

Making an application for financial relief in England following a foreign divorce – by Andrew Moore

Over the last half century international travel, immigration and movement of the work force on a global scale has contributed to a sharp increase in marriages between people of different nationalities. Consequently, it is now normal for families to have property and assets in different countries whether it be holiday homes, invested assets or even inherited wealth.

Where cases have an international element, and the parties have a choice as to which country they divorce in, then it is likely the wealthier spouse will be advised to petition away from this country. England is regarded by many as one of the most 'pro-wife' legal jurisdictions in the world in terms of financial provision on divorce – the courts here are more generous to the party who has stayed at home to look after the children, in the majority of cases the wife, than in other countries' courts. There are also variations between the laws of different countries which will benefit one party than the other. For example, in England a pension sharing order can be made. In France the courts do not have the power to order this.

There is, however, an act of parliament known as The Matrimonial and Family Proceedings Act 1984 (MFPA) which allows parties to make an application in this country for financial provision following a foreign divorce.

There are two main reasons why a party to a foreign divorce will decide to make an application under the MFPA:

- To enforce an order from a foreign divorce. A claim is unlikely to succeed where:
 - parties have not exhausted all avenues of redress in the foreign court that he/she submitted to for the divorce.
 - enforcement can be dealt with by other legislation. For example where a foreign court has ordered one party to pay maintenance to their spouse and then fails to do so, an application in the English courts will be made under The Maintenance Orders (Reciprocal Enforcement) Act 1972 instead of the MFPA. The MO(RE)A only deals with maintenance so for other orders such as a property adjustment order (transferring the ownership of a property between a couple) or an order for sale, the MFPA will be the right legislation to use.
 - the motives behind making the application to invoke a second jurisdiction are not clear. Judges try and limit cases where it is obvious that parties are wanting to get further financial provision when it has been dealt with already.
 - the other jurisdiction was a competent one which would have taken in to account all of the factors of the case when coming to their decision.
- To address situations where the court in question declines jurisdiction to deal with a certain area of the finances.

This is the most obvious case where an application under the MFPA will succeed. For example, under Cypriot law the courts in Cyprus will not make an order that deals with property in England. The parties will therefore have the option to apply to the English courts for the matter to be heard here should they not be able to agree between themselves on how it should be dealt with.

There are a series of complex hurdles and steps which need to be considered prior to an application under the MFPA being heard by a Judge. Any of the family team at Mills & Reeve will be happy to discuss your case with you and give you an indication of whether your case will be successful or not. An application under the MFPA is not straightforward and Mills & Reeve will provide you with the best possible advice and experience from the outset.