

## **Sex, drugs and non-disclosure**

Our family team are often approached by clients with examples of their spouse's bad behaviour during financial remedy proceedings in the hope that the bad behaviour will mean they receive a larger share of the matrimonial pot when the assets are divided. [Oscar Smith](#), associate in the family team, looks at conduct in divorce and whether it can affect the financial division.

### **What the law says**

Conduct is a factor that is considered by the court when dividing assets only if 'it would be inequitable to disregard' (s25(g) Matrimonial Causes Act 1973). There are two types of conduct – personal and financial.

#### **Personal conduct**

Case law has shown that unless the personal conduct is of an exceptional nature, such as an attempt on the other spouse's life or the abduction of children, and the conduct has resulted in current or future financial loss, then the court will not make a financial award because of it.

#### **Financial conduct**

The most common types of financial misconduct are reckless overspending and non-disclosure. Reckless overspending must be clear evidence of a 'wanton dissipation of assets'. This is a high threshold to meet. For example, in one reported case, sums spent on drugs and prostitutes were deemed part of a husband's 'flawed character' which had been known to the wife throughout the marriage and did not, therefore, amount to reckless overspending for which the wife should be financially compensated in the division of assets.

Non-disclosure must be of information that had the court been aware of when the order was originally made would have led to a different result. Non-disclosure can also have an impact on costs. Our family team have had recent success in recovering legal costs incurred by our clients from their spouse when their spouse has failed to comply with an order to disclose information which renders a hearing ineffective.

## **Recent cases**

Recent Supreme Court decisions have even shown that finalised divorce settlements can be reopened by the court if, after the case has concluded, one spouse finds out information which the other spouse fraudulently or intentionally withheld during the original proceedings. Again, this information would have to materially change what the court would have ordered had it been aware of the information for the case to be reopened.

A failure to provide full disclosure can also be considered a contempt of court and the recent case law demonstrates that Judges are more willing to exercise their powers to penalise this, with the ultimate sanction in extreme cases being imprisonment.

For further information on how our team can help with divorce and separation issues, please visit our [service page](#).

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