International relocation

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As a result of increased globalisation, more and more people want to move from one country to another. This is especially so in a small island community such as Guernsey, where on divorce a distant homeland and extended family can seem a long way away. On the breakdown of a relationship or marriage parties often wish to return home, pursue a new relationship or seek out a particular job opportunity, which may lead to relocation.

If you wish to move abroad with your children and the other parent has parental responsibility, then you will need their consent to do so. If the other parent does not agree to the removal, then you will have to obtain permission of the Court.

The law relating to the international relocation of children is complex. If you have any doubt whatsoever as to the legality of taking your children off island, then you should seek immediate legal advice. Get it wrong and you could be guilty of child abduction, which is a criminal offence and for which there are severe penalties.

If you are a parent and you think your child may be wrongfully removed from the Bailiwick, then you need to move quickly to prevent an abduction. Once a child has been wrongfully removed, the mechanism for forcing an immediate return is cumbersome and may require you to issue an application in the child's new location. This can be very difficult and expensive, and prevention is much better than cure. In an emergency, orders to prevent removal can be granted at very short notice. The key is to seek immediate legal advice if you feel that an abduction may occur.

If you do wish to move abroad with your child and the other parent holding parental responsibility consents to the relocation, then the legal process can be very straightforward. The agreement should be incorporated into a consent order, which will need Court approval and which is likely to be granted after a short hearing. An order for relocation by consent would usually stipulate the arrangements for the child to have contact, both face to face and indirectly by way of Skype, telephone, Facebook, letters, etc. With the co-operation of both parents, such orders can be obtained quickly and with little Court intervention.

If permission from the other parent is not forthcoming, then a formal Court application for a specific issue order will be required. The application will need to be filed in the Royal Court and served on the other party. At an early stage in the proceedings, an independent social worker will be appointed by the Court to investigate the application. This is a member of the Family Proceedings Advisory Service. The Court will also order each party to file a statement setting out what orders they seek and why.

Applications for the international relocation of children need meticulous planning and research. The Court will need a detailed, well considered and financially viable plan to justify the relocation, otherwise the application is likely to fail. At its core, the relocation plan must include full details of the proposed accommodation, education, employment and contact arrangements. One of the most important considerations for the Court will be the plan for how the children will maintain a relationship with the parent left behind, and the feasibility of the practical arrangements that will allow the children to spend time with the other parent following relocation.

For many years, the law to be applied on relocation applications has been rather unclear. This placed a great emphasis on the well-being of the party seeking relocation and the effect of a refusal by the Court on the thwarted parent, and the knock-on effect that this might have on the children. In recent years, the scales have been reset and there is now clear guidance laid out in 'The Children (Guernsey & Alderney) Law, 2008' and the case law both from the UK and locally. The 2008 Child Law clearly places the best interests

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of the children as the Court's paramount consideration. This is enshrined in the welfare checklist included in the 2008 Law, which sets out the main factors to be taken into account.

Even with careful planning and meticulous research, applications for the international relocation of children are not straightforward. Such applications are very difficult to predict and can be highly emotional, especially if the intended destination is far away. For all of these reasons, legal advice should be sought at an early stage if relocation is a possibility.

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