

## Filing for divorce: Is there time for reflection?

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When the divorce process is started a short statement has to be filed at Court to confirm whether the possibility of reconciliation has been discussed.

Taking that initial step to file for divorce is not an easy decision to take. It's common for people to consider and reflect on what life may look like post-divorce. Thoughts circle around: What will I do? How will I support myself? Will I be happy? How will the children handle the separation? Parties may speak to a counsellor, or therapist and often guidance is sought from professionals, friends and family about how best to proceed. It's unarguable that people need time to decide how they want to move matters forward, if indeed they do.

What may seem like common sense contrasts with the legal position though. Whether a spouse really has time to decide what to do depends on their nationality and where they are living.

There are rules between European States which govern which country should deal with a divorce. Where more than one Member State has jurisdiction, the rules dictate that the first in time wins i.e. the first person to file for divorce secures jurisdiction.

England is often said to be a divorce capital. That reputation is garnered by its approach to the division of assets on divorce. We start with a 50/50 split of assets built up during the marriage, unless there is a good reason not to do so. Contrast that with most continental European States where Marital Property Regimes are the norm and on divorce assets are retained by the party in whose name they happen to be in. Given this, it is perhaps clear to see why a financially weaker party may choose to rush to file here.

Rushing to file may secure jurisdiction, but it comes at the cost of reflecting. There isn't time to reflect. A financially weaker spouse simply cannot take the risk that their spouse might file in another State. They have to file in England without delay if they want to secure the best financial result.

It's against this backdrop that the Court of Appeal is considering the case of *Thum*.

In that case, a wife filed for divorce in England to secure jurisdiction here, but then waited four months and one day to serve her Petition on her husband. That wasn't too long to wait said Mr Justice Mostyn in the High Court but the Court does not like delay. In *Chai v Peng* Holman J suggested that *"To file [a divorce petition] prematurely is the equivalent of laying one's towel at dawn upon the sun lounge of the English court and returning at high noon to bask in the warmth of the law of England and Wales on divorce and financial remedies."*

The question the Court of Appeal is having to grapple with in *Thum* is did the wife wait too long to serve her petition? Should her petition fall away because of the delay?

Really though, the question is more fundamental than that. It's about reflection. Is the law really saying that divorce is all about money? That spouses should file for divorce and move ahead without having time to reflect? As the law stands arguably there isn't time, or potentially enough time, to reflect. Perhaps the Court of Appeal in *Thum* will provide guidance on this issue, but if not, Parliament will need to give careful consideration to the matter when the European rules that currently govern us fall away.

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