



A GUIDE TO INTERNATIONAL PARENTAL CHILD ABDUCTION TO PAKISTAN

This guide gives you an overview of how cases of parental child abduction to Pakistan are managed, and what your options are for seeking the return of your child. We have tried to make it as clear and detailed as possible, however it is impossible to cover everything in one document.

reunite are not lawyers and so the information in this leaflet should not be construed as legal advice. If you need legal advice please refer to the list of specialist lawyers on our website at www.reunite.org/lawyers. You can also access ongoing practical information, advice and support from the **reunite** advice line on 0116 255 6234.

This leaflet makes reference to the 'UK court'. Please be aware that England and Wales, Scotland, and Northern Ireland are different legal jurisdictions, and so you would need to use the court in the jurisdiction your child usually lives in.

If neither yourself nor your child are British nationals you should seek consular support from your own Foreign Ministry and Embassies, rather than the British Foreign and Commonwealth Office.

This guide was created in 2017, so please be aware that law and practice may change over time.

What is international parental child abduction?

International parental child abduction occurs when a child is wrongfully removed or wrongfully retained away from their home country. Both wrongful removal and wrongful retention are given equal treatment in the family court of the UK and many other countries, and you can ask for the return of your child if they have been wrongfully removed or retained. The only real difference between the two is whether your case can be considered as a criminal matter.

What is a wrongful removal?

A wrongful removal happens when a child is taken out of their country of **habitual residence** without the consent of everyone with **parental responsibility** or the consent of the court.

Wrongful removal of a child under the age of 16 is a criminal offence in England & Wales and Northern Ireland, and is an offence in Scotland if there is an interdict or residence order in place. This is under the Child Abduction Act 1984, which can be viewed in full at <http://www.legislation.gov.uk/ukpga/1984/37>.

If your child has been wrongfully removed and you would like the matter to be pursued by the police then you can report it to your local police force by calling the non-emergency number 101 or visiting a police station.

Please be aware that it is highly unlikely that the police will go and recover your child for you. The police will be focused on the person who has committed the criminal offence and possibly pursuing their conviction. You may also be asked by the court of Pakistan not to support the conviction of the other parent if the return of your child is ordered. However, once the criminal case has progressed past a certain point you may not have much control over what happens next.

It is also worth noting that parental child abduction is not a criminal offence in Pakistan and there is no extradition arrangement between the two countries that would allow the British Police to extradite the abductor back to the UK.

Under UK law, **parental responsibility (PR)** is granted automatically to mothers, and to fathers who are married to the mother at the time of the child's birth.

If you are an unmarried father you will have PR for your child if you are registered on the birth certificate after December 2003 in England and Wales, April 2002 in Northern Ireland and from 2006 in Scotland. You can also be granted PR through a court order or formal agreement with the mother.

If you are in a same sex relationship, please seek legal advice from a specialist family lawyer as to whether or not you have PR for your child.

The country your child lives in is known as their **habitual residence**. Your child will only have one country of habitual residence and this country will have the jurisdiction to make legal decisions about them.

A child's habitual residence can change; for example if you and the other parent agree to move to a different country.

Your child's place of habitual residence may also change if you do not take timely action to seek their return once they have been abducted by a parent. For example if you do not start proceedings asking for the return of your child within 12 months the court may want to know why you took so long. It may be felt that your child has set down such substantial roots in the other country that their place of habitual residence has in fact changed.

However, this change in habitual residence does not automatically occur once your child has been out of the country for 12 months, it very much depends on the facts of your situation.

It is worth noting that your child's place of habitual residence may be different to their nationality.

What is a wrongful retention?

A wrongful retention occurs when a child is taken out of their country of **habitual residence** with the consent of everyone with **parental responsibility**, or the court, for an agreed period of time, but the taking parent then refuses to return the child. An example of this would be if you agreed for your child to go on holiday or to visit family in Pakistan for 2 weeks, but then the other parent refuses to bring them home. Wrongful retention is not currently a criminal offence under the law of the UK, so if your child has been wrongfully retained in Pakistan there may be nothing the British police can do.

The role of the Foreign and Commonwealth Office (the FCO) and the British High Commission

The British High Commission in Pakistan, and the Deputy High Commissions throughout Pakistan, are able to provide specific assistance to British nationals including travel advice, provision of lists of English-speaking lawyers and liaison with local authorities.

We encourage you to report the abduction to the British High Commission, or to the Consular Team in the FCO in London, as soon as possible so that they are aware of your situation and can support you accordingly.

Contact details for the FCO and the British High Commission can be found at the end of this guide.

If your child has gone missing

If your child has gone missing with the other parent and you believe they have travelled to Pakistan you can ask for help from your local police force. The police should be able to take actions such as searching within the UK, checking flight manifests and communicating with other police forces in the UK and internationally. Even if the police are not able to pin-point exactly where your child is, if they can confirm that your child is in fact in Pakistan this means you can start legal processes to seek their return.

From this point the Pakistani police and other organisations can help to locate your child. You should also think about anything you can do to help locate your child yourself, such as reaching out to friends and family of the other parent if possible.

Do be aware that if the police do find out exactly where your child is they may not be able to disclose the exact address to you due to data protection and safeguarding. The police should disclose if they are in the UK or not so that you can start the necessary civil legal process.

Your Legal Options: Applicable Treaties

The 1980 Hague Convention

In 2016 Pakistan signed and acceded to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, an international agreement that sets out how child abduction cases are to be dealt with between signatory States.

For the 1980 Hague Convention to be operational between signatory States, the older member needs to accept the accession of the new member. As of September 2017 the 1980 Convention is only in force between Pakistan and Ukraine, New Zealand and Andorra. The 1980 Convention will only be able to be used between these countries and Pakistan, and only if the abduction happened after the date the Convention came into force between the two countries.

The UK has not yet accepted Pakistan's accession, and so the 1980 Hague Convention **CANNOT** be used between the two countries. The process of accepting an accession is not quick, so we doubt that the UK will ratify with Pakistan in the very near future. If your child has been abducted to Pakistan you need to consider using the courts in the UK and Pakistan as detailed below.

The UK-Pakistan Protocol

In 2003 the President of the Family Division of the High Court of England and Wales and the Hon. Chief Justice of Pakistan signed an agreement called the 'UK-Pakistan Judicial Protocol on Children's Matters' (known as the UK-Pakistan Protocol). This Protocol sets out how cases of parental child abduction between the UK and Pakistan should be handled, with an emphasis on the importance of returning a child to their country of habitual residence.

As the UK-Pakistan Protocol is only a protocol and not law, it is not binding in the courts of the UK or Pakistan. As a result, any existing laws in each country will be seen as more important than the Protocol, and the judges will not use the Protocol if it is seen to conflict with domestic law. This means that the application of the Protocol is patchy and unpredictable.

To ask for the return of your child under the UK-Pakistan Protocol you will need to obtain court orders from the UK High Court that specify that the UK-Pakistan Protocol applies in your case. You will then need to present the orders to the court in Pakistan to support your application for your child to be returned to the UK.

Which court orders you will need and how you can get them is outlined below.

UK Court Orders

England & Wales, Scotland and Northern Ireland are all different legal jurisdictions and have their own distinct legal systems. As a result you will need to make sure that you apply to the court in the jurisdiction your child has been taken from, even if you live in a different part of the country.

If your child has been abducted from England or Wales

If your child has been abducted from England or Wales any court hearings in the UK must be in front of a High Court judge who has sufficient powers to hear international cases and issue **Wardship** orders. The majority of child abduction cases are heard by the High Court at the Royal Courts of Justice in London, but occasionally High Court judges go out 'on circuit' to other courts around the country, and so some cases can be heard in other major cities.

Orders in child abduction cases can be sought from the High Court on an emergency basis as such cases are given priority. The key orders that you will be looking to have issued by the High Court are a **Wardship Order** and a **Return Order**.

Other orders may be possible and helpful but this very much depends on the facts of your situation. For further advice tailored to your case please speak with a specialist solicitor and the **reunite** advice line.

You can also ask for the judge to recognise that your case falls under the UK-Pakistan Protocol or is 'in the spirit' of the Protocol. If the judge agrees that your case is a 'strict' or 'spirit' case they will request the support of the Pakistani authorities in resolving your case. The judge will also request that the Office of the Liaison Judge in the UK is informed of your case.

Under the UK-Pakistan Protocol both the UK and Pakistan have a designated liaison judge to help information about a case pass from one country to the other. This should help a case move more smoothly through the judicial process.

A **Wardship Order** makes your child a 'Ward of the Court', which means that the court holds a degree of legal responsibility for your child. This makes it very clear that the High Court feels it has jurisdiction to decide on matters in relation to your child.

A **Return Order** is an order that your child is to be returned to England or Wales. This is not necessarily a return back to the family home or a specific part of the country, unless stated within the order. Depending on what the judge feels is appropriate in your case, a date may be given by which your child must be returned, or it is stated that the return is to happen as soon as possible.

A **Penal Notice** may be attached to the order, which means that if the other parent does not comply with the order they risk punishment, which can include a prison sentence, for being in contempt of the court.

Whether your case is a 'strict' or 'spirit' case will depend on what orders were in place before the abduction of your child. If you already had either an order that says that you are the primary carer for your child or an order saying your child is not to be removed from the country then your case will be a 'strict' case under the UK-Pakistan Protocol. If you did not have such orders the judge may feel that your case falls within 'the spirit' of the Protocol and so will still ask for the support of the Pakistani Authorities.

If the judge does not feel that the UK-Pakistan Protocol applies you should still be granted a **Wardship** and **Return Order**. These can be taken into the court in Pakistan and may be persuasive, but they will not have the added backing of the UK-Pakistan Protocol.

In the majority of cases, any orders will be served on the other parent regardless of whether they are in the UK or in Pakistan. This service can be carried out by the court **Tipstaff** in the UK, a **process server** in Pakistan, or by other means that the judge feels is appropriate, including email. Please note that the British High Commission cannot serve court orders in Pakistan. In certain circumstances the judge will allow for the order not to be served on the other parent straight away. An example of this would be when it is thought the other parent is planning to come back to the UK for any reason and it is feared that the court orders will deter them from doing so.

If the other parent is in the UK you should also ask the court for an appropriate **Tipstaff Order** so that any passports or travel documents belonging to the other parent can be removed when they are served with the court papers. If the other parent is outside of the UK you should also ensure that the court issues an incoming port alert for your child and the other parent. This means that they will be flagged up when they enter the UK so that court papers can be served and travel documents removed. These measures may prevent the other parent from leaving the UK again to avoid court proceedings.

If the other parent is in the UK or returns to the UK without your child they will have the opportunity to contest the orders you have applied for. If the judge does not think there is good reason for your child to remain in Pakistan they will issue a date by which they want your child to be returned. It is best if the other parent is not allowed to go and collect your child as they may not return. Instead ask if it can be organised for a family member or trusted friend to bring your child back to the UK or if you can go and collect them yourself.

If the other parent does not do as the court has ordered they will be in contempt of the court and may be liable to prosecution and imprisonment.

The **Tipstaff** is the enforcement officer of the High Court and has the power to enforce court orders issued by the High Court if ordered to do so. He has two deputies and can delegate his power to police officers to carry out enforcement work on his behalf.

A **Process Server** is a private company that officially serves court orders on the other parent.

A **Tipstaff Order** is the name given to a number of court orders issued by the High Court that order the Tipstaff to take certain actions, such as removing the passport of a suspected abductor.

If your child has been abducted from Scotland

Scotland is a separate jurisdiction to England & Wales and Northern Ireland. As a result you will need to seek the appropriate orders from the Scottish courts. Scotland does not issue **Wardship Orders** but the court can issue similar orders that show your child was habitually resident in Scotland and should be returned. A judge should also be able to state in the order if the UK-Pakistan Protocol applies and request the support of the Pakistani authorities under the Protocol.

If your child has been abducted from Northern Ireland

Northern Ireland is also a separate legal jurisdiction from England & Wales and Scotland. Northern Ireland does issue **Wardship Orders** in a similar style to the High Court of England and Wales but you will have to apply to the relevant court in Northern Ireland. A judge should also be able to state in the order if the UK-Pakistan Protocol applies and request the support of the Pakistani authorities under the Protocol.

If your child has been abducted from a country outside of the UK

If your child does not live in the UK you will need to speak with a specialist lawyer in the country you are living in to see what court orders are available in that jurisdiction. These orders need to demonstrate that your child was habitually resident in that country and preferably that your child needs to be returned.

As your child was living outside of the UK the UK-Pakistan Protocol does not apply, even if your child is a British National.

There are a number of specialist lawyers detailed on **reunite**'s lawyers listing which can be found on the **reunite** website. Similarly the Foreign and Commonwealth Office keep details of English speaking lawyers in other countries.

Into the Pakistani Courts

Once you have court orders from the UK you will probably need to start court proceedings in Pakistan to ask for the return of your child. In some instances the removing parent will return a child once they have been served with the UK orders, but in other cases you will have to use the Pakistani court process.

Your first step is to speak with a specialist lawyer in Pakistan who has experience of international child abduction cases and specifically the UK-Pakistan Protocol.

When you speak with a specialist lawyer, make sure you discuss the UK-Pakistan Protocol and ask if this can be used in your situation. If so your lawyer should make the application for the return of your child quickly with an emphasis for the Protocol to be taken into consideration when the judge is deciding the case.

If the UK-Pakistan Protocol cannot be used in your case then you will need to take advice from a specialist lawyer on how to proceed in the Pakistani courts. The emphasis is on moving quickly and trying to avoid protracted court proceedings. If possible avoid starting general custody proceedings as such cases can last from a few months to many years.

In any event it is worth trying to get into the most senior court possible such as the High Court. Using an application that can get you directly into the High Court, such as a writ of **habeas corpus**, may help your case to stand out as an international abduction case rather than a domestic family dispute. That being said, other proceedings may be more appropriate on the facts of your case, such as those brought under the Guardian and Wards Act 1980, so it is very important that you seek legal advice from a specialist lawyer who can advise you from their own experience.

Do not enter into any court proceedings in Pakistan before getting UK Court Orders. If you do you may be handing jurisdiction for your child to the courts in Pakistan, and so the UK courts would not be able to help. If the other parent starts court proceedings in Pakistan and you do have UK orders, it is worth speaking with your lawyer to confirm whether you should enter into those proceedings or start your own court case that focuses on the return of your child.

Traditionally **habeas corpus** is a process used to release individuals who have been illegally detained by the State, but in the Pakistani system this principle has been extended to parents who have been keeping their children in a place they shouldn't be.

The wishes of the child

The thoughts and wishes of a child should be taken into account by the Pakistani court in any proceedings relating to them. Initially lawyers would convey the child's wishes, but once a case reaches court the judge is likely to speak with a child directly. There are no psychologists or court social workers involved.

There is a huge range in the amount of time it has taken the court in Pakistan to decide whether or not to order the return of the children. **reunite** has experienced cases where a decision has been made after one court hearing, and other cases that are still ongoing after 18 months and multiple court hearings. General custody cases take on average between 3 and 5 years, which highlights the need for your case to be treated as an international case rather than a domestic custody case.

There are multiple levels of appeal in the Pakistani court system and so this also increases the amount of time a court decision can take, as there can be long waiting lists for court dates in the appeal courts. The highest court a parent can appeal to is the Supreme Court.

If a return IS ordered by the Pakistani Court

If an order for return is granted there will usually be a date by which your child is to return to their country of habitual residence. The court may stipulate whether you have to go and collect your child or whether the other parent is to return them. You may be asked to help facilitate the return by paying for flight tickets or by providing other such support.

If a return is ordered the other parent may be entitled to appeal to a higher court, which may add expense and will add time on to the process. There will be a time frame written in the order in which the other parent must lodge their appeal, which is usually between 20 and 90 days from when the order is issued.

After this time, if an appeal has not been lodged and the return has not happened you can ask the court for help in enforcing the order. This help can come from the Pakistani Police.

If a return order IS NOT ordered by the Pakistani Court

If a return is not ordered you may have the opportunity to appeal this decision. Appealing will add time and expense to the proceedings but may result in a more favourable decision. There will be a time frame, usually written in the order, within which you will need to lodge an appeal.

If you do not wish to appeal the order it may be that you are able to have a contact or custody arrangement put into place. This can be done through the court, through agreement with the other parent, or through mediation.

It is worth noting that mediation can be considered at any point in the legal process as a way of avoiding further litigation and coming to an arrangement that potentially both parents are satisfied with. There is further information about mediation towards the end of the guide.

Lawyers and other professionals

It is advisable to use a lawyer who has experience of international children's cases, particularly in child abduction cases because child abduction is a niche area of family law. **reunite** maintains a list of specialist lawyers based in the UK and overseas which can be found on the reunite website at <http://www.reunite.org/lawyers>.

The Foreign and Commonwealth Office also has a list of English speaking lawyers in Pakistan but these may not have experience of child abduction cases. The list can be found at <https://www.gov.uk/government/publications/pakistan-list-of-lawyers>.

UK

In the UK legal aid is available to cover legal costs incurred in the UK in child abduction cases, which is granted on a means and merits basis. This means that the Legal Aid Agency will take into account your income, outgoings, assets and the merits of your case when deciding whether or not to award legal aid. Legal aid applications are usually filed through the lawyers you wish to instruct, so for further information speak with a specialist lawyer. A legal aid application will usually take around 4 weeks to be decided.

If you have to pay privately for UK orders the price will vary depending on the lawyers you use, the orders you apply for, and the complexity of your case. The average price quoted is around £3,000, but costs can be much more or much less than this figure.

You can make an application to the High Court and represent yourself if necessary. If you are considering self-representing it is worth speaking with **reunite** and other organisations for advice and support.

Pakistan

Pakistan does not have an official Legal Aid system and so **reunite** does not have any experience of a parent receiving legal aid funding in Pakistan, or even knowing how to apply for it. As a result, all parents have had to either pay privately for a lawyer to take on the case or, in a few cases, lawyers have been willing to take a case on a **pro bono** basis.

There are a number of lawyers' societies in Pakistan who offer pro bono legal assistance but this will very much be at their discretion. The details of one, the Pakistan Lawyers Foundation, can be found in the Useful Contacts section.

Parents that **reunite** have spoken with have paid between £2,000 and £10,000 for legal representation in Pakistan. The costs in your case may be much more or much less than this estimate depending on factors such as the complexity of your situation, the number of court hearings needed and if there are any appeals. As costs can vary so wildly it is advised that you agree costs with a lawyer before you hire them.

Legal work that is completed without charge to the client is described as being done '**pro bono**'.

The British High Commission - Passports and Emergency Travel Documents

There have been cases where a child has been returned to the left-behind parent for the purposes of a return to their country of habitual residence, but the child's passport has been lost, stolen, destroyed or the other parent has refused to hand it over.

The British High Commission and British Deputy High Commissions are only able to issue Emergency Travel Documents (ETDs) with the consent of everyone with PR, or if there is an order from a court requesting the creation of such travel documents without the consent of everyone with PR. If you think this could be an issue in your case, it is worth speaking with the FCO and a specialist lawyer in the UK for further advice and to possibly start the process of asking the court for the necessary order.

Mediation

Mediation is a process by which one or two trained mediators would meet with yourself and the other parent to discuss the long-term arrangements for your child. Any agreement reached through mediation can be made into a legally binding court order. Mediation can run alongside court proceedings so you do not have to choose one route or the other.

In Pakistan mediation is rarely ordered in child abduction cases, even though it is compulsory in divorce and other family proceedings. However mediation is being encouraged more and more as an alternative to the court process, and the District Court of Lahore has opened a group of ADR (alternative dispute resolution) centres across the country that can mediate in family cases.

reunite has its own mediation service that specialises in cases of international parental child abduction and international cases involving children. This mediation can take place over Skype, so there is no need for both parents to be in the same country, and interpreters can be hired if necessary. If you would like more information on the **reunite** mediation service, please contact the mediation team on +44 (0)116 255 5345.

When selecting a mediator please ensure that you use qualified mediators and make sure that they have experience of international children's cases.

Other sources of support

reunite Advice Line

The **reunite** Advice Line provides ongoing practical advice, information and support on child abduction and the international movement of children. The advice line is a confidential service and Advice Line Co-ordinators will remain in contact with you until a resolution is reached in your situation.

Foreign and Commonwealth Office (FCO)

As mentioned above, if you or your child is a British National you are able to report their abduction to the consular division Foreign and Commonwealth Office. The FCO will then liaise with the embassies overseas to see what support can be provided for you.

If you live outside of the UK you can report the abduction of your child directly to your local British Embassy, High Commission or Consulate, who can again liaise with other organisations and Embassies and provide support.

SACH – Struggle for Change

SACH is an NGO that provides support in a variety of situations, and may be able to help if you have to travel to Pakistan and feel that your safety is at risk.

Pakistan Lawyers Foundation

Pakistan Lawyers Foundation is a not-for-profit organisation that provides legal representation to those who cannot afford it in the fields of human rights, women's rights and the rule of law.

Travelling to Pakistan

You may be asked or advised to travel to Pakistan to take part in court proceedings.

If you are not a Pakistani passport holder you will need to apply for a visa to travel to Pakistan. Further information about visas can be found in the FCO's Travel Advice website at <https://www.gov.uk/foreign-travel-advice/pakistan/entry-requirements>.

It is also worth checking the Travel Advice above for any security concerns or issues relating to the part of Pakistan you will be travelling to.

Should you need assistance from the British High Commission while in Pakistan, their contact information can be found at: <https://www.gov.uk/government/world/organisations/british-high-commission-islamabad>. This website also includes information of various British Deputy High Commissions throughout Pakistan.

Useful Contacts

reunite International Child Abduction Centre

Advice Line Telephone: 0044 (0)116 255 6234

Mediation/Administration Telephone: 0044 (0)116 255 5345

Website: <http://www.reunite.org/>

Foreign and Commonwealth Office Consular Team

Telephone: 0044 (0)207 008 1500

British High Commission in Islamabad

Telephone: 0092 (0)51 201 2000

Website: <https://www.gov.uk/government/world/organisations/british-high-commission-islamabad>

Links to contact details of the various British Deputy High Commissions across Pakistan can be found at the above website.

SACH – Struggle for Change

Telephone: 0092 (0) 51 4860701

Website: <http://www.sach.org.pk>

Pakistan Lawyers Federation:

Telephone: 0092 (0) 21 35220318

Website: <http://www.plfpk.org/>

British Passport Office Advice Line

Telephone: 0044 (0)300 222 0000

What you can do now

- Start collecting information about your child and the abducting/retaining parent that may be useful at a later date such as name, date of birth, nationality, physical description etc.
- Make sure you have copies of important documents such as birth certificates and marriage certificates.
- Keep copies of any communication between yourself and the other parent that is conducted through email, text message or any sort of instant messenger. These conversations could be used as evidence if needed.
- If possible keep open channels of communication with the other parent and with members of their family.
- If you have not already done so, contact the **reunite** Advice Line for ongoing advice, information and support.

'Never think that you are alone and you are the only one who is going through such an experience... Talk to organisations like reunite, talk to lawyers and other people who can help, and talk to other parents.'

Parent whose children were wrongfully retained in Pakistan