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DOHA INTERNATIONAL INSTITUTE
for Family Studies and Development

Member of Qatar Foundation

Every Family Matters

An In-depth review of Family Law in Britain

THE CENTRE FOR
SOCIAL
JUSTICE

KEY POLICY PROPOSALS

Principles of family law reform

1. Section 1 of the Family Law Act 1996 should be reinstated in primary legislation for family law matters

Divorce law

2. Discussing no-fault divorce is a low priority in contrast to other family law reforms and not promoted;
3. Creation of a period of reflection and consideration at the outset of the divorce process, which would now be commenced only by a short written notice without any allegations;
4. The period of reflection and consideration should last three months and could be abridged by the court in exceptional circumstances;
5. Apart from urgent measures and protective or preservative orders, no other steps would be taken during the period of reflection and consideration;
6. At the expiry of the three months, either party could proceed with a petition for divorce whereupon the present procedure would follow;
7. Parties should be able to petition jointly under existing law;
8. Decree absolute of divorce should be capable of being applied for after four weeks from the decree nisi, instead of the present time periods;
9. Either party should be able to apply for the decree absolute irrespective of whether they are petitioner or respondent;
10. The certificate of reconciliation should be abolished;
11. Improvements to the circumstances in which either party may prevent the granting of the final decree until the final financial settlement and its implementation.

Cohabitation

12. For the different reasons set out above, we do not consider that it is appropriate to make any proposals for cohabitation law reform at this time;
13. We oppose the present Private Members' Bill on the basis that it provides very similar rights to marriage;
14. We recommend more education of couples to raise greater awareness of their rights and limitations in their relationships, and opportunities to provide certainty and planning in their financial affairs.

Pre marriage information

15. Before being married in England and Wales a couple should be very strongly encouraged by Government and others to attend a pre-marriage information course. A note should be made by the registrar of marriages of those who attend in order to measure effectiveness and usage;
16. The course may consist of three sessions, of which the middle one maybe undertaken at home by watching a DVD, reading a book or similar;
17. The course does not have to be undertaken at the location of the marriage nor do the couple have to attend together;
18. The course would be partly or fully publicly funded, provided by accredited services;
19. Attendance would provide a discount on the marriage fee;
20. The course would cover present marriage preparation and information, and specifically cover how to deal with crises and pressure points within marriage.

Marriage support

21. Government should reinstate Marriage Support Services funding and the Marriage Support Services Directory;
22. We particularly endorse and support the following proposals, as made by the two reports referred to above:
23. A comprehensive and coherent framework should be developed encompassing all areas of Relationship Education. However we see no reason why our proposals, above, for pre-marriage information should be

- delayed whilst this is being developed. Instead it will generate more interest in couple relationship education;
24. The provision of CRE should be expanded through an approach which encompasses:
 - Actively encouraging, or potentially requiring, those who naturally form 'gate-keepers' at key relationship stages (e.g. Registrars, Health Visitors, etc) to promote awareness of relationship skills, and the provision of CRE;
 - Encouraging the wide range of local social voluntary providers already in existence to expand and develop their services with an approach to regulation which is kept to a minimum level, so as to encourage, not stifle, local initiative;
 - Defining 'Minimum conditions of satisfaction' that any course must encompass – i.e. defining a minimum core curriculum, and minimum duration, but maximising the freedom of providers to develop those aspects appropriate for their target recipients;
 - Providing funding into the sector primarily through market-led mechanisms where the amount of funding received by providers is driven by the quantity of recognised CRE delivered;
 - Supporting local providers of CRE in the training of those involved in delivery of services by funding such training;
 25. Funding for expansion of CRE should come from both central and local government, and from the voluntary sector, with a gradual shift towards direct payment by recipients who can afford it as CRE becomes more widely accepted;
 26. Details of couple relationship education to be specifically provided through the Family Relationship Hubs referred to below. This will provide consistency of service across the country, overcome patchiness of provision and yet encourage local initiatives;
 27. The PSHE curriculum is to include a specific opportunity to learn about, explore and discuss the nature of marriage, family and relationships, and encourage voluntary sector involvement in relationship education delivery.

Family Relationship Hubs

28. An extra layer of advice, assistance, support and guidance is needed in the UK for people experiencing family troubles to allow them an alternative to the polarising and adversarial route of litigation and the court service. A form of Family Relationship Centre is therefore considered a valid and viable option for the UK. We refer to them as Family Relationship Hubs, to focus on the co-ordinating and centralising role they will play;
29. The UK model should include, where practicable and appropriate, a comprehensive range of services that might include (and act as a referral source for) family dispute resolution, post separation services, child contact services, early intervention services, counselling services, mediation, pre marriage information, pre issue information, and preventative & educational services;
30. These services should where possible be co-located together within Family Relationship Hubs for the benefit of clients, staff and economies of scale in funding matters. Where co-location is not possible or practicable, a formal referral process undertaken by the Hubs would guide clients to the appropriate local resources;
31. The locations should be highly visible and accessible to the public, with strong government branding to promote trust and confidence;
32. A recruitment, accreditation and continuing education scheme is likely to be required, as is a body with compliance and oversight functions;
33. It is essential to engage all stakeholders in the consultation process, including (but not limited to) Domestic Violence organisations, men's groups, the Court Service and solicitors;
34. Responsibility for funding would be between central government, local government and external agencies.

Information before the issue of proceedings

35. There should be information provision before the commencement of family law proceedings;
36. Receipt of this information is a precondition of issuing proceedings, evidenced by the form of a certificate or similar;
37. This applies to all family law proceedings, including divorce, children proceedings and financial proceedings, including substantive applications made in existing proceedings;
38. There would be an exception in respect of proceedings for domestic violence and in other proceedings where there are issues of urgency, for safety and similar, although in such circumstances the information provision should be received and considered within a time period after the issue of proceedings;
39. Once the information provision had been received, any number of family law proceedings could be undertaken within a period of the information provision; it does not relate to only one set of proceedings;

40. Despite past difficulties with various models of delivery, a form of information provision must be found as to its delivery, length, content, cost and manner of providing the information. Face-to-face consultations or meetings are preferable so that the information can be tailor-made to meet individual circumstances;
41. Information providers would be accredited and quality assured;
42. The information provision can take place at the same time as a mediation meeting for a party seeking legal aid;
43. The information provision is likely to be provided by or through the Family Relationship Hubs;
44. With respect to children matters there would also be a mandatory attempt at dispute resolution, organised through the Family Relationship Hubs, although this may be a second stage in the development of pre-application information and the Family Relationship Hubs.

Alternative Dispute Resolution

45. Sections 13 and 14 Family Law Act 1996 should be reintroduced, giving the court specific powers and obligations to adjourn cases for the purposes of mediation and other ADR with reports on what progress has been made;
46. Binding family law arbitration should be introduced;
47. The requirement on legally aided parties to attend a meeting to ascertain if mediation might be suitable should be continued and extended as below;
48. Applicants for divorce and dissolution of civil partnerships, for financial provision on relationship breakdown, for orders regarding children and other family court applications, and save matters of emergency or domestic abuse, must attend a pre-application information meeting which would include provision of details of mediation and other available ADR;
49. There should be mandatory attempts at resolution of children disputes before the issue of proceedings;
50. Forms of dispute resolution short of final court hearings should be regarded as primary dispute resolution, matters of first resort, and final court hearings regarded as matters of last resort.

Legal aid

51. Government should clearly place on record that access to justice, like education, health care and other front-line services, is an essential facet of any civilised society;
52. The legal aid system must attract and retain specialist practitioners in all areas of family law;
53. To this end, the Government must end all plans for further reductions in remuneration;
54. Also to this end, the Government must return to the original basis of 'fair remuneration for work reasonably done';
55. The Government must put an end to the erosion of eligibility for those in need of help;
56. Payments to the Legal Services Commission from the operation of the Statutory Charge should be clearly identified and ring-fenced for use by the Commission and not lost in other revenue to the Exchequer;
57. There should be proper transparency in the published cost of legal aid, so that the net cost, being gross expenditure net of VAT, after deduction of repayment of this statutory charge and interest on it is made public rather than the present opaque figure;
58. The present high rate of interest paid upon the statutory charge must be reduced immediately, linked with base rates and subject to review on an annual basis;
59. Budgets for family legal aid work should be ring-fenced from other areas such as crime;
60. Power for the court to grant interim lump sums, for costs, should be introduced immediately; and
61. There should be dialogue with the main banks and lending institutions to discuss what changes are needed to allow more family law litigation loans to be granted.

Domestic violence and abuse

62. Ongoing education to create knowledge and awareness of domestic abuse for all those involved in the family law process.
63. Systematic evaluation of courses and success rates for offender intervention programmes, including community-based projects, with any shortfall in the availability of programmes to be addressed.
64. Whilst it is too early to draw conclusions on the effect of the 2004 DVCA Act, there must be an ongoing consideration and review of its impact.

Contact

65. An amendment to the Children Act 1989 to include explicit principles of contact and residence, incorporating equal status of those with parental responsibility and the benefit to the children of both parents having a significant involvement in their lives, with the welfare of the child remaining the paramount consideration.

Contact centres

66. Contact centres provide an invaluable service for short-term, and sometimes medium and longer term, contact between a child and parent. However their role is diminished, even unrecognised, in the overall

- services for children. This must be reversed so that they are recognised as a key element in children's services;
67. Recent rearrangements in funding have meant that whilst start-up funding may be available, ongoing costs often cannot be met even with considerable volunteers and charitable support. Yet the costs of running many contact centres are relatively small, especially when taking account of their considerable benefit in post separation parenting and the costs saved elsewhere such as in public law proceedings and ongoing private law disputes. These relatively modest costs should in future be funded;
 68. There should be a partnership of funding between central government, local government, CAFCASS and the centres themselves, recognising that the centres for their part may continue to rely on volunteer work and charitable donations;
 69. There should be an obligation on local government to ensure that geographical areas of particular need have provision of appropriate contact centres;
 70. Whilst there should be more reference to the users making a contribution, there has to be recognition that they are seldom in a financial position to make any material payment;
 71. The services provided by contact centres should be linked with Family Relationship Hubs as part of the combined provision of services for families and children.

Relocation and international children

72. A change in the law regarding relocation such that an amendment to the Children Act as proposed above (see section 5.1.3.2) would apply in such cases, to take better account of the changed patterns of parenting, the considerable impact on the child of relocation away from home and other home environment features and wider family members, yet taking account of the increased movement of families;
73. A call for a international Convention to establish international consensus on child relocation.

Rights of extended family

74. Grandparents should be placed in a distinctive legal position;
75. To protect the child from multiple claims for contact, 'grandparents' should be defined for this legal purpose strictly in terms of a biological or adoptive relationship to the child;
76. A single straightforward application for contact for grandparents should not require leave although other applications for S8 orders would follow existing procedure;
77. Subsequent judgments regarding contact should be based on well-understood relevant criteria, which should include a grandparent's prior interest and contact with the child;
78. An early approach with mandatory attempts at mediation between grandparents and parents should be encouraged before the issue of proceedings at court;
79. The use of child care credits to be paid to grandparents who are not themselves registered child minders, when this would enable a parent to take up employment or training. The rate should be set at 70 per cent of the rate of the carer's allowance;
80. Authorities responsible for housing allocation should be sensitive to the importance, except when there are contra-indications, to children's well-being of maintaining contact with their kinship network, especially their grandparents.

Local Authority Care and Special Guardianship

81. When children are in LA care, positive steps should be taken to enable regular contact with parents, grandparents, siblings, and other relatives.
82. Close family members may be seen as potential carers before a child is placed into local authority care.
83. Arrangements for family members, especially grandparents, to act in a temporary role as foster carers for children who would otherwise be taken into care should be made easier and quicker.
84. In the case of a Special Guardianship Order, payment should be made direct to the family member with care.
85. Special Guardianship Orders should be available to grandparents and extended family members, enabling them to have more responsibility without becoming adoptive parents.
86. The position of grandparents in adoption cases should be strengthened, and, other things being equal, their claims should be given fairer treatment and higher priority as family placements.

Children of prisoners

87. We have found that new Family Drug and Alcohol Courts are pioneering the sentencing of parents in a way that takes full consideration of their children's welfare and the future integrity of the family into account. We recommend their wider implementation.

Marital agreements

88. Couples should have the opportunity to enter into pre-marriage and other domestic relationship agreements;
89. These agreements should be binding provided they comply with certain preconditions, as specifically set out in the summary of proposals for reform of financial provision on divorce;
90. The family court should have a narrow discretion to override such agreements namely if the outcome of the agreement would cause significant injustice;
91. Marital agreements, entered into during marriage and dealing with financial issues, should also be binding provided they comply with similar preconditions with similar discretionary opportunity to override;
92. Civil partnership agreements should be treated the same as marital agreements;
93. Separation agreements, entered into at a time of a breakdown of a domestic relationship, should be treated the same as marital agreements.

Financial Provision on Divorce

Objectives

94. There should be a statutory objective of fairness;
95. Fairness is found in the agreements of the parties, in the overriding calls on the overall resources of the parties and in the equal sharing of the marital assets; with first consideration given to the financial needs of dependent children and taking account of the section 25 Matrimonial Causes Act 1973 criteria where required;
96. There shall be an incorporation of the 1984 legislation of attempting a clean break in all cases.

Marital agreements

97. The court must follow as binding any marital agreements provided they comply with certain conditions as follows:
 - after legal advice, certified on the marital agreement as having been received, and;
 - after financial and other relevant disclosure, and;
 - without misrepresentation, duress, mistake, fraud and similar contractual elements, and;
 - in the case of pre-marriage agreements, at least 28 days before the wedding ceremony, and;
 - there is no significant injustice.
98. Significant injustice shall be in the discretion of the court. Significant injustice will include failure to make reasonable provision for any children of the relationship during their minority in which circumstances the court has power to depart from the agreement to the extent of making such provision. Significant injustice may include failure to have reasonable provision in exceptional unexpected circumstances e.g. health, in which circumstances the court has power to depart from the agreement to the extent of making reasonable provision. Significant injustice may relate to provision as to income or capital or both.
99. If any of the conditions above are not complied with or there is significant injustice, the court shall follow financial provision as set out herein but may nevertheless take into account the existence of the agreement in any discretionary elements.
100. Marital agreements may provide by way of example:
 - for the entire outcome if there were a separation or divorce;
 - a schedule of what are the non-marital assets at the date of the marriage, an issue of considerable importance under our proposed new ancillary relief laws, below;
 - overriding provisions regarding the couple's own preferred definitions of marital and non-marital assets;
 - specific intentions regarding provision for any children;
 - specific intentions regarding provision of major ill health, mental or physical;
 - specific intentions regarding provision for existing children or grandchildren;
 - specific intentions regarding specific assets e.g. family businesses;
 - agreements about preferred jurisdiction.

Definitions of property

101. All resources of the parties at the date of the final settlement are to be categorised as marital assets and non-marital assets.
102. Marital assets are all assets acquired by the parties solely or jointly during the marriage and any premarital cohabitation whether through passive growth or active acquisition. It includes non-marital assets which by the definition below become marital assets.
103. Non-marital assets are:
 - premarital, pre cohabitation assets;
 - inheritances;
 - sole gifts;

- post separation assets if as a consequence of new enterprises and new initiatives by one spouse post separation.
104. Non-marital assets become marital assets in the following manner:
- they are used for the purchase or acquisition of the primary residential property for the family;
 - they are used for the purchase or acquisition of the contents of the family home, motor vehicles, chattels, household expenditure and all other elements of family life;
 - they are used for the purchase, acquisition, investment or other involvement in family and/or jointly run businesses or enterprises or run by the other spouse;
 - they are used for the common benefit of the family;
 - in other circumstances where it is clear from the actions of the spouses that the assets were intended to be marital (following New Zealand's provisions in which separate property becomes relationship property);
 - in any event premarital assets become marital assets as to 5% per annum up to becoming 100% marital asset after 20 years.

Overriding calls on assets

105. In conducting its fairness exercise on distribution of marital assets and non-marital assets, the court shall follow as binding any marital agreement of the parties as set out above.
106. If there is no marital agreement, the following applies:
- The first priority call is a residential home for the children during their minority with the primary carer and the secondary carer, with a presumption of equal basic housing needs of each parent with the children taking account of their ages, gender and similar, and then, if needs so require, providing an uplift, perhaps between 10% to 30% dependent on circumstances, for the primary residential parent. Reasonable accommodation needs of the child with each parent would take account of the standard of the marriage, available resources and Section 25. The first priority call would include other reasonable capital needs of the children.
 - The second priority call is quantified recognition of the prejudice created to either party by commitments, sacrifices or other steps that one spouse has taken for the benefit of the children or the other spouse during the marriage and ongoing, including retained benefit or relationship generated disadvantage. It will be similar to section 18 *New Zealand Property (Relationships) Act 1976* as amended.
 - The third priority call would be provision for the reasonable needs of each spouse, with justification being required by either spouse to show why their needs should be greater than the other post separation.

Division of assets

107. The marital assets, including illiquid assets, shall be divided equally between the spouses unless there is a good reason not to do so which is the 3 priority calls set out above. If there is a disparity in the provision between the spouses in the liquid marital assets, this should be compensated by appropriate disparity in the division of the illiquid assets, with appropriate provision taken of the element of illiquidity and risk.
108. The non marital assets should be used to provide for the priority calls set out above only in so far as they cannot be utilised by the marital assets. Thereafter in respect of the (remaining) non-marital assets, there should be good reasons shown to justify any redistribution, taking account of the Section 25 factors.
109. The first priority call, primarily the housing needs of each spouse as carers, should first be met out of their one half share of marital assets together with their own non-marital assets. If however it is necessary to use any of the one half share of the marital assets or the non-marital assets of the other party, this should be in the form of a Mesher (charge-back) for the child's minority. The second priority call, 'compensation', should be payment of an outright lump sum, from one half of the marital assets or non-marital assets of the paying spouse if necessary, otherwise ongoing maintenance. The third priority call, reasonable needs, should be an outright payment or Mesher dependent upon the nature of the provision of the needs.
110. Where there is a short marriage of less than three years without any children the parties should be put in the position as if they had not been married unless this will cause significant injustice taking account of features such as age, health and section 25 factors. There should nevertheless be equal sharing of the marital assets. However conversion of non-marital assets into marital assets, as above, would not then apply.
111. The court shall retain a narrow discretion to review the overall final division of overall assets to make sure that there was no significant injustice, taking account of the Section 25 principles. This discretion will specifically include where one party's parental/family inheritances have become marital assets in accordance with the above and the other party has yet to receive any parental/family inheritance.

Child support

112. The family courts shall have power to make child maintenance orders where both parties are not in receipt of or claiming welfare benefits and the court is making other orders between them concerning income or capital and in any event where there are arrears of more than 6 months.
113. Written agreements after legal advice by parents regarding child support, when neither is in receipt of welfare benefits, shall count as child-support assessments.

Spousal maintenance

114. Spousal maintenance shall continue to end automatically on remarriage but should be reduced to a nominal maintenance order after periods of six months' cohabitation.
115. Maintenance should be varied in accordance with the retail price indexation on an automatic basis unless otherwise agreed or ordered.

Case reporting

116. The President of the Family Division shall be charged with the responsibility of overseeing judicial reported decisions, making clear those judgments or parts of judgments which are specifically intended to define, change or vary the law or give guidance to practitioners and the public about the law, 'red letter cases', and those decisions which are intended merely to be illustrative of an application of the law in a particular case.

Application of the law

117. This financial provision law is very susceptible to being converted into a web based electronic, computer programme. This should be piloted so that it is available at the time of the introduction of the new law. Legal assistance may be needed, for example on quantification of the priority calls, before data is inputted. Further legal assistance may be needed on the outcome. There will be a number of cases which will be unsuitable. Nevertheless many ancillary relief disputes will have considerable assistance from a web based computer model based on this law.

Applicable law

118. England should only ever apply English law in financial provision disputes appearing before the English family courts.

Miscellaneous

119. Capital gains tax on Mesher payments, including existing Mesher orders, shall be abolished.
120. The court shall have the power to grant interim lump sums for costs, which will assist many more parties to have better opportunities for funding their cases and so more just outcomes.
121. To assist the disclosure process, there shall be much more and easier access to tax returns and other official records.
122. In the case of clear failure to give disclosure, the court shall not only have power to make costs orders including at an interim stage with forthwith payment from existing assets, but to adjust the percentage in favour of the other party by up to 10% of the overall marital and non-marital assets known to the court.

Taxation

123. We consider that there should be a government endorsement of the importance of marriage through fiscal policy, along the lines proposed in *Breakthrough Britain*.

The Human Fertilisation and Embryology Act

124. We recommend a thorough public investigation of the implications and applications of the broader welfare principle to assisted reproduction;
125. We recommend continuing, and starting new, qualitative research to compare outcomes for children born in alternative household structures, both in their early years and later in life;
126. We recommend introducing an adapted 'special guardianship' status;
127. We recommend greater transparency in the birth registration system and moving birth certificates to the GRO;
128. We recommend funding and long-term commitment to UK Donor Link, or a similar organization;
129. We recommend greater availability of counselling for prospective parents intending to use donated gametes, for parents of donor children and for donor-conceived children and adults;
130. We recommend the establishment of an independent National Bioethics Committee.

International Families

131. Endorsement of the interim proposals of our report on European family law, as set out above.