



A CLEAR MESSAGE IS SENT TO SPOUSES CONSIDERING DEFICIENT FINANCIAL DISCLOSURE

The standard of proof to be applied in cases of non-disclosure was recently revisited by the Court of Appeal considering the case of *Mahon v Mahon*. The husband in that case, who was found to have substantial assets which he had refused to disclose, had appealed the decision of the court to award his wife £9 million out of £10.5 million of the parties' established assets, relying on the argument that a judge has to go beyond a finding that there are hidden resources and must attempt to quantify them to justify the award which he or she is making.

The standard of proof to be applied in cases of such non-disclosure is 'on the balance of probabilities'. The court must reach its decision as to the probable value of the assets by considering all available evidence. The applicant should prove his or her case, but the respondent must provide the court with all relevant information in order that the court can properly exercise its discretion. Mere suspicion or unsupported anecdotal evidence will not be enough for a court to properly make a finding based on an adverse inference; there must be sufficient material before the court to justify such a finding.

In a previous Appeal case of *Baker, Butler-Sloss LJ* found that if a party has lied about their means or material issues, withheld documents and failed to give full and frank disclosure, it was open to the court to find that behind such misrepresentations are undisclosed assets. The approach taken is that any unfairness resulting from an inaccurate assessment of the extent of a non-disclosing party's resources should fall upon that party, as opposed to their innocent spouse.

The Appeal Judge in *Mahon* found that the court does not need to quantify hidden resources to justify the finding made, as to do so would have the effect that the less a party disclosed, the less a judge would be entitled to draw an adverse inference regarding the non-disclosure.

The outcome of this decision underlines the robust approach taken by the English Courts. The result is that the drawing of an adverse inference could lead to an unjust conclusion which gives the law abiding spouse more than he or she would ordinarily be entitled to. The non-disclosing spouse would only have themselves to blame in such a circumstance.

The unequivocal message is this: any spouse considering dishonest or deficient financial disclosure or a refusal to make full, frank and early disclosure is most unlikely to benefit from adopting such a strategy.