

Indicative List of Interview Questions for Practitioners

Family Matters

I. General questions

1. Is there any demand for cross-border legal advice?
2. What is your client base (eg local; foreign; or both)?
3. Does the prospect of *Brexit* appear to have any positive or negative impact on the number of clients that come to you to engage in cross-border litigation?
4. Roughly what proportion of your cross-border cases involve: a) *divorce – including financial relief*; b) *child maintenance*; c) *parental responsibility*; d) *child abduction*; e) *other*?
5. Roughly what proportion of your cross-border cases involve a party or parties from: a) *another part of the UK (Scotland or Northern Ireland)*; b) *another EU Member State*; c) *another Commonwealth State*; d) *from the rest of the world*?
6. What is the lowest value of a desired financial remedy you have come across?
7. Has the prospect of *Brexit* affected the behaviour of your clients in cross-border disputes?

II. “Pre-action conduct”¹: Central aspects of PIL regime and Major attributes of a cross-border claim

8. Do parties consider which set of procedural rules (including evidential rules) would suit their case before deciding on the jurisdiction in which to issue the proceedings?
9. What are the major attributes (eg desirable remedy; location of the child; facts; applicable substantive or procedural rules) which are factored in when assessing the relative strength of the claimants’ claim?
10. Would the response to the previous question be different, if the monetary value of the desirable remedy is high (or very high, perhaps)?
11. Do parties consider whether the rendered judgment will be recognised and enforced outside the country where it is granted before deciding on the jurisdiction in which to bring their action? Does the prospect of *Brexit* affect your clients’ decision-making process?
12. Which attribute (eg judges; speed; procedures; forcing a settlement; home turf), do you think, is the most important for a party’s decision to issue cross-border proceedings in England and Wales? Could *Brexit* make any impact in this respect?
13. Is the “court first seised” rule (i.e. Article 19 of Brussels IIa) an important aspect of the current EU civil justice framework?
14. Should there be a *court-first-seised* rule post-*Brexit*? Or should the common law concept of *forum (non) conveniens* be revived?
15. What are the factors that affect the strategy of a potential defendant who is threatened with an action against him to wait until he is sued or to engage in settlement negotiations or to initiate a pre-emptive strike before a court which is more convenient for him?

¹ See Civil Procedure Rules: Practice Direction – Pre-Action Conduct and Protocols.

16. Do parties consider which law would govern the merits of the dispute before deciding on the place where to litigate? Why?
17. Do parties consider what financial remedies they would be entitled to under the potentially different applicable substantive laws? Why?
18. Is cross-border litigation expensive? Is it more expensive in comparison with domestic litigation?
19. Do costs in cross-border cases affect the suing decisions of parties? Do your clients seek legal aid (or any other type of financial assistance, perhaps)?
20. Do financially weaker parties benefit from suing at their home jurisdiction? Do you think that there should be rules protecting financially weaker parties, *post-Brexit*?
21. Do cross-border disputes often settle in this country? How important is the role of parties' legal advisers in this respect?
22. Do costs in cross-border cases affect the settlement dynamics?
23. Have you come across settlements in cross-border cases at an early stage (ie even before issuing court proceedings)?
24. Have you noticed any changes in the pre-action conduct of your clients since the *Brexit* vote?

III. Litigants' strategies after the proceedings are issued

25. What are the major attributes (eg desirable remedy; location of the child; facts; applicable substantive or procedural rules; costs, including cost-shifting rules; legal aid) which are factored in by a defendant in terms of organising his defence in a cross-border case, once an action is brought against him?
26. Would the response to the previous question be different, if the value of the desirable financial remedy is high (or very high, perhaps)? Why?
27. Have you come across any delaying tactics in cross-border cases? If yes, what are the most common types?
28. With regard to delaying tactics, do you think the prospect of *Brexit* will have any positive and/or negative impact?
29. Are jurisdictional challenges common in cross-border cases? Why?
30. Does a jurisdictional challenge affect the behaviour of the claimant? How?
31. Do cross-border disputes tend to settle after a jurisdictional challenge has been dealt with by the courts in this country? Why?
32. Do you think the prospect of *Brexit* will have any positive and/or negative impact on settlement? Why?
33. Do you come across parallel proceedings? Do you think the prospect of *Brexit* will have any positive and/or negative impact in this respect?
34. Do you come across cases where a transfer of jurisdiction is sought (eg child custody cases)? Do you think the prospect of *Brexit* will have any positive and/or negative impact in this respect?
35. Does a potential non-recognition and/or non-enforcement of a rendered judgment affect parties' willingness to continue with litigation and any settlement offers? Why?

36. How would the cost-shifting rules impact on the behaviour of the defendants and any settlement dynamics?
37. Does the response to the previous question differ depending on the value of the desirable financial remedy?

IV. Recognition and enforcement of rendered judgments

38. Do your clients make use of the provisions on recognition and enforcement of the Brussels IIa Regulation and/or of the Maintenance Regulation? Why?
39. With regard to the recognition and enforcement of EU judgments here and/or English judgments in the EU, does the prospect of *Brexit* have a positive and/or negative impact on your clients and in turn on the attractiveness of English and Welsh courts?
40. Do your clients make use of the relevant provisions of the Hague Conventions (Abduction Convention 1980, Children's Convention 1996 and Maintenance Convention 2007)?
41. Are you aware that the three Hague Conventions are part of the EU *acquis* and therefore in the absence of any Brexit deal would apply between the UK and EU Member States?
42. Do you see any advantages or disadvantages in applying the Hague Conventions rather than the EU Regulations in dealing with cases involving people from other EU Member States post-Brexit?
43. Is there a case for the UK to take a lead in the development of PIL in the Hague Conference on Private International Law and/or in the Commonwealth?

V. Concluding Questions

44. Under what circumstances, should ADR be preferred to litigation?
45. Do you have any concerns which we have not discussed?