

Divorce overseas: ten steps to protect your children.

By Frank Arndt

In all areas of life, the world is getting smaller. Every year, British families embark on the dream of a new life abroad. At the same time, long-distance relationships are on the rise.

For many ex-pats, this new life provides all the happiness and enjoyment for which they had hoped. For an unfortunate few, this dream ends in despair and frustration. If your marriage breaks down, the prospects can be daunting if you are “stuck” in a foreign country, without a strong grasp of the language or knowledge of local culture.

However, while you may feel isolated, faced with complicated legal issues and dealing with foreign lawyers in an alien language, the truth is that help is always at hand.

My own firm has helped people from all over the world who have found themselves in such a situation and called upon us for assistance. In almost every case, the first questions we have been asked have concerned the client’s children: what can be done to protect them? What can be done to ensure that access is not unfairly restricted?

The good news is that even in the most serious of cases, where spouses return home one day to find their partners have fled taking the children, there are legal remedies. Although divorce is an extremely traumatic experience for any parent to go through, the first steps are always the most important and the main priority is to keep a level head.

For example, if certain criteria are met, you may be able to argue that you have a right to file legal proceedings in another country. Different countries require different levels of “residency” to allow legal proceedings to start. This question is no small one, because family law can vary enormously between one country and another – and the financial implications can loom large.

The basic rule of thumb is that you are a resident of the country you regard as ‘home’. The court will look at the facts: how much time you spend there, the location of your place of work and where you spend the majority of your time.

It is worth noting that different countries have vastly differing approaches to investigating the facts presented in court – including financial statements. If a spouse is able to hide their true wealth, the fairness of any settlement is at stake.

You should also be aware that every country's legal system has its own nuances. If an initial separation order is filed in Spain, for example, spouses are prohibited from advancing proceedings anywhere else. This is not the case in other European countries.

Careful preparation is a must. Here, then, are the ten essential pieces of advice that should be followed by any ex-pat parent facing the challenge of family breakdown.

1. Wherever you are, seek advice from a good local lawyer with experience of international family law. The pressure to speak to the first lawyer with a decent grasp of your native tongue is very hard to resist, but it is far more important to get good advice. I once had to help pick up the pieces of a case where an English mother had relied on the advice of a German tax lawyer, who spoke good English but lacked adequate knowledge of the relevant family law. The local embassy or consulate can help you find an appropriate lawyer.
2. Whatever you do, make sure that time is on your side – not your spouse's. I have dealt with cases in which proceedings have been issued in different countries, literally minutes apart. For the party filing last, there is no second chance. Delay filing your papers, and you risk disabling your case from the start.
3. If you believe your partner is planning to flee with your children, you need to ensure that you receive the best possible advice about your rights as a parent with regard to cross-border child movements.

In one harrowing case, I advised a husband whose wife had fled – with their children – to the UK after many years of living in France. He had been reassured, by a French lawyer, that the normal separation process would take care of the custody issue.

Unfortunately, this advice had failed to recognise the significance of the first few hours in child custody cases, or the complications of cross-border separations. When he did apply to have the children brought back to their natural residence, the court ruled that the time delay was too great and no action could be taken.

4. Whatever you do, don't try and take matters into your own hands and flee with your children. I once received a call from a mother who had returned to the UK with her children, against her partner's wishes. She believed that by doing so, she had increased the strength of her custody claim. In fact, the effect was quite the opposite and she was legally compelled to return to the country in which the family had previously been living.

5. It is important to note existing residence orders do not restrict international movement. I once helped a father who had won an English residence order for his child. The father believed that this order prevented his wife from taking the child abroad. In fact it did not. Once the mother did relocate, we successfully re-established custody – but we had to resort to complicated international law that applied specifically to the child’s new country of residence. If the father had sought advice earlier, the mother’s decision to relocate could have been prevented. Even when there are several different legal tools available, it is important to use them at the right time.
6. If you believe you have fair grounds to file a divorce claim in England, contact an English firm – one that specialises in international cases – as soon as possible. For wives and mothers, British courts are far more generous in their settlements and take a relatively dim view of partners who try to hide their true financial worth.
7. Even though your children are your first priority, you mustn’t forget that it is in their interest for you to secure your own future. Secure your assets. This is especially important if your liquid assets are held in joint accounts: it may be some time before you are in a position to sell property or company shares, and in the meantime you will need to pay your way. If possible, ensure that your spouse doesn’t have sole access to your assets.
8. Do you suspect that your partner may try to hide assets? If so, your English lawyer can apply for a ‘Worldwide Mareva.’ This is an injunction that places legal restrictions on a party’s financial transactions, worldwide. Additional measures can also be taken - for example, at Stowe Family Law, we employ a team of forensic accountants to ensure that wealthy partners do not hide their assets in offshore havens.
9. Although it is easier said than done, always try to keep a level head. Erratic behaviour – from damaging property to trying to flee with the contents of a bank account – will only come back to haunt you under cross-examination in court.
10. As a final point, do not rely on your understanding or assumptions of family law. As more cases are heard that involve international child custody issues, the law can change frequently and at dizzying speed.

Separation is never easy, particularly when children are involved. As more families find themselves separating across borders, this area of law is constantly evolving. Recent attempts to harmonise the law across the EU drew fire from several quarters, while courts in different countries are tentatively trying to use law from a claimant’s home state in an attempt to deliver fairer settlements.

Depending on the course of action taken, outcomes can vary wildly – which only reinforces the importance of good advice and timely action. The best advice at the correct time can protect your rights as a parent and ensure your financial settlement is fair.

While there is a great deal at stake and the pressure may feel overwhelming at times, there is always a light at the end of the tunnel for those involved. As one client told me, it may seem as though “your world is falling apart, but it is possible to get your life back.”

Once proceedings are over, you can move on and rebuild your life and your future. Who knows what opportunities await?

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