

English Family Law from a Polish perspective

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Dealing with international clients who, by extension, might have a different perception of how the legal system works, having been raised and lived in another country, can be quite a challenge.

Sometimes those perceptions might be right, but more often than not, they need to be explored, explained, understood and put into context, while keeping in mind the cultural background of the client.

Being Polish myself means that I am contacted regularly by a lot of Poles living in UK and looking to get some advice with regards to family law. It makes me uniquely placed to assist them, as not only do I understand their language, I am also able to have a better idea of their culture, values, traditions and any stereotypes that they may encounter. Having worked on numerous cross-border cases involving Poland, I am familiar with the differences in our legal systems, some are obvious, others not so much, but any differences can be critical when an order is made in one country but needs to be enforced in another.

The most prominent differences I came across, to name a few interesting ones, are:

Removing one parent's parental rights

I often receive calls from potential clients who wish to remove one parent's Parental Responsibility upon the relationship breakdown. This seems to be quite a routine route in Poland. Those clients are very surprised to hear that terminating one parent's parental responsibility is almost unheard of in England and Wales, and any decision to restrict one parent's parental rights would not be taken lightly. There are, of course, applications that one can make to regulate where the children will live, how much time they will spend with the other parent, to decide on specific issues regarding schooling, religion, medical and other important matters, or to prohibit someone from taking the child away, for example. However, none of these applications take the Parental Responsibility away completely.

Applying for a child passport without the agreement from the other parent

One of the decisions the court can make is with regards to a Specific Issue Order. This covers a range of issues that the parents might not agree on and therefore need the court to determine.

According to the Polish Passport Documentation Act, written consent of all those with parental responsibility is required in order for a Polish passport to be issued for a minor. This must be given in person by signing a consent form during an appointment at the Consular Section of the Polish Embassy. If parents are attending in person, they must present their valid

passport or ID cards if they are EU citizens.

A Notary Public certified consent of a parent is also accepted in the event a parent/parents are unable to attend in person. An original of the consent must be provided.

When it is impossible to obtain parental consent, it is necessary to provide a Court's decision replacing such consent for each of the parental responsibility holders not consenting in person. The Court Order must stipulate the following: 'for the purposes of Polish passport issuance the consent of the father/mother/any other parental responsibility holder is dispensed with'. English Courts have got better with these types of Orders as time went by, but there was a time when these applications were very unusual as no such consent would be required for a British passport for a child; and therefore, the concept seemed alien to some judges in England and Wales.

Child maintenance

Contrary to Poland, where the Court has the jurisdiction to decide on the amount of the child maintenance mostly based on the child(ren)'s needs, in England most cases of child maintenance are dealt with by Child Maintenance Services. This is an organisation that calculates and deals with the execution of child maintenance payments. The amount of child maintenance being payable is based on the paying parent's income and the number of nights the child spends with the paying parent. A mathematical formula is used to calculate the appropriate amount. In England and Wales, the child maintenance is normally only payable until the child reaches the age of 18 or is in fulltime education. In comparison, in Poland the child maintenance may need to be paid for much longer, until the child reaches full independence. The approach to child maintenance differs considerably between the two countries and might be quite a shock to some parents.

Matrimonial property regime

We are often contacted by clients who inform us that in their sole names is up for grabs in financial proceedings upon a divorce. This cannot be further from the truth here. England does not have a matrimonial property regime that allows one to elect how their assets should be dealt with when entering a marriage. All assets, be it in sole or joint names, are taken into account. There might be some exceptions to this, and considerations need to be made on the factual matrix of the case; however, it is not as simple as one might have thought coming from a jurisdiction where there is a clear recognition of the matrimonial property regime. Although people sometimes confuse matrimonial property regime documents with pre-marital agreements, these are not the same and should not be treated as such.

Enforcement issues

When dealing with any cross-border matter, one needs to be very alert to the other jurisdiction at hand and from the start be very clear on what can be achieved and at the end, recognised and enforced in another country, if necessary. This, of course, works both ways. Some orders cannot be simply translated and followed in another country if there are no legal grounds for such provisions. For example, in Poland there is no equivalent of Special Guardianship Order; therefore, careful consideration needs to be taken as to the wording and the goals of such orders when dealing with a family that might move back to Poland in the future. Otherwise, what might happen is that they will struggle to have the English Order enforced in Poland as intended. In those cases, we might be looking at adoption orders in Poland. This is why it is crucial to involve appropriate authorities early when taking steps to try and find out a solution that works best for the family.

The above list is not exhaustive and only demonstrates a snippet of how much the laws and judicial approach can differ from one country to another.

There are significant differences between different legal systems and what one might consider a norm in one country can be a complete anomaly in another. It is, therefore, crucial to seek advice and assistance from foreign bodies and lawyers when dealing with a cross-border matter. But what is also important is for the client to feel that, as their lawyers, we understand them and being familiar with other people's culture and beliefs is becoming essential when a person decides who should represent them.

If we put ourselves in the client's position, it must be rather difficult to need to explain yourself, your understanding of the world, ideologies and views that you have if you feel like someone is not open-minded enough or might be perhaps to some extent dismissive because they are not familiar with what you are trying to explain to them, or it might sound alien to them.

Family law requires that special human touch as we deal with what is the most precious thing in person's life – relationships. It also requires understanding your client's needs. Every family is different, and every case will bring their own individual challenges. By being familiar with different jurisdictions and laws around the world, it makes us better equipped to assist and understand our clients' needs.

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