

# FREETHS

## Family Law

### Taking a child abroad

The prospect of moving overseas to a new country can be very exciting. However, there are practical issues that you will need to consider beforehand, such as making an application to the court to relocate a child permanently overseas if you have children with a former partner.

When parents are separated/divorced the consent of anyone that has parental responsibility (normally the other parent) is required before steps to move to another country can progress.

If the other parent does not agree it will be necessary to make an application to the court to obtain an order allowing the child to be removed from this country permanently. This is never an easy decision for a judge, and will involve detailed consideration of the plan to relocate and reasons for the move as well as the child's current arrangements, the involvement the child has with both parents and the plans and proposals for the future. Consideration will also be given to the impact of refusing permission to emigrate on the parent wishing to leave.

The judge will want to see detailed plans and information to enable the application to be fully considered. The most important factor for the judge will be what they consider to be in the child's best interest.

The decision to move overseas without your children can also need the help of the court. Some visa applications require medical examinations to be done on the children of an emigrating parent, even though the children are not going with them. This can cause difficulties if the parent and children are estranged or the other parent is refusing consent to the medical examination. There are some situations where this

can be dealt with by correspondence, but should a court application become necessary we can help.

Historically, applications to remove a child from this country have been dealt with by applying guidance set out in a case from 2001 called Payne –v-Payne. However there have been a number of cases over the last few years that have evolved the approach taken, particularly as a result of a case called Re F in 2015 which followed guidance from a case called K-v-K 2012. The guidance is now that all of the judge's attention must be on the issue of the welfare of the individual child involved. Useful guidance from historical cases such as Payne is still considered valuable but this should not distract the judge from the overall assessment of the case and every factor should be considered on a child and case specific basis, considerations which are likely to remain important are the motivation of both parents, the level of planning for the relocation and the proposals put forward to promote the continued involvement of the other parent as well. The child's own wishes and feelings are also taken into account.

This can be a complex area of the law, where time is often of the essence. If you need any advice or assistance please call to speak with Rachael Oakes.



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