

THE INTERNATIONAL FAMILY LAW GROUP

iGuides to family law and practice

Child abduction: good practice issue to consider

What to consider with the client from whom a child has been abducted:

Good practice if the client knows where the child and abducting parent are

- Ensure the client does not tell the abductor or anyone else with whom s/he is connected that lawyers have been instructed and are seeking a return - secrecy of steps being taken is crucial to a safe return;
- Keep the client in communication with the abducting parent in order to obtain as much information as possible as to where the child may be and any change of plans or location. Tell the client not to engage in any adversarial communication but instead to keep relations very simple and sweet in order to encourage the obtaining of information;
- Ascertain what connection or ties the abductor has to the country to which the child has been taken. Obtain full details of where the child and/or other parent may be staying and full details of relatives and friends in this and the other jurisdiction (if known). This may help orders to be made against family members in this jurisdiction to require disclosure of information.
- Does the abductor have assets in this jurisdiction? If so, what are they and where are they situated and can they be seized
- If possible ensure that e-mail communication is maintained and/or set up and preserve any e-mails from the abductor that your client receives. Warn your client that all e mail correspondence may be put before a court in evidence;

Good practice if the client does not know where the child and abducting parent are

- If contact is made by the abducting parent, again ensure the client does not tell the abductor that he has instructed lawyers and is seeking a return - secrecy of the steps being taken is crucial to a safe return. Tell the client not to engage in any adversarial communication but instead to keep relations very simple and sweet in order to encourage the obtaining of information. If contact has been made by telephone, try to obtain the number as it may be possible to trace the house or mobile location where the call was made.
- Establish contact with friends or relatives to ascertain information that may lead to the abducting parent and the child's whereabouts but ensure the client does not say that lawyers have been instructed and that a return is being sought -secrecy of the steps being taken is crucial to a safe return;
- Ascertain what connection or ties the abductor has to the country to which the child has been taken. Obtain full details of where the child and/or other parent may be staying and full details of relatives and friends in this and the other jurisdiction (if known). This may help orders to be made against family members in this jurisdiction to require disclosure of information.
- Does the abductor have assets in this jurisdiction? If so, what are they and where are they situated and can they be seized
- If possible ensure that e-mail communication is maintained and/or set up and preserve any e-mails from the abductor that your client receives. Orders can be made against internet providers for disclosure of addresses. Receiving an e mail from an abducting parent can be used to locate where the e mail came from (IP address). Warn the client that all e mail correspondence may be put before a court in evidence;
- The involvement of the media may assist locating a child but weigh up the disadvantages, see below

General good practice

- Once a client reports that a child is missing, ensure the client is advised that action must be taken immediately as time is of the essence to securing a successful return.
- check the status of the current relationship between the client and the abductor;
- check on the habitual residence of the child
- check what orders can be usefully obtained to assist with the location
- check if there are already any orders already in place here and abroad and obtain copies
- check whether the client has a lawyer in the other jurisdiction and if not locate one as soon as possible who may be able to assist if a return order is made or if expert evidence is required during the proceedings. If necessary, contact a lawyer in the other jurisdiction direct (and not rely on the client) to co-ordinate future advice and representation
- check what possible defences or cross allegations may be raised
- check whether the client has rights of custody in the other jurisdiction, which probably require local advice
- check whether the client consented or acquiesced to the removal of the child in the first place
- check what were the terms of the original agreement the client made with the other parent giving permission to leave the country in the first place, if applicable
- report the offence to the Police as this may help within future proceedings, particular if this has happened previously. If the child is abroad, it may be useful in locating the child by using Interpol. When located an arrest warrant may also be obtained. The police can also assist with extradition once the abductor has been located. This can be a very slow process

Good practice when a child has been found

- Until the child has been found, tell the client not do anything that may jeopardise the safe return of the child without first having discussed any proposed course of action with the solicitor
- Once the child has been located, ensure that the client does not go to the place where the child is until the solicitor has said that the client may do so. Be patient. Wait for orders to be in place.
- Contact reunite, for the support of the client and use of their resources (see below)
- In some situations it may be useful to consider the use of specialist mediation, contact reunite for more details and see above
- if the client has serious concerns about the welfare of the child contact can be made with the equivalent of the Social Services Department or the Police in the other jurisdiction to give the client peace of mind to know the child is safe and well. However, this may produce the reverse effect as it is very likely this will alert the abductor that they have been found and encourage them to move on to another country or location with the child.

What to consider with the client who fears the child may be abducted:

There is a considerable amount of preventive action which can be taken for a client who reasonably fears a child may be abducted. This includes circumstances where there is intended to be a holiday abroad by the other parent with the child and an anxiety that the child will not be returned. Naturally, this is crucially more important when a non Hague convention country is involved.

- consider the action points above and decide what steps could be undertaken now and what information can be obtained now in readiness
- complete the ICACU form (Central Authority questionnaire) in readiness, see above
- obtain several recent photos (preferably digital) of the children and the other parent or other suspected abductors
- ensure the client has the lawyer's telephone number for use in an emergency if an abduction occurs or that he/she has an emergency telephone number of another specialist solicitor who will be able to assist out of hours in an emergency.

- obtain the reunite prevention pack
- collate information documents in readiness for any possible abduction
- the client should tell others of her fears. This may include the school, midwives, health visitor, family doctor, nursery, social worker, registered childminder, youth club or other children's group leaders and others as notice can be given to the client if the child is absent or if medical records or other enquiries are being made about the child by another person.
- Make sure that there is always someone available to collect the child immediately school finishes and when sports and other social events finish
- obtain a reliable telephone number (land line if possible) for the other parent during contact visits and telephone to speak to the child at reasonable intervals; caution is needed to avoid unreasonable interference during contact
- obtain fingerprint evidence, see the reunite pack
- consider obtaining and safely retaining reliable DNA evidence, on which expert advice is always needed
- the client should, in some circumstances, inform her local police station of her fears and if possible, hand in a copy of the reunite information pack and photographs to the police who can take action in tandem with her solicitor.
- ensure the child's passports are safe and secure; if lost, inform the police and the Passport Office and obtain a replacement
- notify the Passport Office that a passport for the child is not to be issued to the other parent or obtain a court order
- if a passport on which the child could travel is retained with the other parent, request it and if refused, consider making a court application to secure it
- Take especial care if the child has dual nationality

Obtain a without notice order for non removal from the jurisdiction when an event occurs giving good reason to be concerned about an abduction

See separate fact sheet on child abduction

This is taken from "A Practical Guide to International Family Law" (Jordans 2008) by David Hodson, with acknowledgement. Further details can be found within the book and from David Hodson. This iGuide is for information only and specialist legal advice should always be taken. For further details contact The International Family Law Group at 020 3178 5668 and www.iflg.uk.com.

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