

# Non-disclosure in the spotlight - *Sharland v Sharland and Gohil v Gohil*

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**CATEGORY:**  
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The issue of non-disclosure grabbed the headlines in autumn last year, as a result of the Supreme Court decisions in the cases of *Sharland and Gohil*. The issue before the Court in both cases (which were heard together) was whether fraudulent non-disclosure by two ex-husbands was significant enough to result in the financial orders in their divorces being revoked. Would fraud unravel all?

The facts of the two cases differed.

Mr Sharland had a two-thirds shareholding in a company which his expert accountant valued at £60m and Mrs Sharland's expert valued at £88m on the basis that there was no plan for a public sale. The couple reached an agreement in July 2012 under which Mrs Sharland was to receive just over £10m in cash and properties, a further lump sum of £1.7m and 30% of Mr Sharland's shares in the company. Mr Sharland was to receive about £5.5m and was to retain the remaining proceeds of sale of the shares. The agreement was subsequently made into a final court order, following a contested trial, even after it was discovered that Mr Sharland had intentionally failed to disclose that he had been actively preparing for a public sale of the company prior to the agreement, reportedly with a value of \$750m – \$1bn.

Mrs Sharland applied to overturn the financial order, arguing that she would not have settled on such terms had she known of the proposed sale. When making the order, the first instance judge ruled that despite Mr Sharland's dishonesty, he would not have made an order different from the agreement, as under its terms, Mrs Sharland received by far the greater share of the liquid assets and she was to receive a large percentage of the proceeds in the event of sale of the company.

Mr Gohil had disclosed that his assets were worth just over £300,000. Mrs Gohil compromised her claims in order to achieve finality, settling for £270,000, notwithstanding that she had concerns that Mr Gohil had not provided full and frank disclosure – a fact that was recorded as a recital to the Order. (This was in contrast to Mr Sharland's non-disclosure, of which Mrs Sharland was unaware prior to entering into the agreement.) Three years later Mr Gohil was convicted of fraud and money laundering to the tune of £25m and sentenced to 10 years' imprisonment. Mrs Gohil applied to set aside the financial order.

The Supreme Court ruled in favour of both wives, overturning the Court of Appeal decisions and remitted both cases back for re-trials because in each case the husband's disclosure was found to have been fraudulently dishonest.

However, not all instances of non-disclosure in financial claims will result in court orders being set aside. It will depend upon whether the non-disclosure is material to the decision of the court. In cases involving fraud, the victim will nearly always have a right to redress and the burden of proof will be with the perpetrator to show that a reasonable person would not have been influenced by the deceit, or that the court would not have made a different order had there been no fraud.

The media frenzy around the Supreme Court decisions in *Sharland and Gohil* suggested the floodgates had been opened for those who consider their former spouse deliberately withheld or hid information in their divorce.

In our view, this is an overreaction which over simplifies the complexity of the issues. Furthermore, glossed over by the media is the salient point, clearly set out in Lady Hale's judgment that setting aside of an order does not mean that the financial proceedings must necessarily start from scratch. It may be possible to isolate the issues to which the non-disclosure relates and deal only with those. It is certainly the case though, that a warning shot has been fired by the Supreme Court that the family court will not tolerate non-disclosure and parties must take their obligations of full and frank disclosure seriously. It means that parties and their advisors must be vigilant to ensure proper disclosure is given but those who are concerned that they have already been a victim of non-disclosure should seek advice.

For Mrs Gohil and Mrs Sharland, this is just the beginning of the next chapter in their stories, and both must now head back to court to have their cases tried again.

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