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Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

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2011-035334

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

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BETWEEN:

DAVID McGOWAN

Petitioner;

and

CHRISTABEL McGOWAN

Respondent.

_____

O'HARA J

Introduction

[1] This case involves the distribution of assets of a couple who were married in 1984 and separated in 2008. Standard issues arise about how those assets should be shared, taking account of the provisions of the Matrimonial Causes (NI) Order 1978 and especially the matters to which I am obliged to have regard by Article 27. In addition however there are two significant issues between the parties:

(i) Whether I should make a Pension Sharing Order in favour of Mrs McGowan which takes account of the years since the parties separated during which Mr McGowan has continued to be employed by the same employer, making contributions to the same pension scheme.

(ii) Whether I should make an order for any or all of Mrs McGowan's costs against Mr McGowan on the basis that there has been financial and/or litigation misconduct on his part.

The costs issue will be dealt with in a separate judgment. This judgment deals solely with the division of assets.

Background

[2] Mr McGowan was born in October 1955. He is due to retire in December 2015 soon after his 60th birthday. In February 1981 he started employment with a bank by which he is still employed in a very senior capacity. The parties married in July 1984. Mrs McGowan who was born in August 1959 was then a nurse. After a number of miscarriages she stopped work in the hope that this would help her to have children. In the event she has had four. When the parties separated in summer 2008 the children were 21 years, 19 years, 17 years and 11 years. One was working but the other three, all girls, were in full-time education.

[3] Mrs McGowan has not returned to work outside the home since the children were born save that she has done some childminding, partly for a church run parent and toddlers group. It was suggested by Mr McGowan in his evidence that he had encouraged her to go back to paid work, not as a nurse because she had been away from nursing for so long but perhaps in a local pharmacy. Mrs McGowan did not recall any such exchange. In this context I note that when the parties separated in 2008 Mrs McGowan was 48 years old and that she has not done anything at any time since then to try to earn an independent income. This is despite the fact that she is sufficiently educated and accomplished to have qualified as a nurse and to have done a "fantastic job" (in the words of Mr McGowan) in raising their children.

[4] The parties lived in a family home near Belfast in some comfort and style as a result of Mr McGowan's work with the bank. His present net income is £13,750 per month. For the last 3 years his gross pay has been approximately £290,000. (All figures in this judgment have been rounded off save where the contrary is stated). Until the banking crisis of the late 2000s Mr McGowan also received substantial annual bonuses. The family home was mortgage free as was a holiday home they bought in Portugal in 1999.

[5] From 2002 onwards Mr McGowan was required to work in London from Monday to Thursday. He then returned to Belfast where he worked on Fridays and at weekends. This left Mrs McGowan to run the home and care for the children largely alone. While in London Mr McGowan's salary was augmented by him being given an allowance for housing. At present that accounts for £4,250 of his monthly £13,750.

[6] In summer 2008 the parties separated. Mr McGowan soon began to work full-time in London. Initially he came home regularly at weekends but as time went on that faded and then largely stopped. At about the time of the separation he bought a flat in London in Notting Hill, using the housing allowance to pay for it. He also took £34,000 from their joint account to pay for the stamp duty on the purchase. In 2009 he became involved with his current partner, Miss Russell. They have lived together since October 2010 in her London home. For a year from 2010 to 2011 Mr McGowan rented out the Notting Hill flat. The rent of £3,000 per month was paid to an account in Miss Russell's name. In 2011 the flat was sold at a profit of £79,000. £50,000 of that was then used to reduce the mortgage on a house in France which Mr

McGowan and Miss Russell had bought through a company which they formed. (Of the other £29,000, £14,000 is still unaccounted for by Mr McGowan.) Neither Mrs McGowan nor the children knew that Mr McGowan had moved in with Miss Russell in 2010, that he had rented out the flat in Notting Hill, that he had then sold Notting Hill or that he had bought the house in France. This was only disclosed in affidavits in these proceedings from 2012.

[7] Mr McGowan's evidence was that he has paid Miss Russell £2,000 per month, and the gas bill, since he moved in with her in 2010. He also said that occasionally when he was financially stretched she gave him some money back. That may be so but there is no record of it and on his evidence it appears that any repayments have been occasional and limited. I attach no significance to them but I note that these payments continue uninterrupted to the present day.

[8] For some time after their separation Mr McGowan's pay continued to go into the joint account which he held with Mrs McGowan. That arrangement only stopped a year or more later. Nominally he was paying her £4,000 per month maintenance for herself and her children but she was able to access more through the account. Ms O'Grady QC for Mrs McGowan suggested that £4,000 was at the lower end of the maintenance which should have been paid. That proposition was advanced on the basis of guidelines which suggest that for three children in full-time education Mr McGowan should have been paying approximately 25% of his net income, about £3,400, quite apart from what he paid for the maintenance of Mrs McGowan. While that is right, the fact is that for some time she had access to their joint account and she also used inheritances in excess of £100,000 from her parents who each died a few years before the separation in 2008.

[9] In the mid-2000s, towards the height of the property boom and at the instigation of Mr McGowan, the couple bought two buy-to-let properties in Northern Ireland. These turned out to be disastrous investments. There was significant pressure by 2013 to repay the outstanding loans on these properties which had been made by the bank which employed Mr McGowan. In July 2013 he unilaterally reduced his monthly payments to Mrs McGowan from £4,000 to £2,000. He did not reduce the £2,000 which he was paying each month to Miss Russell. Nor did he redirect any of the housing allowance of £4,250 which was then being used by him to pay for the property in France. It is true that by this time only one child, the youngest, was in full-time education rather than the original three. That might have made it possible for Mr McGowan to argue for a downwards variation in the maintenance which he was paying but by acting in the way that he did he left Mrs McGowan receiving for herself and their youngest child the same as he was paying Miss Russell in London. No application for maintenance pending suit was pursued on behalf of Mrs McGowan, in part at least because she still had access to her inheritance from her parents on which she became more dependent.

[10] In the end the debt on the buy-to-lets was cleared only by selling them and the family home in Portugal. While that property meant a lot to Mrs McGowan and the children, it appears to have meant rather less to Mr McGowan whose focus was now on his new holiday or retirement home with Miss Russell in France. All that remains of the home in Portugal is a net balance of £34,000 which is to be distributed between the parties.

[11] When the property in Portugal was sold and the debt on the buy-to-lets was cleared, Mrs McGowan's monthly maintenance was not raised from £2,000 by Mr McGowan. It remains at that figure today.

[12] The position of the four children is as follows:

- The son lives and works in Belfast and has done for some years.
- Two of the girls live in a house which they bought together recently near Belfast. They are both employed.
- The youngest girl who is 17 lives with her mother in the family home. She is in full-time education.

[13] Mrs McGowan's current position is that she wants to move from the family home which is now too big for her and which is too expensive for her to run. It is for sale at present and has been for some time but during the hearing in February 2015 it was hoped that a reduction in the asking price which Mr McGowan had agreed to would achieve a sale and leave a net figure in the region of £400,000. If that money is divided on something like a 50-50 basis, Mrs McGowan will be able to buy a new home for herself and her daughter but she will have to move to a less expensive area to do so.

[14] Mrs McGowan will continue to receive £2,000 per month from her husband until the orders made as a result of this judgment take effect. Of her inheritance she still has £15,000 in cash, £30,000 in shares and paintings worth £13,000.

[15] Mr McGowan will earn his existing salary or a figure close to it until he retires in December 2015 as I am satisfied he will. He accepted in evidence that his financial experience and expertise are such that he has the capacity to earn an appreciable income from directorships and consultancies from 2016 onwards but he disavowed any interest in doing so. His reasoning was that for the last 10 years or so life as a banker has been particularly stressful and he simply wants to escape from that world by living with Miss Russell in France for 7 or 8 months of the year and in London for the rest of the time. I find it credible that this is his present intention but it would be wrong to regard that as a fixed decision. It is one that he could change at any time and may well change after he has had some time away from his full-time pressurised job.

[16] So far as assets are concerned, he accepted that he has a beneficial interest in Miss Russell's London home as a result of his payments of £2,000 per month to her for the last 4½ years. That was an appropriate concession, especially since Miss Russell's income is said to be in or about £9,000 per annum and her monthly mortgage is £700, being an interest only repayment mortgage on a loan of £340,000. According to Mr McGowan the property is worth about £750,000.

[17] Mr McGowan also owns with Miss Russell the French property which is set in its own grounds of 22 acres. She has made no payments towards this property but as an architect has contributed to major refurbishments which are ongoing and in respect of which they have a facility to borrow a further £100,000. Mr McGowan's expectation is that his share of the sale of the matrimonial home in Northern Ireland will clear the mortgage on the French property though it was less clear whether that included the refurbishment loan.

[18] On retirement Mr McGowan will be entitled to a mortgage with a CETV of £2.726M. However that pension is divided with Mrs McGowan, he will be entitled to take 25% of his share tax free. She can do the same but she can also use her share to buy an annuity or to invest or do both. He has less flexibility because he will be subject to the rules imposed by the trustees from time to time.

[19] Mr McGowan has shares or investments in his own name worth £15,500. He and Mrs McGowan share joint assets of two assurance policies worth £10,000 together and a deposit account with £26,000 in it.

[20] As part of the case for Mr McGowan, Mr Toner QC who appeared with Ms Lisa Moran suggested that Mrs McGowan should have lived more prudently since her separation. My attention was drawn to her spending on items from the QVC shopping channel, to how she had run down the money she inherited on the death of her parents by about £55,000 and to how she had not seriously worked out how to plan for her future or set money aside for it. In part this questioning was based on an analysis by Mr McGowan with help from an associate at the bank of her spending as seen through bank statements. Having considered this evidence I find the criticism to be unfair. Mrs McGowan has lived comparatively modestly. Her lifestyle is far removed from the relative luxury she enjoyed until 2008. Holidays are infrequent, her car is more than 5 years old and there is no identified spending in high end restaurants or boutiques.

[21] Mr McGowan on the other hand has made up for the loss of the home in Portugal by buying a replacement holiday/retirement home of some increasing luxury in France. He has enjoyed relatively high end living through holidays and restaurants and, through his relationship with Miss Russell, he enjoys the benefit of living in an ever more valuable property in London.

[22] In no small measure Mr McGowan has achieved this by treating his life up to 2008 and his life since then as two separate lives. This was illustrated on a number of occasions during the hearing. To take just one example, he gave evidence that when he was paying £4,000 per month to Mrs McGowan he was in fact paying her 55% of his net income. For the purposes of this exchange his monthly pay was taken at £13,500. He calculated the 55% by deducting the £4,250 which is used to pay for the French property, school fees of £1,000 for the youngest child, £500 which was paid on the buy-to-lets and £500 for the running costs in Portugal. This reduced the £13,500 to £7,250 of which £4,000 is 55%.

[23] What is striking about this approach is the way in which Mr McGowan treats the French property. His employer pays him £4,250 towards the cost of living in London each month. As a result of his relationship and living arrangement with Miss Russell he has been able to divert that £4,250 to acquire another property entirely. Another man might think that by living with Miss Russell he is saving £2,250 from his housing allowance. Instead Mr McGowan appears to have convinced himself that he was being generous by giving Mrs McGowan £4,000 per month or 55% of what he regarded as his true disposable income.

[24] I heard financial evidence from a number of experts. It is unnecessary to set this out in great detail because ultimately their positions became closer. In a note signed by the two actuaries retained by the parties and dated 5 February 2015 it was stated that Mrs McGowan's share of the pension benefits which had accrued from the date of Mr McGowan's entry into the pension scheme until the date of separation was 41.01% (according to Mr McGowan's actuary) or 42.31% (according to Mrs McGowan's actuary). These percentages were based on the CETV dated June 2014. The actuaries agreed that a Pension Sharing Order for 41.01% would provide equal value of pension benefits accrued to the date of separation and that a Pension Sharing Order of 42.31% would provide equal cash sums and residual pensions based on Mrs McGowan purchasing an annuity. With some limited reservations the actuaries also confirmed that the same statistics applied to the updated CETV as at 4 February 2015.

[25] While I accept this agreed evidence I also note that the exclusion of Mrs McGowan from any entitlement to a share in the pension accrual from 2008 to 2015 would leave her with a significantly smaller pension than Mr McGowan. For instance her cash sum would be £268,000 as opposed to his £324,000 and her flat annuity if she bought one would be £41,200 compared to his annual pension of £48,700.

[26] I also heard other expert evidence about the way in which Mrs McGowan might choose to exercise her options. Again the extent of this evidence was narrowed by Mrs McGowan confirming that she would take advantage as soon as she could of the option to cash 25% of whatever share of the pension she is to receive on a tax free basis. The remaining debate was whether she would be best advised to

buy a flat annuity or an increasing annuity. There was also some debate about whether she would be better advised to invest some of the lump sum rather than use it all to buy an annuity. On the evidence the risks involved in investing the money and paying fees annually for advice on maintaining or changing the investments would not necessarily be attractive to a cautious investor who depended significantly on the pension and annuity for her income but that will be a matter for her.

Submissions

[27] I had the benefit of detailed and helpful written submissions from both parties to whom I am indebted. On behalf of Mr McGowan Mr Toner emphasised the following points in particular:

- Since this was a long marriage of 24 years an equal distribution of assets is appropriate save in respect of post-separation pension accrual.
- The husband's pre-marriage pension service of 3 years would be harder to exclude from consideration than his post-separation service.
- The wife's inheritance from her parents should be included in the matrimonial assets to be shared.
- The general principle is that there is no absolute rule as to how assets should be divided and the court's discretion is broad.
- Since Mrs McGowan will be well provided for by receiving 50% of the sale of the family home and a pension sharing order to reflect the period up to 2008 there is no need to look beyond 2008 and make an award in respect of the property in France or any pension which has accrued from 2008 to 2015.
- The guidelines given by Mostyn J in Rossi v Rossi [2006] 3 FCR 271 are applicable in the present case even if the facts in Rossi are entirely different.
- The husband's ongoing work and increasing pension entitlement from 2008 is not matched in this case by any ongoing contribution from Mrs McGowan.
- The husband's position is that fairness is achieved and discrimination avoided by allowing to Mrs McGowan 41.1% of Mr McGowan's pension ie 50% of the period from 1981 to 2008.
- The proceeds from the sale of the family home should be divided equally.
- The maintenance should continue at £2,000 per month until the Pension Sharing Order becomes effective.
- This is an appropriate case in which to make a clean break between the parties. Courts are moving more and more to achieve finality and minimise ongoing stress and tensions especially since these can have an adverse effect not just on the parties but also on their adult children.

[28] For Mrs McGowan it was submitted by Ms O'Grady that:

- This is a needs based case.

- The court has a virtually unfettered discretion on how to achieve fairness between the parties though in any case fairness can be an elusive concept.
- The net proceeds of the matrimonial home should be divided 55% - 45% in Mrs McGowan's favour since the youngest daughter who is 17 and who is still at college lives with her and needs to be provided with accommodation.
- The net proceeds from the sale of Portugal and the buy-to-lets are to be divided equally, a point agreed to by Mr Toner.
- Mrs McGowan should be credited with half of the net value of the property in France because it has only been paid for by Mr McGowan and not at all by Miss Russell and because it was bought in effect using £50,000 from the sale of Notting Hill which in turn was bought in part with £34,000 from the joint account.
- Failing that, Mrs McGowan should be credited with £17,000 ie half of the £34,000 used to pay the costs of buying Notting Hill.
- Mrs McGowan is entitled to half of the £14,000 which is unaccounted for on the sale of Notting Hill.
- Mrs McGowan is entitled to £2,000 per month for 20 months being the reduction by half of the maintenance which she has received since July 2013.
- Mrs McGowan is entitled to £22,000 from the amount remaining of the £50,000 placed by the parties in the joint deposit account to cover their legal costs.
- If Mrs McGowan receives half of the net value of the French property she accepts that Mr McGowan should be entitled to half of her inheritance from her parents.
- Since Mr McGowan clearly has the potential to earn a significant income after his retirement, the court should make an award of nominal maintenance in favour of Mrs McGowan rather than a clean break settlement. By doing so Mrs McGowan would retain the option to seek further payments in the future from Mr McGowan if he started to build up an income from consultancies, directorships etc.

Discussion

[29] It was submitted by Ms O'Grady that the present case is significant because in this jurisdiction it is taken as read that post-separation pension accrual is excluded from the assets to be divided on divorce. Mr Toner did not contend that there was any absolute rule that post-separation accrual must be excluded. Nor did he contend that pre-marriage accrual must be excluded. He did however contend that the guidance given by Mostyn J in Rossi has been followed here, that it remains good law, that it is reflected and endorsed by the decision of Singer J in S v S [2007] 1 FLR 2120 and in B v B [2010] 2 FLR 1214. Ms O'Grady's response was that the law requires fairness and equal treatment to be achieved by taking account of the factors which are identified in Article 27 of the 1978 Order. These include need, the duration of the marriage and earning capacity, present and future. They also include at Article 27(1) (f) "the contributions made by each of the parties to the

welfare of the family, including any contribution made by looking after the home or caring for the family".

[30] It is perhaps curious that the principles relied on by Mr Toner come from the case of Rossi which is entirely removed from the circumstances of the present case. Rossi involved cohabitation for some years and then a marriage of approximately 10 years without children following which the husband made his ancillary relief claim more than 20 years later. The claim failed for many reasons but at paragraph 24 the judge drew together a number of principles which he deduced from the authorities and on which Mr Toner relies. Some of the principles are not controversial. For instance at paragraph 24.6 it is stated that non-matrimonial property (eg inheritances or pre-marriage pension accrual) in reality become merged or entangled with matrimonial property the longer the marriage lasts. On that analysis Mr McGowan's pension accrual from 1981 to 1984 and Mrs McGowan's inheritances from the deaths of her parents a few years before separation became merged with the matrimonial property such as the family home and pension accrual during marriage and before separation.

[31] Some of the "principles" are however more contentious. At paragraph 24.4 Mostyn J suggested that a bonus or other earned income relating to a period immediately following separation would be "too close to the marriage to justify categorisation as non-matrimonial". He went on however to suggest that such earnings could be classed as non-matrimonial if they related to a period which commenced at least 12 months after the separation. As Mostyn J acknowledged there is an element of arbitrariness about fixing or even suggesting a precise time period.

[32] Ms O'Grady's submission was that Rossi was not a needs case and that the principles set out there should not be exported to a needs case. In other words, there is a danger that principles which are set out in a case which is concerned with one factual scenario should be interpreted as if they apply to all cases. I accept that submission. Mostyn J appears to have been careful to set out the principles which he listed in fairly broad terms but whether and how they apply in quite different scenarios will always be open to debate. It must also be open to debate whether additional or different principles might apply in certain circumstances. The continuing debate and discussion in this area is reflected in Jackson's Matrimonial Finance, 9th edition, at paragraphs 5.91 to 5.96. See in particular the reference to the decision of Bodey J in CR v CR [2008] 1 FLR 323 in which the judge rejected an attempt on the part of the husband to depart from equality in respect of post separation accruals where the asset accruing role had not changed in any way since separation.

[33] In this case the fact is that Mr McGowan was able to continue to live in London and make a successful living there, enjoying the benefit of his housing allowance, only because the children stayed in Northern Ireland with their mother

who looked after them (or at least looked after the three girls). Her contribution did not stop in the summer of 2008, especially in the case of their 11 year old daughter. It would be entirely wrong, unfair and inequitable to disregard the fact of her ongoing contribution to looking after the home and caring for the children.

[34] Mr McGowan appears to have sectioned off his life into pre and post-separation periods. He seeks a division of assets largely along those lines. In so doing however he undervalues how important Mrs McGowan's contribution has continued to be over the last 8 years. That contribution is a factor which I must consider under Article 27(1) (f) even if he does not.

[35] I am obliged by Article 27 to exercise my powers to place the parties in the financial position they would have been in if the marriage had not broken down and each had properly discharged their financial obligations and responsibilities to each other. I fail to understand how I can do that, to the extent that it is possible to do so, if I entirely disregard the fact that Mr McGowan was able to continue to work in London and receive his housing allowance and invest much of the profit from Notting Hill in France and establish a new holiday home there while the home in Portugal was lost and while he literally left his wife and children behind in Northern Ireland. The case made on his behalf is that I should disregard the acquisition of the property in France and that I should disregard the fact that by continuing to work in London he has added 8 more years to his pension entitlement. This case is made on his behalf despite the fact that he has not engaged in any new business venture or built up his wealth by taking any fresh direction in employment terms but has rather continued to work for the same company in the same job on the same terms as he enjoyed at the time of his separation.

[36] In the circumstances of this case I consider that the fairest distribution of the assets of Mr and Mrs McGowan is as follows:

(i) The net proceeds of the sale of the family home will be divided on an equal basis between them. I do not think that fairness requires more than that in light of the further orders which I will make. The result is that Mrs McGowan will receive around £200,000 towards the cost of a new home and Mr McGowan will receive a similar figure which he can use to clear or reduce the debt on the French property.

(ii) I will include Mr McGowan's pension accrual from 1981 to 1984 in the matrimonial assets to be shared because I consider that they became merged in the matrimonial property during the next 24 years of marriage.

(iii) I would apply the same principle to Mrs McGowan's inheritance save that I am satisfied that she relied substantially on some of that money to support and provide for the children and herself when her maintenance was a modest £4,000 per month but even more after it was reduced to £2,000 per month.

She did not live a high life, certainly not compared to Mr McGowan. There is approximately £58,000 left of her total inheritance of £113,000. I will not include in the assets to be shared either the part of the inheritance which she has already spent or the money which remains in the PBS account but I will include the paintings and shares which remain worth approximately £43,000.

(iv) In light of the decision I have made about Mrs McGowan's inheritance, I decline to order any payments to her or any division of assets to reflect the reduction in her maintenance from £4,000 to £2,000 in summer 2013.

(v) I order Mr McGowan to pay to Mrs McGowan half of the £34,000 used in the purchase of Notting Hill i.e. £17,000 and half of the unaccounted for balance of £14,000 on the sale of Notting Hill i.e. £7,000.

(vi) I make no order in respect of the property in France. The orders made in the preceding sub-paragraph will have the result of Mrs McGowan having returned to her £24,000 which she can be regarded as having contributed to the purchase of that property.

(vii) The value of Mr McGowan's shares and investments (in the region of £15,000) will not be included in the balance of assets to be shared given that I have determined that Mrs McGowan can keep the money from her inheritance currently held in the PBS.

(viii) I divide in equal shares the net proceeds following the sale of Portugal and the buy-to-lets i.e. £34,872.

(ix) I order that Mrs McGowan is to receive £22,000 from the joint deposit account which was created by drawing down £50,000 from their joint account to cover legal expenses. She has spent only £3,000 of that so far. Any balance over and above £22,000 is to go to Mr McGowan.

(x) I order that the parties share the value of the two assurance policies worth approximately £10,000.

[37] On this division of assets Mrs McGowan will have approximately £200,000 towards a new home, she will keep a balance of £37,000 on her inheritance and she will in addition receive approximately £68,500. She will also continue to receive £2,000 per month until the Pension Sharing Order takes effect.

[38] For his part Mr McGowan will receive approximately £200,000 which will clear all or most of the mortgage and loan on the property in France. The valuation of the property there is not entirely clear but with the refurbishment and other work which is proceeding at present it is likely to be worth a figure in the region of €400,000 at the very least. He also has a beneficial interest in Miss Russell's London

home which according to him is worth approximately £400,000 more than it is mortgaged for. In addition to that he will receive or keep assets of about £64,000.

[39] Mr McGowan will continue to earn his significant salary until December 2015. He has the potential to earn more money after retirement, perhaps considerably more. I accept that he may take a break from working when he retires and that he may never work again. Even though he may resume work at some point in the future I do not think that it is necessary or appropriate to keep open the potential of a further claim. The advantages of clean breaks have been widely recognised, notably by Lady Hale in Millar v Millar [2006] 2 AC 618 at paragraph 133. They have been increasingly accepted in recent years and are to be encouraged.

[40] However the fact that I am excluding any further claims makes the decision on pension sharing all the more important. Subject to any appeal, Mrs McGowan will not be able to seek any further award from her husband. Realistically she will not have any future income of significance beyond whatever share of his pension she is awarded. Mr Toner has suggested that she will be well provided for if she receives his suggested 41.1% based on half of 3 years pre-marriage accrual and 24 years of marriage. In a sense that is correct but she would still receive significantly less than Mr McGowan and he will have the benefit of significantly more assets than her. I do not regard that degree of discrepancy as fair in the circumstances of this case and I do not think that it achieves a balance in the needs of the parties.

[41] Ms O'Grady submitted that this is a case in which I should make a Pension Sharing Order of 50% in her client's favour. I conclude that Mrs McGowan's needs can be met fairly without going quite that far and I do not disregard the fact that she has not sought any paid work since the separation in 2008. I also conclude that the pension share, even in the circumstances of this case, should reflect some limited balance in Mr McGowan's favour. Accordingly my decision is to make a Pension Sharing Order in favour of Mrs McGowan for 47.5% of the pension to which Mr McGowan is entitled.

[42] In reaching this decision I have followed the course recommended by McLaughlin J in M v M [2002] NIJB 47. At page 38 of his judgment he stated:

> "It appears to me that the proper approach is firstly to determine the value of the assets available to the parties; secondly to take account of the principles set out in the statute and matters which bear on the fairness of the division of the assets and thirdly to set about the task of achieving fairness by dividing the value of those assets in such a way as to attain it. Once that has been done the judge should then stand back and test the potential result against the yardstick of equality."

I have considered a range of possible ways of dividing the assets of these parties. I have considered carefully the submissions which have been made, the evidence which I have heard and the authorities to which I have been referred but most of all I have gone back to the wording of the statute which must always be the primary guide. It is not possible to achieve absolute equality and there is a difference between equality of treatment and equality of result but in the division which I have made I have sought to balance need, fairness and equality.

[43] My final observation is to return to what I was told was the practice in Northern Ireland of excluding from matrimonial assets any pension accrual after the separation of the parties. That approach has the attraction of certainty and is likely to be appropriate in many cases. It is also important to note that most cases do not and should not take eight years to come to final hearing after the parties have separated. There will however be some cases, such as the present, where the needs of the parties in the context of their overall circumstances are such that it is necessary to make some allowance for post-separation matrimonial assets including pension accrual.