



Stay or Go? Relocating as a separated parent

Introduction

We always hear that the world is getting smaller, as air travel has become cheaper and more accessible, and video communication is now available on your own mobile phone. But what if you are a single parent and want to move abroad with your child; or, for that matter, what if you want to move a significant distance within the United Kingdom? Unless you can get your child's other parent's consent, you will have to seek permission of the Court to go, or risk a counter-application being made by the other parent preventing you from leaving, or worse, face recovery proceedings to require you to return.

Whilst it is certainly true that every case is different, having recently represented clients in a number of relocation cases, some common traps and pitfalls can be identified (and hopefully avoided).

The Law

Happily, the law applicable to both internal (within England and Wales) and external (outside of England and Wales) relocation cases has been somewhat clarified and codified in recent years.

International Relocation

Applications to remove a child from the jurisdiction of England and Wales are made pursuant to s13 of the Children Act 1989, although in practice they are often accompanied by a supporting application for a s8 Child Arrangements Order that the child also "live with" the relocating parent.

In the case of *Re F (A Child)(International Relocation Cases)* [2015] EWCA Civ 882, the Court of Appeal sought to correct the practice that had developed in the lower courts of dividing cases into 'primary carer' cases (applying the so called 'Payne discipline' from the seminal case of *Payne v Payne* [2001] EWCA Civ 166) and 'shared carer' cases (applying the case of *Re Y* [2004] 2 FLR 330). Instead, in his leading judgment, Lord Justice Ryder reviewed the leading authorities in this area and brought attention firmly back to the welfare of the child, which is enshrined as paramount at s1(1) of the 1989 Act.

The Court of Appeal suggested that, although s1(4) Children Act 1989 means that consideration of the s1(3) Welfare Checklist is not obligatory in relocation cases, the applicable case law recommends its use. Furthermore, and considering the important public law case of *Re B-S*, the Court indicated that a "holistic evaluative analysis" is the appropriate approach to be taken in s13 relocation cases.

This means that each parent's proposal needs to be evaluated on its own internal merits, and by reference to what the child has to say, and then compared side by side with that proposed by the other party. As the relocation of the child will likely significantly infringe the Article 8 ECHR rights of the remaining parent, the proportionality of the relocation proposal also falls to be considered.

The Court made clear that the decision in *Payne* was nuanced and the so-called *Payne* discipline was always intended to be part of a welfare analysis and was not intended to be elevated into principles or presumptions. To reinforce this point, Ryder LJ stated that: "*Selective or partial legal citation from Payne without any wider legal analysis is likely to be regarded as an error of law*"; however, the case of *Payne* remains a helpful checklist to be considered, summarised by Lady Justice Butler-Sloss P at paragraph 85:

- (a) *The welfare of the child is always paramount.*
- (b) *There is no presumption created by section 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.*

Internal Relocation

Strictly, any move away from the child's home that impacts upon the time that he/she spends with the other parent, and/or results in a change of school, requires the permission of the court, unless the other parent consents. This is perhaps obvious in the case of a proposed relocation from Cardiff to, say, Norwich, but may be less apparent in the case of a proposed relocation from Cardiff to, say, Brecon.

As with international relocation, such applications have been the subject of much judicial discussion. Following the above case of *Re F*, the case of *Re C (internal relocation)* [2015] EWCA Civ 1305 provides the following helpful summary of the applicable law by Mr Justice Bodey:

- a) *There is no difference in basic approach as between external relocation and internal relocation. The decision in either type of case hinges ultimately on the welfare of the child.*
- b) *The wishes, feelings and interests of the parents and the likely impact of the decision on each of them are of great importance, but in the context of evaluating and determining the welfare of the child.*
- c) *In either type of relocation case, external or internal, a Judge is likely to find helpful some or all of the considerations referred to in *Payne v Payne* [2001] 1 FLR 1052; but not as a prescriptive blueprint; rather and merely as a checklist of the sort of factors which will or may need to be weighed in the balance when determining which decision would better serve the welfare of the child."*

Maximising Success

From representing both the relocating parent and the opposing parent, it is suggested that the following matters can increase a party's chances of succeeding, or if absent, can be used effectively to oppose relocation:

- **Plan properly:** to stand any chance of succeeding, it is suggested that any proposal will have to cover the following key issues and provide clear evidence of the same:
 - Accommodation – where will the child live?
 - Education – where will the child go to school/nursery?
 - Employment/finances – how will the move and life in the destination be financed?
 - Contact – how will the important relationship with the other parent be safeguarded? How often will contact take place? Where shall the contact take place? If in the destination location, where will the other parent stay? What are the transport links to/from the home location to the destination?
 - Support Networks – who will support the relocating parent at the destination?
 - Familiarity – how well does the relocating parent and/or child know the destination location?
 - Wider Family – are the wider paternal/maternal family close to the home location? How involved are they in the child's life?

- Friendship Groups – how attached is the child/parent to the home location? How close are the relationships at the home location? If close, how will these relationships be preserved?
- Plan Early: The above issues should not await a party's preparation for Final Hearing, but should be fully considered before any application to the Court is even made. These proposals should be capable of being explained to the CAFCASS officer undertaking any s7 investigation, together with any supporting documentary evidence that may be available.
- Discuss the proposed move with the other parent: Early, sensitive and reasoned discussion of the proposed move with the other parent will always assist the case; indeed, it may even mean that agreement can be reached and costly court proceedings avoided. Ensure, where possible, that your discussions and any agreements are documented; for example, if discussing by telephone, send a confirmatory text message or email to the other parent.
- Consider mediation: I have found that litigation polarises the views of the parents, often causing them to become intransigent and unwilling to even consider the merits of a move. As such, the use of a trained family mediator may provide an opportunity to explore the proposed move in a conciliatory setting.
- Make the rationale for the move clear: As made clear at (d) of the 'Payne discipline' above, the motivation for the move must be genuine and not intended to undermine or defeat the relationship with the other parent. Whether the motive is economic (e.g. a great job opportunity), romantic (e.g. to be with a new partner) or welfare based (e.g. increased support in destination), be open and clear about why you want to move. Better make it clear from the outset, than find yourself challenged in evidence at the Final Hearing.
- Be reasonable and be sensitive: Relocating with a child, thereby leaving one parent behind, is obviously likely to cause the remaining parent a great deal of distress; try not to lose sight of this and be as sensitive as possible to how the move will make the other parent feel. Never assume that your relationship with the child is more important than the other parent's; this is often the starting point of cross-examination...

Conclusion

The central messages for a separated parent wishing to relocate with their child are clearly: plan early and thoroughly, be sensitive and reasonable to the other parent, and communicate! Of course, it may be that all of your preparation and sensitive discussion leads to an impasse, which can only be solved by the court. In such a scenario, all of your hard work planning the move is not wasted – it will form the bedrock of your argument to relocate and will certainly improve your chances of succeeding.

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David Gareth Evans
9 Park Place, Cardiff

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