



## **Eleanor Bruce**

Year called 2008

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## **OVERVIEW**

*"Fights hard for her client, really giving the impression that she has done everything she can to reach a successful outcome."*

Eleanor Bruce has established a busy specialist Family Law practice. She specialises in all aspects of family law with a particular emphasis on children matters and international work including wardship proceedings in the High Court.

Eleanor has extensive experience of representing Local Authorities to parents, children and intervenors at all stages of proceedings. She has a particular interests in international work and is regularly instructed in relation to applications to relocate both within and outside of the jurisdiction.

Clients really appreciate Eleanor's "exceptionally thorough approach and attention to detail", "calm and direct approach" and acknowledge that she "fights hard for her client, really giving the impression that she has done everything she can to reach a successful outcome".

Eleanor has the ability to communicate clearly and persuasively to a wide range of audiences and to think quickly on her feet, a useful and adaptable skill that she developed in the Criminal Courts during pupillage and in the early years of tenancy.

Eleanor is happy to advise both on paper and by telephone and is qualified to accept instructions from members of the public, via the direct access scheme.

Having grown up in Brazil, Eleanor is now based in London.

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## **PRACTICE AREAS**

Children Law (Private)

Direct Access

Family Finance

## Family Finance

Eleanor is successfully developing her matrimonial finance practice and has represented clients in cases involving high value pensions, companies, trusts and foreign assets and has undertaken work on behalf of Applicants and Respondents, including those in civil partnerships. Eleanor has also been instructed to advise on cases Schedule 1 CA 1989 cases concerning provision for children.

Eleanor has spoken at seminars in relation to the case law in relation to pre-nuptial agreements.

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## Children Law (Private)

Eleanor is regularly instructed on behalf of parents, children and grandparents in relation to complex private law disputes.

She has particular experience of cases concerning serious domestic violence including kidnapping and sexual abuse, parties with mental health issues and applications for removal from the jurisdiction.

She also has experience of complex cases involving Wardship claims with an international aspect, hostile parents and applications for enforcement.

## Notable Cases

### ARTICLE RE F (A CHILD) (INTERNATIONAL RELOCATION CASES) [2015] EWCA CIV 882

The parties (Mother (“M”) and Father (“F”)) were involved in a dispute regarding their 12-year-old daughter (“L”). Cross-applications were made by them, M applying to remove L from England and Wales to take her to Germany, and F applying for a child arrangements order regarding his contact with L. The case was heard at first instance at the Family Court in Brighton and an order was made allowing the Mother to remove L and take her permanently to Germany under Section 13 of the Children Act 1989. The order also stated that L would spend 6 weeks minimum with F each year. F appealed the decision.

### Permission to Appeal Granted

Lord Justice Ryder granted F permission to appeal on three grounds:

1. Whether the court should carry out a welfare analysis of the plans and options of each parent;
2. Should the court carry out a comparative evaluation of the options and plans; and
3. If Article 8 ECHR is engaged by reference to the gravity of the consequence of the decision of the court, should the court carry out a proportionality evaluation. Both parties’ representatives agreed

that the key issue in the current case was whether such an approach was the correct one in Section 13 cases.

### **Court of Appeal Decision**

The appeal was heard by Ryder LJ, Clarke LJ and McFarlane LJ.

Ryder LJ said that while the judge at first instance gave a careful and detailed judgment, she had allowed herself to be deflected from the welfare analysis that was required and allowed herself instead to be constrained by the narrower approach as set out in *Payne v Payne* [2001] EWCA Civ 166 (“Payne”). As a result the judge had placed too great an importance on Payne and had erred not just in form but also in substance.

In particular, the judge gave no consideration as to whether there would be any erosion in the quality of the relationship between F and L if L were to move to Germany. Instead, the harm that would be caused to L in each of the parties’ proposals should have been weighed against each other.

Ryder LJ therefore allowed the appeal, set aside the relocation and child arrangements orders and directed a re-hearing before a different judge. Additionally, he recommended that in the re-hearing of the case, greater emphasis needed to be placed on L’s participation.

### **Reasoning Behind the Decision and Guidance For Future Cases**

As part of his lead judgment, Ryder LJ discussed the relevant case law that is applicable in relocation cases. His comprehensive analysis provides a useful explanation as to why the CA decided that a holistic evaluative approach and use of the welfare checklist in Section 1(3) of the CA in these cases (despite it not being obligatory under Section 1(4) of the CA 1989) does not alter the existing jurisprudence but instead underpins and explains it.

A summary of the law as set out by LJ Ryder, Clarke LJ and McFarlane LJ is as follows:

- The welfare of the child is the paramount consideration and is the only true principle;
  - The three leading authorities are *Payne*, *K v K (Children: Permanent Removal from Jurisdiction)* [2011] EWCA Civ 793 (“K v K”) and *Re F (A Child) (Relocation)* [2012] EWCA Civ 1364 (“Re F”);
  - In *Re F*, *K v K* was identified as being the starting point in relocation cases. *K v K* emphasised that the welfare of the child is the only principle to be applied and: “that guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision-making; but that (per *Moore-Bick* and *Black LJ*), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted” (per *Munby LJ* [29]).
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- *Payne* set out the three factors which are often the most relevant in relocation cases:

1. Is the Mother’s application genuine and is it realistic?

2. Is the Father's opposition motivated by genuine concern for the future of the child's welfare or by an ulterior motive? What would be the impact on their future relationship if the application was granted and would this be offset by the benefits of granting the application?

3. What would be the impact on the Mother of the refusal of a realistic application by her?

- The ratio of Payne was nuanced in that the questions it set out were always intended to be part of the welfare analysis and not to be elevated into principles or presumptions as they have often have been. They are not rhetorical questions.
- The approach that is now to be applied is set out in Re F at [37] which endorsed and reinforced that in K v K namely: "there can be no presumptions in a case governed by s1 of the Children Act 1989. From the beginning to the end the child's welfare is paramount and the evaluation of where the child's interests truly lie is to be determined having regard to the 'welfare checklist' in section 1(3)"; [61] The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regards to the 'welfare checklist', though of course also having regard, where relevant and helpful, to such guidance as may have been given by this Court";
- The relevant passages of Re F and K v K that a judge determining international child relocation cases should read are set out at [21-26];
- Payne is to be read in the context of Re F and K v K;
- To assist judges in analysing competing welfare considerations, a 'balance sheet exercise' could be carried out but caution needs to be taken to ensure that this is just a route to judgment and not a substitute for the judgment itself. Furthermore, it is important that weight (or lack of it) is still attributed to the factors within the balance sheet;
- Both parties' plans need to be scrutinised and evaluated with reference to their proportionality because such cases engage articles 6 and 8 of the ECHR as confirmed in Glaser v United Kingdom (Case No 32346/96). However, "it will not be every private law application that requires a proportionality evaluation" [32] and although Section 13 applications may require such an evaluation due to the consequences of relocation, this evaluation "may amount to no more than an acknowledgement that one option is better than the other and that the preferred option represents a proportionate interference in the article 8 ECHR rights of those involved" [32].

Due to the reliance placed on the term 'holistic' in this case, McFarlane LJ emphasised that his use of the term 'holistic' in Re G (Care Proceedings: Welfare Evaluation) [2013] EWCA Civ 965 "is no more than shorthand for the overall, comprehensive analysis of a child's welfare seen as a whole, having regard in particular to the circumstances set out in the relevant welfare checklist" (Paragraphs 45-50) and that is how it should be seen when applying it future cases.

It is worth bearing in mind when considering the applicability of this case to future ones, that Ryder LJ emphasised that the context in this particular case was of strong importance, specifically the negative attitude that M had shown towards L's involvement with F.

## **Qualifications**

Diplock Scholarship, Middle Temple  
BVC (Very Competent), ICCL  
GDL (Commendation), BPP London  
BA (Comb Hons), King's College, London

## **Professional Memberships**

Family Law Bar Association

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