

FARRER&Co

Relocation

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Relocation cases are the "hardest of dilemmas"



Consider carefully the legal position of the relocating parent

- Is there a 'lives with' child arrangements order in place?
 - If yes – written permission required to remove the child from the UK unless the removal is for less than a month and is by the person with the benefit of the 'lives with' order.
 - If no – the Children Act does not require consent **but** failure to obtain such consent could result in the commission of the criminal offence of abduction.

Consider carefully the position of the relocating parent

- Where does the relocating parent wish to go?
 - There is no legal requirement for permission to relocation when the planned relocation is within the UK BUT
 - the 'left behind' parent can apply for a Prohibited Steps Order preventing the move or a Specific Issue Order, for example that the child continue to be educated at a particular school.
 - If a parent relocates within the UK without the other parent's permission, the 'left behind' parent can seek peremptory return of a child or children, but the application must be made urgently and as soon as the parent realises the child or children have moved.
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Alternative methods of resolving the dispute

- Mediation
- Arbitration

Making the application

- Timing (schooling etc)
- Do the children need separate representation?
- Use the correct form:
 - For permission to relocate: Form C2 (with Form C1A if required)
 - For a specific issue order (for example to deal with schooling) or a child arrangements order: Form C100 (with Form C1A if required)

The Law

- The overriding principle is that the welfare of the child is the paramount consideration.
- The court must consider the welfare checklist and undertake a global, holistic evaluation.
- Each proposal must be analysed and considered on its own merits in a side by side comparative evaluation.

The Evidence

- CAFCASS/Independent Social Worker
- Statements

Some examples – AY v AS and A

- Father was English. Mother was Kazakhstani. Mother moved to this country to be with father, and they had a child, A, in January 2017.
- Mostyn J found that the mother was in an objectively intolerable position.
- She argued that she would only find personal contentment and reasonable employment commensurate with her level of education if she were to be permitted to return to Kazakhstan.
- She proposed that A should spend around 70 days a year with her father, half of which would be in Kazakhstan. She also proposed regular WhatsApp video contact.

Some examples – AY v AS and A

- The guardian said that she felt that the mother’s proposals would give rise to an “appreciable risk” of the essential nature and quality of the bond between the father and A being lost or diminished.
 - Mostyn J agreed with the guardian’s assessment. Was this a price worth paying, in order to give the mother the personal contentment, and functional fulfilment that she so ardently craved?
 - Mostyn J’s answer to that question at present was no.
 - In her first statement, the mother had said that she would consider moving to London if she was able to find a job there.
 - Mostyn J therefore stated that until an internal relocation had been tried in good faith and had failed, the mother’s proposal for contact between the father and his daughter was objectively unreasonable and contrary to A’s best interests.
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Some examples: Re N-A (Children)

- The children were 15 and 13. They lived with their father and spent time with their mother.
 - Their father made an application for leave to remove the boys to Iran.
 - The boys expressed a desire to go.
 - However, the Cafcass Officer advised against the move, concluding that a move would harm their relationship with their mother, and would have a negative impact on their education and on their social relationships. She considered that the move may cause them further emotional harm, in addition to that which they had already suffered as a result of the breakdown in their parents' relationship.
 - At first instance, the judge met with the children, concluded that neither boy really understood what a permanent move to Iran would entail, and that their best interests 'demanded' that they stay in the UK.
 - The father appealed
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Some examples: Re N-A (Children)

- The Court of Appeal dismissed the appeal.
- Even with older children, their wishes and feelings are only ever one of the factors that have to be considered in arriving at a decision as to what is in their best interests.
- The judge was entitled to find that the boys had been influenced by their father, and that, although they knew what Iran was like by virtue of the time they had spent there, they did not really understand what a permanent move would entail.
- The judge had had no faith in the father encouraging contact, and grave doubts about how much would actually take place if the move occurred. The position in relation to the boys' relationship with their mother was a heavy weight on the scales against the move.

After permission has been granted

- Enforcing your order
 - Brussels II bis countries
 - Non EU Countries

A sideways look at other jurisdictions

California: *The parent who has primary physical custody of the child and who has been the child's "primary caretaker" has a presumptive right to move with the child. His or her attachment to the child and the child's need to be with the parent are theoretically unaffected by a proposed move. The noncustodial parent has the burden of proving that the child will be hurt more by moving than by being separated from his or her primary caretaker. This is a difficult burden to meet.*

Florida: *The ultimate test is best interest of child. There is no presumption for or against removal. However, most applications are refused or reversed if granted.*

A sideways look at other jurisdictions

New Zealand: *The overriding consideration for the court in determining relocation cases shall always be the welfare and best interests of the child. Some of the factors to be considered in determining best interests include continuity of the child's relationship with each parent and their wider family group, the child's safety, and preservation of the child's cultural identity. The court's inquiry is intensely fact specific and multifaceted. No presumptive weight is to be given to one or more factors and it is inappropriate for the court to apply a one size fits all' checklist in determining relocation cases. This means that it is often impossible to predict a likely outcome in any given relocation case. In any contested relocation case, the court **must** appoint a lawyer to represent the child. The child must be given an opportunity to express their views. The court must take the child's views into account.*

A sideways look at other jurisdictions

Scotland: *The test is the best interests of the child. Most applications to remove are refused. There is no formal presumption, but it is not at all easy to persuade the courts to allow children to be removed.*

Reading List

Payne v Payne [2001] EWCA Civ 166

K v K [2011] EWCA Civ 793

Re F [2012] EWCA Civ 1364

Re F [2015] EWCA Civ 882

Re C (Internal Relocation) [2015] EWCA Civ 1302

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