

RELOCATION, RELOCATION

1) REMOVAL FROM THE JURISDICTION

The Law

s.13 (2) CA 1989 permits a person with a residence order to remove the child from the jurisdiction for up to one month per annum.

Permission needed if there is PSO in place or the child is a ward of the court.

If both parents have PR both must agree to the removal.

Written consent from parent/carer whether or not they have PR.

Child abduction sanctions are widely accepted in many countries. UK courts have a number of orders at their disposal to stop removal if the other parent learns of the intention.

UK courts likely to take a dim view of unilateral removal.

Which Court ?

County Court

High Court

Consider a transfer to the High Court if :

- a) Immigration status of one or both parents within the jurisdiction is, or maybe uncertain.
- b) There is a sensitive political situation in the proposed country.
- c) There are sensitive ethnic &/or religious issues.
- d) In addition- applications for temporary relocation to a Non-Convention country may be complex & may also require an application.

NOT a Family Proceedings Court.

The Court's Approach

Poel v Poel [1970] 1 WLR 1469

M applied for permission to take her 3 yr old child to New Zealand to live with her new husband. M was expecting a second child with her husband. F was having only 2 ½ hrs contact a week. The court held that once a situation was established, following the separation of the parents, of the child living with a particular parent “.....*this court should not lightly interfere with such reasonable way of life selected by that parent to whom custody has rightly been given*”.

The reasons for not interfering were that otherwise considerable strains would be placed on the applicant carer with a consequent effect on the child's happiness & well-being.

Payne v Payne [2001] 1 FLR 1052

Thorpe LJ held that

- Welfare of the child is the paramount consideration.
- Usually it is incompatible with the child's welfare to refuse the primary carer reasonable proposals for the relocation of her family life.
- Great weight should be attached to the emotional & psychological well being of the primary carer.

Test In Payne v Payne

1. Is the application genuine or is it motivated by some selfish desire to exclude the other parent from the child's life ?
2. Is the application realistic ? (i.e. carefully considered & researched)

If yes, the court can then consider the opposing view.

1. Is the application resisted because of genuine concern for the welfare of the child or some other motive ?
2. What is the detriment to the non-custodial parent's relationships with the child ?
3. To what extent would that be off-set by the benefit to the child in progressing a relationship with some extended family & homeland ?

Re G (Leave To Remove) [2007] EWCA Civ 1497

F sought permission to appeal the judge's order granting M leave to relocate to Germany, arguing that some judges were misapplying **Payne v Payne [2001] 1 FLR 1052**, in that they were inappropriately prioritising the impact of refusal on the primary carer, and disregarding modern views on the importance of the co-parent.

The Court of Appeal refused permission to appeal. It was not possible to argue that the decision in **Payne v Payne** was being widely misunderstood. The experience of the Court was that the principles in **Payne** were well understood and had been of assistance to trial judges

Some Practical Matters Which The Court Will Consider

- Level of contact enjoyed by the child and non resident parent at the time of the Application
- Plans for future contact
- Has applicant been hostile to contact in the past ?
- Arrangements e.g. education, housing, health, child care etc.
- Strength of link to the country which the proposed move is being contemplated
- Lifestyle choice
- Child's vulnerabilities
- Separation from siblings / half siblings
- Legal framework in place in the proposed new jurisdiction
- Adverse or significantly different living conditions.

The Statement In Support Of The Application

The statement in support of any application to leave the jurisdiction needs to be thoroughly prepared and detailed.

1. History of the parents' relationship, include their involvement with the children
2. Reasons for wanting to move abroad
3. Evidence of financial arrangements in proposed jurisdiction e.g. job offers, salary details (Is the proposed move financially viable?)
4. Accommodation details – particulars of the property, detailed description from agents, photographs, cost, facilities nearby, availability of transport.
5. Evidence of any existing links to the country
6. Education arrangements – letters from school, brochures & photographs, details of after school activities
(Does the child have any special needs ?)
7. Health care facilities
8. Evidence of the child's knowledge or experience of the other jurisdiction
9. Language
10. Future proposals for contact including travel & cost
11. Evidence about the jurisdiction's recognition & enforcement of UK orders
12. Are there any legal / practical steps which could be offered to reassure the court & non-resident parent that contact will be maintained ? (security)
13. Is any expert evidence required to address the impact of change on the child/ the family in general ?
14. Is expert evidence required to address any cultural differences the child / family will be exposed to in the other jurisdiction ?

Statements From Others

Consider obtaining statements from Applicant's partner & extended family members.

Are there any friends / family members in the other jurisdiction who could provide a statement in support ?

There is no presumption in favour of the Applicant Parent

Opposing An Application For Relocation

1. Do any urgent steps need to be taken ? (e.g. urgent application without notice to prevent removal, application to prevent the issue of a passport or requiring passport to be surrendered)
2. Consider the evidence. Do not take the Applicant's evidence for granted. Check availability of school places, offers of employment, accommodation etc.
3. Is expert evidence needed ?
4. The non-resident parent will need to show their commitment to contact
5. What impact will the relocation have on contact with the non-resident parent's extended family ? Obtain statements
6. Check the financial viability of travel arrangements
7. What are the child's educational needs ? Can his needs be met in the other jurisdiction ?
8. What are the child's social links to the UK ?
9. Does the child have any medical needs ?
10. What are the wishes and feelings of the child ?

Assess the strength of the Application . Consider your options carefully.

- Litigation is expensive and lengthy
- If you succeed in preventing the relocation, what impact will it have ?
- Could more contact be secured ?
- Ask the court to impose conditions

Re R v R (Leave To Remove) [2005] 1 FLR 687

English M whose family originated from France where many of her family members lived wished to move to live in France with her children. A psychiatrist gave evidence that therapy for M was essential & her current coping mechanism was “to fly”. F & CAFCASS opposed her application.

M’s Appeal was refused.

HELD :

- (1) M did not have the emotional stability to establish a new life in another country at this stage. On the balance of probabilities, M would soon become disillusioned if she were to move to France & if she had an emotional crisis she would move again (para [93](b)(g)).
- (2) Children’s contact with F would be adversely affected by the proposed move. They would also see less of both sets of grandparents (para [93](e)).
- (3) M’s current plans had not been sufficiently or carefully considered (para [93](f)).
- (4) M’s assurances that the English court could retain jurisdiction were ineffective, as once the children became habitually resident in France, French law would inevitably apply to questions concerning them (para [93] (1)).

Re B (Leave To Remove: Impact of Refusal) [2005]2 FLR 239 (CA)

M of children remarried in Australia, where some members of her immediate family were living. M had lived there for a number of years earlier. M place great emphasis on the emotional significance to her of the move. M’s application was refused.

M’s Appeal was allowed & the case was remitted for retrial.

HELD

- (1) There was no difference in principle between a “lifestyle case” – one in which the desire to relocate was inspired by a desire to improve general living conditions - & the more familiar cases of foreign national relocation or employment opportunity. The same principles were to be applied no what the facts.
- (2) It was important to give great weight to the emotional & psychological well being of the primary carer & not merely to take note of the impact on the primary carer of a refusal (para [11, 16-17])).

2) TEMPORARY REMOVAL

Courts are more likely to grant an Applicant permission in such cases whether for say a holiday or career opportunity.

In these cases the **Payne Principles** are not generally applied with the same degree of scrutiny.

Any such application should, however, still display carefully set out plans.

Consider plans for contact with family members.

Undertakings to return may be relevant.

Non- Hague Convention countries – offer securities, mirror orders.

Re A (Temporary Removal From Jurisdiction) [2004] EWCA Civ 1587

M sought permission to take her 4 year old daughter to South Africa for 2 years to undertake research which was necessary to complete her PhD. If M was not able to go to South Africa, her current contract of employment would have to be terminated and her academic career would suffer significant setback. The child spent 5 nights a week with M & 2 nights a week with F under a shared residence order.

Judge at first instance refused M's application.

M's Appeal allowed.

HELD

1. The considerations relevant to an application for permission to relocate permanently were not automatically applicable for temporary removal (paras[9]-[11])
2. The Judge had underestimated the impact on the M's career plans of the refusal of permission. It was the Judge's task to balance the very significant impact of refusal on M's academic career against the effect of moving the child for 2 yrs. On balance, in light of the temporary nature of the move, the parents' ability to ensure that contact was maintained between F & the child, the benefit to M & child

of being granted permission far outweighed the negative impact on the child.

3) INTERNAL RELOCATION

CA 1989 does not impose any explicit restrictions on the right of the primary carer to move within UK.

Again the **Payne Principles** do not have to be applied.

The welfare checklist always applies.

However, consider the case of

B v B (Residence Order: conditions) [2004] 2 FLR 979.

Prime motive of M was to get away from F & prevent contact. M had misled the court & F, on a number of serious issues. Moving the child to a school in the geographical area of the UK, as proposed by M was not in the interests of the child. Furthermore, the proposed move was to a distant part of the UK, which meant that contact depended on M ensuring the child boarded a plane to London. M could not be relied on to promote contact.

A residence order was made in favour of M with a condition that she resided within a defined area in the South East of England.

This was an exceptional case.

Annabel Beattie.

Park Court Chambers.

16, Park Place,

Leeds.

LS1 2SJ.

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