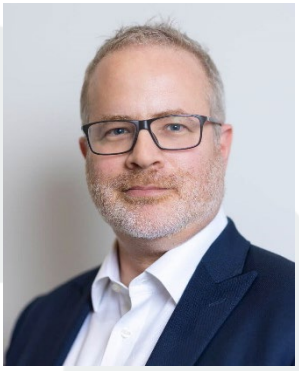
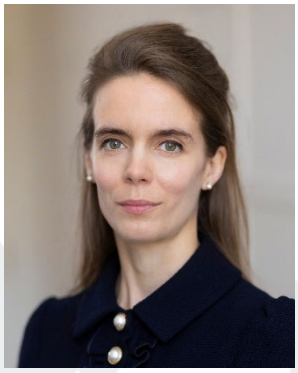
Private Client eBriefing

What Kroupeeva v Kroupeev tells us on orders for variation of nuptial settlements and adverse inferences in trust and divorce cases

Article by Fenner Moeran KC and Roxane Reiser, 1st June 2026





In *Kroupeeva v Kroupeev* [2026] EWFC 85, James Ewins KC sitting as a Deputy High Court Judge found that an offshore discretionary trust ("the Rossini Trust") and an offshore company ("Waterford") held by it comprised a nuptial settlement capable of variation pursuant to s24(1)(c) of the Matrimonial Causes Act 1973.

It was held that the nuptial settlement specifically included those underlying assets of Waterford from which continuing provision had been made for the benefit of the spouses. Those findings were made against the backdrop of the husband's deplorable disclosure, which led to adverse inferences being drawn. The court did not, however order any variation under s24(1)(c), preferring to transfer to the wife all liquid non-trust assets, coupled with a lump sum £60m. The wife's variation application was adjourned with liberty to restore as a means of enforcement in the event of non-payment by the husband.

The decision is noteworthy for the following reasons:

1. It reaffirms that the court can deploy its powers of variation under s24(1)(c) to extend through a corporate holding structure to its underlying assets;
2. It demonstrates the court's reluctance to make variation orders where such orders are likely to prove worthless;
3. It shows the court's increasingly robust approach to drawing adverse inferences against divorcing spouses.

Facts

The husband ("H") and the wife ("W") were of Russian origin. They married in 1988 in their late 20s in Russia, moved to London in 1993 and separated in 2023 after 35 years of marriage. There were two (now adult) children of the family who lived with W in London. H and W held dual Russian-British citizenship. At the time of the financial remedy proceedings H claimed to be tax resident in Cyprus.

H had a long and successful career in the energy sector, through which he acquired valuable oil, gas and energy-related investments. After the family moved to London, H established Waterford Finance & Investment Ltd ("Waterford"), originally in Guernsey, later in the Seychelles, as the principal holding vehicle for his investments.

The Rossini Trust was settled in 1995. The origins of the trust remained opaque, largely due to H's inadequate disclosure. The initial beneficiaries of the trust were three Guernsey charities. H, W and the children were subsequently added as beneficiaries (although by the time of the proceedings, W had been removed). The initial trustee was a Guernsey trust company. The Guernsey trustee was replaced with a trustee in the Seychelles in 2004.

The trust's sole asset was the entire share capital of Waterford, which had been settled into the trust in 2003. Waterford in turn held shares in other corporate structures. This included (a) a controlling stake in Gulfsands Petroleum Plc, an unlisted UK oil company and (b) a 13.7% minority shareholding in a Turkish company ("Serra") which owned a villa complex in Turkey. The complex included a holiday home enjoyed by the family during the marriage ("the Turkish villa").

During the course of the marriage the Rossini Trust advanced substantial shareholder and director loans to H, deriving from the assets and/or profits of Waterford. H accepted that this funding enabled the acquisition of the parties' various real properties and financed their family expenditure during the marriage.

W argued that the Rossini Trust and/or Waterford was a nuptial settlement capable of variation. By way of variation, she sought orders for the outright transfer to her of assets held by the Rossini Trust through Waterford, namely the Turkish villa, 50% shares in Gulfsands Petroleum Plc and lump sums totalling £31.2m.

The court found ([87]) that:

a. The trust was settled during the marriage with the intention of holding investments in which H was directly involved for the benefit of him, his wife and his children;
b. The trust made continuing provision for H, W and the children during the marriage. The trust was accordingly a nuptial settlement capable of variation;
c. H had failed to provide financial disclosure as to whether and how the specific underlying assets of the Rossini Trust played a part in the arrangement by which the continuing provision had been made;
d. The court was therefore justified in drawing adverse inferences against H, namely that the entire trust structuring including all its directly owned and underlying assets formed part of the arrangement that made continuing provision for H, W and the children, all of which were therefore capable of variation under s.24(1)(c) MCA 1973.

The court did not, however, make any variation orders, stating "*I consider that such provision may prove to be, if not worthless in her hands, nonetheless of significantly impaired value*" ([115]). The court nonetheless found that the Rossini Trust assets were matrimonial property, and therefore relevant to the computation of the wife's sharing claim. The court proceeded to award W "*those assets which are most likely to result in her receiving actual financial benefit*" ([111]) namely five properties worth in aggregate c. £40.5m, coupled with a lump sum of £60m, giving W c. 33% of the

total visible assets. W's variation application was adjourned so that W could restore it in the event of non-compliance by H.

When can the court look through a corporate holding structure to its underlying assets under s24(1)(c)?

Possibly the most interesting part of the case is how it dealt with the entire holding structure as being a nuptial settlement, and therefore subject, at least potentially, to the court's powers of variation under MCA s.24(1)(c). To put this in context - in order for W to argue that the court could transfer to her some of the trust's underlying assets held through Waterford, W needed first to establish that the court could deploy its powers of variation to extend through a corporate holding structure.

James Ewins KC noted that there was no appellate authority on point. He reviewed a number of first instance decisions, from which he extracted the proposition that the nuptiality of the settlement is derived from the ongoing provision made by the underlying assets. The judge went on to state:

> *59. (…) Thus, where an asset is making such continuing provision, the arrangement by which it does so, which may include an intermediate corporate entity or entities, constitutes a nuptial settlement comprising the nuptial property, all of which is variable under s24(1)(c).*
>
> *60. It therefore follows that a court can, in circumstances where continuing provision is made to the parties to the marriage by an asset held through an intermediary company, define the nuptial arrangement to include both the nuptial asset(s) (or right(s) over the nuptial asset(s)) and the holding structure, and vary it accordingly. But in doing so, the court cannot impute nuptiality to any part of a settlement or arrangement that extends more widely than that which is making continuing (nuptial) provision.*

The judge cited *DR v GR* [2013] EWHC 1196 (Fam), in which Mr Justice Mostyn stated that a family company which under an arrangement made some form of continuing provision for either or both spouses was itself capable of amounting to a nuptial settlement. The judge hastened to emphasise that it was the requirement that there should be a finding of nuptiality in respect of the arrangement as a whole, which distinguished it "*from those which are subject to the prohibition against 'cutting across the statutory schemes of company and insolvency law' (…) [which were] essential for the protection of those dealing with a company*"' quoting Lord Sumption in *Prest v. Petrodel* [2013] UKSC 34 (at [41]).

Several points arise from this:

First, there is nothing new (at least at first instance) in the principle that a nuptial settlement may include both a corporate structure holding the underlying asset(s), and the underlying asset(s) themselves (see eg. *Ben Hashem v Shayif & Anor* [2008] EWHC 2380 (Fam) and *N v N and F Trust* [2005] EWHC 2908 (Fam)). Indeed, that is so even if the company is itself held by a trust of which one or both spouses are beneficiaries (see *DR v GR* at [16] and *NR v AB & Ors* [2016] EWHC 277 (Fam)).

A finding of nuptiality is only the starting point however. The court must ascertain the precise nature of the arrangement through which continuing provision is made (e.g. a license to occupy a family home). Bearing in mind the nature of the arrangement, the court must then go on to consider whether to make a variation order, and if so, on what terms (as to which see more below).

Second, this flexibility arises out of the fact that the term "settlement" under s24(1)(c) – although not defined in the MCA itself – bears a very wide meaning. In *Brooks v Brooks* [1996] AC 375, Lord Nicholls stated that "settlement" is not a term of art with one specific of precise meaning, and that its meaning depends on the context in which it is used. The main criterion is that "*the disposition must be one which makes some form of continuing provision for both or either of the parties to a marriage with or without provision for their children*" ([391]).

Such a broad definition is certainly capable of encompassing a corporate holding structure, and indeed there are good policy reasons why the court should, in appropriate circumstances, be able to reach through such structure. As Mr Justice Mostyn stated in *DR v GR*, the court's jurisdiction under s24(1)(c) would be "*totally emasculated*" if the imposition of a company between a trust and its underlying asset was an impediment to making a variation order disposing of underlying assets, bearing in mind that in the great majority of cases there is an interposed company and it is usually offshore.

Third, while the nuptiality requirement and the broad meaning of settlement do distinguish cases like *Kroupeeva v Kroupeev* from those like *Prest* where no such statutory gateway to variation exists, as the judge hinted, it would be wrong to think that *Prest* has no relevance to a variation application under s24(1)(c) where a holding company is involved. In *Prest* the wife had been refused leave to argue that the companies / corporate structure constituted a nuptial settlement within the meaning of s 24(1)(c), and therefore the decision was decided in the context of s24(1)(a) which empowers the court to make orders for the outright transfers of property from one spouse to the other. However where the very variation order which is being sought is an outright transfer of assets held by a company to a spouse, it is difficult to resist the conclusion that some of the remarks made by Lord Sumption are particularly relevant, not least his seminal dictum that "*Courts exercising family jurisdiction do not occupy a desert island in which general legal concepts are suspended or mean something different*." ([37]).

Mrs Kroupeeva's attempt to secure an order for the outright transfer of the Turkish villa highlights this. Had the application been decided, it would have raised very similar issues to those arising in *Prest*. In particular, the judge would have had to grapple with the fact that the Rossini Trust was only a minority shareholder in Serra, and such shareholding did not confer any right to any particular property of Serra. Further difficulty is that Serra was not a party to the proceedings, which would seem to present a significant obstacle to enforcement.

One also wonders whether there were further contracts or agreements with Serra giving rights over a specific villa, or shareholder agreements – although the judgment goes on to show that this topic was not fully expanded on at trial. At para. 80, the judge stated:

> "*I find that the shares in Serra Gayrimenkul Yatirim owned by Waterford, within the Rossini Trust, gave H the* ***ability*** *to occupy the villa, for which he had to pay outgoings, including service charges. However,* ***I have no details or evidence as to the contractual or other basis by which the right of occupation was conferred and concluded that while H may have a "right", his ability to occupy the villa and use the common facilities may fall somewhat short of an enforceable right to do so****. I nonetheless find that the villa was made available to the family by way of continuing provision as a holiday home for their exclusive use during the marriage*." (emphasis added)

Given this, it seems unthinkable that a judge dealing with the wife's variation application, if and when it is restored, would be minded to order an outright transfer of the villa. Indeed, James Ewins KC himself did not appear to consider it a realistic option and expressed doubt that even a transfer of the shareholding to the wife would confer on her any enforceable right of ownership or occupation. This is not to reward the husband for his non-disclosure, but simply to recognise that the court cannot vary property or contractual rights which do not exist. And, one might suggest (although the Judge did not refer to this), where the order could have difficulty in the real world of enforcement in Turkey, which leads to the next issue the case highlighted.

Will the court order a variation where such an order may prove worthless?

James Ewins KC considered that the variation orders sought by the wife may prove to be "*if not worthless in her hands, nonetheless of significantly impaired value*" ([115]). The judge articulated two principal reasons for this, namely (a) that a transfer of the shares in Serra would be unlikely to confer on the wife any enforceable right in respect of the Turkish villa and (b) a transfer of the Gulfsands shares may well come with significant concomitant liabilities.

One might have added to those the fact that the trustee of the Rossini Trust was offshore and although joined to the proceedings, did not submit to the court's jurisdiction. Further, it is likely that the variation orders sought would have impacted on the parties' children's rights as beneficiaries of the Rossini Trust. No doubt, if the court had been minded to decide the wife's variation application, the children ought to have been given the opportunity to join the proceedings.

Instead, the judge framed his order in a way calculated to maximise the money in the wife's pocket. He did so by awarding W all the liquid visible non-trust assets and a further lump sum of £60m, giving her total assets of c. £100.6m, i.e. 33% of the total assets as the judge inferred them to be. The judge was under no illusion that the wife would be likely to face difficulties in enforcing her lump sum and adjourned her variation application for that reason. It is questionable, however, whether that application will prove a useful enforcement tool.

The decision illustrates the court's increasing reluctance to make variation orders, where such orders are unlikely to produce any actual financial gain for the receiving spouse.

How helpful are adverse inferences?

Kroupeeva v Kroupeev is part of a number of recent trust & divorce cases where the court's power to draw adverse inferences in the face of non-disclosing spouses has been robustly deployed in trust cases (see *Sloutsker v Sloutsker* [2025] EWFC 369 and *MK v SK* [2026] EWFC 28). Faced with an incomplete financial picture, the court in *MK v SK* and *Sloutsker* opted to make an award by reference to the wife's needs (rather than by reference to the sharing principle). This approach was criticised by some as giving non-disclosing spouse a "non-discloser's dividend".

Kroupeeva v Kroupeev is not vulnerable to the same criticism. Provision for the wife was approached on a "sharing" basis. It may be said that an award limited to 33% of the visible assets, even accounting for factors such as illiquidity, is not an entirely satisfactory application of the sharing principle (the starting point being a 50/50 split). However, as the case demonstrates, the court must have an eye to the efficacy of its own orders. This requires the court to take into account both the existence of assets-holding structures and likely cross-border enforcement difficulties. To that extent, adverse inferences only offer limited relief to the applicant spouse.

For more information:

- Our Trusts, probate and estates: contentious expertise.
- Our Trusts, probate and estates: non-contentious expertise.

If you are viewing this document on LinkedIn, you can download it by clicking on the  *icon in the top-right-hand corner when in full screen view.*