

FAMILY COURT

REVIEW OF THE YEAR 2017

From time to time it has been suggested that I publish something along the lines of "Views from the President's Chambers" written by the President of the Family Division of England and Wales in which he gives his views on issues of concern in the family justice system.

While I would not pretend to aspire to the authority of those publications or wish to become involved in political controversy, I thought it might be helpful to attempt an overview of the work of that part of the Isle of Man High Court which deals with what is called "Family Business". The work which is carried out under that banner includes:-

- The processing of divorce applications
- Deciding contested financial disputes arising from divorce. These cases range from claims for maintenance to more complex cases involving trusts and companies
- Deciding disputes between the separated parents of children about who should look after those children and when, if at all, the children should see or have "contact" with a parent
- Disputes about where the child should go to school, about medical treatment, or another specific issue such as a change of name
- Deciding applications which seek to prevent a parent or other carer removing a child from the Isle of Man on a temporary basis, perhaps for a holiday or for another temporary period
- Deciding cases where one parent wishes to move permanently from the Isle of Man to live elsewhere in the world against the wishes of the other parent
- Deciding whether to grant non-molestation orders when one partner in a relationship claims that the other is harassing him or her or in cases of alleged domestic violence.
- Regulating rights of occupation where individuals in a relationship are unable to agree who should live in their former home
- Considering the merits of financial agreements between those who have been married and issuing "consent orders" to reflect those agreements
- Deciding cases under the Hague Convention on Child Abduction where children who are alleged to have been abducted by one parent are brought to the Isle of Man
- Adoption applications. These cover a wide variety, from step-parent adoptions to those arising from a child having been taken into care. An adoption order is probably the most serious and permanent infringement on parental rights available to any court and alternatives, such as special guardianship orders, must be considered
- Holding fact-finding hearings at which the court makes findings about allegations of abuse, which findings are then used to inform decisions about the future arrangements for children
- Applications to freeze money or other assets which one party to a divorce believes are likely to be dissipated

Cases involving property disputes between unmarried couples are dealt with in another section of the High Court. Applications to take children into care are dealt with either by magistrates or by a judge and are dealt with by another part of the court system.

Some Statistics

In 2017, the court received 209 new divorce applications. From 1st July 2017 to 31st December 2017 it also received 25 new contested applications for financial provision following a divorce and 54 new applications to resolve a specific dispute concerning the residence, contact or other arrangements for children. The court also received 57 draft consent orders reflecting the financial agreement which had been reached by the parties.

Transparency

Unlike virtually all other court hearings which take place in the Isle of Man Courts of Justice, hearings in the Family Court are required to be held in private and the press are not admitted.

Judgments which raise issues of general importance are placed on the Court's website ww.courts.im with amendments made to preserve the anonymity of children and the families involved.

Advocates

The court relies heavily on the expertise and assistance of advocates who specialise in family court work. However, an increasing number of individuals appear without the benefit of legal representation, usually because they cannot afford to pay privately and are not eligible for legal aid. Generally speaking, those who appear without an advocate tend to slow the court process down and take up far more of the court staff's time than do those who are professionally represented. Family law is a complex and demanding area of work and those who are unrepresented find themselves often facing insuperable difficulties.

Court Welfare Service

Court Welfare Officers, attached to the Department of Home Affairs, play a vital role in helping the court to achieve the best outcome for children who are often caught in the middle of a parental dispute. Court Welfare Officers produce reports after having interviewed the parents and the children and are able to communicate to the court the wishes and feelings of the children. This important work is done by two court welfare officers who currently (December 2017) have between them 36 open cases. The number of cases requiring reports is increasing.

Other Experts

From time to time the parties instruct, with the court's permission, other experts to help with specific issues arising in the more complex cases. These may include child psychologists, psychiatrists, play therapists and independent social workers. At all times the child's welfare is the court's paramount consideration.

Mediation

The court strongly encourages the use of out-of-court mediation to resolve disputes. Support is readily given by advocates and the legal aid system to achieve the resolution of many disputes in this way involving children and money. The benefits of the parties reaching their own solutions without the court imposing them cannot be underestimated.

Court User Group

The court organises regular meetings of those who deal regularly with it (advocates, court welfare officers, Victim Support, mediators) and this has proved to be a useful forum in which to discuss issues of general and practical importance to the efficient working of the court.

The Future

While the volume of work coming into the court remains broadly at similar levels to previous years, the complexity and difficulty of cases has increased.

The judges who carry out this difficult and demanding work on top of their other judicial work must apply the law as laid down principally by Tynwald. It is an interesting time in the proposed reform of family law. Our law is largely based on English law. There is increasing pressure in England and Wales to reform the grounds for divorce. The Isle of Man may follow these proposals or take a lead in adopting its own changes. The existence of a different and more complex set of rules for financial disputes between those who cohabit rather than marry is also a frequent source of comment. Changes may also take place to the Isle of Man law on domestic abuse, adoption and the financial rights of divorcing couples. Isle of Man family law legislation and procedural rules are showing their age and it is to be hoped that time and resources will be found to bring them up to date to ensure that the Isle of Man High Court can assist in bringing about a swift and just resolution to family disputes which often involve the most vulnerable in our society.