



No 18 Chambers

# Financial Remedies Update

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# Introduction

- First update of 2026
- Focus on one particular case and explore some related legal concepts:
  - Enforcement of foreign judgments
  - Interplay between MFPA 1984 and MCA 1973
  - Appealing findings of fact
  - Failure of Disclosure
- Questions

# *Awolowo v Awolowo*

- [2025] EWCA Civ 641 - CoA concerning family court's treatment of debt alleged owed by H to a Nigerian company of his brother.
- Successful appeal of HHJ Vincent finding loans were genuine
- H claimed Hendon family worth £1.8m was held on trust for his company who had loaned £1.6m from Linkserve for its purchase.

# Awolowo v Awolowo

- H's brother's company allegedly loaned De Skyline of £1.6m (Aug 2009).
- FMH bought in Dec 2009 for £1.35m without a mortgage.
- Parties separated in 2015 – H returned to Nigeria
- Decree Nisi pronounced in Nigeria on 7 September 2018
- W secured permission to apply for financial relief under Part III MFPA 1984 on 17 October 2018
- Interim maintenance order of £1,000 pcm made by Family Court on 16 August 2019
- In March 2018 H's brother's company sued H for £1.6m in Nigeria and judgment entered for H's brother's company on 27 March 2019 BY CONSENT
- Order registered in (then) QBD by a Master on 30 April 2019
- ICO on 9 October 2019 made final on 28 November 2022
- H's brother's company allegedly loan of £1.6m (Aug 2009).
- FMH bought in Dec 2009 for £1.35m without a mortgage.

# *Awolowo v Awolowo* [2025] EWCA Civ

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- Moylan J in CA:

'[40] These cases establish that, as set out in *Kremen v Agrest* at [11], when "the available assets are insufficient to satisfy both the financial claims of one former spouse (usually the wife) and the debts of the other (usually the husband) a conflict arises between the interests of the claimant and those of the creditors". In those circumstances, at [13], a balance has to be struck between the interests of a judgment creditor and the interests of a wife. In my view, although it is not necessary to decide the question for the purposes of this appeal, the effect of these authorities is that the issue of whether a charging order should be made in favour of a creditor, and on what terms, is determined by the court when also determining the financial application (through the balancing exercise referred to) and not prior to that determination. They also support the conclusion that this balance has to be struck *before* a charging order is made or, at least, before it is made final.'

# Foreign Judgments

- The Nigerian court's judgment was registered for enforcement in England and Wales under the [Administration of Justice Act 1920](#) and the [Foreign Judgments \(Reciprocal Enforcement\) Act 1933](#).
- AJA 1920 applies to most commonwealth countries
- AJA 1920 applies to money judgments, but only to orders for payment of a fixed sum(s). Thus, it can be used to enforce a lump sum order (or a costs order), but not a periodical payments order. The creditor makes an application direct to the English court for registration of the foreign order and the procedure is governed by CPR Part 74. Once registered, the order is enforceable as if it were an English order (made by the High Court).

# Foreign Maintenance Orders

- Part I [Maintenance Orders \(Reciprocal Enforcement\) Act 1972](#) (MO(RE)A 1972)<sup>25</sup> applies to numerous countries, including (broadly) some Commonwealth countries (including Canada (various provinces), Hong Kong, New Zealand and Singapore); countries that are party to the Hague Convention 1973; and the USA
- The [Maintenance Orders \(Facilities for Enforcement\) Act 1920](#) (MO(FE)A 1920) applies to Commonwealth countries but has been superseded by MO(RE)A 1972, Part I in respect of some of these countries. It applies to 'maintenance orders', which is defined to only include periodical payments order
- European Maintenance Regulations - Withdrawal Agreement, Art 67(2)(c), the provisions of the EMR regarding recognition and enforcement shall continue to apply 'to decisions given in legal proceedings instituted before the end of the transition period' and 'to court settlements approved or concluded, and authentic instruments established before the end of the transition period' (i.e. 31 December 2020).
- The EMR applies to 'maintenance obligations' only,<sup>6</sup> not to 'property rights arising out of a matrimonial relationship
- ECJ in *Van den Boogaard v Laumen*<sup>7</sup> (a case decided under the analogous Brussels I Regulation):
- *'If [the reasoning of the decision] shows that a provision awarded is designed to enable one spouse to provide for himself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Brussels Convention. A decision which does both these things may, in accordance with Article 42 of the Brussels Convention, be enforced in part if it clearly shows the aims to which the different parts of the judicial provision correspond.'*

# Foreign Maintenance Orders

- Hague Maintenance Convention 2007
- The 2007 Hague Maintenance Convention applies to various family maintenance obligations in different ways. It is important to bear in mind that Article 2(1) sets a default provision, and that states can expand the scope significantly beyond the default scope described in Article 2(1). A state may declare that it will apply all or part of the Convention to “any maintenance obligation arising from a family relationship, parentage, or affinity, including in particular obligations in respect of vulnerable persons.” (*Article 2(3)*)

# Scotland and NI

- The procedure for enforcing judgments from Scotland and Northern Ireland is set out in sections 18 and 19, and Schedules 6 and 7, [Civil Jurisdiction and Judgments Act 1982](#) and [CPR 74](#).

# Family Enforcement

- Three key aspects of enforcement of foreign judgment should be noted
- First, the arrangements all provide for the registration and/or enforcement of the foreign financial order in the relevant English court. Since the establishment of the single Family Court, the relevant English court is usually the family court for the area in which the debtor resides or in which the debtor has assets (Second, once a foreign financial order has been registered in the English court (or, in the case of the EU Maintenance Regulation Hague Protocol countries is treated as automatically enforceable), it is usually enforceable as if it were an English financial order, meaning the court will usually have all the methods of enforcement available.
- Third, FPR Part 343 and FPR PDs 34A–34E cover the reciprocal enforcement of foreign maintenance orders.

# Hague Judgments Convention

- **EU member states (except Denmark), Ukraine and Uruguay:** Judgments from these countries given in proceedings instituted on or after 1 July 2025 can be enforced in the UK under the [Hague Judgments Convention](#), which entered into force for the UK on 1 July 2025.
- Civil and commercial matters

# Hague Convention on COC

- **Mexico, Singapore, Montenegro, Ukraine, the Republic of Moldova, Albania, Switzerland and North Macedonia.** The enforcement of judgments from these countries where the court in that state was designated in an exclusive choice of court agreement, is governed by the Hague Convention on Choice of Court Agreements ([Hague Convention on Choice of Court Agreements](#)). All EU member states, the UK, Mexico, Singapore, Montenegro, Ukraine, the Republic of Moldova, Albania, Switzerland and North Macedonia are bound by the Hague Convention on Choice of Court Agreements. The UK's accession to the Hague Convention in its own right took effect following the end of the UK-EU [transition period](#) on 31 December 2020

# Judgments in transition period

- **EU member states: judgments given in proceedings instituted before 31 December 2020.** The enforcement of judgments from these states given in proceedings instituted before 31 December 2020 is governed by the following:
  - Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([Recast Brussels Regulation](#)) which has direct effect in all EU [member states](#) and has been implemented in Denmark (see [Danish Law No. 518 of May 2013](#)); and
  - Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([2001 Brussels Regulation](#)); and
  - Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims ([EEO Regulation](#)), which does not apply to Denmark.

# EFTA – transition period

- **EFTA states: Iceland, Norway and Switzerland but not Liechtenstein: judgments in proceedings instituted before 31 December 2020.** The enforcement of judgments from these states given in proceedings instituted before 31 December 2020 is governed by the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007 ([2007 Lugano Convention](#))

# MFPA 1984 Part III

- The basis for financial relief under Part III of the Matrimonial and Family Proceedings Act 1984 (MFPA 1984) is a divorce, annulment or legal separation granted outside the jurisdiction of England and Wales.
- The court may not grant permission unless it considers there is substantial ground for making an application (section 13(1), MFPA 1984).

# MFPA 1984 Part III

- The Supreme Court has guided that substantial means “solid” ([Agbaje v Agbaje \[2010\] UKSC 13](#), Lord Collins at paragraphs 32-33 and [Potanina v Potanin \[2024\] UKSC 3](#), Lord Leggatt at paragraphs 89 and 92).
- “... the judge will need to consider whether, on the factual basis alleged unless it is clearly without substance, there is a substantial (in the sense of solid) basis for saying that in all the circumstances of the case, and having regard in particular to the matters specified in section 16(2), it would be appropriate for an order for financial relief to be made by a court in England and Wales. In making this assessment, it will be necessary to take into account whether there is a real prospect that further material supporting the applicant’s case would emerge, through disclosure or otherwise, if the case were to proceed to a substantive hearing.” (Lord Leggatt)
- At the subsequent remittal hearing in the Court of Appeal, Cobb LLJ made clear that the assessment of substantial ground is to be made as things stand at the date of the hearing, not the date of the application ([Potanina v Potanin \[2025\] EWCA Civ 1136](#) at paragraph 9(x))

# MFPA 1984 Part III

- The court reiterated that when making the assessment, the court also looks forward and considers whether there is a real prospect of the disclosure and evidence required for a substantive hearing resulting in the emergence of further material supporting the applicant's case
- In [TY v XA \[2024\] EWFC 96](#) the first reported case after the Supreme Court's decision in *Potanina v Potanin*, when deciding a set-aside application, Moor J concluded that the same requirement applies for a set-aside application to succeed as for a permission application to be refused namely that either:
  - As a matter of law, the claim is bound to fail even if the applicant proves all disputed facts in their favour
  - The factual basis for the claim is fanciful because it lacks substance or conflicts with the evidence such as underlying documents.

# MFPA 1984 Part III

- For a court to gauge in advance whether it is likely to be appropriate to grant financial relief, it gives consideration at the permission stage to the factors below. If permission is granted, the court will consider these factors in more detail at the second stage, namely the hearing of the substantive application for financial relief.
  - The parties' connections. In particular:
    - the connection that the parties to the marriage have with England and Wales;
    - the connection that those parties have with the country in which the marriage was dissolved or annulled or in which they were legally separated; and
    - the connection that those parties have with any other country outside England and Wales.
  - Financial relief. This includes:
    - any financial benefit that the applicant or a child of the family has received, or is likely to receive because of the divorce, annulment or legal separation, under an agreement or the operation of the law of a country outside England and Wales;
    - in a case where an order has been made by a court in a country outside England and Wales that requires the other party to the marriage to make any payment or transfer any property for the benefit of the applicant or a child of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with;
  - any right that the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any country outside England and Wales and if the applicant has not applied for such relief, the reason for that omission; and
  - the availability in England and Wales of any property for which an order under [Part III](#) of the MFPA 1984 in favour of the applicant could be made.
  - Enforceability. That is, the extent to which any order made under Part III of the MFPA 1984 is likely to be enforceable.
  - Time elapsed since decree. That is, the length of time that has elapsed since the date of the divorce, annulment or legal separation.  
([Section 16\(2\)](#), MFPA 1984.)

# *MFPA 1984 Part III*

- By s17(a), the court may make the orders which it could make under Part II of the Matrimonial Causes Act 1973 (financial provision orders and property adjustment orders).
- By s17(b) and (c) it may make pension sharing orders and pension compensation orders which are not relevant here.
- By s18(2), “The court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen”.
- By s18(3) the court is required in particular to have regard to the matters mentioned at section 25(2)(a) to (h) of the 1973 Act

# *Awolowo v Awolowo* [2025] EWHC 3346 (Fam)

- Re-hearing in December 2025 – Peel J found
  - No debt of £1.6m owed to H's brother's company
  - Registration of Nigerian order in QBD set aside
  - Set aside of charging order
  - Discharged H's brother's company from proceedings.

# Appealing findings of fact

- An appeal court will only interfere with a trial judge's finding of fact, and thus allow an appeal on the basis of a challenge to such a finding, where it properly determines that the "finding of fact is unsupported by the evidence or where the decision is one which no reasonable judge could have reached": *Haringey LBC v Ahmed & Ahmed* [2017] EWCA Civ 1861, CA, at [29]–[31].
- In *Wheeldon Brothers Waste Ltd v Millennium Insurance Co Ltd* [2018] EWCA Civ 2403 at [17]–[18], Coulson LJ said applications for permission to appeal on questions of fact or on the evaluation of expert evidence must meet the high threshold summarised in *Grizzly Business Ltd v Stena Drilling Ltd* [2017] EWCA Civ 94 at [39]–[40] i.e.:

# Appealing findings of fact

*39. The parties were broadly agreed upon the relevant law in the light of the recent Supreme Court decisions of Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 and McGraddie v McGraddie [2013] UKSC 58; [2013] 1 WLR 2477 the latter of which cited with approval Hamilton v Allied Domecq Plc [2006] SC 221, para 85. In the latter case it was said:-*

*"If findings of fact are unsupported by the evidence and are critical to the decision of the case, it may be incumbent on the appellate court to reverse the decision made at first instance."*

*In Henderson the Supreme Court (para 62) also said:-*

*"It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."*

# Appealing Findings of Fact

*We have also had regard to the last three reasons why appellate courts are warned not to interfere with findings of fact unless compelled to do so as enumerated by Lewison LJ in Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5:-*

*"iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.*

- *v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).*
- *vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done."*

*40. There will be (and have been) rare cases where an appellate court is compelled to set aside findings of fact made by an experienced trial judge but we are far from convinced that that is the case here. None of the challenged findings can be said to be unsupported by the evidence and the decision is certainly not one that no reasonable judge could have reached. The case was not an easy one for the judge but he grappled with all the potential difficulties of the evidence and came to a conclusion which, we feel able to say (although our own opinion is immaterial) was probably correct*

# Appealing findings of fact

- In *Volpi v Volpi* [\[2022\] EWCA Civ 464](#), [\[2022\] 4 WLR 48](#) (cited in *K-K (Children)* [\[2024\] EWCA Civ 1025](#)), Lewison LJ (at [2]) set out the principles as follows: 'The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
  - (i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
  - (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
  - (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

# Appealing findings of fact

- (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- (vi) Reasons for a judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.'

# *Awolowo v Awolowo* [2026] EWFC 31

- Peel J delivered judgment following hearing on 11 & 12 Feb 2026.
- Peel J found that H's assets in Nigeria were c. £6m in 2009
- FMH bought in December 2009
- Only visible asset in UK was FMH – Peel J attributed £2m value with equity after COS and an unpaid school debt of £1,940,000.
- W was awarded £1,750,000 of the sale proceeds in maintenance arrears of £72K, arrears of school fees.
- Peel J drew adverse inferences that H had undisclosed wealth in Nigeria

# Non-disclosure – Adverse Inferences

- 46. In **Moher v Moher** [2019] EWCA Civ 1482, Moylan LJ stated as follows:
- [86] My broad conclusions as to the approach the court should take when dealing with non-disclosure are as follows. They are broad because, as I have sought to emphasise, non-disclosure can take a variety of forms and arise in a variety of circumstances from the very general to the very specific. My remarks are focused on the former, namely a broad failure to comply with the disclosure obligations in respect of a party's financial resources, rather than the latter.
- [87] (i) It is clearly appropriate that generally, as required by s 25 of the 1973 Act, the court should seek to determine the extent of the financial resources of the non-disclosing party.
- [88] (ii) When undertaking this task the court will, obviously, be entitled to draw such adverse inferences as are justified having regard to the nature and extent of the party's failure to engage properly with the proceedings. However, this does not require the court to engage in a disproportionate enquiry. Nor, as Lord Sumption said, should the court 'engage in pure speculation'. As Otton LJ said in *Baker v Baker*, inferences must be 'properly drawn and reasonable'. This was reiterated by Lady Hale in *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415, [2013] 2 FLR 732, at para [85]:
- '... the court is entitled to draw such inferences as can properly be drawn from all the available material, including what has been disclosed, judicial experience of what is likely to be being concealed and the inherent probabilities, in deciding what the facts are.'
- [90] (iv) How does this fit within the application of the principles of need and sharing? The answer, in my view, is that, when faced with uncertainty consequent on one party's non-disclosure and when considering what Lady Hale and Lord Sumption called 'the inherent probabilities' the court is entitled, in appropriate cases, to infer that the resources are sufficient or are such that the proposed award does represent a fair outcome. This is, effectively, what Munby J did in both *Al-Khatib v Masry and Ben Hashem v Al Shayif* and, in my view, it is a legitimate approach. In that respect I would not endorse what Mostyn J said in *NG v SG (Appeal: Non-Disclosure)* [2011] EWHC 3270 (Fam), [2012] 1 FLR 1211, at para [16](vii).
- [91] This approach is both necessary and justified to limit the scope for, what Butler-Sloss LJ accepted could otherwise be, a 'cheat's charter'. As Thorpe J said in *F v F (Divorce: Insolvency: Annulment of Bankruptcy Order)* [1994] 1 FLR 359, although not the court's intention, better an order which may be unfair to the non-disclosing party than an order which is unfair to the other party. This does not mean, as Mostyn J
- said in *NG v SG*, at para [7], that the court should jump to conclusions as to the extent of the undisclosed wealth simply because of some non-disclosure. It reflects, as he said at para [16](viii), that the court must be astute to ensure that the non-discloser does not obtain a better outcome than that which would have been ordered if they had complied with their disclosure obligation

# Non-Disclosure - Adverse Inferences

- 47. In **Ditchfield v Ditchfield** [\[2023\] EWHC 2303 \(Fam\)](#), I said this at para 15:
- “The potential consequences of failure to disclose have been clearly set out in a series of cases summarised in *Moher v Moher* [\[2019\] EWCA Civ 1482](#), [\[2020\] Fam 160](#), [\[2020\] 1 FLR 225](#). The law is clear. The court is entitled, in the absence of full and frank disclosure, to draw adverse conclusions where appropriate and to the degree of specificity or generality deemed fit. A non-disclosing party cannot complain if the lack of disclosure leads the court to make an order which by necessity is based on less secure foundations than the court would wish; that is the fault of the miscreant party. As Thorpe J (as he then was) said in *F v F (Divorce: Insolvency: Annulment of Bankruptcy Order)* [\[1994\] 1 FLR 359](#), at 367:
- ‘... if in consequence the obscurity of my final vision results in an order that is unfair to [the husband] it is better that than that I should be drawn into making an order that is unfair to the wife

**Any Questions?**

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**BARRISTERS CHAMBERS**