



PUMP COURT CHAMBERS

Breakfast Briefing at Moore Barlow

Relocation applications update
Costs in Children Act proceedings



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Relocation applications

- Growth in both internal and external relocation applications fuelled by increase in shared lives with vs. lives with/spends time with orders.
- Under the “old” Payne v Payne guidance, the intentions of the “resident” parent carried great weight, so most relocation applications succeeded.

Relocation applications

- Then in 2015 the “new” guidance came from Re. F [2015] EWCA Civ 882 – the child’s welfare is paramount, not the wishes of the parent who wants to relocate. That created more of a balancing act in external relocation cases, and diluted the relevance of the “mummy will be sad if she has to stay in the UK” argument.

Relocation applications

- In Re. C (Internal Relocation) [2015] EWCA Civ 1305 the Court of Appeal decided that the same principles should be applied in both internal and external relocation cases. It was not correct to say that the court would only prevent an internal relocation in an “exceptional” case.
- In addition, where there was a shared residence order it would be harder to succeed because the “left behind” parent could say – you move to the Scilly Isles if you want to, but Tabitha and Marmaduke will live with me.

Relocation applications

- *AZ v BX* [2024] EWHC 1528 and *LKM v NMP* [2023] EWFC 118 are the two cases in which High Court judges have set out the benefits of there being shared lives with orders even in cases of an unequal split of time, and where parents have an acrimonious relationship.
- Shared lives with orders are therefore becoming the norm.
- The knock on effect of that is that relocation applications will become harder to predict

Relocation applications

- In cases which are finely balanced, strategy becomes more important. So, if you are advising the relocating parent:
- Get your proposal fully formed
- Be realistic about your timetable
- Be as generous as you can with your “contact” proposal
- Do not propose to vary the shared lives with order into a lives with/spends time with order

Relocation applications

- If you are advising the staying behind parent:
- Seek an undertaking not to remove children from their current school, and to give advance notice of any application for another school;
- Take your time
- See if the staying put parent can offer a home for the children full time. If so, offer that outcome with a reverse spends time with proposal

Relocation applications

- How to resolve these disputes?
- Negotiation
- Mediation
- ENE
- Arbitration
- Litigation

Relocation applications

Evidence:

- Housing
- Schooling
- Contact proposal – travel implications
- Visas?
- Mirror order / legal advice from the destination country?
- Impact on child maintenance?
- Financial disclosure?
- Children's wishes and feelings?

Relocation applications

- If you end up with litigation, how do you avoid the magistrates?
- The Schedule to the Allocation and Gatekeeping Guidance dated 22nd April 2014 stipulates that leave to remove cases to Hague Convention/EU should be heard by a DJ, and relocation to countries outside Hague Convention/EU should be heard by CJ or HCJ.
- That leaves internal relocation cases with a lay bench, even though the legal principles to be applied are the same.

Relocation applications

- Remember that relocations to Scotland or Northern Ireland are outside the jurisdiction
- For internal relocation, it can be hard to justify transfer. Consider these options:
 1. can you stretch the final hearing to 3 days or more?
 2. if there are likely to be interim hearings, stress the need for judicial continuity
 3. If there have been previous proceedings at DJ level, the case should remain at that level
 4. If you want a transfer, make an application. Don't just turn up at a FHDRA and ask.

Relocation applications

The Father v The Mother [2023] EWHC 1454

- F had applied for a shared lives with order with a 50/50 split of time. M later cross applied for permission to relocate from Nottingham to Rugby. By the time of the final hearing, there had been 3 S.7 reports from 3 different Cafcass Officers, none of whom supported M's application.
- M's desire to move was to be nearer to her parents, and because she said the commute from Rugby to London compared to Nottingham to London meant that she could only continue in her role if she moved to Rugby, and her career (in the military) was very important to her.
- There was one child, aged 4, so his wishes and feelings were not material and he had not started school

Relocation applications

The court allowed the move, and made a shared lives with order, because:

- The judge found the parties could make a Friday to Monday weekend work if they wanted to;
- F could do a midweek visit if he wanted to
- The impact on M of having to lose her career was significant and nobody had really considered that
- The Cafcass reports had equated a reduction in time between child and F with damage to or loss of that relationship. The judge thought that was wrong, F and the child had a good relationship and that bond would stay strong regardless of the loss of a midweek visit, or the inability to step in at short notice if required.

Relocation applications

G v H [2024] EWFC 230

- Application to remove a 6 year old child permanently to Australia by M
- Both parents were Asian and the child had lived in Asia, Australia and London. Upon separation there had been fact-finding hearing where M's allegations were not proved, and in fact the court found that she was the dominant person in the relationship.
- Since then the child spent 5 nights a fortnight with F, and 9 with M.
- The parties had instructed an ISW called Melissa Wright. The judge said "it has been some time since I read a report of such poor quality".

Relocation applications

- M had uncertainty over her right to remain in the UK and was currently dependent on F for her visa status. She had financial problems and her earning capacity was very limited.
- M would be able to live in Australia as she had grown up there and was an Australian citizen. She had a job offer and wanted to return to her home town where her family lived.
- F had a working visa and was financially secure in London. He could probably get a visa to work in Australia, but it would have to be in a big city and would still therefore be many hours travel from where M was proposing to live.
- The travel required was considerable as the town in Australia had no airport. The judge found that each way would take at least 2 days and the cost of a return trip would be £3500 - £5000. F could do it 3 times a year.

Relocation applications

- The court found it to be a finely balanced case. If M was given permission, F's relationship with the child would be significantly reduced. If M was not given permission, her ability to remain in this country and meet the child's needs would be strained. The court let her go.
- The case emphasises the importance of the "balance sheet" approach: set out the pros and cons and in doing so come to a "best interests" decision.

Relocation applications

Re. V [2024] EWHC 2600

- Bournemouth case (Thrings / Preston Redman). One child, subject to a shared lives with order made in August 2023.
- In Feb 2024 M applied for permission to move with M to the North of England (her first proposal was in the Midlands but she then changed because of a new job offer).
- There must have been proceedings already in place, as the hearing took place in April 2024. The Recorder gave permission for the move to take place in August 2024. F appealed and a stay was placed on the order. The appeal was heard in August. The reason M got permission was that the Recorder had only considered 2 options (M's proposal or status quo) when there was another possible option of M commuting.

Relocation applications

- M was a professional who was living in the South but doing a part-time job based in the North as a locum, she wanted to take the job permanently and move there. She was currently commuting.
- F's issue was that it was best for the child if M simply carried on commuting. That put the burden of travel on M. If M relocated, the burden of travel would be on the child, and that was not in her best interests.
- M said she could not carry on with the commute, and with having two homes. It was not sustainable.

Relocation applications

- The appeal judge emphasis the same need for a holistic assessment of all the factors.
- Although the Recorder's use of the word "binary" had been "unfortunate" she had in fact considered all the options, but discounted the option of M continuing to commute when M "took that off the table" by saying she would not do it. That was a reasonable approach to take.

Relocation applications

The conclusion is:

- Shared live with orders neutralise a lot of issues in relocation cases – both parents have already been deemed capable of meeting needs, and do not raise safety concerns. The case is not about who the best parent is.
- Relocation cases therefore depend on a judgment about a welfare decision: is it going to be better for the child to go, or to stay? That can be very hard to predict or give advice about.
- Despite the move away from *Payne v Payne*, these recent cases were in fact decided on what was best for M in terms of work/life balance.

Costs in Children Act proceedings

- It has long been understood that costs in Children Act cases will only be awarded in *exceptional* cases, where there has been proven conduct which is both *reprehensible* and *unreasonable*.
- The key authorities in this area have been Re. T [2012] UKSC 36 and Re. S [2015] UKSC 20 – both decisions of the Supreme Court and both involving public law cases.

Costs in Children Act Proceedings

- In private law proceedings, Re. J [2009] EWCA Civ 1350 gave some support for the idea that a different approach could be taken in private law proceedings, which was more akin to a “clean sheet” situation – costs follow the event – but which would still require unreasonable litigation conduct.
- Same idea supported in A Mother v A Father [2023] [EWFC] 105.

Costs in Children Act Proceedings

Re E [2025] EWCA Civ 183 has provided clarity on those issues. Facts:

- 4 children, parties separated in 2022, M issued injunction proceedings, F countered with CA proceedings. Cross allegations of domestic abuse.
- M then ramps up by making new allegations that F sexually abused the children, and was involved in a paedophile sex ring.

Costs in Children Act Proceedings

- Application issued in May 2022, FHDRA before a DJ October 2022.
- DJ sent it up to CJ because of the gravity of the allegations. First hearing July 2023, listed for a 4 day fact find in November 2023.
- The 4 days hearing did not happen – no judge. Instead the case was elevated again to the High Court because of the paedophile sex ring allegation. M ordered to produce the names of the others involved. She did not.

Costs in Children Act Proceedings

- Fact find finally started in Jan 2024 but the police and medical disclosure came in so late it had to be abandoned half way through, relisted for May 2024. Reserved judgment, handed down in July 2024 – more than 2 years of no contact at all.
- Findings: M was a poor witness: vague, confused and unconvincing.
- F was similarly unconvincing when giving evidence of his allegations against M, but he was convincing when defending himself against M's allegations.

Costs in Children Act Proceedings

- Conclusion was that M had convinced herself that F had sexually abused the children, she had then set about convincing the children themselves and the authorities. None of the sexual allegations were proved
- F had been guilty of some abusive/aggressive behaviour towards M at the point of separation but it was fairly low level.

Costs in Children Act proceedings

- M had obtained LA because she was a “victim”. F was privately paying and had spent £75,000 in costs which was a significant amount for him.
- F applied for M to pay his costs. The judge made no order as to costs because:
 - Both parties had made allegations, some were found, some were not.
 - Both had been unimpressive witnesses.
 - Much of the cost had been attributable to the abandoned hearing in Jan 2024, but that was caused by third party failure.
 - The fact that M had had a LA certificate made the impact of costs unfair, but that in itself was not a reason to make a costs order.

Costs in Children Act Proceedings

- F appealed (straight to Court of Appeal: Jackson, Andrews, Moylan).
- Complete clarity that the same test is to be applied in Children Act cases regardless of whether the proceedings are private or public law – costs orders are exceptional and require reprehensible and unreasonable conduct (so *Re J* and *Mother v Father* [2023] are not good law insofar as they imply a different test for private law cases).

Costs in Children Act Proceedings

Appeal allowed for following reasons:

- The allegations about sexual abuse and the paedophile sex-ring were of a different character to the other allegations (which were typical allegations of domestic abuse between separating parties). The judge was wrong not to recognise the difference.
- The costs had flowed from the serious sexual allegations. Without those, the case would have stayed with a DJ.
- The fact that M really believed her allegations was “a subtle distinction, and I cannot see how it avails the Mother in this case”
- Conclusion – the judge had been “unduly indulgent” to M

Costs in Children Act Proceedings

- The court ordered M to pay 50% of F's costs upto and including the final fact-finding hearing save for those hearings where the court order said "no order as to costs". The costs order was not be enforced without the leave of the court, and F was going to have to try and get the money out of the LAA.

Costs in Children Act Proceedings

- Maybe a paper victory, but it is at least a clear authority that *serious* allegations of abuse which are found to be false can be penalised in costs.
- Also a good reminder that tit-for-tat cross allegations which are not wholly successful can undermine an otherwise good costs application, so don't make allegations unless they are likely to make a real difference to the outcome.