**Moving abroad with a child and applying for a Specific Issue Order under Section 8 of the Children Act 1989**

I require consent from my child’s estranged biological father. I was divorced, the father of our child has had no contact for over 10 years. I am now planning to love abroad with child and my new husband but I've been advised I need the father’s consent. However I don’t know where he is. How do I proceed?

**1. Case summary**

This advice explains: what parental responsibility is and its relevance, the benefits provided by mediation, and what steps the court will take if the child’s biological father cannot be found or will not consent to the child’s relocation abroad.

This advice also refers to the Children Act 1989, explaining what a Child Arrangements Order is, in particular, the Specific Issue Order under Section 8 of the Children Act 1989. How the court applies this order is also examined.

**2(a). What is parental responsibility and who has it?**

 Does the child’s biological father have parental responsibility?

 Section 3(1) of the Children Act 1989 defines parental responsibility as ‘the legal rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’. This means that those who have parental responsibility are essentially responsible for ensuring that the rights of the child / children are met.

S2(1) CA 1989, ‘Parental responsibility for children’ provides that where a child’s father and mother were married to [or civil partners,] each other at the times of the birth, they shall each have parental responsibility for the child.

This means that if the mother was married to the child's father, he is likely to have parental responsibility. This means he has rights and obligations regarding the child’s upbringing, including where the child lives.  In particular, a parent with parental responsibility will need to consent if the child moves abroad to live.

**2(b). Do parents who are absent, still have parental responsibility of a child?**

 Yes. In England and Wales, there is no legislation that will simply take away the parental responsibilities of an absent parent. Whether they have been absent for weeks, months, or even years, the absent parent in question still has parental responsibility over the child / children; and is to be consulted about significant issues such as moving abroad. Failure to do so, could be considered illegal, and potentially classed as child abduction.

Upon assessment of the facts and application of the relevant law, this child’s biological father does have parental responsibility. As such, it is necessary to locate and contact him regarding the relocation of this child.

Additional information about parental rights and responsibilities are explained on the gov.uk website:

<https://www.gov.uk/parental-rights-responsibilities>

**3. What happens when a parent is uncontactable and / or untraceable?**

When trying to do the right thing and get permissions from the other party, it will always be made more difficult if you do not have the details of the parent in question. The obvious solution would be to look through social media, reverse imaging, directories and even mutual friends or family. This, however, cannot always be helpful if the person does not want to be traced. There are also plenty of companies who offer a tracing service to help find the people you have lost contact with.

**4. What are tracing agencies?**

Tracing agencies specialise in locating those deemed to be missing or who have lost contact with family or friends. Using specialised techniques and databases, they can track down most people. They do have to adhere to some rules and laws, including data protection, to ensure that they are conducting themselves in an appropriate manner. Prices for this service usually range from approximately £30.00 to £100.00 / £150.00, depending on what type of help is required. Most agencies also offer a no trace, no fee guarantee.

More information about tracing:

[Nationwide Tracing](https://nationwidetracing.co.uk/?msclkid=0d6354344dde1eb0b9723397082870d9)

[Find People in the UK | Trace People, Beneficiaries, Debtors & More - UK Tracing](https://uktracing.co.uk/)

**5. What are the next steps if the father has been found, but does not consent for the child to move abroad?**

If the father has been found but will not agree for his child to be moved abroad, it would be advisable for both biological parents to take part in mediation before an application to court is made.

**6(a). Mediation, the Mediation Information Assessment Meeting (MIAM) and the benefits**

Mediation is an effective form of alternative dispute resolution, although it is voluntary it is encouraged by the courts. It is an informal type of non-court dispute resolution.  The mediator is impartial and is there to help the parties come to an agreement.

Mediation would potentially provide a structured environment for both biological parents. At the initial MIAM Meeting, they would be able to discuss the move abroad and the arrangements concerning their child. It promotes cooperation rather than conflict, which can benefit ongoing parental relationships. Mediation allows both parties to express their views and negotiate terms that work for everyone, including the child’s best interests. Mediation can be a constructive first step in resolving issues related to relocating with a child, and it may help avoid the need for more contentious legal battles.

Mediation can be less expensive than court proceedings, saving time and legal fees. Mediation is also mandatory for those wishing to pursue a court order.

**6(b). Mediation process**

Those wishing to engage in mediation can contact a mediator to discuss the situation and explore options. If the other party can be located and agrees to participate, both parties can meet with the mediator to discuss the relocation. If an agreement is reached, it can be formalised. It may, then, help obtain the necessary consent or support for a court application.

**6(c). When mediation is required**

In many cases involving children, mediation is encouraged before going to court. If, however, the father is untraceable or unwilling to participate, the mother may need to explore other legal options, such as applying to the court directly.

Although it is not mandatory to reach an agreement via mediation, it is mandatory to attend an initial mediation information and assessment meeting (MIAM) before filing your application, except in certain exceptional circumstances such as domestic abuse and child protection concerns.

Please see the link below to the **Family Mediation Council**, this provides further information and a list of professional mediators:

<https://www.familymediationcouncil.org.uk/family-mediation/assessment-meeting-miam/>

A **MIAM** (Mediation Information Assessment Meeting) costs approximately £120.00 per person, this cost will increase if you require more sessions. Fees will also differ depending on your location.

There is also a link below to a helpful PDF about Family Mediation:

<https://assets.publishing.service.gov.uk/media/5a800f33ed915d74e33f834d/family-mediation-leaflet.pdf>

**7 What are the next steps if the father refuses consent, or is still untraceable after using a tracing agency?**

If the father refuses consent, or is still not found after trying all avenues, then a Specific Issue Order, also known as a section 8 order, would be required (this is explained in more detail below). The court can still decide on the application even if the father cannot be found. The court may allow the mother to proceed based on her evidence and the child's best interests. Please see: [Children Act 1989](https://www.legislation.gov.uk/ukpga/1989/41/section/1)

**8(a). Specific Issue Order under Section 8 of the Children Act 1989**

A “specific issue order” is a type of section 8 order which gives directions in relation to a specific question that has arisen or could arise that relates to any aspect of parental responsibility for a child, s.8(1)(2) CA 1989.

If the father cannot be found or will not consent to this child moving abroad, the mother would need to apply for a Specific Issue Order under section 8 of the Children Act 1989.

The mother will need to show that moving abroad is in her child's best interests. She needs to consider factors such as:

* The child's happiness and stability
* Quality of life in the new country
* Their new family environment.

Then, the court will consider the child's welfare, which is of paramount importance.

**8(b) Criteria the Court will consider before making an order**

Set out unders.1(1)(a) CA 1989, are the principles underlining the ‘Welfare of the child’: this states the court determines any questions with respect to the upbringing of a child based on the best interests of the child.

When the court is considering whether to make a **section 8 order**, and the making of the order is opposed by any party to the proceedings, the key factors the court has particular regard to are explained under s.1.3 CA 1989:

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;   
(c) the likely effect on him of any change in his circumstances;   
(d) his age, sex, background and any characteristics of his which the court considers relevant;   
(e) any harm which he has suffered or is at risk of suffering;

(f)  how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g)  the range of powers available to the court under this Act in the proceedings in question.

Additionally, when the court considers whether or not to make an order, the court provides that it shall not make the order, unless it considers that doing so would be better for the child than making no order at all, as set out under s.5 CA 1989.

**8(c). Advice – will the age of the child matter for a Section 8 Order?**

 The age of the child can affect the court’s decision when applying for a Section 8 Order and is referred to under s.1.3(a) and (d) CA 1989.

Section 8 orders generally only apply until the child turns 16, unless there are exceptional circumstances, then the order may last until they turn 18.

The court will consider a child’s wishes and feelings in line with their age and maturity.

If a child is under 12, the court will mainly focus on their best interests.

If the child is older, the court will listen to their wishes. The child will have the opportunity to decide where they would like to live, and if they would want to relocate; if the court feels they are mature enough to make their own decisions.

If a child is 16 or older, a court order is not needed, as the court usually allows that at this age they can decide where to live.

The court will consider what impact relocating will have on a child.  They will look at things such as schooling, the impact of leaving friends and family and if the move would be beneficial or not, as set out under s.1.3(c) and (b) CA 1989

**9. Powers of the court in relation to the absent party / father**

 If the mother cannot find the father’s current whereabouts, she will have to apply for a specific issue order and ask the court  to dispense with service of the application on the father on the basis that he cannot be found. She will apply for this using form C2. In the form she will need to explain what steps she has taken to try and find the father (see section 3 and 4 above).

**10. Further legal advice**

Many solicitors provide a free initial consultation to evaluate a potential client case, this is usually for approximately 30 – 45 minutes. Some solicitors also offer lower cost advice, below is a link to the UK government website about finding a legal adviser:

<https://www.gov.uk/find-legal-advice/find-legal-adviser>

If you require further legal advice or representation, please see the Law Society website that contains a list of local practitioners ([www.lawsociety.org.uk](http://www.lawsociety.org.uk/)).

**11 Legal process and costs**

To proceed with applying for a specific issue order you will need to complete **form C100**.  The form is available online, please see the link below:

<https://www.gov.uk/government/publications/form-c100-application-under-the-children-act-1989-for-a-child-arrangements-prohibited-steps-specific-issue-section-8-order-or-to-vary-or-discharge#:~:text=Form-,Apply%20for%20a%20court%20order%20to%20make%20arrangements%20for%20a,be%20able%20to%20apply%20online>

Following completion of the C100 form, it should be submitted with the draft consent order to the local family court along with a court fee. The fee is £255.00.

There is an **EX160 (Fee Exemption) Form** which can be submitted if the applicant is on low-income or in receipt of income-based benefits:

Form - **How to apply for help with fees: EX160A**

<https://www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees/how-to-apply-for-help-with-fees-ex160a-for-applications-made-or-fees-paid-on-or-after-27-november-2023>

You can also get a C100 form from your local family court. To find your local family court, please click this link, [Find your local family court](https://www.find-court-tribunal.service.gov.uk/search-option)  If you do send your application by post, you will need to send 3 copies of each document.

The costs associated with various legal services and applications regarding child custody and relocation can vary based on several factors, including whether the mother hires a solicitor and the specific court fees. Below are typical costs she might encounter:

**12 Next steps**

* It would be advisable to use a tracing agency if one parent is uncontactable or not able to be found. Most agencies offer a no trace, no fee guarantee

* Mediation can provide a structured environment for both biological parents. Discussions about the move abroad and arrangements concerning their child can take place at the initial MIAM Meeting

* Applying for a ‘**Specific Issue Order’** (a type of Section 8 Order under the Children Act 1989), allows a parent to ask the court for a ruling on a particular question or issue related to their child's upbringing, which in this case involves relocating.