

Fiona's blog on Scottish Family Law and Divorce "Divorce Survivor" is a personal account of her experience and her observations on the Scottish system which suffers too with flaws and faults. In this interview, Fiona tells us why she started blogging, what problems the Scottish system faces and details some highly insightful observations of the tone and flavour of Divorce in Scotland.

1- How did you find yourself in the world of Scottish Family Law?

My background is in engineering and mental health and I have two children who are now young adults. Our son is currently at home studying engineering and his sister is in Australia, half way through a year's round the world trip. I separated 10 years ago before the Family Law(Scotland) Act 2006 so without consent I found myself in the world of Scottish Family Law for almost 5 years before the actual divorce.

2 - What led you to start blogging?

I was travelling to Europe a lot and spent time in airport lounges reading or hooked up the internet trying to fathom out how the law worked. Blogging seemed like a good way of sharing information and news and learning from others. There appeared to be no other blogs about Family Law in Scotland or even non commercial sites or forums. It also requires a bit of thought on my part because it is so different from my usual day to day work.

3 - What would you say today is the most fundamental malfunction of the Scottish System?

A lack of dedicated family courts. To my knowledge only Glasgow has dedicated family courts and I have heard solicitors complaining it takes two weeks to get an urgent case before a judge. From a layperson's point of view, court rules and procedures are difficult to follow and sifting through the ordinary rules is complicated and it is not possible to understand them just through reading them. The win/lose approach of traditional advocacy to secure the best possible deal for one party at the expense of the other does not serve separating families well.

4 - How do divorcing parties in Scotland feel about the legal representation they receive in general?

I think it is very difficult to ascertain what divorcing parties really feel about legal representation in Scotland. On the whole divorce does not receive the same media coverage in Scotland as it does in England and there has been very little use made of the internet in the past, although that is changing. No one likes paying money to a solicitor and there are a few very vocal people but the majority are silent. There was a new independent Scottish Legal Complaints Commission launched in October 2008 and in some quarters there are concerns about how independent it really is. Family lawyers here seem cautious and fairly conservative.

5 - Can you tell us a little about the set up in Scotland of the Family Courts and the system as a whole?

There are two different procedures for divorce. Divorce is available where a marriage has broken down irretrievably and is established by proving one of four circumstances: adultery, unreasonable behaviour, one years' separation with consent or two years' separation without consent. In the last year figures are available 92% of divorces were granted on the separation grounds. Conditions for using the simplified procedure are the ground for the divorce being relied upon is one of the separation grounds; the action is not being defended by the other party to the marriage; there are no children under 16; neither party is applying for an order for financial provision on divorce and there is no indication that either of the parties is unable to manage his/her affairs because of mental illness or impairment. To apply for a divorce under this procedure the applicant fills in a form giving the reason for the divorce and information to support it. This is submitted to the court and if the other party does not object the court will grant the divorce decree.

When the conditions for a divorce under the Simplified Procedure are not met the Ordinary divorce procedure is used and it is advisable to use a solicitor. The action begins with the solicitor for the pursuer drafting the summons (Court of Session) or initial writ (sheriff court). This is a formal document stating all the facts which is sent to the court. Where both parties are in agreement the action proceeds as an undefended divorce. Sworn statements are usually provided by the divorce applicant and the solicitor submits the statements to the court. The judge examines the case in private and the divorce decree will then be granted unless the court requires further information.

The defender may decide to defend the action, either because they object to the divorce itself, or because they dispute some aspect of the future arrangements for the care of any children, the proposed financial provision on divorce or both of these matters. If during the process defended actions are settled by agreement a [Joint Minute of Agreement](#) can be drawn up.

If the divorce involves a dispute in respect of children and the action is being defended in the sheriff court, the next step in proceedings is a Child Welfare Hearing. The sheriff may also order such a hearing in other instances where they consider it appropriate. This is intended to bring about the quick resolution of disputes about children, proving that this can be done in a manner consistent with the child's welfare. All parties are required to attend the hearing personally and are under a duty to provide the sheriff with as much information as possible so that he or she can take whatever steps necessary to deal with the matter. The court may also refer the dispute to a mediator accredited to a specified family mediation organisation at any stage in the proceedings

Where a divorce is defended in the sheriff court the next stage is an Options Hearing. This is intended to give parties a chance to meet before the sheriff in order to ascertain if agreement can be reached without proceeding to a full proof (see below) or, if this is not possible, to focus the precise disagreement between parties.

If the matters at issue are not resolved the case proceeds to a 'proof.' A proof is a full court hearing where evidence is given by witnesses in proceedings open court. It can be reported by the media, subject to certain restrictions aimed at protecting 'public morals' and children. If the grounds of the divorce action are proven, the court will grant a decree of divorce.

6 - What would say the Scottish Family Court's philosophy is in relation to processing cases as an overall impression?

The approach is relatively narrow and as the family courts are not hugely cultivated, it is perhaps viewed as secondary to our other courts.

7 - Is Collaborative Law an option in Scotland?

Alternative dispute resolution is well developed and one of the strengths of Scottish divorce. The introduction of collaborative law in Scotland is relatively new but suits the ethos of settling out of court well.

8 - How has the economic downturn affected the Family Justice System in Scotland?

The economic downturn has affected mainly lawyers involved in property and so far Family Law does not seem badly hit. House prices tend to fluctuate so much in Scotland as they do in England. According to the media the biggest effect so far has been an increase in the number of men who qualify to divorce in England & Wales or Scotland applying here because they perceive the Scottish system is less generous to wives.

9 - What are the strengths of the Scottish system?

The law aims to provide certainty and out of court settlements and it is underpinned by the "clean break" to encourage parties to readjust to a lower standard of living or a return to independence. There are now also some rights to financial provision for cohabitants.

10- If there was one thing you could change about the Scottish system, what would it be and why?

The introduction of a mandatory Family Law protocol so everyone is clear where they stand and when there is good reason for complaint.

09/03/09