

International Relocation – *Tips and Traps*

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When?

CAA 1984.

When to apply:

- More than one month if CAO 'live with';
- More than 3-months if SGO.

No restriction on where can/can't go if those apply (ie. Hague/Non-Hague etc).

Recourse to PSO if 'non-resident' parent.

s8/s13.

Case law

Health warning on older cases

Caution is required in reading cases that predate the following authorities as they may not reflect the current state of the law:

- K v K [2011] EWCA Civ 793
- Re F (A Child)(international relocation case) [2015] EWCA 882
- Re C (internal relocation) [2015] EWCA Civ 1305

External relocation

K v K

- The only principle to be applied when determining an application to remove a child permanently from the jurisdiction is the welfare of the child.
- The only principle to be extracted from Payne v Payne is the paramountcy principle – the rest is guidance as to the factors to be weighed in that analysis.
- Guidance such as in Payne is very valuable in identifying what are likely to be the most important factors and the weight to be generally attached to them.
- However, the circumstances of relocation cases vary infinitely and the judge in each case must be free to weigh up the individual factors in determining the child's best interests.

Shared care v primary care?

Re F (a child)(permission to relocate) [2012] EWCA Civ 1364

- No presumptions in any case to which section 1 of the CA 1989 applies.
- From beginning to end the child's welfare is paramount.
- The evaluation of the child's best interests to be determined having regard to the welfare checklist.
- The court should not get 'bogged down' in arguments about where this was a shared care or primary care case.

Payne v Payne – guidance

Butler-Sloss P

- (a) The welfare of the child is always paramount.
- (b) There is no presumption created by s 13(1)(b) in favour of the applicant parent.
- (c) The reasonable proposals of the parent with a residence order wishing to live abroad carry great weight.
- (d) 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.
- (e) The effect upon the applicant parent and the new family of the child of a refusal of leave is very important.
- (f) The effect upon the child of the denial of contact with the other parent and in some cases his family is very important.
- (g) The opportunity for continuing contact between the child and the parent left behind may be very significant.'

Payne v Payne – guidance

Thorpe LJ:

(a) Pose the question: is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father 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.

(b) 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 his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?

(c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?

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

Comparative holistic analysis

Re F (A Child)(International Relocation Case) [2015] EWCA Civ 882

- A welfare analysis of each proposal is required.
- Each option should be considered on its own internal merits and side by side in a comparative evaluation in a non-linear approach.
- The proposal for relocation must be scrutinised and evaluated by reference to proportionality – Articles 6 and 8 are engaged.
- A balance sheet may be useful but must only be as a route to judgment.
- Selective or partial citation from Payne without any wider legal analysis is likely to be an error of law.

Comparative holistic analysis

L v F [2017] EWCA Civ 2121

The options:

(1) Staying in England and sharing his time equally between his parents under the existing arrangements with frequent moves.

(2) Staying in England and sharing his time equally, week on/week off.

(3) Staying in England and having his main home with his mother, with substantial time spent with his father.

(4) Staying in England and having his main home with his father, with substantial time spent with his mother.

(5) Moving to Italy with his mother and having as much time as possible with his father.

Comparative holistic analysis

L v F [2017] EWCA Civ 2121

- Correct approach to allegations of domestic abuse is set out in PD12J.
- There is no requirement to settle the living arrangements before going on to consider relocation.

The 'F, K, C, Payne' composite

Re C (A Child) [2019] EWHC 131 (Fam)

- The proportionality exercise will usually be subsumed in the overall holistic evaluation.
- To assist in identifying the relevant issues the court may (but is not obliged to) deploy the 'F, K, C, Payne' composite – no more than an integrated approach to the welfare checklist.

The 'F, K, C, Payne' composite

Re K (A Child) [2020] EWHC 488 (Fam)

- Williams J
- Helpful summary of how an application of the composite may look in practice at para 50.
- Welfare checklist – specific considerations suggested within that analysis.

The 'F, K, C, Payne' composite

The likely effect on the child of any **change in their circumstances** may include:

- What changes to housing, schooling and relationships are likely if they remain in England?
- How realistic is the plan in the sense of how likely is it to be implemented as conceived?
- Will there be positive effects in respect of the removing parent's ability to provide care for them if they move abroad?
- What are the other positives and negatives about country X in terms of environment, education, links with family?
- What will be the impact on the child of moving permanently to another country in respect of their relationship with the left behind parent and other extended family?
- To what extent may that be offset by on-going contact and extension to other relationships in the new country?

The 'F, K, C, Payne' composite

Any **harm which he has suffered or is at risk of suffering** – overlaps with effects of change, may include:

- What may be the impact on the child of the change of their relationship with the left behind parent?
- How secure is that relationship now and how likely is it to endure and thrive if the child moves?
- How realistic are the proposals for maintaining contact?
- What will be the impact on the removing party of having to remain in England, contrary to their wishes? What will be the consequent impact on the child?
- What will be the impact on the left behind parent of the child moving?
- Will the ability of either parent to provide care for the child be adversely affected by the refusal or grant of the application and if so to what extent?
- To what extent will loss of contact with the left behind family be made up for by extension of contact with the family in the new country.

The 'F, K, C, Payne' composite

The **capability of the parents**, how capable each of them are and any other person in relation to whom the court considers the question to be relevant is of meeting the child's needs, may include:

- How are the parents currently meeting their needs?
- Are there any aspects of their ability which may be particularly important in the context of a relocation, for instance their capability of meeting the emotional need of the child for a relationship with the left behind parent?
- Is the application to relocate wholly or in part motivated by a desire to exclude or limit the left behind parent's role?
- Is the left behind parent's opposition to the move genuine, or is it motivated by some desire to control, or some other malign motive?
- Will the parent be better able to care for the child in the new country than in England?
- What role can the left behind parent play in the future?

The 'F, K, C, Payne' composite

The **range of powers** available to the court under this Act.

- Can conditions of contact be imposed in terms of provision of funds, or frequency of visits?
- Can court orders be made in the other country, either mirror orders or orders which will allow reciprocal enforcement?

Examples in case law

Re R (a child – relocation) [2015] EWHC 456 (Fam)

- Application to relocate to Hong Kong refused – mirror orders were insufficient as M had presented barriers to contact in the past.

Re S [2014] EWHC B20 (Fam)

- Application to relocate to Pakistan. Order to be taken out in Pakistani Guardian Court (not pre-condition), £2,000 bond accepted to guarantee compliance.

Examples from the case law

- **S v S (relocation) [2017] EWHC 2345 (Fam)**

Boys, aged 15 and 13. Application by F to live with him and new partner in Switzerland. Lived with M in UK. Family had already lived in three countries previously, relevance to 'change of circumstances'.

- **TR v JM [2022] EWFC 60]**

Impact of parents' mental health; move to US - relevance to both ability to care, ability to facilitate/attend contact and healthcare provision (USA).

Views of the child(ren)

Not determinative: ***Re N-A (Children) [2017] EWCA Civ 230, [2017] All ER (D) 143 (Apr)*** – children aged 14 and 16; judge declined to order a move to Iran, had been very good reasons not to accede to those wishes.

Summary return within the UK

Re R (A Child)(Domestic Abduction) [2016] EWCA Civ 1016

- No rule or presumption that a child unilaterally relocated **within the jurisdiction** should be summarily returned.
- Correct approach is to apply section 1 of the CA 1989.

AH v DT [2017] EWHC 36 (Fam)

- Order for return from Northern Ireland

FZD v MQB (summary return from Scotland) [2024] EWFC 205

'Temporary' removal

'Temporary' removal

- Again, welfare is paramount.
- s1(3)
- Different considerations (although similar) to permanent removal, by the nature of application.
- Safeguards highly relevant.
- As is expert evidence: *Re M (a child) (removal from jurisdiction: expert evidence)* [2010] EWCA Civ 888, [2011] 1 FLR 1943.

Draft order

- ***Re C-W (A Child) [2015] EWCA Civ 1272*** in an annexe to judgment, suggested draft order (app M, M lived in USA, for contact with child *in* USA):
 - RECITALS
 - as to the residence with F in England Wales;
 - E&W has jurisdiction;
 - M&F have ‘rights of custody’ for the purposes of Hague Convention;
 - Undertakings given by M not to initiate proceedings in USA and to return child;
 - M did not seek to challenge jurisdiction or that F ‘primary carer’.

- ***Re C-W (A Child) [2015] EWCA Civ 1272*** in an annexe to judgment, suggested draft order (app M, M lived in USA, for contact with child *in* USA):
 - ORDERS
 - Live with F;
 - M not to leave Florida with child;
 - Conditions pursuant to s11(7): M pays air fares, flight itinerary 7 days prior, child's passports to be retained by third party service whilst in Florida, mirror order in Florida.

Risks

- Increased focus on if proposed location is a Hague signatory?
- *A Father v A Mother* [2023] EWFC 227
 - Relied on a 'risk' that M may decide to stay in Hong Kong;
 - Inferred that potential risk from the publication of information in respect of proceedings on her 'gofundme' page.
- Arguably quite cautious approach – court addressing risks of both abduction, but also general risks in locations where parties have eg. extended family.

- ***Re M and K (Temporary Leave to Remove to Non-convention Country) [2015] EWFC B229***
- *the magnitude of the risk of breach of the order if permission is given*
- *the magnitude of the consequence of breach if it occurs; and*
- *the level of security that may be achieved by building in to the arrangements all of the available safeguards*

- ***JS (A child) [2014] EWHC B20 (Fam)*** - did not approve application for holiday to Dubai.
- ***Re L And B (Children) (Specific Issues: Temporary leave to remove from the Jurisdiction; Circumcision) [2016] EWHC 849*** – risk of onward travel, no travel within Europe permitted (court had made findings of threats to abduct).

- ***AB v TB (Temporary Removal to Jordan) [2014] EWHC 4663 (Fam)*** – permitted travel to Jordan for summer holiday.
- ***M v F (Travel to Non-Convention Country) [2017] EWFC 7*** – travel contingent upon either being with M’s partner, or only one of subject children (unlikely to stay in Iran in those circumstances). (in addition to other safeguards including bond).

Domestic abuse

Re: A & I (Children: Appeal: Relocation & Joint Lives-With Orders: Fresh Evidence) [2024] EWHC 1824 (Fam)

- Consideration of PD12J in relocation application.
- Essential to consider the impact of the DA on M.

Implications for removal of presumption of parental involvement?

Re O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888

Para 41: The Judge turned to the mother's relocation plan. He described how it had initially been driven by financial considerations ("she has received very limited financial support from the father and recognises that she is unlikely to receive from him any capital sum to enable her to provide a home for their children"), but that the focus had shifted more recently to her need to "move on from the trauma and the deep seated effects of the years of domestic abuse". The Judge cited an extract from the mother's evidence in which she had said how she was now "better able to articulate the effects of the emotional and physical damage done to [her] and the children by the father during those years of domestic abuse"; she had described how she had not felt "brave enough" to articulate until recently how deeply affected she was by what had happened to her and the children.'

[para 95] Thus, in such a case, and when considering what will be the appropriate order in the best interests of the child, it seems to me that the court may well find it appropriate to consider (specifically in relation to 'harm' or 'risk' of harm in section 1(3)(e) CA 1989):

- i) Whether the abuse is in any respect ongoing, and how the victim(s) can be protected in each jurisdiction;
- ii) The extent to which, if at all, the abuse has informed or influenced the applicant's decision to issue an application to relocate;
- iii) What support (family or professional) will be available to the victims of abuse (abused parent and/or child) in this country and in the country to which relocation is sought?
- iv) How the abused parent and/or child can be protected from further abuse from the perpetrator while living in this country and in the country to which relocation is sought. What, if any, orders would be available from the court in the country to which relocation is sought? What other protective measures are likely to be available in the country to which relocation is sought?
- v) How ongoing risk to the abused parent and/or child from the perpetrator of the abuse can be assessed, and/or managed, if the abused parent and/or child is living in this country or abroad ("the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm": PD12], para.35); this is likely to be relevant to child arrangements ('time spent with') orders;
- vi) What professional (or other) supervision of contact is available both in this country and in the country to which relocation is sought? How can indirect contact be managed and/or (if relevant) supervised?

Evidence for relocation applications

- Housing
- Schooling, higher education
- Health care
- Culture, local area, amenities, safety etc
- Financial viability
- Immigration requirements
- Employment
- Travel back for contact
- Safeguards

Practice points

- NCDR
- Section 8 – SIO or PSO.
- Timing of the application
- Essential factual evidence
- Initial advice as to the safeguards from a local lawyer – Hague/Non-Hague?
- Expert evidence
- Safeguards
- Cafcass/ISW
- Separate representation
- Identification of issues – is PD12J engaged?

Questions