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Child Relocation 2025

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Jersey: Trends & Developments
Lauren Glynn and Victoria Cure
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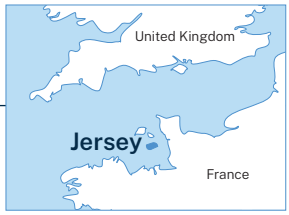
JERSEY



Law and Practice

Contributed by:
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Carey Olsen

Contents

Carey Olsen is a leading offshore law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey from a network of nine international offices. Its specialist family law team offers prompt, cost-effective and pragmatic advice to individuals and their advisers to mitigate the financial risks and the trauma that relationship breakdowns can create. The firm assists families and those who advise on planning and structuring their affairs to handle the financial risks that relationship divisions can cause. It offers sensitive and comprehensive advice on separation, divorce, civil partnership dissolution and on all of the financial and child issues that may arise. This includes a broad range of safeguards, including prenuptial, postnuptial and cohabitation agreements. As a full service and integrated firm, it also works in partnership with its property, litigation and private client specialists to assist individuals and families involved in disputes.

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1. The Care Provider's Ability to Take Decisions About the Child

1.1 Parental Responsibility

In Jersey, a parent's decision-making power is known as parental responsibility. Parental responsibility is a concept introduced by Article 3 of the Children (Jersey) Law 2002 (CLJ). It is defined in Article 1 (1) as being "all the rights, duties, powers, responsibilities and authority which the father of a legitimate child had in relation to the child and his property".

Parental responsibility encompasses the right to make important decisions about a child, including, but not limited to, their education, religion, healthcare, name and where they should live.

1.2 Requirements for Birth Mothers

A child's birth mother automatically acquires parental responsibility in Jersey.

1.3 Requirements for Fathers

A father's parental responsibility is dependent on his relationship to the child's mother at the time of a child's birth.

A father will only automatically have parental responsibility if the mother and father were married at the time of the child's birth or the child was born in Jersey after 2 December 2016 and the father's name is registered on the child's birth certificate.

For children born in Jersey before 2 December 2016, an unmarried father will not automatically have parental responsibility for his child(ren). In order to acquire parental responsibility, an unmarried father must enter into a parental responsibility agreement with the child's mother or apply to the court for a parental responsibility order. A parental responsibility agreement must be made in the form set out in the Schedule to the Children (Parental Responsibility Agreement) Rules 2005 and must be filed with the Family Division of the Royal Court of Jersey.

Jersey is not currently party to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measure for the Protection of Children. This means that, even if a parent had parental responsibility for a child in the country in which they previously lived and/or in which the child was born, that position may not be recognised in Jersey.

The factors to be considered in determining whether to grant parental responsibility to an unmarried father pursuant to Article 5 of the CJL 2002 were confirmed by the Royal Court in *G v K*2005 JLR N [39], as follows:

- the commitment of the father to the child;
- the attachment between the father and child; and
- the father's motivation for the application.

In *LS v NS*2007 JLR N [37], the Royal Court confirmed the test above and noted that the welfare of the child was paramount. It was further noted that parental responsibility confers an important status on fathers

and the order should usually be granted unless clearly contrary to the child's welfare.

1.4 Requirements for Non-Genetic Parents

A non-genetic parent can obtain parental responsibility in the following ways.

- Adoption – pursuant to the Adoption (Jersey) Law 1961, an adoptive parent automatically acquires parental responsibility by the making of an adoption order.
- Step-parents – currently, a step-parent can only acquire parental responsibility if a residence order is made in their favour or if they adopt their step-child(ren). Draft legislation, the Children and Civil Status (Amendments) (Jersey) Law 2024, which is due to come into force in the latter part of 2025, will allow a step-parent who is married to, or in a civil partnership with, the child's parent, to acquire parental responsibility for their step-child(ren) by entering into a parental responsibility agreement, providing each parent with parental responsibility is in agreement.
- Same-sex female parents – see **1.6 Same-Sex Relationships**.
- Surrogacy – in Jersey, surrogacy is not currently governed by any legislation. The surrogate birth mother will be registered as the child's mother in the register of births and named on the child's birth certificate. The biological father (if there is one) can be registered as the father in the register of births and their name will appear on the child's birth certificate.
  (a) If the surrogate mother is married, the husband of the surrogate mother will be treated as the father of the child unless it is shown that he did not consent to the arrangement. Those named in the register of births will acquire legal parent status for the child. Following a six-week period, the surrogate mother can provide her agreement for the child to be freed for adoption or for a parental order to be made by the Court in England and Wales.
  (b) The intended parents can either (i) adopt the child in Jersey, which extinguishes the legal parent status and parental responsibility of the birth mother and the child's father (if named in the register of births) and will provide the intended parents with legal parent status and parental responsibility or (ii) apply for a parental order from a court in England and Wales if they satisfy the criteria in Section 54 of the Human Fertilisation and Embryology Act 2008. There is some debate in Jersey as to the enforceability of a parental order obtained in England and Wales.
  (c) The draft Children and Civil Status (Amendments) (Jersey) Law 2024, once enacted, will allow the intended parents of a child born by a surrogate mother to apply to the court in Jersey for a parental order, which will, if granted, provide them with legal parent status and parental responsibility for the child and extinguish the existing legal parent status and parental responsibility for the child. Certain criteria, which will be set out in the new law, will need to be satisfied in order for a parental order to be granted.
- Guardian – pursuant to Article 7 of the CJL 2002, a person appointed as a child's guardian shall have parental responsibility for the child concerned.
- Public law proceedings – where a care order is in force with respect to a child, the Minister shall have parental responsibility for the child. If an emergency protection order is in force with respect to a child, the applicant shall have parental responsibility for the child but shall only take such action in meeting such responsibility as is reasonably required to safeguard or promote the child's welfare having regard to the duration of the order.
- Residence order – where the court makes a residence order in favour of any person who is not the parent or guardian of the child, that person shall have parental responsibility for the child while the residence order remains in force. It is important to note that where a person has parental responsibility for a child as a result of this, the person shall not have the right to consent, or refuse to consent, to the making of an application with respect to freeing a child for adoption or the making of an adoption order.

1.5 Relevance of Marriage at Point of Conception or Birth

As set out in **1.3 Requirements for Fathers**, a father will automatically acquire parental responsibility if they

are married to the child's mother at the time of the child's birth.

Marriage is relevant in terms of parentage. Currently, under Jersey customary law, if a child is born or conceived during a marriage, there is a presumption that the husband is the father of the child, which may be rebutted only by strong and satisfactory evidence to the contrary. The biological father can apply for a Declaration of Parentage by issuing an application to the Royal Court of Jersey.

1.6 Same-Sex Relationships

In Jersey, same-sex marriage is recognised in the Marriage and Civil Status (Amendment No 4) Jersey Law 2018. However, under the current law, same-sex couples still face limitations in obtaining legal parent status and parental responsibility without adoption.

While the birth mother acquires legal parent status and parental responsibility by being the birth mother, the second female parent, even if married or in a civil partnership, cannot be registered as the child's mother or named on the birth certificate, so cannot acquire parental responsibility via that route. The second female parent must usually adopt to gain legal parent status, and they would also then acquire parental responsibility for the child. A residence order can provide the second female parent with parental responsibility but not legal parent status. A residence order would ordinarily only last until the child reaches the age of 16, however an order can be sought for the residence order to extend to the child's 18th birthday, as an exceptional circumstance.

The Children and Civil Status (Amendments) (Jersey) Law 2024 is due to come into force in the latter part of 2025. This legislation will amend the Children (Jersey) Law 2002, the Marriage and Civil Status (Jersey) Law 2001 and the Marriage and Civil Status (Jersey) Order 2018, to make provision for children who are conceived as a result of fertility treatment or surrogacy arrangements, including provision for the making of parental orders, the acquisition of parental responsibility and the associated registration procedures.

1.7 Adoption

An adoptive parent automatically acquires parental responsibility upon the making of an adoption order.

Pursuant to the Adoption (Jersey) Law 1961, the Court must be satisfied that each parent or the guardian of the child agrees generally and unconditionally to the making of an adoption order or that it is appropriate for such consent to be dispensed with in accordance with a ground specified in Article 13 (2) of the law.

2. Relocation

2.1 Whose Consent Is Required for Relocation?

In order for a parent to lawfully, permanently remove a child from Jersey, they need either (i) the consent of any other party with parental responsibility or (ii) an order of the court. If a parent permanently removes a child from Jersey without the consent of those with parental responsibility, they are likely to be committing the criminal offence of child abduction.

2.2 Relocation Without Full Consent

If a parent is unable to obtain the consent of any other party with parental responsibility, it will be necessary for them to make an application to the Family Division of the Royal Court of Jersey seeking the court's leave to remove the child permanently from the jurisdiction. Such applications are commonly referred to as "leave to remove" applications.

2.3 Application to a State Authority for Permission to Relocate a Child

2.3.1 Factors Determining an Application for Relocation

In considering a leave to remove application, the child's welfare will be the court's paramount consideration, and the court must have regard to the factors set out in what is known as the "welfare checklist" in Article 2 (3) of the Children Law (Jersey) Law 2002, which are as follows:

- the ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding);

- the child's physical, emotional and educational needs;
- the likely effect on the child of any characteristics of the child which the court considers relevant;
- any harm which the child has suffered or is at risk of suffering;
- how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs; and
- the range of powers available to the court under this Law in the proceedings in question.

As noted by the Royal Court in *In the matter of LL and MM* (Prohibited Steps Order and Residence Order) [2020] JRC 137 and applied by the Family Division sitting in *A v B* (Family) [2019] JRC 001A:

"The legal test to be applied is now very straightforward. It is the application of the principle of the paramountcy of the children's best interests, as taxonomised by the checklist in section 1 (3) of the 1989 Act. That principle is not to be glossed, augmented or steered by any presumption in favour of the putative relocator. Lord Justice Thorpe's famous "discipline" in *Payne v Payne* [2001] 1 FLR 1052 is now relegated to no more than guidance, guidance which can be drawn on, or not, as the individual case demands. In fact, most of the features of that guidance are statements of the obvious". per Mostyn, J in *GT v RJ* [2018] EWFC 26.

In summary, the court must determine whether it is in the child's best interests to relocate or not.

2.3.2 Wishes and Feelings of the Child

As noted in **2.3.1 Factors Determining an Application for Relocation**, the wishes and feelings of the child will be considered as part of the welfare checklist.

2.3.3 Age/Maturity of the Child

The extent to which a child's wishes and feelings will be taken into account depends on the age and maturity of the child and the specific circumstances of the case. The wishes and feelings of an older child are likely to weigh more heavily in the court's decision than those of a younger child. However, it is acknowledged that children of any age are not usually able to fully understand the implications of relocation and cases are unlikely to be determined on the basis of the child's wishes and feelings.

2.3.4 Importance of Keeping Children Together

The court considers it to be very important to keep children of the family together, where this is possible. However, the outcome will depend on the specific circumstances of the particular case.

2.3.5 Loss of Contact

An important factor in a successful leave to remove application will often be demonstrating how meaningful contact with the left-behind parent can be maintained and supported. Courts are very critical of relocation proposals that do not acknowledge the other parent's important role in a child's life. Parents applying for permission to relocate should include detailed proposals for how a child can maintain their relationship with the left-behind parent in their application.

2.3.6 Which Reasons for Relocation Are Viewed Most Favourably?

Jersey is a very expensive offshore jurisdiction to live in, and the court is sympathetic in cases in which both parents have moved to Jersey and, following their separation, are struggling to be able to afford to meet their child's basic needs without reliance on state benefits. Notably, Jersey law restricts who can rent and buy property, and state benefits are not available for the first five years of residency in Jersey.

Courts are also often sympathetic where parties move to Jersey and then separate in a very short timeframe, with one parent wanting to return home. It is often the case that these families have a very small, if any, support network in Jersey upon which to rely. The cost of childcare provision for children under school age is often higher than a parent's income.

2.3.7 Grounds for Opposition to Relocation

As noted in **2.3.1 Factors Determining an Application for Relocation**, all applications will be determined by reference to the relevant child's welfare. The court is likely to be particularly sympathetic to an objection that a parent is seeking to remove a child from Jersey with the purpose of frustrating their relationship

with the other parent, where this is supported by the evidence.

2.3.8 Costs of an Application for Relocation

Whether a parent should be given leave to permanently remove a child from Jersey is a binary decision and cases very rarely settle; in most cases a final hearing is necessary and the final hearing will ordinarily be between two and five days in duration. This means that leave to remove applications are often expensive with legal fees frequently being incurred between GBP50,000 and GBP100,000.

2.3.9 Time Taken by an Application for Relocation

It is ordinarily expected that an application for leave to remove would be determined within six to 12 months, depending on the court's availability and any need for expert evidence.

2.3.10 Primary Caregivers Versus Left-Behind Parents

There is no preference or bias between the impact of the move, or the move being refused, on the child's primary caregiver or the left-behind parent, but the impact on both parents will be taken into account in the context of the child's welfare.

2.4 Relocation Within a Jurisdiction

Jersey is a small, nine-by-five mile island. Parents do not require the consent of anyone else with parental responsibility to move within the island.

3. Child Abduction

3.1 Legality

Pursuant to the Criminal Law (Child Abduction) (Jersey) Law 2005, it is a criminal offence for a person connected with a child under the age of 16 years to take or send the child out of Jersey without the appropriate consent. A person is deemed to be connected with the child if they are:

- a parent of the child;
- a guardian of the child;
- a person in whose favour a residence order is in force with respect to the child; or
- a person having custody of the child.

The law does not apply to people who have a residence order in respect of the child, if they remove or take the child out of Jersey for a period of less than one month.

No offence is committed by the person taking or sending the child out of Jersey without the consent of another person whose consent is required, if the person:

- does so in the belief that the other person has consented, or would consent if the other person was aware of all the relevant circumstances;
- has taken all reasonable steps to communicate with the other person but has been unable to communicate with that other person; or
- the other person has unreasonably refused to consent – note, this defence does not apply if the other person has a residence order in respect of the child, has custody of the child, or the person taking or sending the child out of Jersey is, by so acting, in breach of an order made by a court in Jersey.

It is also a criminal offence for other persons (ie, a person not deemed to be connected with the child) to take or detain a child under the age of 16 years out of Jersey without lawful authority or excuse.

The maximum penalty under the Criminal Law (Child Abduction) (Jersey) Law 2005 is seven years' imprisonment and/or a fine.

It is also unlawful (under civil law) to remove a child from Jersey, either temporarily or permanently, without either the permission of all those with parental responsibility for the child or an order permitting removal from the Family Division of the Royal Court of Jersey, save that a person with a residence order in respect of the child may remove the child from Jersey without consent for a period of less than one month.

3.2 Steps Taken to Return Abducted Children

If a child has been removed from Jersey without the relevant consent, measures are available to aid the return of the child from the country to which they have been taken.

If a child is removed from Jersey to anywhere in the UK, namely England, Wales, Scotland and Northern Ireland (or from any of those countries into Jersey), reciprocal legislation exists providing for the recognition, registration and enforcement of orders in respect of children made under Part 1 of the Family Law Act 1986 and its dependent territory modifications, and Part 3 of the Child Custody (Jurisdiction) (Jersey) Law 2005. Legal advice should be obtained in the relevant jurisdiction – ie, England, Wales, Scotland or Northern Ireland as to how to register and enforce an order of the Jersey court in respect of the child.

Jersey is also party to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children signed in Luxembourg on 20 May 1980 (the "European Convention"), providing for the recognition and enforcement of custody decisions across member states, including mechanisms for the restoration of custody when a child has been wrongfully removed. Legal advice should be obtained in the relevant jurisdiction as to how to register and enforce an order of the Jersey Court in respect of the child.

Jersey is also a party to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the "Hague Convention") (by extension of the UK's membership). If the country to which the child has been taken is also a party to the Hague Convention (and, if an ascension member state, has entered into relations with the UK), then an application for the summary return of the child can be filed with the Attorney General of Jersey via the Law Officers' Department, which acts as Jersey's Central Authority, for onward transmission to the Central Authority of the country to which the child has been removed.

Applications pursuant to the reciprocal legislation with the UK and to the European Convention require that the party seeking the return of the child has a custody order – ie, a residence order (or possibly parental responsibility). Many left-behind parents will not have the benefit of such an order, as orders in respect of arrangements for children are only made by the court in cases where they are required – ie, where there has previously been a dispute which could not be resolved without the court's assistance. It is also of note that Jersey is not currently party to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measure for the Protection of Children. This means that, even if a parent had parental responsibility for a child in the country in which they previously lived and/or in which the child was born, that position may not be capable of recognition in Jersey.

If a child is taken to a country outside of the UK, and which is not party to either the European Convention or the Hague Convention, advice will need to be taken in that jurisdiction as to what, if any, measures are available in that jurisdiction to aid in the return of the child.

In cases with no existing order, and/or in which there is no reciprocal legislation or convention to aid in the child's return, it is advisable for parties to consider making an urgent ex parte application to the Royal Court of Jersey by Order of Justice for:

- immediate interim injunctive relief for the child's immediate return to Jersey (such an order can be granted pursuant to the inherent jurisdiction);
- parental responsibility (if required);
- a sole or shared residence order in respect of the child; and/or
- immediate interim injunctive relief for the non-removal of the child from Jersey following their return.

3.3 Hague Convention on the Civil Aspects of International Child Abduction

Free legal aid is available in Jersey to the parent of the abducted child.

Jersey is a small jurisdiction with a population of around 120,000 people. Many people relocate to Jersey for work in the offshore corporate finance and hospitality sectors. The majority of child abduction cases therefore involve children being removed from Jersey, rather than into Jersey. Noting that the vast majority of court decisions are reported in Jersey (anonymously), there are just two reported decisions dealing with the determination of an application for a child's summary return to their country of habitual

residence from Jersey pursuant to the Hague Convention. Neither was successful.

In the matter of Max (A Child) [2014] (2) JLR 413, the court determined that the father had consented to the permanent removal of the child and declined to order his return.

In *Applicant parent v Birth Mother and others* [2020] JCA141A, the Court of Appeal upheld the Royal Court's decision not to order the child's return on the basis that the child was settled in her new environment and that her return would expose her to a grave risk of psychological harm. Notably, the court's decision regarding settlement in this case is questionable – the child had been abducted from Canada several years prior to her arrival in Jersey. In the intervening period, the child had lived a somewhat covert and itinerant existence in Spain and then France, before she was brought to Jersey illegally from France – on a four-metre inflatable dinghy. The initial application was made on 29 July 2019, but the substantive hearing did not take place until January 2020.

The court will apply the required principles set out in the Convention – namely consent, habitual residence, the exercise of rights of custody, settlement and grave risk of harm.

An application for a child's summary return should be made to the Central Authority of the country of the child's habitual residence, for onwards transmission to the Law Officer's Department, on behalf of the Attorney General, in Jersey.

3.4 Non-Hague Convention Countries

For the reasons set out in **3. Child Abduction,** there is very limited case law in respect of applications for the return of a child to the country from which they have been removed.

The single reported decision – *E v W* 2000/189 – pre-dates the implementation of the Hague Convention in Jersey and pre-dates the coming into force of the Children (Jersey) Law 2002.

The Jersey Court regularly follows and adopts the law and practice of the courts of England and Wales in children law matters. For that reason, where there is an absence of local jurisprudence, the Jersey Court will follow and apply English case law, particularly in areas in which the law is developing. In England and Wales, it is possible to secure the summary return of a child pursuant to the inherent jurisdiction of the court or by means of a specific issues order. The Royal Court of Jersey is currently hearing such a case and it remains to be seen whether it will determine that it has the power to do so.

An application for the return of a child pursuant to the court's inherent jurisdiction can only be made to the Inferior Number of the Family Division of the Royal Court of Jersey, as the lower court does not have inherent jurisdiction. An application for the return of a child by way of a specific issues order can be made to any level of the Family Division.

Such applications should be heard without delay. Cases will be determined on the basis of the paramountcy principle – ie, what is in the child's best interests but applying the principles of international law regarding child abduction – ie, that questions as to the upbringing of a child should be determined by their country of habitual residence. It is anticipated that the principles set out in *J v J* (Return to Non-Hague Convention Country) [2021] EWHC 2412 will be applied:

- "any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration";
- "there is no warrant, either in statute or authority, for the principles of The Hague Convention to be extended to countries which are not parties to it";
- "in all non-Convention cases, the Courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration";
- "the court does have the power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of

cases during the 1960's these became known as 'kidnapping' cases";
- "summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child";
- "focus had to be on the individual child in the particular circumstances of the case";
- "the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever";
- "one important variable... is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this";
- "another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests";
- "in a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned"; and
- "the effect of the decision upon the child's primary carer must also be relevant, although again not decisive."

The identity of the country to which the child is to be returned may affect the outcome of an application. If the country in question does not determine issues in respect of children by reference to welfare – ie, what is in the child's best interests, and/or there is serious and genuine uncertainty as to the competence of the court in the other country and/or to uphold international human rights principles, then the application is unlikely to be successful.

Trends and Developments

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Themes Emerging from Child Relocation Case Law in Jersey

Jersey is a self-governing Crown Dependency, with its own legal system, laws and courts. Jersey is also an offshore International Finance Centre with a strong professional services industry. The professional services industry employs around 14,000 professionals within the sector, with a significant number of these professionals being attracted from overseas. Jersey's thriving finance industry and its island location contribute to its high cost of living.

Jersey is also a popular holiday destination and has a prosperous hospitality industry. The hospitality sector is staffed by a significant number of people from overseas, who often come to Jersey with the intention of working the summer season, but end up remaining on the island long term. Whilst many Europeans work in these roles, following Brexit, there are also a significant number of individuals from further afield. Work in the hospitality sector is not generally highly paid – many employers will pay, or only slightly above, the minimum wage of GBP13 per hour.

It is expensive to live and work in Jersey; property prices and day-to-day living expenses are high. This has been exacerbated by relatively high levels of inflation in recent years, with Jersey RPI reaching 12.7% in March 2023.

Jersey is well-known as a low tax offshore jurisdiction. It welcomes applications from high net worth individuals to come to Jersey as part of the High Value Residency (HVR) programme. To be eligible to apply for the scheme, an individual must have:

- the ability to generate an annual tax contribution of a minimum of GBP250,000;
- sustainable worldwide income of more than GBP1.25 million per annum; and
- personal wealth of more than GBP10 million in assets (not including their main residence).

Successful applicants benefit from an income tax rate of 20% (the standard rate of Jersey income tax) on the first GBP1.25 million of worldwide income and 1% on income over this threshold. It is easy to see that this is a very attractive proposition for many UHNW individuals and their families.

The commentary above demonstrates that Jersey is an island with significant immigration. Where families move to Jersey and then suffer relationship breakdown, this can cause difficulties, and we commonly provide advice to people in circumstances in which parents have separated and one of them would like to return "home" with the children.

Residential and employment statuses

Jersey has four residential and employment statuses – Entitled, Licensed, Entitled for Work, and Registered. An individual's residential and employment status determines their eligibility to buy and rent property on the island, as well as the type of work they are able to do.

Registered persons and those Entitled to Work can only lease Registered property as a main place of residence. Registered property is often more expensive and of a lower standard than what is called "qualified" property.

Once a Registered person has been on the island for five years, they will become Entitled to Work and, by virtue of this change in status, entitled to receive a number of state benefits. However, residential status does not change until a person has lived in Jersey for ten years.

Those who are Licensed can buy, sell or lease any residential property, not including first time buyer restricted or social rented housing, in their own name, for as long as they keep their Licensed status. Should a Licensed individual lose their job and therefore lose their Licensed status, any property they own will need to be sold.

Divorce or separation can impact an individual's residential and employment status where their status was obtained by reference to their relationship. For example, if a husband makes a successful application under the HVR scheme, he will become Entitled with conditions, whereas their wife will become Entitled to Work only, by reference to her husband's residential

status. If the parties separate, the wife will potentially lose her residential status.

Trends/themes from the case law

The child(ren)'s welfare is the court's paramount consideration.

It is in a child's best interests to have the best possible relationship with both of their parents provided it is safe for them to do so.

A proposal to remove a child from Jersey must be substantiated by detailed suggestions as to how the left-behind parent can continue to have a meaningful relationship with the child(ren).

The court will be sympathetic where parties have not been in Jersey for any considerable length of time.

The court will not seek to socially engineer – the fact that another country is not as wealthy or prosperous as Jersey will not be a determining consideration in itself.

The court will be sympathetic to the reality of how affordable it is for both parties to remain in Jersey, noting that Jersey is an expensive jurisdiction to live in and parties will not have access to state benefits until they have been on the island for five years.

The party proposing to remove the child(ren) from Jersey has the burden of pleading a persuasive case that it would be in the child(ren)'s best interests to change the current status quo, and such applications are therefore somewhat of an uphill battle.

Case law summaries

i) *S v S* 008 JLR

Note 26 – "given the instability which almost invariably arises following the separation of parents, it was likely to be in the child's best interests to retain as much stability in other areas (eg, home, school and friends) as possible. Thus, it was generally likely to be in the child's best interests to remain in the country in which he had been habitually residence whilst his long-term future was decided by the courts".

ii) *C v D (Family)* [2019] JRC090A

The father (43 years old) was a Jersey man, and the mother (39 years old) was from Country A. The child was almost two years old at the date of the hearing. The mother had left Country A at the age of 23. She had not lived in Country A for 14–15 years. The parties cohabited from March 2016 and acquired a retail business together a few months later, which the mother ran (the father being employed elsewhere at the time). When the child was born, the father resigned from his job and took over the running of the business. Sadly, the relationship had broken down by January 2018, when the father left the family home and moved in with his parents. By the date of the hearing, both parties were living in two-bedroomed rented accommodation. The mother was reliant on benefits, in addition to weekly child maintenance of GBP100. The court noted the parties' seeming inability to agree on anything, but significantly, particularly the father's contact with the child. The parties would only communicate via text message or lawyers. An expert psychologist report was commissioned in respect of the mother, at the behest of the Jersey Family Court Advisory Service (JFCAS) (Jersey's equivalent of a Children and Family Court Advisory and Support Service (CAFCASS)) officer, who felt the mother may be suffering from post-natal depression. Evidence was heard from the expert, both parties, the paternal and maternal grandmothers (the latter via video link with the assistance of an interpreter) and the JFCAS officer, who did not feel able to recommend that leave be granted to the mother. The mother's evidence was that she sought to improve the child's quality of life, as Jersey is "difficult and expensive". However, the mother was highly critical of the father as a parent. The father's evidence was that the mother was controlling and he felt systematically excluded from the child's life following the breakdown of their relationship. He considered that the mother's relationship with her own family, whom she proposed she and the child would live with in Country A, had historically been poor. The child had not met the mother's family until several weeks prior to the hearing. The expert psychologist and the JFCAS officer both considered that there was risk that the mother would fail to promote the father in the child's life. The mother's application was refused. The court noted its concern as to the impact upon the relation-

ship between the father and child of the cessation of regular contact, given the importance of developing a secure attachment during the first three years of the child's life.

iii) *N v M* [2022] JRC005 (on appeal)

The mother was from Country 1, and a Christian. The father was from Country 2, and a Muslim; he was also a British citizen. The father first came to Jersey to work in 2005. The mother first came to Jersey to work in 2017, where she met the father. They married on 23 April 2019. The child was born in 2019 shortly after which their relationship broke down. They remained living together by necessity until May 2020, when the mother left the family home with the child. The child had a medical condition for which she was receiving treatment at Great Ormond Street Hospital (GOSH). The mother applied, inter alia, for leave to return to Country 1, a non-Hague Convention country, with the child. Both parties worked in the hospitality industry and lived in rented accommodation. The mother was ineligible for state benefits as she had not been resident in Jersey for five years. It was likely that, if the mother remained in Jersey, she would be reliant, at least in part during the child's minority, on state benefits, whereas if she returned to Country 1, she and the child would have the benefit of living rent and mortgage free in the apartment the mother owned with the maternal grandmother and uncle. The parties' relationship became acrimonious, and a number of interim applications were dealt with by the court. The final hearing was scheduled to be heard in summer 2020, but for various reasons, including the COVID-19 pandemic, was adjourned on three occasions. The final hearing eventually took place in June 2021.

The father's principle objections to the move were that (i) Country 1 was an extremely poor country and did not offer the child a better quality of life than she would enjoy in Jersey, (ii) the child would not receive the same level of medical care in Country 1 as that provided by GOSH, (iii) the mother did not respect the father's role in the child's life and would seek to use the move to exclude the father from her life, (iv) the mother would not encourage or promote the child to learn about her Muslim heritage and (iv) that Country 1 was unstable from a political perspective and the father would not feel safe travelling to Country 1 for contact with the child given his ethnicity and religion. Evidence was heard from the parties, the maternal grandmother and uncle, a lawyer from Country 1 providing expert evidence in respect of Country 1's legal system (recognition and enforceability of Jersey court orders) and governance/politics, and the JFACS officer. The court confirmed that the principles to be applied were those set out by Mostyn J in *GT v RJ* (Leave to Remove) [2018] EWFC 26.

The court at first instance granted the mother's removal application, subject to the mother obtaining a mirror order in Country 1. The court noted that the mother's attitude towards the father had demonstrably softened during the course of the proceedings, that the mother would promote the child's relationship with the father and that the mother could offer the child a better life in Country 1 than Jersey, notwithstanding that it was evidently a much poorer country. The decision was upheld following the father's appeal to the Royal Court of Jersey. The mother was eventually, some two years following the court's decision, successful in obtaining a mirror order in Country 1.

iv) *A v B* [2025] JRC025

The court was asked to determine issues of residence, contact and leave to permanently remove a child from Jersey. The child was born in 2022, aged approximately 33 months at the date of the hearing. The mother was from Country A having moved to Jersey in December 2009. The father was from Jersey. The parties commenced a relationship in April 2021 which broke down prior to the child's birth. Both parties and the child had remained living in Jersey. In April 2024, the mother applied for leave to relocate to Country A with the child, where they would live with the maternal grandparents. The child had lived with the mother since birth. The parties had agreed contact arrangements which involved the father initially seeing the child at the mother's home almost every day. In spring 2024, the parties met in mediation and agreed contact between the child and the father four times per week. Contact was subject to conditions including that the contact be supported by the paternal grandmother or another agreed third-party. Unsupported contact was to be limited to three hours duration on each occa-

sion. The mother was granted leave to take the child on holiday to Country A for a week in August 2024 to celebrate the maternal grandmother's 60th birthday. The parties agreed that any order of the Jersey court made in relation to the child would be enforceable in Country A.

During the course of the proceedings, the father had undergone testing for substance abuse, which demonstrated repeated active usage of cannabis and excessive consumption of alcohol. Police disclosure recorded a number of callouts including an alleged assault by the father against the previous partner, a complaint by the paternal grandfather that the father had been "smashing up" the paternal grandfather's home, and two reports by the mother that the father had sent her threatening messages. In June 2025, the JFCAS officer had noted her concern at the high level of unsupervised contact between the child and the father. There were no concerns regarding the mother's care of the child although the mother was noted to present as highly anxious as to her reported concerns regarding the father. The JFCAS officer observed that the father loved the child but felt he had limited insight into the issues that had restricted his contact. In her view, the father's presentation during her assessment had been inconsistent and on occasion chaotic. The JFCAS officer had spoken to both sets of grandparents and noted that she had no doubt as to the maternal grandparents' ability to practically and emotionally support the mother if she was able to return home to live in country A.

The JFCAS officer gave a clear recommendation that the mother be given permission to relocate to Country A. The court noted that both parties had made allegations or assertions unsupported by the evidence presented to the court, including the mother's allegations regarding the father's religious or personal views as there was no evidence to suggest the impact upon the child, as well as the father's contention that Country A is in the midst of political turmoil and a wave of criminality. The court found that the father's alcohol consumption was excessive and that his drinking could have an adverse impact upon the child or the mother. The court noted that just because the child had not come into harm in the father's care, did not mean there are no concerns. There would be potential risks to the child in the care of the father if contact was to be for longer periods or without support. This would not change unless and until the father proved that he had controlled his drinking consistently over a significant period of time. It followed that the father's contact must remain limited for the safety and well-being of the child. The mother's application for leave to remove was granted subject to her first obtaining a mirror or parallel order in Country A at her expense.

Court's approach to domestic abuse

Jersey does not have an equivalent practice direction to PD 12J in England and Wales, which outlines guidance as to how the court should approach cases involving allegations of domestic abuse when considering issues relating to children. Nevertheless, the authors consider that the principles outlined in PD 12J will be persuasive in Jersey.

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