home at £925,000.00, this equates to £927,000.00.
- 50% of the Aegon investment being £55,466.00.
- 50% of the Legal & General investment being £18,159.00.

Total: £1,920,625.00.

[81] In addition the wife retains the Donegal land and the money from the farm account which she has already received.

[82] This would mean the husband has a 50% interest in the matrimonial home, yard and land being £317,500.00 plus £602,500.00 in relation to the non-inherited land and 70% of £3,090,000 being £2,163,000. His parent's home remains in his name valued at £925,000.00 and he retains his equal share of the investments being £18,159.00 and £55,466.00 all of which, total £4,081,625.00.

[83] In addition the husband retains his pension provision and his interest in the livestock and machinery which the wife values in total at £805,906.00.

[84] Leaving aside the Donegal land and monies the wife has already received and the husband's interest in his pension, the livestock and machinery, this equates to the wife receiving approximately 32% of the value of the assets in dispute and the husband retaining approximately 68 % of the assets in dispute.

[85] The parties accept that land will require to be sold by the husband to raise the lump sum due to the wife which award I round out to £1,920,000.00 and that such land sales will be liable to tax which ought to be taken into account by the court. Accordingly, I find that each party should be responsible pro rata to their benefit so the wife shall contribute 32% of the resultant tax costs of selling land to meet the award due to the wife.

[86] If the parties are unable to agree that any property or land, including the former matrimonial home shall be held by the wife so as to mitigate tax implications, then within 4 weeks hereof, the husband shall identify the land which he proposes to sell to meet his liability. Pending the discharge of the lump sum due to her, the wife shall receive her 50% share of the Aegon and Legal & General investment being £73,325.00 and shall be at liberty to remain in the former matrimonial home with the current status quo in relation to maintenance continuing until the balance liability due to her, after any deduction for tax is discharged.

[87] Upon discharge of the liability to the wife under this judgment, the parties financial and ancillary relief claims against each other in life and in death arising from the breakdown of their marriage, shall stand dismissed.

[88] I so Order.