

David Hodson on International Family Law Four Jurisdictions Conference in Edinburgh

The British Isles is a curious and confusing family law location! It constantly bewilders family lawyers in other jurisdictions and with very good reason. It's boundaries, it's legal systems, its political turmoils and differences and separate electoral accountabilities are founded in history going back over 1000 years. It comprises five countries (excluding the surrounding islands), four family law jurisdictions, two EU member states (UK and Eire) and one geographical entity. Predictably many families move frequently and freely, settling long-term, sometimes for many generations, in other countries yet retaining their cultural origins. Family lawyers within the British Isles need to understand both the cross-border issues and the relevant national laws.

About 16 years or so ago lawyers with practices bordering the Irish Sea met to discuss these issues, now comprising Scotland, Northern Ireland and north-west England (with Wales but most definitely not Southeast England) and the Republic of Ireland. Their annual conferences in late January, rotating between the countries, are very successful and have built up a considerable momentum, informing delegates of the crucial issues facing the jurisdictions. This past weekend (28-29 January) in Edinburgh the conference looked at approaches to relocation, marital agreements and self help documentation. Predictably there was almost unanimous condemnation of the English law on relocation, but this is a matter of global consent! Except by some of the English judiciary. Whilst England has moved closer to presumptively binding marital agreements from Radmacher, the Supreme Court decision in October, there is still a discretion. In contrast Scotland, with an excellent presentation by Morag Wise, has a very high level of certainty, and agreements play a central place in the making of final settlements. The burden is strenuously on the party seeking to set aside. The Republic of Ireland has a shorter history in these agreements, primarily in the context of a separation yet a few recent cases highlight the importance of finality. Anne Caldwell gave a refreshing insight on the issues as a practising solicitor in Northern Ireland

A highlight of the conference was a role play on self-help issues including implications of a spouse taking a personal diary, indiscreet photographs, bank statements on hall table, in a briefcase and locked in a filing cabinet in the study of one of the spouses, removing a laptop or copying the hard drive, interfering with personal and commercial communication and intercepting the postman! The difference of opinions was dramatic. Some judges, especially who had previously worked in civil cases, were adamant that confidentiality ruled the day and that there should be no or minimal opportunity to have access to self-help documents. Many practising lawyers, of all 4 jurisdictions, were equally adamant that the greater importance was to ascertain the overall financial circumstances to produce a fair outcome. Hillary Coveney of Dublin and Abigail Bennett of Liverpool demonstrated the frustrations for the clients seeking reliable disclosure.

Some presentations were disappointing: two weeks after the Law Commission published its consultation paper, should a speaker really say: "*which I think contains ...*"? Most were high quality and very practical. The conference avoids posturings and positioning sometimes found in other conferences. These are practitioners, young and very experienced, who work closely together in very local but cross-border cases. They don't seek to change the laws of other countries. They seek to share the enjoyment and challenges of professional practice. The organising committee in Edinburgh have yet again produced an excellent conference.

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