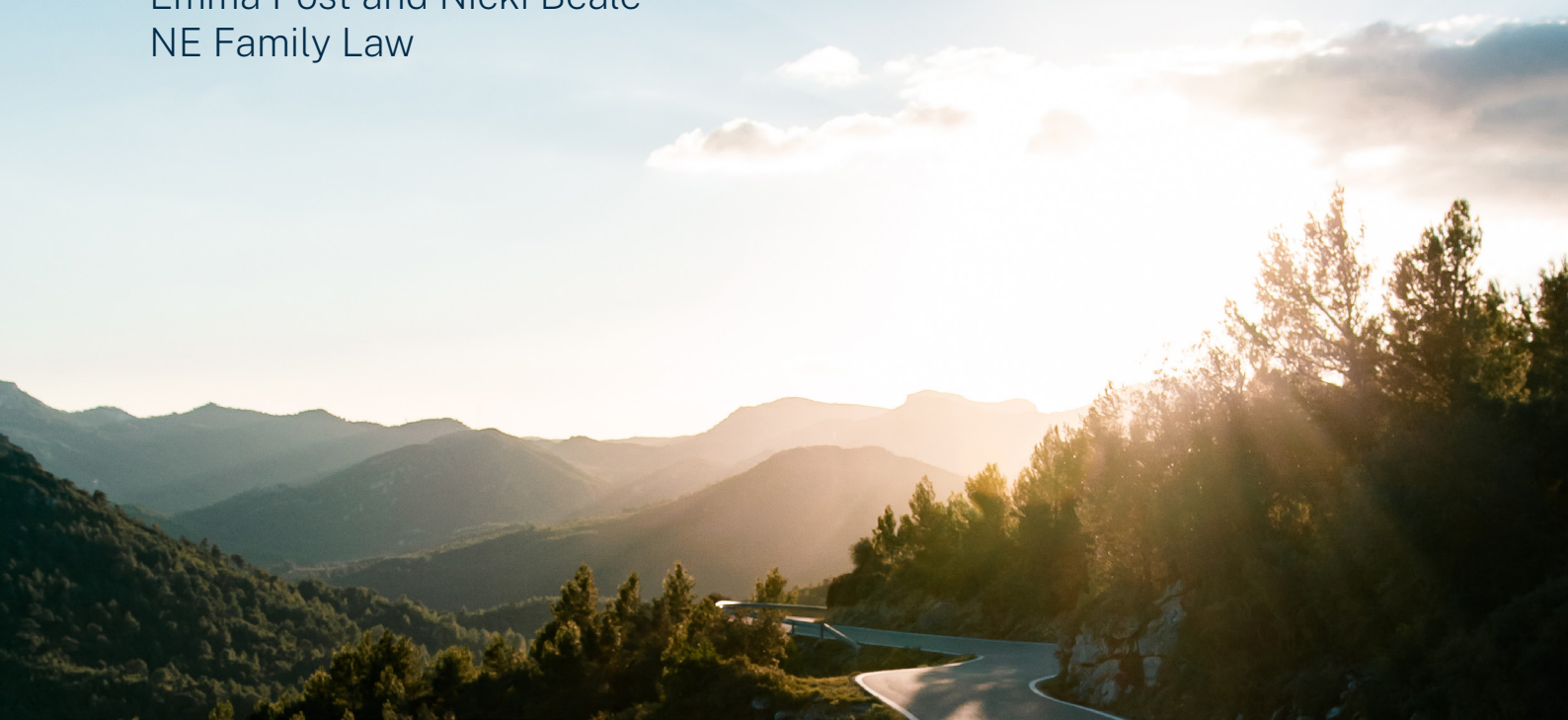

CHAMBERS GLOBAL PRACTICE GUIDES

Child Relocation 2025

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UK: Law & Practice

Emma Post and Nicki Beale
NE Family Law





Law and Practice

Contributed by:

Emma Post and Nicki Beale

NE Family Law

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NE Family Law is a boutique specialist law firm specialising in all aspects of separation, divorce, and private law children. The partners have considerable experience in domestic and international relocation applications, and wrongful removal/retention from both sides. Some recent examples include the jurisdictions of Australia, New Zealand, South Africa, Estonia, Canada, Portugal, Malaysia and Cyprus. The firm also deals extensively with financial remedies (including business, offshore and trusts) and nuptial agreements, assisting mid to high net worth clients

with complex legal issues. The firm prides itself on its strong team ethic and commitment to the highest standards of client care, as well as building the right team to meet the needs of the case. With extensive experience in mediation and other forms of non-court dispute resolution, the firm promotes the use of mediation, private financial dispute resolution, arbitration and early neutral evaluation wherever possible. The firm's lawyers are also skilled litigators and will take a robust approach when the case demands it.

Authors



Emma Post is a co-founder of NE Family Law and has been a family law specialist for over 15 years. Emma is a resolution accredited specialist in complex financial remedies and private law children. She has

considerable experience in domestic and international locations, and is an advanced hybrid mediator. Emma's clients are mid to high net worth individuals, often with complex legal issues. She focuses her practice on empowering clients and couples with knowledge of their specific needs and circumstances, to enable them to make informed decisions about their future, while keeping their children at the forefront of decision-making.



Nicki Beale is a co-founder of NE Family Law and a family law specialist with over 40 years' experience in assisting mid to high net worth clients in navigating divorce, financial remedies, TOLATA and private law

children matters. Nicki deals with complex financial disputes involving business, offshore interests and trusts. Nicki is committed to guiding and resolving issues for her clients, and non-court dispute resolution is an essential part of that process. Even where matters cannot be concluded by way of a negotiated/agreed settlement, she is strategic and robust in supporting her clients through the court process.

NE Family Law

Parkshot House
5 Kew Road
Richmond
Surrey
TW9 2PR
UK

Tel: +44 20 3924 8462
Email: enquiries@ne-familylaw.co.uk
Web: www.ne-familylaw.co.uk

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FAMILY LAW

1. The Care Provider's Ability to Take Decisions About the Child

1.1 Parental Responsibility

Parental responsibility (PR) in England and Wales is defined by Section 3 (1) of the Children Act 1989 as meaning "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

What Does PR Cover?

While the definition is very broad, it covers the following non-exhaustive list:

- discipline or chastisement;
- consent to medical treatment;
- change of name;
- schooling/education;
- adoption;
- consent to marriage;
- appointment of a guardian;
- applying for or refusing a passport application; and
- temporary or permanent removal from the jurisdiction (save for where there is a "lives with" order in place which permits travel outside the jurisdiction for up to 28 days without consent being required).

1.2 Requirements for Birth Mothers

In England and Wales, a child's birth mother automatically acquires PR.

1.3 Requirements for Fathers

A father does not automatically acquire PR for a child on birth – this will depend on the nature of the relationship between the father and the birth mother at the time the child is born.

When Will a Father Automatically Acquire PR?

A father will automatically acquire PR in the following circumstances:

- at the time of the birth of the child if they are married to the child's birth mother; or
- if they were a civil partner of the child's mother at the time of birth.

When Will a Father Not Automatically Acquire PR, and What Can They Do?

If a father is not married to or in a civil partnership with the child's mother at the time of birth, there are several routes for an "unmarried" father to acquire PR:

- being registered on the child's birth certificate (on or after 1 December 2003);
- marrying or entering into a civil partnership with the birth mother, after the birth of the child;
- entering into a PR agreement (Section 4 (1)(b) Children Act 1989) with the birth mother – this requires completion of Form C (PTA1), which needs to be witnessed by a Justice of the Peace or other nominated court official;
- obtaining a PR order from the court (Section 4 (1)(c) Children Act 1989), but the child must be under the age of 18; and
- being appointed as a testamentary guardian for the child, either by the birth mother or by order of the court.

What Impact Will a Child Arrangements Order Have on PR?

If a child arrangements order is in place, determining that the child "lives with" the father, the court must also make a PR order (Section 12 (1) Children Act 1989). This is not required (but can be considered) in the case of a "spends time with" order (Section 12 (1A) Children Act 1989).

1.4 Requirements for Non-Genetic Parents Adoption

Adoption orders automatically confer PR, whether made in favour of an individual or a couple, subject to the following.

A couple may apply for an adoption order (Section 50 Adoption and Children Act 2002) if:

- both have attained the age of 21; or
- one is the mother or father of the child to be adopted and has attained the age of 18, and the other person is over 21.

An individual may apply for an adoption order (Section 51 Adoption and Children Act 2002) if, when an adop-

tion order is made, Section 46 (1) of the Adoption and Children Act 2002 confers PR.

Furthermore:

- a child must be under the age of 18 when an adoption application is made;
- an adoption order cannot be made if the child reaches the age of 19 or if that person is or has been married/a civil partner;
- one or both members of the couple needs to have a fixed and permanent home (ie, be domiciled) in the UK, Channel Islands or Isle of Man; and
- both must have lived (ie, have been habitually resident) in the UK for at least one year before commencing the adoption application.

Step-Parents

A step-parent does not automatically acquire PR by virtue of marriage or civil partnership.

Step-parents (meaning only spouses and civil partners) can acquire PR for the children of their spouse/civil partner by the following means.

- Agreement with the child's parents by way of a PR order. This would need to be with the consent of:
 - (a) both the child's mother and father if both have PR; or
 - (b) the child's mother, if only she has PR.
- By applying to the court for either a PR order or a child arrangements order, for a child they are caring for to live with them.
- Becoming a legal guardian by way of step-parent adoption or special guardianship.

Same-Sex Female Relationships

For same-sex female couples, how both partners can obtain PR depends on their relationship status and how the child was conceived.

Automatic PR

This is obtained as follows:

- birth mother – automatic PR.
- married or civil partners at conception (Section 42 Human Embryology and Fertilisation Act 2008) – if the couple are married or in a civil partnership

at the time of conception (using donor sperm or fertility treatment), or if there is agreement from the child's mother (and the conditions under Section 43 Human Embryology and Fertilisation Act 2008 are met), both women are automatically legal parents and both have PR unless it is shown that the other party did not consent.

How the non-birth mother can obtain PR

This can be obtained as follows:

- being named on the birth certificate – for children born after 1 September 2009, if the correct forms are signed at a licensed clinic, the non-birth mother can be named on the birth certificate and obtain PR;
- PR agreement – with the consent of all those with PR;
- court order – the non-birth mother can apply to the court for a PR order (the court will consider the child's best interests);
- adoption – if the non-birth mother adopts the child (for example, if she is not a legal parent), she will obtain full PR; and
- child arrangements order – if the court makes an order that the child "lives with" the non-birth mother, she will obtain PR for as long as the order is in force.

See Section 43 of the Human Embryology and Fertilisation Act 2008.

Subject to Section 45 (2) to (4), the other woman is to be treated as a parent of the child if no man is treated by virtue of Section 35 as the father of the child and no woman is treated by virtue of Section 42 as a parent of the child, but:

- the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies;
- at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in Section 44) were met in relation to another woman, in relation to treatment provided to W under that licence; and

- the other woman was alive at that time.

Surrogacy

In England and Wales, a birth mother will automatically have PR, regardless of genetic connection and regardless of whether the woman was in the United Kingdom or elsewhere at the time of the placing of her embryo or sperm or eggs (Section 33 Human Embryology and Fertilisation Act 2008). If the surrogate is married or in a civil partnership, her spouse or civil partner also has PR, unless it can be shown that they did not consent to the arrangement (Sections 35 and 36 Human Embryology and Fertilisation Act 2008).

The intended parents can apply to the court for a parental order (Form C51), which would extinguish the legal parenthood of the surrogate and her partner and confer it on them. The welfare of the child is the court's paramount consideration when the court is considering making a parental order, and the eligibility requirements are that at least one of the intended parents needs to be genetically related to the child – ie, the egg or sperm donor (Section 54 (1)(b) Human Embryology and Fertilisation Act 2008).

Joint applicants

The applicants must be married, civil partners or living as partners in an enduring relationship (not within prohibited degrees in relation to each other) and there must be no existing parental order.

A parental order must be applied for within six months of the date when the child is born (Section 54 (3) of the Human Embryology and Fertilisation Act 2008); however, note the decision in *X (a child) (surrogacy: Time Limit)* [2014] EWHC 3135 (Fam), which found otherwise, although an application should be made within six months if possible.

The child's home must be with the intended parents, and one must be domiciled in the UK (Section 54 (4) Human Embryology and Fertilisation Act 2008).

The intended parents must have attained the age of 17 by the date of the application (Section 54 (5) Human Embryology and Fertilisation Act 2008).

When the surrogate mother, together with any partner who consented to her clinical treatment, agree to the making of the parental order, such agreement must be freely and fully understood (Section 54 (6) Human Embryology and Fertilisation Act 2008).

Consent would not be valid if given when the child was less than six weeks old.

"Expenses reasonably incurred" can be paid to the surrogate; however, no other money or benefit can be given in consideration of those set out in Section 54 (8)(a)–(d) of the Human Embryology and Fertilisation Act 2008, unless there is authorisation of the court.

No parental order must previously have been made under Section 54 or 54A of the Human Embryology and Fertilisation Act 2008.

Sole applicants

An application for a parental order by a sole applicant is governed by Section 54A of the Human Embryology and Fertilisation Act 2008, and can be made on the basis that:

- the child has been carried by a woman who is not the applicant, as a result of placing in her an embryo or sperm and eggs, or her artificial insemination;
- the gametes of the applicant were used to bring about the creation of the embryo; and
- the conditions under Section 54A(2)–(8) of the Human Embryology and Fertilisation Act 2008 are satisfied, which mirror the conditions set out in Section 54 (2)–(8A) of the Human Embryology and Fertilisation Act 2008.

1.5 Relevance of Marriage at Point of Conception or Birth

Please see **1.3 Requirements for Fathers** (When Will a Father Automatically Acquire PR?).

1.6 Same-Sex Relationships

PR is automatically acquired by the parent at the time of birth if:

- at the time of placing the embryo or sperm and eggs in the mother or of her artificial insemination, the other parent is married to the child's mother;
- the other parent is a civil partner of the child's mother at the time of birth; or
- there is agreement from the child's mother that the other parent shall be treated as such, provided the criteria in Section 43 of the Human Embryology and Fertilisation Act 2008 are met.

1.7 Adoption

Please see **1.4 Requirements for Non-Genetic Parents** as to the acquiring of PR upon making of an adoption order.

Parental consent is required for an adoption order to be made, except in the following circumstances:

- where the parent or guardian cannot be found; and
- where the parent or guardian lacks capacity to give consent (pursuant to the Mental Capacity Act 2005), or where there is a risk to the child and their welfare requires that consent be dispensed with (Section 52 Adoption and Children Act 2002).

The conditions to be met are set out in Section 47 of the Adoption and Children Act 2002, and must be satisfied before making adoption order, as follows.

- The parent or guardian consents to the making of an adoption order.
- The parent or guardian has consented under Section 20 (advance consent) and that consent has not been withdrawn and does not oppose the making of an order. The parent or guardian would require the court's leave to oppose the making of an adoption order, and the court must be satisfied that there has been a change of circumstances or that a placement order has been made.
- The parent or guardian's consent should be dispensed with.
- The child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made, and with the consent of each parent or guardian and the mother's consent when the child was at least six weeks' old, or the child was placed for adoption under a placement order. The parent or

guardian would require the court's leave to oppose the making of an adoption order, and the court must be satisfied that there has been a change of circumstances or that a placement order has been made.

- The child must be the subject of a Scottish permanence order, which provides for granting authority for the child to be adopted, or is free for adoption by virtue of an order made under Article 17 (1) or 18 (1) of the Adoption (Northern Ireland Order) 1987 (SI 1987/2203 (NI22)).

2. Relocation

2.1 Whose Consent Is Required for Relocation?

To remove a child permanently to another jurisdiction, the parent who wishes to move must obtain written consent from all those who hold PR (Section 13 (1) (b) Children Act 1989). In the absence of written consent (or as dealt with in **2.2 Relocation Without Full Consent**) or without permission being obtained from the court, prior to removal, that parent could be guilty of an offence of abduction pursuant to Section 1 (1) of the Child Abduction Act 1984, unless one of the exemptions in Section 1 (4) of the Child Abduction Act 1984 applies. This is further dealt with in **3. Child Abduction**.

2.2 Relocation Without Full Consent

In the absence of consent from all those who hold PR, the parent wishing to permanently remove a child from the jurisdiction of England and Wales must seek permission of the court to do so. The parent wishing to relocate would need to make an application for a specific issue order (Form C100 and Form C1A (if required)) and the application would be made pursuant to:

- Section 13 (1)(b) of the Children Act 1989 – if an existing child arrangements order is in place which provides for with whom a child lives and when they are to live with any person (Section 13 (4) Children Act 1989); or
- Section 8 of the Children Act 1989 – if no existing order is in place.

The application must be made in accordance with the Family Procedure Rules (FPR) 2010 and specifically Practice Direction 12B, which was amended following the new rules requiring the court to consider whether the case is suitable for non-court dispute resolution (NCDR) at each stage. There is an expectation that NCDR will be considered prior to the issue of proceedings. In situations that give rise to an emergency situation, risk or removal, such steps are not required, but the protocol is generally expected to be followed in applications to relocate.

2.3 Application to a State Authority for Permission to Relocate a Child

2.3.1 Factors Determining an Application for Relocation

The only legal principle applicable to an application to permanently relocate out of the jurisdiction of England and Wales is that the child's welfare is the paramount consideration (Section 1 Children Act 1989).

What Other Factors Are Considered?

If an application is made pursuant to Section 8 of the Children Act 1989 – ie, when a child arrangements order is not already in place – the court *must* approach the question of welfare by reference to the “welfare checklist” set out in Section 1 (3) of the Children Act 1989. In practice, however, the welfare checklist is applied in either case and is considered a useful aide memoir on Section 13 (1) applications. The factors under the welfare checklist are:

- the ascertainable wishes and feelings of the child concerned (considered in light of their age and understanding);
- their physical, emotional and educational needs;
- the likely effect on the child of any change in their circumstances;
- the child's age, sex, background and any characteristics of theirs that the court considers relevant;
- any harm that the child has suffered or is at risk of suffering;
- how capable each of the child's parents, and any other person, is of meeting the child's needs; and
- the range of powers that are available to the court.

The court has the ultimate discretion to apply the welfare checklist to the specific circumstances of the

case, and to weigh up the individual factors and make whatever decision it considers to be in the best interests of the child's welfare needs. See *Re L* (relocation: second Appeal) [2017] EWCA Civ 2121, [48], which also described a “balance sheet” approach, though this is to be used as no more than an aide memoir of the key factors and how they weigh up against each other as a route to judgment, as well as of the welfare evaluation and weight to be attached (or not, as the case may be) to the specific factors of the case. See also *Re F* (international relocation cases) [2015] EWCA Civ 882, [29], [52].

The 2010 Washington Declaration on International Child Relocation

The 2010 Washington Declaration on International Child Relocation offers a list of factors, often cited by judges in England and Wales, in determining applications for international relocation.

Factors relevant to decisions on international relocation

In all applications concerning international relocation, the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.

In order to more clearly identify cases in which relocation should be granted or refused, and to promote a more uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors, listed in no order of priority. The weight to be given to any one factor will vary from case to case:

- the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;
- the views of the child, having regard to the child's age and maturity;
- the parties' proposals for the practical arrangements for relocation, including accommodation, schooling and employment;

- where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;
- any history of family violence or abuse, whether physical or psychological;
- the history of the family, and particularly the continuity and quality of past and current care and contact arrangements;
- pre-existing custody and access determinations;
- the impact of granting or refusal on the child, in the context of their extended family, education and social life, and on the parties;
- the nature of the inter-parental relationship, and the commitment of the applicant to supporting and facilitating the relationship between the child and the respondent after the relocation;
- whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden on the child;
- the enforceability of contact provisions ordered as a condition of relocation in the state of destination;
- issues of mobility for family members; and
- any other circumstances deemed to be relevant by the judge.

While these factors may apply to domestic relocation, they are primarily directed at international relocation and thus generally involve considerations of international family law.

Key Cases

The leading authorities on determining international relocation cases are:

- *K v K* (children) (removal from jurisdiction) (2011) EWCA Civ 793, (2011) All ER (D) 67 (Jul);
- *Re F* (a child) (permission to relocate) (2012) EWCA Civ 1364, (2013) 1 FLR 645; and
- *Re F* (a child) (international relocation: welfare analysis) (2015) EWCA Civ 882, (2015) All ER (D) 90 (Aug).

2.3.2 Wishes and Feelings of the Child

Please see **2.3.1 Factors Determining an Application for Relocation**. In accordance with Section 1(3)(a) of the Children Act 1989, the ascertainable wishes and feelings of the child concerned (considered in light of their age and understanding) will be a relevant factor

for the court in England and Wales to consider when determining an application for international relocation. The wishes and feelings of the child are not necessarily determinative; this will depend on their age and maturity.

2.3.3 Age/Maturity of the Child

If an application involves an older child, it is likely to be inappropriate and even futile to make orders that conflict with the wishes of the older child (see *Re C* (older children: relocation) [2015] EWCA Civ 1298 [2]); however, in each case it is a matter of judgement for the court what weight is placed on their wishes, which do not carry precedence over other welfare factors (see *Re N-A* (children) [2017] EWCA Civ 230).

2.3.4 Importance of Keeping Children Together

In England and Wales, there is no presumption that children/siblings will be kept together. In so far as the court considers this factor, it would be relevant under Section 1 (3)(b) of the Children Act 1989, as would their emotional needs under Section 1 (3)(c); the impact on any change of circumstances would also be a factor to be considered as part of the overall welfare analysis.

2.3.5 Loss of Contact

The implementation of Section 1 (2A) of the Children Act 1989 (the presumption that the involvement of both parents in a child's life will further the child's welfare) under Section 11 of the Children and Families Act 2014 brings heightened scrutiny of proposals that interfere with the relationship between child and parent. The court must balance the competing rights of both parents and the child under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, and furthermore the rights of the child to maintain a direct relationship and contact with both parents, unless contrary to their welfare (United Nations Convention on Rights of the Child).

This is an important factor that impacts a child's emotional welfare and any change in circumstances, and therefore falls to consideration under Section (1)(3)(b) and (c) of the Children Act 1989.

Factors to be Considered

Factors that may be considered when assessing the weight to be placed on the loss of contact between the child/children and left-behind parents would include (but are not limited to):

- the child's wishes and feelings;
- the motivations of the parent in support of the application to relocate or the parent opposing it (are they genuine?);
- what the current arrangements are for the time the child spends with each parent, how this will be impacted by the proposed move and how the impact will/can be mitigated;
- the proposals of each parent if the application is granted or if it is refused as to the time the child will spend with each parent;
- the proposals and position of each parent in so far as the practicalities of maintaining the relationship – ie, the costs of travel, accommodation, frequency, time and factors relevant to the child's age; and
- the impact of the financial constraints of maintaining contact against the parents' ability to financially maintain the child.

The relevance and weight to be placed on these factors will differ depending on the facts of each case.

2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?

In England and Wales, there is no single reason that can be put forward by an applicant to a relocation application that will be viewed more sympathetically against other reasons. By their nature, relocation applications are case- and fact-specific. The reasons advanced by the applicant in support of their application to relocate will be considered and the weight to be attached to them will depend on the facts of the case.

2.3.7 Grounds for Opposition to Relocation

There are no specific grounds of opposition that a court in England and Wales would be most sympathetic towards, as each case is nuanced and specific to its facts. However, some common examples include (but are not limited to):

- loss of relationships by reducing a child's contact with the left-behind parent and extended family;

- the child's wishes and feelings;
- disruption of stability, including schooling, friendships and support networks;
- practical difficulties in maintaining contact, including travel time, expense and logistical changes;
- impact on exercising PR on a day-to-day basis;
- motivations of the applicant parent – eg, a desire to frustrate or fracture the relationship between the left-behind parent and the child; and
- adequacy of planning and proposals versus alternative proposals for the child's care.

The court is likely to have the matters raised under **2.3.5 Loss of Contact** firmly in mind, though these will fall to be considered as part of the overall welfare analysis, ensuring paramountcy to the child's welfare. See **2.3.1 Factors Determining an Application for Relocation**.

Any person with PR can oppose an application to relocate.

2.3.8 Costs of an Application for Relocation

Relocation applications are often considered to be the most difficult for judges to decide, and the decision is binary. They are often hard fought and protracted; for this reason, it is often an expensive and complicated process. It is difficult to give an accurate figure of the costs likely to be incurred in an application to relocate in England and Wales, as this will depend on the issues before the court and whether expert evidence is necessary, and the costs will vary widely between different firms depending on size and location.

2.3.9 Time Taken by an Application for Relocation

The timeframe for determining a relocation application will be dependent on various factors, including but not limited to:

- the number of witnesses – eg, mother/father/extended family/new partners;
- evidence required (including from experts such as CAFCASS/ISWs/immigration and foreign lawyers); and
- the listing availability within the relevant court, which can vary across England and Wales.

“No Delay” Principle

There is no set timetable or timeframe within which applications should be determined, but the general principle is that delay is prejudicial to the welfare of the child. Section 1 (2) of the Children Act 1989 provides for a “no delay” principle, and the court has a positive duty to consider delay at all stages of proceedings.

2.3.10 Primary Caregivers Versus Left-Behind Parents

In all relocation applications in England and Wales, the welfare of the child is the paramount consideration. The court will need to carefully consider the proposals of *both* parents in conducting its analysis of the welfare checklist with the child’s interests at the centre. The proposals need to be considered on their own merits and side by side.

The exercise has been said to be “holistic” in that the proposals of each parent need to be considered as a whole, not in a linear way (as per *Re F* (a child) (permission to relocate) (2012) EWCA Civ 1364, (2013) 1 FLR 645). The case law is clear that there is no presumption in favour of either the primary care giver or the left-behind parent.

2.4 Relocation Within a Jurisdiction

There is no automatic restriction for moves within the UK.

Section 13 (1)(b) of the Children Act 1989 only applies to relocations outside the UK – ie, England, Wales, Scotland and Northern Ireland. Therefore, parents do not need each other’s consent to relocate within the UK. However, while treated as an internal move, once the move has taken place the jurisdiction of the court in England and Wales ceases, so consideration would need to be given to registration and enforcement issues (much the same as when the move is international).

A move within the UK can give rise to applications under Section 8 of the Children Act 1989 to regulate the proposed move, such as:

- a specific issue order allowing the relocation or to determine schooling (which has the effect of determining the application to relocate);

- a prohibited steps order to prevent the relocation; and
- a child arrangements order to determine where the child lives.

The legal framework is the same as in international relocation cases; in the event of an application to prohibit or allow the move, the child’s welfare is paramount, and judges must approach the welfare question with reference to the welfare checklist – the factors for determining the application are as set out in **2.3 Application to a State Authority for Permission to Relocate a Child.**

A key case is *Re C* (internal relocation) [2015] EWCA Civ 1305; [2017] 1 FLR 103.

3. Child Abduction

3.1 Legality

If There Is a “Lives With” Order in Place

A parent who is named as the parent with a “lives with” order can take that child outside the United Kingdom for a period of up to one month, without the consent of the other parent or permission of the court (as per Section 13 (2) Children Act 1989). If that parent intends to be outside the UK for a period of longer than one month, consent of those with PR or permission of the court would be required.

If There Is No “Lives With” Order in Place and No Consent From Those With PR

It is an offence for a person connected to a child under the age of 16 to remove the child from the United Kingdom without the appropriate consent or leave of the court (Section 1 (1) Child Abduction Act 1984). A “connected” person is defined by Section 1 (2) of the Act as being connected to the child as follows:

- he is a parent of the child;
- in the case of a child whose parents were not married to (or civil partners of) each other at the time of the child’s birth, there are reasonable grounds for believing that he is the father of the child;
- he is a guardian of the child;
- he is a special guardian of the child;

- he is a person named in a child arrangements order as a person with whom the child is to live; or
- he has custody of the child.

Written consent is required from the individuals set out in Section 1 (3)(a)(i–v) of the Child Abduction Act 1984 – namely:

- the child's mother;
- the child's father, if he has PR for the child;
- any guardian of the child;
- any special guardian of the child;
- any person named in a child arrangements order as a person with whom the child is to live; and
- any person who has custody of the child.

A person does not commit a criminal offence if one of the exceptions set out in Section 1 (5) of the Child Abduction Act 1984 can be satisfied – namely:

- the removal is in the belief that the other parent has consented or would otherwise consent if aware of all the relevant circumstances;
- all reasonable steps have been taken to communicate with the other parent that it has not been possible to do so; and
- the other parent has unreasonably refused to consent.

3.2 Steps Taken to Return Abducted Children

The UK is a signatory of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the “Hague Convention”). The Hague Convention prevents children from being wrongfully removed or retained in a country that is not their habitual residence (Article 1).

If a child has been abducted (see 3.1 **Legality**) to a country that is a signatory of the Hague Convention, the first step is to ascertain whether the UK has recognised the state's accession. This can be checked via the Hague Conference on Private International Law (HCCH) website.

Application to the Central Authority

The Hague Convention requires countries to have a central authority (Article 6) – in England and Wales this is the International Child Abduction and Contact Unit

(ICACU) under the Lord Chancellor. The first remedy in most cases is for the left-behind parent to apply to the central authority to instigate proceedings in the other state for the return of the child – the application can be made by the parties themselves or via solicitors.

Left-behind parents are entitled to non-means or merits-tested legal aid if they apply for a return via the ICACU. See Part 12F, paragraph 2.5 FPR 2010. If the application is not made via the ICACU and solicitors are independently instructed, the costs will vary depending on the firm.

The summary procedure is as follows:

- the application for a return must be made within 12 months of the child's wrongful removal or retention; and
- a decision on the return must be made within six weeks.

Defences to return include the following:

- consent (before removal or retention) or acquiescence (after removal or retention) of the left-behind parent;
- the left-behind parent was not exercising “rights of custody” at the time of removal or retention (defined in Article 5) as per Article 13 (a);
- there is a “grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation” as per Article 13 (b) – the threshold is high; and
- the child objects to the return (to the country as opposed to the left-behind parent) and has attained “an age and degree of maturity at which it is appropriate to take account of its views”.

Application to the Court

The court in England and Wales can also make a declaration of wrongful removal if it will assist the foreign court in understanding whether the removal was contrary to English law, or alternatively can bring substantive proceedings for the return of the child in the English court, where the court will exercise its full welfare jurisdiction (Section 1 Children Act 1989); however, it can approach by way of a summary assessment (as

per *Re J* (abduction: rights of custody) [2005] UKHL 42.

Removal Regarding Non-Hague Convention Signatory Countries

The left-behind parent would need to consider whether to make an application to the High Court for:

- declaration of wrongful removal or retention;
- a return order; and
- other orders, such as wardship.

The court will exercise its full welfare jurisdiction (Section 1 Children Act 1989).

Specialist advice would need to be obtained in the country to which the child has been taken as to the enforcement of English orders or remedies within that jurisdiction.

3.3 Hague Convention on the Civil Aspects of International Child Abduction

The UK is a signatory of the Hague Convention. If a child is removed from a Hague Convention country and is brought or is inbound to England and Wales, the left-behind parent can make an application for their return. The proceedings are summary in nature and must be concluded within six weeks.

Statistical Study of Applications Made in 2021 Under the Hague Convention (HCCH, October 2023)

As previously discussed, left-behind parents are entitled to non-means or merits-tested legal aid if they apply for a return from England and Wales via the ICACU. If the application is not made via the ICACU and solicitors are independently instructed, the costs will vary depending on the firm.

The court in England and Wales will adhere to its obligations under the Hague Convention, and will generally strive to return a child once the alleged abduction or retention has been proven. As to the defences available, these would be considered on a case-by-case basis and are very fact-specific, but the burden remains on the respondent to establish an exception (which has a high bar).

As regards the return of the child to a non-Hague Convention country, the procedure is as set out in Chapter V, Part 12 of the FPR 2010 for an application to the High Court, invoking the court's inherent jurisdiction (wardship proceedings). Form C66 is required. The welfare of the child will be the court's paramount consideration. A summary return is likely on the basis that it would be appropriate and in line with the child's welfare for their state of habitual residence to determine welfare decisions. However, this will depend on the facts of each case.

3.4 Non-Hague Convention Countries

The UK is a signatory to the Hague Convention, which is enshrined in domestic legislation through the Child Abduction Act 1984 and Chapter VI, Part 12 of the FPR 2010; therefore, this topic does not apply.

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