

## THE INTERNATIONAL FAMILY LAW GROUP

### iGuides to family law and practice

#### Opposing a child relocation application

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A parent needs the permission of the other parent or court order to take a child permanently abroad. This is known as a relocation application, or leave to remove. See the iGuide on the subject. England is a very liberal and generous country in allowing relocation applications if the applicant parent has well prepared plans for the child in the new country. Opposing an application is not easy and requires very considerable care.

Although a client's first reaction may be to oppose the relocation application vigorously and aggressively, consider the prospects of success and the likely best interests of the child. Take account of the amount of the child's present contact and relationship with the non primary carer. It may be much better in some cases not to oppose but instead to put energies and representation into ensuring very good future contact before the relocation goes ahead

Although many relocation applications are successful, it is possible successfully to oppose them. Again preparation is very important and certain factors must be brought to the court's attention.

- What more could the client offer the children if they were to continue to reside in this jurisdiction?
- Consider ways in which the client can rebut the Payne guidelines.
- The court should hear oral and cross examination evidence.
- Show how stable the children are at School with school reports to show good progress if applicable
- Exhibit letters from the School and/or other educational adviser to show a detrimental effect which a move may have on the child.
- Show the close family network of support the client and child has in this jurisdiction
- show what friends and other support the child has in the home country
- set out the things that the child will miss e.g. sports teams
- Show the impact on the wider family including grandparents

It can be possible to plan ahead with the client at the time of separation to minimise the risk of a successful relocation application. If the child's other parent has strong links with another country and/or the client thinks there is a risk that an application may be made to relocate permanently in the future, think tactically and agree as much contact as possible for the client as soon as possible at the point of separation. Try then to formalise this arrangement by applying for a shared residence order in order to establish that there is no primary carer. This will go a long way to prevent a successful application being made by the other parent for leave to remove. See for example Re Y (Leave to remove from jurisdiction) (2004) 2 FLR 330

#### Securing contact if a relocation

Even if a child has been or will be permitted to go abroad by order of the court, certain safeguards can be put in place to ensure that good contact continues

- Use the relocation application to negotiate extended staying contact during school holidays.
- Insist contact dates for the coming years are agreed well in advance and consider what will happen if future contact cannot be agreed. Try to keep to the same annual arrangement if possible as this will save future difficulties.

- Look at enforcement of the contact order in the other country if there were a breach and decide what action could be taken and who will pay for this application to be made. Then cover it in the final agreement, perhaps as a condition of relocation
- Remember that once a child has moved, it is likely that England will lose jurisdiction so take local advice about what will happen upon any breach
- Don't rely on undertakings even of a previously excellent parent.
- Undertakings may have no validity abroad
- Use notarised agreements, mirror orders, bonds, religious oaths and all other safeguards to ensure compliance with arrangements, for example see Re: K (Removal from Jurisdiction: Practice) [1999] 2 FLR 1084
- As to bonds to secure conditions on relocation, see Re: S (Removal from Jurisdiction) [1999] 1 FLR 850
- Agree as tight arrangements as possible for the facilitation of contact, including travel arrangements and how such travel will be funded. Think about timing of contact if this is to be by telephone if the children are to move to a time zone distant country.
- Insist on the children being able to use e mail and web cams to communicate with the client.
- Will contact orders made in England be automatically recognised or will they require separate court procedures and, in any event, they should be put fully in place before departure of the child.
- Obtain mirror orders abroad before departure
- Agree a long period of staying contact with the children just before the children leave. The courts will be very sympathetic.
- Obtain a certificate of the contact order if the child is in an EU country

It is quite common and justified for the left behind parent to want a mirror order in a foreign jurisdiction; an identical order in both this country and in the country in which the child will be living. The great advantage for the left behind parent's point of view is that because the order becomes an order of the foreign state, local enforcement is available. He will not have to relitigate issues of anticipated contact, including in a country which may be now more favourable to the local, primary parent.

*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*

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This iGuide is for information only and a 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](http://www.iflg.uk.com)

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