



Maintaining Contact with Grandchildren following their Parents' divorce

Following the breakdown of a relationship, children will undoubtedly be affected by their ability to spend less time with each of their parents. A subsequent consequence in the breakdown of the family unit will be the impact on the child or children's relationship with their wider paternal or maternal family. Whilst every family is different, for many families, this loss will be felt particularly strongly by grandparents, who often have close relationships with their grandchildren and frequently provide invaluable childcare assistance.

There are a number of reasons why grandparents' relationships with their grandchildren may breakdown. This could be due to difficulties in their relationship with one or both of the child's parents. It might also be that the parents are unable to agree arrangements for their children and whilst proceedings between the parents are ongoing, grandparents also seek the opportunity to be involved in these conversations. However, is there any specific legal provision or protection for these relationships?

If an individual wishes to obtain an Order from the Court that regulates with whom a child is to live, spend time with or otherwise have contact with, then the individual would need to make an application for a Child Arrangements Order under section 8 of *The Children Act 1989*.

Applying to the Court

Unlike parents, grandparents do not have an automatic right to make an application to the Court for a Child Arrangements Order purely on the basis of their relationship with the child, nor do they have automatic Parental Responsibility. In most circumstances they will need to apply for leave (permission) from the Court to make an application.



There are however a number of exceptions to this rule, which would provide an automatic right to make an application; –

- If the child has lived with the applicant for a period of at least three years (not necessarily continuous but the period must have begun no more than five years before or ended more than three months before the making of the application)
- If the child has lived with them for at least one year immediately preceding the application
- All those who have Parental Responsibility for the child have consented to the application being made
- Where there is an existing Order in place, the parties to that Order who the child lives with consent to the application; or
- Where the child is in the care of the local authority and the local authority consents to the application

The criteria that the Court must consider when deciding whether or not to give leave is set out at section 10(9) of *The Children Act*.¹ When making a decision, the Court should have particular regard to the nature of the proposed application; their connection with the child; and any risk there might be of the application in question disrupting the child's life to such an extent that he or she would experience harm as a result.

If leave is granted, then the application will be allowed to proceed along the same course as child arrangement proceedings between parents.² If one or both parents object to contact taking place, then the Court is likely to list a contested hearing to hear evidence from the parties and determine the issue.³ Like all other child arrangement applications, the welfare of the child or children is the Court's paramount consideration.⁴ The Court will consider the welfare checklist (as set out section 1(3) of *The Children Act* together with specific factors such as (but not limited to) the



child's relationship with the grandparent(s) or family member, any impact that contact may have on the child's relationship with its parents or wider family members and the detriment to the child if they were not to have a relationship with that family member.

Alternative routes

Whilst grandparents can pursue contact with their grandchild through Court, a child's parents are generally seen as able to decide who their child or children can and cannot spend time with. The Court is not the first avenue to turn to if there is a disagreement about a grandparent seeing a grandchild (or alternative extended family member) and there are a number of other channels that should be explored, with Court as a last resort. This includes direct discussions between parents and family members, mediation and family therapy. Where possible, Court proceedings for children should be avoided. We can provide advice and assistance to help parents and grandparents try to resolve any issues of contact or any disputes about caring for a child.

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