

Do Grandparents have rights?

When a family breaks down, attention rightly focuses on the couple and their children and the affects on grandparents are often forgotten.

Grandparents can be left to deal with feelings of grief and loss in addition to watching the struggle of their son or daughter.

Grandparents are frequently concerned about losing touch with their grandchildren and many seek legal advice about what can be done to prevent this.

Although Court proceedings are an option they are usually best avoided for the sake of the children.

The Court always considers the circumstances from the child's perspective with the paramount concern being the child's welfare.

In accordance with the current Law of England and Wales, grandparents do not have Parental Responsibility for their grandchildren and are not automatically entitled to make an application to the Court in relation to a child.

Grandparents wishing to make an application to the Court must first apply to the Court for "Leave" (permission) to be heard.

The Court will need to consider the family circumstances and the role that the grandparent(s) seeking leave has had within that family. The Court may distinguish between a grandparent who frequently assists with childcare and one who rarely sees their grandchild.

If leave is obtained, the Court will consider the practicalities for the situation and will take into account the children's wishes and feelings, as well as their usual routine.

The Court prefers to try to make provision for the children to see grandparents within existing contact arrangements where possible, rather than divide the children's time into smaller portions. The Court will also consider whether an order is needed or whether matters can be agreed.

The court will normally instruct CAFCASS (The Children and Family Court Advisory and Support Service) to become involved. The role of CAFCASS is to investigate, assist in discussions and report to the Judge with recommendations. CAFCASS is able to interview all parties involved and speak directly with the children.

A grandparent does not have special rights to Parental Responsibility. However, if a grandparent is bringing up their grandchild, they will have parental responsibility for the child living with them if a court makes a Child Arrangements Order relating to where a child lives in their favour or they are

the child's guardian. Please see our separate fact sheets regarding Child Arrangements Orders and Parental Responsibility.

A Child Arrangements Order says who a child is to live with and gives Parental Responsibility to the person with the order if they don't already have it. The Parental Responsibility only lasts as long as the Child Arrangements Order is in place, which is usually until the child is 16, unless there are exceptional circumstances, such as if the child has learning disabilities. A Child Arrangements Order relating to residence will stipulate that you will share parental responsibility with the child's parent(s).

Advice for Grandparents

Negotiate with the child's parents at an early stage. Be careful not to take sides and ensure you make it clear that all you want is a reasonable ongoing role in your grandchild's life.

Do not, under any circumstances, play the blame game or get involved in the relationship breakdown.

Be realistic. Don't forget that the children now have three households to move between - not just yours and theirs.

If discussions do not proceed smoothly or if you have concerns for your grandchildren, don't let the situation escalate. Instead, seek legal advice and again try to settle quickly to avoid confrontation.

If necessary apply to the Court. Consider whether your application be linked to your son's or daughter's application for contact. The court is more willing to consider an application by a grandparent to assist with childcare within the context of the parents being primary carers, particularly if historically you have been the babysitter/carer of choice.

Don't use an application as a way of getting back at your son or daughter-in-law. Don't use your application as a way to reduce their time with their children and don't use it as a weapon. The court will be highly critical of any person who appears to be abusing the process or using the law as a means to hurt the other parties.

If parents can resolve the issues themselves, it is more likely that grandparents' hopes and wishes will be considered. If not, it is worth remembering that the court considers it best for children to know their extended family, so that they can understand their background and place in the world.