



UK & Ireland Advocates and Judges Family Law Conference

Hosted by the Family Law Bar Association

13 and 14 April 2018: Middle Temple, London EC4Y

On 13 and 14 April 2018, the FLBA hosted the UK and Ireland Advocates and Judges Family Law Conference. Around forty delegates - from the four jurisdictions of England and Wales, Scotland, Northern Ireland and Ireland - attended and contributed to a lively debate spanning three themes: Money Topics, Children Topics and the Future of Family Law Post-Brexit. The debates concluded with resolutions adopted by the conference which are set out below.

Money Topics

Lord Justice Moylan and Lady Morag Wise opened the session with presentations focusing on the current issues within their respective jurisdictions. The benefits of a system based on certainty versus a system based on discretion were debated by delegates. The conclusion drawn was that England and Wales and Scotland are edging closer in their respective approaches to capital division. However, they are still some way apart in their approach to maintenance. It was unlikely that England and Wales would approach maintenance claims with the same degree of rigidity as Scotland, notwithstanding Baroness Deech's Divorce Bill.

HHJ Robinson and Janys Scott QC considered enforcement of financial orders. Enforcement can be complex for litigants and there is much room for improvement. In England and Wales, there is disproportionate focus on process rather than achieving fair results. Advocates and Judges should give consideration to enforcement at an early stage in the litigation, as often happens in Scotland. Enforcement will probably become even more difficult when the UK detaches itself from the EU. It may become much more difficult to enforce orders in ex-European partner states.

Kirsty Malcolm and John Wilson QC discussed the protection available to cohabitants upon the breakdown of a relationship or death. Law reform in Scotland and Ireland is much more progressive than England and Wales and Northern Ireland. However, the cost of litigation and wide discretion of the courts may be deterring people from initiating litigation.

Kate Dowdalls QC and Morgan Sirikanda considered alternative methods of dispute resolution. ADR has a vital role to play in resolving family law disputes. It produces less delay and less stress to clients.

Children Topics

Francis Judd QC and Kenneth Campbell QC outlined the challenges faced across jurisdictions in adoption proceedings. The structure of the Scottish legislation is seen as a challenge by some. In England and Wales, the route map was clear but decision making remained difficult. Of significant importance was the lack of support available to adoptive parents. There is a need for much more research, education and support for adoptive parents.

Janys Scott QC and Justin Gray discussed the cross-jurisdictional issues particularly relating to secure accommodation. Both Scotland and England/Wales welcomed Law Commission recommendations to arrive at a more sensible solution regarding secure accommodation.

Deirdre Fottrell QC led a session on surrogacy. There is a framework in place but it could be much better. The Law Commission is likely to focus on commercial surrogacy and the s54 criteria. There is a real opportunity to revise some of the difficulties. However, there may be a push for pre-birth orders and a more administrative process. Both are potentially problematic. Delegates from England and Wales and Scotland wish to collaborate in respect of the Law Commission report on surrogacy law with a view to achieving coherence across jurisdictions.

The Future of Family Law Post-Brexit

Ruth Innes, Tim Amos QC and Tim Scott QC led this discussion. The question was posed: is there a single advantage of Brexit from a family law perspective? The delegates were unable to conclude that there was. Much work is being done to ensure that family law issues are on the agenda.

Resolutions passed by the advocates in attendance only (Judges not included):

1. This conference regrets the continued absence of protection for cohabiting couples, families (particularly children) of unmarried people and unrecognised marriages. There are relatively few jurisdictions that provide any satisfactory legislation.

2. This conference emphasises the importance of the benefits of a regulatory framework for family law post Brexit.
3. This conference gives support for better provision being made for families and children post adoption to include consideration being given to post-adoption contact.
4. This conference supports rationalisation of jurisdiction across the different parts of the UK with regard to child protection and measures for children in public law.

Enormous thanks are due to all speakers and delegates and, in particular, Lord Justice Moylan, Lady Morag Wise, Janys Scott QC, Frances Judd QC, Henry Toner QC and Nuala Jackson SC.

The FLBA very much looks forward to the next conference to be hosted by one of the other jurisdictions.

Janine McGuigan (QEB)

Rapporteur