
INTERNATIONAL CHILD ABDUCTION:

A GUIDE TO THE 1980 HAGUE CONVENTION, NON-HAGUE CASES, AND ARTICLE 21 RIGHTS OF ACCESS/CROSS BORDER CONTACT – FAMILY LAW WEEK



MEET OUR SPEAKERS



RWK Goodman, 69 Carter Lane, London, EC4V 5EQ



Kim.lehal@rwkgoodman.com
07467511924



1GC, 10 Lincoln's Inn Fields, London, WC2A 3BP



020 7797 7900

Jessica Lee specialises in all areas of family law relating to children, including private law and public law cases. Jessica represents local authorities, Guardian's and parents, and is extremely experienced in cases involving clients with significant vulnerabilities.

Jessica undertakes instructions for private law cases including child arrangements and surrogacy. Jessica has a strong practice in cases involving allegations of domestic abuse and coercive and controlling behaviour.

Jessica is a member of the Commonwealth Lawyers Association and has links to Antigua and Barbuda.



Harcourt Chambers, 2 Harcourt Buildings, Temple, London EC4Y 9DB

020 7353 6961



Paige Campbell is an award-winning barrister having received the 'highly commended' award in the Young Barrister of the Year Category in 2021 and 2023. She was also 'highly commended' in the Case of the Year category at the Family Law Awards in 2021 where she was led as a junior in the Supreme Court case of *G v G* [2021] UKSC 9.

Paige is experienced acting alone and as junior counsel and specialises in all aspects of child law, both private and public as well as international.

Paige is also a certified ADR-ODR civil-commercial mediator and is currently a member of the South-Eastern Circuit executive committee.

Kim Lehal is a Partner and Head of the International Children department at RWK Goodman in London.

An accredited specialist in International Child Abduction and Children Law by the Law Society Family Law Advanced panel since 2013, Kim is a highly regarded expert committed to supporting families through complex international legal challenges.

She specialises in acting exclusively on all aspects of international and domestic children law, including international child abduction, relocation proceedings, and complex family disputes. Kim also advises on surrogacy and adoption, domestic abuse, forced marriage, female genital mutilation, and represents victims of honour-based violence and abandoned spouses in foreign jurisdictions.

Kim sits on the Editorial board for Family Law week.

ARTICLE 3 & ARTICLE 12 OF THE 1980 HAGUE CONVENTION

Article 3 | Factors to Establish | Incoming Cases

1. Does the Applicant have Rights of Custody?

2. Was the child habitual resident in country they seek the return to?

3. Has there been wrongful removal or retention?

4. Has the application for return be made within 12 months of the wrongful removal/retention?

Article 12 | Defences in Hague Convention Proceedings

Article 13(A): This provides a defence to a child return order if the left-behind parent consented to or later acquiesced (agreed to or went along with) the child's removal or retention abroad.

Rights of Custody: Refers to a wide-ranging set of legal rights related to a child's care and location, including the right to determine their place of residence.

Article 13(b): A defence to the return of a child, meaning the child would face a significant risk of physical or psychological harm or an intolerable situation if returned to their country of habitual residence

Child Objections: A child's objection is a specific defence against the return of a child alleged to have been abducted. The child must have reached an age and maturity where their views can be considered, and their objections must show a strength of feeling that goes beyond mere preference

Settlement: A defence against a child's mandatory return to their country of habitual residence. This defense is available only when an application for the child's return is filed more than 12 months after their wrongful removal or retention.

INCOMING -V- OUTGOING CASES:WHAT IS THE DIFFERENCE?

Incoming Cases:

- ❖ Incoming cases is where a child is brought into England and the litigation happens here.

Legal Aid:

- ❖ Left Behind parents are automatically entitled to legal aid on a non-means and non-merits-based test.
- ❖ Respondent's will be subject to means and merit test but do not need to provide evidence of domestic abuse to qualify.



Outgoing Cases:

- ❖ Outgoing cases is where a child is removed to another Country – the litigation will then happen there.

Legal Aid:

- ❖ Legal Aid for outgoing cases is not available.
- ❖ It is important to note which countries do and do not offer Legal Aid.

NON-HAGUE AND INHERENT JURISDICTION CASES:

Application:

- o What if a child has been abducted into this jurisdiction (England and Wales) from a country that is not a signatory of the 1980 Hague Convention?
- o High Court application: Form C66

Legal Principles:

Leading Authority: **Re J (A Child) (Custody Rights: Jurisdiction) [2006] 1 AC 80.**

Key considerations: Child's welfare

What are the Important Factors?

A. The degree of connection

B. The length of time;

C. Do the courts of the country of origin apply similar welfare concepts to England and Wales

D. Effect on the primary carer.

Relevant Practice Directions:

- ❖ FPR 2010, Part 12, Chapter 5;
- ❖ FPR 2010, Part 12D;
- ❖ FPR 2010 Part 12F.

Asylum Status:

- ❖ How does the grant of asylum or refugee status affect a child's return to another country?
- ❖ **Re G (A Child) [2021] UKSC 9; Article 33 Geneva Convention 1951.**



RETURN TO NON-HAGUE COUNTRY (CHILD BROUGHT TO ENGLAND AND WALES)

If a child has been abducted to a country who is not a signatory of the Hague Convention, how can the Court make a return order?

- ❖ Inherent Jurisdiction
- ❖ Habitual Residence in England and Wales
- ❖ Enforcement

Re J are also applicable to outgoing return orders (NG v GA [2019] EWHC 1412 (Fam)).

Foreign Commonwealth and Development Office (FCDO)



Pakistan:

- ❖ Pakistan ratified the 1980 Hague Convention in 2016 and entered into force in Pakistan on 1 March 2017.
- ❖ The Convention does not operate bilaterally. What does this mean?
- ❖ Bilateral Agreement between the UK and Pakistan.
- ❖ Anglo-Pakistan Protocol

Egypt:

- ❖ Egypt is not a signatory to the 1980 Hague Convention.
- ❖ January 2005: UK and Egypt sign a declaration affirming the principles of the UN Convention on the Rights of the Child 1989

CROSS BORDER CONTACT | ARTICLE 21:

What is Article 21?

“An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of the child. The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as is possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.”

Key Case - Rights of Access:

Case of A v C (Hague Convention: Rights of Access) [2018] EWHC 2048 (Fam)



THE PROCESS:

An application must be made to the Central Authority – ICACU first who will allocate the case to a specialist solicitor to make an application.



C100 application made to the Court with supporting statement.



Progression of Contact: Often Cafcass are involved and directed to provide safeguarding letters or a welfare report.



Breach of contact orders:

- I. The difficulties Applicants experience if a child is not made available for contact or does not want to see/spend time with their parent
- II. Are there any ongoing concerns about the influence of one parent on the child?
- III. Costs Orders

CROSS BORDER CONTACT:

Children Act 1989:

The Children Act 1989 is a key piece of legislation in England and Wales that establishes the legal framework for child welfare and safeguarding. It is defined by principles such as the paramount consideration of a child's welfare in court, the introduction of parental responsibility, and the duty of local authorities to promote and safeguard children's welfare.

Rights of Access:

- ❖ Article 5(B)
- ❖ Rights of Access shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Central Authority:

The Central Authority is responsible for taking all appropriate measures to initiate or facilitate institution of judicial or administrative proceedings either directly or through any intermediary.

Cafcass:

CAFCASS is the Children and Family Court Advisory and Support Service, are independent social workers who represent the interests of children in family court cases.



Q&A

KEY RESOURCES AND WEBSITES:

- ❖ **Kim Lehal | RWK Goodman | Profile:** <https://www.rwkgoodman.com/our-people/kim-lehal/>
- ❖ **Jessica Lee | 1GC | Profile:** <https://1gc.com/barristers/profile/jessica-lee>
- ❖ **Paige Campbell | Harcourt | Profile:** <https://www.harcourtchambers.co.uk/barrister/paige-campbell/>
- ❖ **Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. The Hague Conference on Private International Law.** <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>
- ❖ **ICACU | Guide to Making an Application:**
https://assets.publishing.service.gov.uk/media/5fb57dc1e90e07209904513f/international_child_abduction_and_contact_form_guidance.doc
- ❖ **Reunite | International Mediation:** <https://www.reunite.org/mediation-process/>
- ❖ **GlobalARRK:** <https://www.globalarrk.org/for-parents/the-hague-convention/>
- ❖ **Legal Aid Agency:** <https://www.gov.uk/government/organisations/legal-aid-agency>
- ❖ **The Guide to Good Practice – Transfrontier Contact Concerning Children:**
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiM19_D8dWQAxV8TkEAHYAfB6MQFnoECBcQAQ&url=https%3A%2F%2Fassets.hcch.net%2Fdocs%2Faabaa1c1-4fb5-4c24-92bd-75a8b161e29a.pdf&usq=AOvVaw1q-eD166SICgcfwudmXq80&opi=89978449
- ❖ **Foreign Commonwealth and Development Office:** [Foreign, Commonwealth & Development Office - GOV.UK](https://www.gov.uk/government/organisations/foreign-commonwealth-and-development-office)