

CHILDREN VISITING FAMILY OVERSEAS: KEY KNOWLEDGE FOR FAMILY COURT ADVISERS

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Introduction

A number of different section 7 reports, written for courts in various parts of the country, has drawn my attention to an apparent lack of awareness amongst some family court advisers about the legal issues which can be raised when a parent wishes to take a child to visit members of their wider family overseas. The other parent's opposition to such a trip may be inappropriately castigated as that parent failing to recognise the importance to the child of growing up with a knowledge of both sides of their heritage, or, particularly where one or both of the parents are unrepresented, lead to the court making orders which have disastrous, life-changing consequences for the children. The purpose of this article is to highlight the issues, the correct procedures which should be followed and the risks which may arise from visits to family overseas.

It helps to understand the problem if we go back to the beginning of the legal thread. In the absence of any court order to the contrary, parents are entitled to take their children to whatever part of the globe they wish. Where the parents have separated and there is a 'live with' child arrangements order in place, section 13 of the Children Act 1989 permits the parent with whom the child lives to take the child out of the UK for up to a month. Longer absences, or overseas trips by the parent with whom the child does not live, must have the other parent's agreement or be sanctioned by the court. To ignore this may involve an offence under the Child Abduction Act 1984. The permission given by s13 is, of course, subject to any other orders, particularly prohibited steps orders, which the court may make in an individual case.

The issue, quite simply, is this: what happens if a parent takes the child abroad, ostensibly for a holiday, but then fails to return? Family court orders are all well and good within the UK, but they do not necessarily have any effect elsewhere in the world. In *Re R (Children: Temporary leave to remove from the Jurisdiction)* [2014] EWHC 643 (Fam), HHJ Bellamy quotes from a letter from the Foreign Office which summarises the issue very clearly:

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