



## Grandparents and their grandchildren

**At Wards Solicitors our family lawyers are experienced in providing practical and supportive advice and can help you identify and prioritise the issues. This factsheet is designed to give you information on the issues surrounding grandchildren. We have further fact sheets on considering children in divorce and relationship breakdown, understanding your divorce proceedings, ending your Civil Partnership, injunctions relating to abuse and violence in the home and handling financial claims during your divorce or civil partnership dissolution. If you have any further questions, please do not hesitate to contact us.**

Over 40% of grandparents lose contact with the grandchildren when their parents separate.

A million children lose touch with their grandparents as a result of separation or divorce (Grandparents Association estimate 2009)

4 in 5 teenagers say grandparents are the most important people outside immediate family (Grandparents Plus).

### Your grandchildren

Grandparents play a supportive role in children's upbringing secondary to their parents. Unfortunately when parents separate the role of grandparents can be undermined, particularly where the grandparents are related to the parent without the day to day care of the children.

Grandparents do not have an automatic right to have contact with their grandchildren however the courts are gradually recognising the important role of grandparents especially in light of the significant number of parents who rely on grandparents for child care.

### Role of a grandparent

There are many roles a grandparent can take following the separation of parents. Often grandparents will be considered in a supervisory role or somebody who can be the 'go between' between the parents where communication has broken down.

### Arrangements for Children

Following the breakdown of a relationship between the parents, courts are usually asked to assist in making future arrangements for children, i.e. with whom a child is to live, spend time with, or otherwise have contact with.

The Orders made by the Court are called 'Child Arrangement Orders'. They will set out and regulate who a child will live with, where a child will spend their time and who a child will have contact with.

A parent can apply to the Court at any time for such an order. Other people, including grandparents, who are connected to the child but not a parent will need the Court's permission to apply.

There are other orders that the court can make in relation to children dealing with specific issues and to protect the children's welfare.

### Mediation

Before applying for an order you are required to attend a Mediation Information Assessment Meeting (MIAM) with a trained mediator who will assess whether your case is suitable for mediation. Mediation is where the parties meet a mediator who will listen to both sides of the argument and then help the parties to see each other's point of view. Sometimes this can be a very effective way of solving a problem. Family courts have wide powers where children are concerned. It is obviously best for all concerned if arrangements for the children can be agreed and if you and the other parties can work together constructively for the benefit of the children.

If you do not attend mediation the court will not accept any application.

We have fully trained Collaborative Lawyers. Please enquire if you would like more details about this process.

### Applying for an order

If the assessment is that mediation is not suitable or if you have attended mediation and it did not work, an application to court can be made.

The first step is for the court to establish whether the court's permission to make the application is needed.

In the following circumstances grandparents will not need permission:-

- If the child has lived with the grandparents for 3 years preceding the application.
- If they have consent from all parents who have parental responsibility (see below).
- If they have an order stating a child is to live with them.

Where permission is needed the court will consider the following:-

- The circumstances surrounding the application.
- The connection that the grandparents have with the child.
- If the order being called for will disrupt the child's day to day life too much.

If the court is satisfied the application has merits and is beneficial to the child then permission will be granted and the application for a child arrangements order will go ahead.

The procedure is as follows:-

A written application is made to the court with a fee. The court arranges a first hearing, usually within 21 days of receiving the application. The papers are then served on the other party.

At this stage someone from the Child and Family Court Advisory and Support Service (CAFCASS) will contact you about the case and undertake preliminary checks. The result of the checks and their discussions with you and the parties will be sent to the court ready for the first court hearing.

At that hearing, a CAFCASS officer is usually

present and parties may be given the opportunity to discuss the case to see if any agreement can be reached. It is also at this stage that the court will give its consideration to whether or not permission is granted for you to proceed with your application and to hear any objections from the other parties.

If an agreement is reached then an order will be made if the Judge considers it appropriate.

If an agreement cannot be reached the Judge will set a timetable (directions) for providing further information (evidence) that the court will require to make a decision.

Such timetable can include provision for disclosure of police records, parties to undertake hairstrand testing for drug and alcohol, DNA testing and medical evidence. Sometimes parties have to make formal written statements about their case. CAFCASS and Social Services can also be instructed to prepare a report on the case which is normally very influential.

It is difficult to provide an accurate timetable as much depends on the particular facts of each case. However, a Dispute Resolution Appointment will generally be fixed for a couple of weeks after the evidence has reached the Court and after any reports have been completed. If an agreement can still not be reached at this hearing then a Final Welfare hearing will be fixed at which a Judge or Magistrates will review the evidence, taking into account the parties statements, if applicable, and a Final Order will be made.

The court relies heavily on the recommendations of the CAFCASS or Social Services report in reaching its final decision. The writer will be very experienced and usually with a social work background. They will see all parties in a case and usually interview the children too. It is unlikely that the children will attend court.

The court has to give 'paramount consideration' to the welfare of the child. The court also has to pay specific attention to the following matters:-

- The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding).
- Their physical, emotional and educational needs.
- The likely effect on them in any change in their circumstances.
- Their age, sex, background and any characteristic the court considers relevant.

- Any harm which they have suffered or at risk of suffering.
- How capable are the grandparents and any other person the court considers to be relevant of meeting their needs.
- The range of powers available to the court. The court is prohibited from making an order unless it is better for the child than making no order at all.

It is important that serious thought is given to a case before an application is made for an order as it will have an unsettling effect on the entire family.

Some courts operate an 'Interviewing Children Scheme'. Where this applies, the court can adjourn formal proceedings for older children to be interviewed by a specialist worker for their views. We will discuss this with you if it is likely to apply in your case.

## Parental Responsibility

A mother automatically has parental responsibility for her child (unless it is removed by court action).

Fathers do not automatically acquire parental responsibility, however they can acquire it if either; the father was married to the mother at the time of the child's birth; his name is registered on the birth certificate and the child was born after

1/12/03; the parents have entered into a parental responsibility agreement or he obtains parental responsibility through the order of the court.

Grandparents can acquire parental responsibility if a court has given a Residence Order or Special Guardianship Order, in the past. Or where a Parental Responsibility Order or a child arrangements Order stating the child will live with them has been made.

When a person has Parental Responsibility it means that they can obtain information from the children's school or doctor about their progress.

It gives a right to be consulted about major issues such as education, the child's religious upbringing, agreement to adoption, consent to marriage or removal out of the country. It does not give the person the automatic right to interfere with the day to day care nor does it give that person the power to override the parents decisions unless you have a Special Guardianship Order.

Please note that this information sheet is designed to cover a wide range of cases and circumstances. You will be given specific information relating to your own case. If you have any queries please ask.

For more information on divorce and relationship breakdown please follow the link [wards.uk.com/divorce-and-family](https://wards.uk.com/divorce-and-family).