

Fraud and divorce: Sharland and Gohil

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The Supreme Court overturns final financial orders on divorce due to husbands' dishonesty but what are the repercussions for past, present and future cases?

Brief facts

The common feature in these cases is that Mr Sharland and Mr Gohil each secured financial settlements on divorce based on fraudulent evidence. In Mrs Sharland's case her former husband's company, AppSense, was valued by experts at £50m-£75m, on the basis that there were no plans for a public sale, despite him actively planning for such a sale with a value reported to be between \$750m-\$1bn. In complete ignorance of this, Mrs Sharland negotiated an agreement with Mr Sharland in July 2012, securing just over £10m in cash and properties, a further lump sum of £1.7m and a large percentage of the proceeds of sale of Mr Sharland's shares in AppSense when sold. Mr Sharland retained £5.5m and the remaining proceeds of sale of the shares.

In Mrs Gohil's case, despite her misgivings about whether her former husband had fully disclosed his assets at just over £300,000, she reached agreement in order to achieve finality, and settled for £270,000. Three years later Mr Gohil was convicted of fraud and money laundering to the tune of £25m and sentenced to 10 years' imprisonment.

Both wives sought to have their final financial orders overturned due to non-disclosure. In both cases the Court of Appeal refused to set-aside the orders on the basis that the court would not have made substantially different orders had the full pictures have been known at the time the original final financial orders were made.

Outcome

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

It also endorsed the principle that there is every incentive (it being beneficial for spouses, their children, their families and society at large), for matrimonial and civil partnership claims to be settled by agreement, (through negotiation, mediation, collaborative law or arbitration) rather than by antagonistic battles through the court.

Advice for past, present and future cases

- The judgments emphasise each party's right to a fair trial which requires the other party to comply with their obligation to give full and frank information in financial claims on divorce. This applies for past, current and future divorce settlements.
- Couples are encouraged to settle their dispute by negotiation but the fact that one party may be on notice about material non-disclosure by the other party does not exonerate that party from his/her duty to give full disclosure.
- Where there has been deliberate non-disclosure, this will be fraud and fraud in family cases, as in civil cases, usually 'unravels all'. In such a scenario, the non-disclosure will be deemed to be material in any event and it is presumed that a different order would have been; it is up to the perpetrator to prove that it would not have done so.
- Where there has been 'inadvertent' non-disclosure in the negotiations or before the court, then it must be 'material' and it will be up to the party seeking to overturn the financial order to establish that a different order would have been made if the true picture had been known.
- The Supreme Court also confirmed that applications to overturn final financial orders should be made to the level of court that made the original order: it is not necessary to apply to appeal the order. That clarification also removes another complication as permission to rely on fresh evidence is required in appeal hearings. Procedural changes have been recommended to make the process to set-aside orders clearer.

Unanswered questions

- Is there a deadline by which spouses wishing to set aside consent orders have to take the case to court? How long can you leave it? In

another judgment given this year by the Supreme Court (*Vince v Wyatt*), it held that there is no time limit to spouses making claims on divorce and the court was keen to stress in the *Sharland* case that the family court has jurisdiction over a marriage, even after it has been dissolved.

- How does a spouse obtain evidence about suspected non-disclosure, after an order has been made, without launching court proceedings? This very much depends on the nature of the non-disclosed assets and each case will be different. However, it is hoped the Family Procedure Rule Committee, which is dealing with the proposed procedural changes, will identify a mechanism to deal with this in a pragmatic and proportionate way.
- And what about Mrs *Sharland* and Mrs *Gohil* — will they achieve a better award second time around, with the benefit of knowing all of the material facts? We shall have to wait and see; Mrs *Gohil* has the added complication that she cannot claim against the proceeds of crime and there are confiscation proceedings against her former husband's assets as much or all of his assets may well represent the proceeds of crime.

One thing is certain and that is that divorcing and separating couples need expert legal advice to ensure that they are properly informed and can weigh up whether their case stands a chance of success. The floodgates may be opening, but not for every victim on non-disclosure on divorce.

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