

Financial Remedies Case Law Update

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March 2026

The decision considers non-disclosure and trust-based resources within financial remedy proceedings. The court may infer access to wealth despite opaque structures. The inability to quantify resources, caused by a party's own non-disclosure, does not prevent the court from making a fair award on a needs basis.

[MK v SK \[2026\] EWFC 28](#)

Introduction

In MK v SK [2026] EWFC 28, Peel J addressed allegations of non-disclosure within financial remedy proceedings. The wife (“W”) alleged that the husband (“H”) had concealed wealth behind complex offshore structures, and had accessible resources, principally in a trust (“the A Trust”) that held H’s shares in a global technology group (“the Group”). Alternatively, W contended that resources could also be held in other trusts or by other structures/persons. H denied any legal or beneficial interest in any assets within A trust, or any other trust/structure. H’s case is that the Group has financially collapsed and he has no other resources to draw from.

This judgment demonstrates application of the principles on non-disclosure (Moher v Moher) and trusts as financial resources (Charman, Whaley). It illustrates how a lack of disclosure combined with circumstantial evidence can justify the court drawing adverse inferences. Where the true extent of resources has not been disclosed, the court may construct a financial picture from the evidence that is available. The court can also determine that the outcome is ultimately be needs-based where the true scale of the wealth cannot be quantified.

Background

The parties and the marriage

W and H were North American nationals. They married in 2005 and separated in January 2024. They had no children. W’s evidence, as accepted by Peel J, was that she had limited visibility over financial matters throughout the marriage. H controlled all finances and did not involve her in financial decision-making. During the marriage, parties enjoyed a high standard of living, including multiple international properties, travel, luxury hospitality, ownership of up to 24 horses, and large donations to charities. This lifestyle was paid for either directly by the Group when it could be classed as business related, or indirectly through H’s personal loan (described below).

H’s success and \$10m USD loan

H described himself as a ‘serial entrepreneur’. His first notable financial success came from selling shares in a North American internet start-up in the late 1990s which generated approximately \$10m USD. Around this time, he also co-founded the Group with a business partner, each holding 50%. H’s 50% interest was held through a holding company (“HL”).

H loaned \$10m USD from his own monies to HL. This loan was not documented. After the parties married in 2005, H's personal expenditure was met by the business and treated as drawings against the loan. H stated that by the end of the marriage it was said to have no remaining value.

The Group

The Group was a large group of technology companies operating in the UK and internationally. There was evidence of significant and sustained commercial success. In questionnaire replies, H stated that global revenue for 2024 was forecast to be \$1bn USD with EBITDA of \$40m USD. Peel J was satisfied that the Group had been highly income-generative, albeit reliant upon leverage.

Despite The Group's success, H maintained that he received no salary, bonuses or any equity from the Group in over 20 years. Instead, he had his expenses met by the business. H explained that his aim was to improve The Group's value and to at some point extract funds, despite not doing so in some 20 years. The court described H's claim as "somewhat surprising".

H asserted that from 2024 The Group encountered significant financial difficulties which accelerated in 2025. He resigned as CEO of The Group in early 2025 and received a severance payment of approximately \$1m CAD.

H relied on a purported valuation of the business produced by his brother to assert that The Group has nil value. Peel J attached "no weight" to this valuation. He did, however, acknowledge some relevant figures which indicated a reduced EBITDA, debt and a negative cashflow. The court found that any remaining value in the Group was "limited, illiquid and speculative" [45].

The trusts

The 1997 trust:

H maintained that an earlier trust was created in 1997. He described this as a "Family Trust". The nature, terms and operation of this 'Family Trust' were unclear as little documentation was available. There was no disclosure as to its assets, distributions, beneficiaries or what happened to the monies within it when/if it came to an end.

The A Trust:

The A Trust was established in December 2017. The only document provided was the trust deed. Peel J described the A Trust as follows:

'The structure of the trust is in one sense beguilingly simple. There are full discretionary powers as to distribution of capital and income. There are powers to add and exclude beneficiaries. There are powers to change trustees. There are powers for the Protector to be replaced. The current beneficiary, Mr W (like the beneficiary before him) is a professional, and not, in reality someone who would receive any benefits. It is a boilerplate trust deed with named professionals, but no family members (including H) are named, nor is there any linked class of beneficiaries. It could hardly be more flexible, and its simplicity enables H to assert that he has no connection with it' [76]

H explained that his HL shares had been "rolled over" into the A Trust but maintained that he had no control over the trust and no benefit from it.

The B Trust:

Evidence also emerged of a second trust ("B Trust"), for which the trust deed was not disclosed. Peel J found that the B Trust existed and was separate but connected to the Group. Therefore, it was concluded that B Trust had not been adequately disclosed.

The law on non-disclosure

Peel J at [68] referenced the Court of Appeal's guidance in *Moher v Moher* [2019] EWCA Civ 1482. The court must determine, so far as possible, the true resources of the non-disclosing party. The court is entitled to draw adverse inferences, but they should be reasonable and cannot be speculative. It need not make a specific determination as to a figure or bracket. Further, where non-disclosure creates uncertainty, the court may infer that the resources are sufficient to make an award even when the resources cannot be specifically quantified. When undertaking this exercise, the court must ensure that the party guilty of non-disclosure does not obtain a better outcome than if they did comply with their disclosure requirements.

Peel J also referred to his own decision in *Ditchfield v Ditchfield* [2023] EWHC 2303 (Fam). In this matter, Peel J stated at [15] that the court may 'draw adverse and conclusions where appropriate and to the degree and specificity or generality seemed fit'.

The law on Trusts as a financial resource

In *HO v TL* [2023] EWFC 215, Peel J summarised the relevant principles at paragraph [51]. The central question is whether the trust constitutes a financial resource to which a party has access, rather than control. The test, derived from *Charman v Charman* [2005] EWCA Civ 1606 [13] is: "...whether the trustee would be likely to advance the capital immediately or in the foreseeable future".

The court must adopt a realistic approach, applying a "mixture of worldly realism and of respect for the legal effects of trusts, legal duties of trustees and, in the case of offshore trusts, the jurisdictions of offshore courts" (per Sir Mark Potter P in *Charman v Charman* (No.4) [2007] 1 FLR 1246, CA [57]). The court must look at the facts realistically.

The court should not place undue pressure on trustees to exercise their discretion in a certain way. However, it may make an order in a way which provides "judicious encouragement" to make funds available where it would be reasonable to do so. The court has a discretion to draw adverse inferences, or attach less weight to evidence, when trustees fail to engage with proceedings when they could have offered considerable assistance.

When considering the Charman test, the court can consider numerous factors. These include the nature and purpose of the trust, the identity of the beneficiaries, the effect of any distribution on beneficiaries, the history of distributions, the value and liquidity of trust funds, the relationship between the beneficiary and the trustees, and the extent of disclosure and participation by the trustees as a witness.

Analysis

Peel J held that H had not been fully truthful and did have access to undisclosed wealth. This finding was on the basis of several points:

The whiteboard [39-41] [73]

In 2023 and 2024 W saw a whiteboard. The words and diagram upon it showing arrows between H, the A Trust, HL and an intermediate holding company. Above H was written “UBO” and elsewhere on the whiteboard was written “UBO: H”. Despite H denying having written them, Peel J was satisfied that the probable explanation is that H wrote the words, or they were written under his direction. Peel J found that the whiteboard was “critical evidence” establishing the true beneficial ownership and that H’s denial “infects his evidence on disclosure generally”. [73].

Lack of transparency surrounding the Trust and Trustees’ lack of engagement

Peel J found that the trustees provided limited and unhelpful responses to requests for information. In regard to this, Peel J stated:

“In my judgment, he has hidden behind the screen erected by the trustees which has been designed to prevent the court from having any access to information about the trust beyond the boilerplate trust deed. Given that W has from the very beginning made the trust a major plank of her non-disclosure case, the failure of H and the trustees to provide a proper exposition of the trust is telling and, in my judgment, permits the court to draw the inference that H has something to hide” [79]

The named Settlor and Protector (Mr KM) within the A Trust is a professional trustee and a director of one of the companies within the Group. Peel J concluded that Mr KM “simply does H’s bidding” and “he simply acts on H’s instructions” [77].

Neither Mr KM nor the professional beneficiaries were called to give evidence, nor were other family members who might have shed light on the purpose and nature of the trust.

Implausibility of H’s financial narrative [82]

Peel J identified a number of features of H’s case upon which he found the financial picture to be improbable. Notably, that a founder and long-standing CEO of an international technology group had never extracted any personal wealth. Equally implausible was H’s assertion that he had received no salary, bonus or equity in over 20 years. These features suggested that H’s case, namely that he had reduced his wealth to almost nil despite sustained commercial success, was unlikely.

As well as the improbability of his financial narrative, the court determined that H was not irrevocably excluded from benefiting given that he could be appointed as beneficiary under the terms of the trust. Peel J stated that “It would be surprising if H’s prima facie 50% entitlement was permanently alienated from him after it was founded in 1998, benefitting others in the family but not himself, even though he was married for twenty years and had financial responsibilities. I regard it as possible that H intended the grandchildren to benefit from his efforts upon his death, as he had no children himself, but the suggestion that he irrevocably excluded himself from being able to access any wealth in the trust seems improbable to me and not made out on the evidence” [82].

Peel J concluded that H deliberately structured his affairs to distance himself from personal wealth, partly for tax reasons, through complex multi-national structures [75]. This had made it more difficult to determine H’s true wealth in the absence of full disclosure.

Overall evaluation of H's resources

Peel J concluded at [88]: “H has concealed the true financial picture and that he has access to undisclosed assets in the A Trust and/or the B Trust and/or in some other structure and/or held by individuals on his behalf. To attempt to find exactly how, when and where this came about would be too speculative. In general terms it is likely to have come about through monies derived from the Group, and funnelled out to H, perhaps over a long time, but there may have been other resources (for example from the monies placed in the first trust by his father)”.

The court concluded that H could, if he chose, procure his inclusion as a beneficiary and obtain distributions from the trust. This is especially so as the trustees would act on H's instructions and H could become a beneficiary at any time.

Peel J at [92] found that H's wealth amounted to “a few million pounds”. Further, the court elected to take a needs-based approach due to the uncertainty that was created by H's lack of disclosure.

Peel J made the following order [101]:

- i. W to retain the house.
- ii. H to indemnify re the monies advanced by him from the loan to fund W's business.
- iii. H to pay two lump sums to W:
 - a. £525,000 to clear W's debts, plus any accrued interest on the litigation loan(s) from 30 January 2026 onwards.
 - b. The capitalised sum of £1,550,000.
- iv. I will not reduce this by any sums paid to W by H since separation as it seems to me that I have dealt with the case on the basis of her present needs. I will hear submissions on time for payment, but the £525,000 needs to be prioritised because of the involvement of a litigation lender in funding W's costs.
- v. Until payment of the second lump sum of £1,550,000 H shall pay interim maintenance of £100,000pa (reduced pro rata by any part payment).
- vi. My provisional view is that there should be no order as to costs.
- vii. Chattels to be divided by agreement

Conclusion

This decision is a reminder of the court's approach to non-disclosure and complex trusts structures in financial remedy proceedings. Where the court is faced with incomplete or opaque disclosure, it is entitled to draw inferences as to the financial picture using the evidence that is available. In this case, H's case that his assets were ‘almost nil’ was undermined by the lack of transparency, witnesses and documentation. Non-disclosure can fundamentally alter the court's view of a party's credibility and ultimately affect the outcome.



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