

THE INTERNATIONAL FAMILY LAW GROUP

iGuides to family law and practice

Child Relocation

It is not possible to take a child permanently abroad without the permission of the other parent or those with parental responsibility. Doing so without permission is a child abduction - see separate fact sheet. If the other parent will not give permission, one has to apply to the court for permission. This is known as a child relocation.

The English court will often give permission if satisfied with the proposed arrangements and it is in the best interests of the child. This does however cause huge unhappiness with the parent who is left behind, sometimes without the ability to see his child more than once a year or so if taken to a country a long way from England. Equally the parent with primary residence of the child is very unhappy if she cannot move to a country which may be her home country, or with a new partner or on long term work.

It is an area of real tension and big disputes. English law generally favours allows the parent to leave. Many other countries are perceived as favouring the child remaining in the home country and giving the benefit to the left behind parent.

One statement of the law, in the case of Payne, was as follows:

'is the other's application genuine in the sense that it is not motivated by some selfish desire to exclude the farther from the child's life? Then ask is the mother's application realistic, by which I mean founded on practical proposals both well researched and investigated If the application fails either of these tests refusal will inevitably follow

If however the application passes these tests, then there must be a careful appraisal of the father's opposition; is it motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive? What would be the extent of the detriment to him and is future relationship with the child wren the application be granted? To what extent would that be offset by extension of the child's relationship with the maternal family and homeland?

What would be the impact on the mother either as a single parent or as a new wife of a refusal of his realistic proposal?

The outcome of the second and third appraisals must then be brought into an overriding view of the child's welfare as his paramount consideration, directed by the statutory welfare checklist insofar as appropriate'.

The Court of Appeal in Payne laid down useful and practical guidelines for cases in which leave is sought to remove a child permanently from the jurisdiction:

- the welfare of the child is always paramount
- there is no presumption created by s13(1)(b) in favour of the applicant parent
- the reasonable proposals of the parent with a residence order wishing to live abroad carry great weight
- consequently the proposals have to be scrutinised with care and the court needs to be satisfied that there is a genuine motivation for the move and not the intention to bring contact between the child and the other parent to an end

- the affect upon the applicant parent and the new family of he child of a refusal of leave is very important
- the effect upon the child of the denial if contact with the other parent and in some cases his family is very important
- the opportunity for continuing contact between the child and the parent left behind may be very significant.

As with child abduction, steps can be taken in advance to reduce the likelihood of a successful relocation application. We can advice on this. See separate fact sheet

Similarly, the prospects of successfully obtaining permission to relocate a child are significantly increased by careful planning and preparation. We can advice on this.

See our longer Guide on law and practice in relocation cases.

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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