



## Matrimonial Finances - Dealing With Delayed Claims

One of the most difficult problems that can arise in dealing with finances after a marriage break down is the question of how any significant lapse of time between the parties' separation and resolution of the finances should be taken into account.

Unlike issuing proceedings for a personal injury claim, for example, there is no limitation date in respect of issuing a claim for financial relief following a decree of divorce or judicial separation. This means that a party may pursue his or her claim at any stage after separation, as long as he or she has not remarried.

In cases where there has been a significant lapse of time, this can often result in assets, such as the amount of equity in the matrimonial home, rising significantly in value by the time the matter proceeds to court. The statute which governs such applications states that it is the value of the assets at the time of hearing, not at the time of separation, which must be considered in the vast majority of cases.

The court has a very wide discretion in dealing with finances upon a marriage break down, however proceeding with an application after a significant delay could lead to a reduced award or even a dismissal of the claim. The reason for the delay is often critical as to how the case will be dealt with. In *Hill v Hill* (1998) 1 FLR 198, the parties divorced in 1969 but reconciled and cohabited for a further 25 years before the relationship again broke down. Ward LJ stated that the fact that Mrs Hill 'resumed cohabitation with her former husband' gave the delay 'a difficult quality' and that if Mrs Hill had 'cohabited with another man for 25 years and then sought the court's leave I would not be likely to grant it.' This was in contrast to the case of *Chambers v Chambers* (1980) 1 FLR 10 where the wife cohabited with another man for 21 years before bringing her claim for financial relief, which was subsequently dismissed.

In the more recent case of *Rossi v Rossi* (2006) EWHC 1482 (FAM), the judge approved the old line of authorities, underlining that a claim may fail if it is left dormant for too long. He suggested it would be difficult for an applicant to pursue a claim six years after separation without good excuse. He further stated that it was the function of the court to distinguish between matrimonial and non matrimonial property. For example, an asset acquired or created after separation by the industry of one party could be considered non-matrimonial property, but that such property is not to be 'ring-fenced' and any distinction between matrimonial and non matrimonial property would be diluted where the claimant's needs could not be met without recourse to the non-matrimonial property.

If you are in a marriage which has irretrievably broken down and there are finances which require to be resolved, you should seek advice from a solicitor sooner rather than later in order to avoid the potential pitfalls that bringing a delayed claim can result in.