

## **Hidden Assets in Divorce – Another Look**

*This article first appeared via the Wealthbriefing website on 6 July 2015*

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Tracking down the assets involved in divorce cases presents challenges particularly with new forms of holding wealth as part of the Information Age, as this article explains.

At the beginning of July, a law firm examined a large case in the Supreme Court, London, about appeals where financial assets in divorce haven't been fully disclosed. In this article, Nicola Harries, partner for Stevens & Bolton LLP, looks at the latest developments and explores how new forms of holding wealth may create new challenges in marriage breakups.

This week the Supreme Court is hearing the appeal of Alison Sharland against the terms of the financial agreement she reached with her ex-husband Charles. The grounds for that appeal are that Charles Sharland was dishonest in failing to share pertinent details about his financial situation. Although one of the first pieces of advice that a divorcing spouse receives is that they will need to give full and frank disclosure of their financial position to their spouse, not all are prepared to follow that advice.

The giving of disclosure is usually achieved by completing a standard court form which leads a party through their assets from properties to bank accounts to pensions. But what happens when a party's assets don't fit neatly into the pre-prepared boxes on this standard, and arguably, outdated form? Could virtual assets be more easily overlooked either because one spouse is deliberately dishonest about their existence, or because their value is genuinely unappreciated?

It is now commonplace to bank online – “e-bank accounts” are not usually forgotten. However, money held within PayPal or online gambling accounts can easily be overlooked. If the owner is successful, they may be self-sustaining accounts meaning there are no visible transactions with bank accounts to identify them. Loyalty card points, air miles, pre-paid foreign exchange currency cards and pre-paid credit cards

can also be easy to forget but in some cases can have a reasonable value, and certainly a value that one spouse would want taken into account on a divorce.

Helpfully, if a direct question is posed, in most cases a printout of the relevant named account can be provided and its value factored in. If faced with a lack of cooperation, there is a corporate entity that can be approached to verify details. That is not the case for other online assets.

Historically, the cryptocurrency Bitcoin, created in 2009, could easily have been overlooked. Bitcoin “miners” keep their Bitcoins in online wallets bearing anonymous coded designations. Information about a wallet’s contents is available online to those who know where to look. However, if you are faced with an uncooperative or deceitful spouse, there is no central authority to approach in this faceless world to confirm the owner of a specific wallet, or to ask whether a spouse owns one or more wallets. Bitcoin blazed the trail but others have followed providing a variety of alternative cryptocurrencies that those eager to hide assets might successfully deploy. Family lawyers would at least have an inkling about Bitcoins but very few are likely to have heard of the competition - Ripple, Dogecoin, Dash - to name but a few.

It would also be very easy to overlook the value of virtual assets within online games. Games that create alternative virtual worlds such as Second Life allow the avatars of gamers to spend a virtual currency, such as the Linden dollar. This virtual world has created real world wealth for some. In 2006 Ailin Graef became a real world millionaire after building up an initial investment of under \$10 to over a million US dollars through her avatar’s online activities. The initial investment, being such an insignificant sum, would not have been queried. Without any real understanding of the world of gaming, (a status that can probably be attributed to most divorce lawyers), who would think to ask about the value of such assets even if the gaming habit were mentioned by the client?

The standard court forms do not cater for these unusual but potentially valuable assets. There is a “catch-all” section for “any other assets” but a more focused form, suggesting some of these new classes of assets would be an obvious next step to signal that virtual assets are as relevant and important as any others.

## **Pragmatism**

For those parties who are aware of the unusual nature of their assets, a pragmatic approach can be taken. In the case of *Cooper-Hohn v Hohn*, the husband was an ultra-high net worth hedge fund manager. There was an acceptance by both parties that completion of the standard disclosure form would not be an appropriate way to set out the family's financial infrastructure. A bespoke alternative was agreed that would better expose the position and this approach was endorsed by the court. Agreed variations to standard form disclosure are something that practitioners will need to bear in mind as assets become less mainstream and tangible than we have been used to.

For both cryptocurrencies and virtual currencies within games, another issue arises. If you succeed in establishing the existence and value of these asset types, how do you enforce an order to share them? In most cases, care would be taken to ensure that other assets were secured so that the enforcement issues against virtual assets wouldn't arise. However, that may not always be a possibility.

The usual enforcement applications such as third party debt orders (formerly garnishee orders) would be useless in such situations – there would be no identifiable entity to apply against and, in all likelihood, any virtual wealth would be based outside the jurisdiction. If organisations such as the FBI cannot penetrate the anonymous nature of cryptocurrencies, an individual with limited resources has little chance of making any headway.

For most divorces, such issues are unlikely to arise. For some, however, this virtual world creates all sorts of possibilities for defeating a spouse's claims and the family court and its disclosure processes have a long way to go to catch up.

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