

“May you Live in Interesting Times”

By [Michael George](#)

3PB Barristers



“May you Live in Interesting Times”
Economic Disruption and Financial Remedy Claims
How not to catch a cold

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1. Impact on Case preparation
 - a. Tips and Traps
2. Impact on Outcome
3. Impact on Timing

Valuations – Property

Increased market uncertainty.

Mortgage capacities.

Lack of comparables.

Longer to sell.

Greater Uncertainty

“Under current circumstances with regard to the Corona Virus crisis we are, as valuers instructed to attach an important Notice to any current valuations and therefore my valuation which was already advised to be complex and that a range of values would be appropriate as indicated in my original report should be considered in the light of this Notice as given below.

The Important Notice

The outbreak of the Novel Corona Virus (COVID-19) declared by the World Health Organisation a “Global Pandemic” on the 11th March 2020 has impacted global financial markets. Travel restrictions have been implemented by many countries.

Market activity has been impacted in many sectors. As of the valuation date we Michael Cuddy & Co consider that we can attach less weight to previous market evidence for comparison purposes, to inform opinions of value. Indeed, the current response to COVID-19 means that we are faced with a non-precedented set of circumstances on which to base a judgement.

Our valuation is therefore reported on the basis of “Material Valuation Uncertainty” as per VPS3 and VPGA10 of the RICS Red Book Global. Consequently, less certainty-and a higher degree of caution-should be attached to our valuation than would normally be the case. Given the unknown future impact that COVID-19 might have on the real estate market, we recommend that you keep the valuation of this property under frequent review.”

Valuations – Portfolios

Increased market uncertainty

High Levels of Volatitlity

Businesses

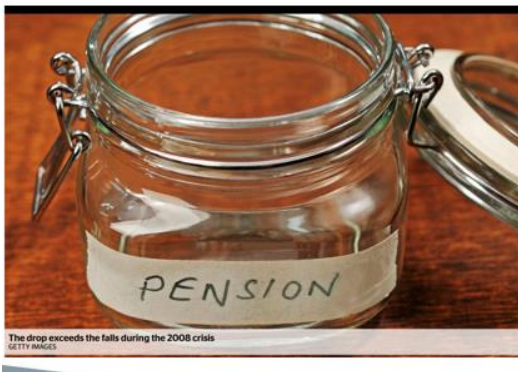
Value of the business is highly speculative

Evidence on liquidity less so

Pensions

Watch out for revaluations and the different impacts on different types of pension.

Pensions – Defined Contributions



Pensions – Defined Benefit – State funded



The stock market is unusually volatile at present (March/April 2020) in light of investor reaction to the coronavirus (COVID-19). We expect pension values to fluctuate more than usual over the next few weeks, and the results shown in this Report should be understood in this context.

While the calculations provided in this Report will continue to give a very good guide as to the quantum of any required Orders, it may be the parties decide that some fine tuning—with the benefit of up-to-date values—would be sensible as they approach the time for Court to seal any Orders.

Jonathon Galbraith – Mathieson Consulting

There is also a potential impact on offsetting calculations.

I do need to caveat the answer to this in that since I did the report, I have had reason to change my expectation for future tax. Until the lockdown occurred, I have always assumed that future tax rates will remain the same in real terms in future.

The announcements from the Government since have led me to believe there will need to be a hike in Income tax in future and depending on what these changes are, this could affect the figures. However, at this stage, it is not right to guess what the changes might be.

To Summarise the issues they are:

Absence of robust and reliable valuations.

Practically far harder to off set one asset class against another.

Balance risk differently than done previously.

Wells V Wells [2002] 2 FLR 97

The facts:

Longish marriage – 2 teenagers

FFH circa £1M

Investment property £120K

W other assets £264K

H Assets £390K

Business now running at a loss – held by Husband 13 prior to Marriage

Not possible to put value on shares due to precarious trading position.

Outcome First Instance

FFH to W and her other assets £1.26M

H £695K and company

School fees £22K pa

£10k PP child PPs

On appeal

H simply wanted the capital disparity reduced

Court of Appeal

Reduced Wife's capital provision by £190K

Increased Wife's share of the company – unconventional manner

"[The Judge heard] expert evidence from his accountant who asserted that the company's future operation would be handicapped, if not crippled, were the wife to become a substantial shareholder."

These arguments were rejected by the court of appeal as being determinative.

"We make it plain that had we had the opportunity of ordering a division of the shareholding, we would have brought the wife's shareholding up to something in the order of 10% of the company. Our inability to do that is explained in para [25] of the judgment, and it is only that fetter that persuaded us to introduce the mechanism in para [29]"

PARA 33

"Once the judge found it impossible to value, it became no more than an uncertain source of future income for the husband. Its retention of course conferred on the husband a chance, namely the chance that he might trade out of deep difficulty and achieve a level of sustained profitability sufficient to create demand for the shares and with it a realisable value. The extent of that chance was not quantified and was probably incapable of quantification."

"Finally, we would defer absolute finality by introducing a mechanism enabling the wife to apply in the event of a sale of the husband's shareholding within 5 years from the date of this order. Since the wife remains a shareholder in the company she will be entitled in her own right to regular information as to its performance." Para 29

Looking back from 2020

It seems that the Company was never sold. The company Soundtracs Ltd now called - Mark Kingsley Ltd. Mr Wells still director and holds more than 75% of shares ye 2018 £1.3M capital reserves, Nearly £1M cash at bank and in hand. We don't know if a WP compromise was reached but nothing reported to that effect.

Haskell v Haskell [2020] EWFC 9

Lifestyle of the Internationally wealthy.

H said he needed 2 or 3 years to revive his fortunes.

Claimed he was £50M in the red.

Wife an Immerman document suggesting H worth \$185M

Needs case.

H financially coercive and controlling.

Excoriating Judgment on the behaviour of H

Wells v Wells approach to adjourning claims?

"So far as I am aware there is no reported case of a claimant successfully later reviving capital claims that were adjourned at the final hearing." para 7

“Although I cannot put even an imprecise figure on the husband’s likely future wealth after the expiry of the two-year breathing period, I am satisfied that it is more likely than not that very substantial resources will be available to him in the reasonably foreseeable future.”

Para 57

Further Lump sum of £5.181M payable on 2 March 2022.

A safety net

“The law allows the husband to apply to extend the payment date of the second instalment (or even to seek to vary its quantum in highly exceptional circumstances) but he must understand that he would need to adduce very clear evidence that payment of that sum on that date was an impossibility.”

Para 67

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