



Family breakdown: what rights do grandparents have?

04 August 2021

In recent years working parents have come to rely more and more heavily on their own parents for childcare. We are all aware of close family bonds being disrupted by Covid, but what happens if that family relationship is disrupted by a divorce or separation? Every year several thousand grandparents make applications to the Court to spend time with their grandchildren, but how do they end up there?

I can see that my son's relationship with his partner is not going well, and he has hinted to us that they may split up. He works long hours which means that the children will live with their mother, but we have always picked them up from school. What rights do we have if the worst happens?

The short answer is that grandparents have no automatic right to spend time with their grandchildren just because of their biological connection. It has been debated by several governments at various times in the last 20 years, but never taken further.

If the parents have not yet separated, then maintain your relationship with your grandchildren as far as possible, but do try to keep all your time and communication with them, and with their parents, neutral. Think of yourselves as Switzerland for the children; a safe, neutral refuge that will not be drawn into the conflict they may be facing. Focus on what the children are doing day to day, and don't bombard them. Brush up on your tech skills so you can email or text older children, and consider keeping a diary of when you see the grandchildren, and copies of letters, messages etc.

Our son's wife is always so distant and sometimes rude with us, and tells our son that she doesn't want to see us. How will we keep our relationship with our grandchildren going now they are splitting up, and she has treated him so badly?

It can be extremely difficult for mothers, and fathers, to separate their feelings about their former spouse or partner, from their feelings about their in-laws.

The first step is to see if the parent who has care of the children is willing for the relationship between grandparents and grandchildren to continue. This is where that neutrality really comes into play. You have only ever heard one side of the story, and the main focus in all of this should be your grandchildren, and not, unless they are exposed to harm at home, about their parents. It may mean swallowing your pride, but it's worth it to keep a relationship with your grandchildren.

We have to admit that our son has behaved badly on the breakdown of his marriage. Our former daughter in law is refusing to respond to our emails asking to see our grandchildren. Do we have to go to Court now?

It may come to that, but a good first step is to explore mediation or some form of out of Court dispute resolution instead. You do not necessarily have to be in the same room, and it can be a helpful way of opening communications

Our son's former partner has cut herself off from him and his entire family, and he is not sure if he can face fighting to see his children. Can we take this to Court if our son doesn't want to?

Grandparents can bring Court proceedings to regulate the time that they spend with their grandchildren. However, there is an extra stage as they first have to make an application to the Court for permission to make that application. Before doing so they will also at least have to have spoken to a family mediator at a Mediation Information and Assessment Meeting.

At the permission stage, the Court will consider a number of factors, including the time that the grandparent has spent with the child before, what they are seeking now, by way of times, locations etc., and whether what the grandparent is seeking will be beneficial for the grandchild. All evidence that can be produced of a close family bond will be of assistance. This is where that diary and all the copy letters etc. will come in very handy.

Our former daughter in law says that we shouldn't see our grandchildren because of how she says our son behaved, and as it will cause her too much stress and anxiety. This seems ridiculous to us; all we want to do is keep our relationship going.

It is only in extreme circumstances that the Court will determine that no contact should be allowed at all with the grandparents. However, it is very much a case of fitting what the grandparents are asking for with the child's life, and the child's existing relationship with both their parents.

If the Court gives permission, then it will go on to consider the application for a child arrangements order, balancing the value and the importance of a child spending time with their grandparents with the wishes of the children, and the wishes of the parents, which are not necessarily the same. Every case is going to be different, but the Court's paramount consideration in all of this, as with any children case, is the welfare of the child. Therefore the Court will look at the existing arrangements that the parents together have in place, how the grandparents fit in this, and whether the arrangements being proposed would take time away from both the parents in such a way that it would not be in the child's interests. You may, therefore, rank behind your own child in the queue to see the children.

The Court has to consider whether the application will cause disruption and whether it is going to harm the child, which includes behavioural, and physical development and mental health. It will consider how to manage the case to ensure that the risk of harm to the child is minimised; causing stress and anxiety to the parent(s) is not necessarily going to be sufficient to stop it happening. In a case with a more fractured relationship, the Court will direct the contact to go much more slowly. Contact might take place remotely, or be supervised and it may be necessary for grandparents to say that they will not bring the child into contact with any other relative, including the other parent.

The Court also follows the "no order" principle, so a Judge will not make an order unless they think it will be good for the welfare of the child. For example if there was a history or allegation as to domestic abuse involving the grandparents, then the Court will have to consider a fact finding hearing, and whether it should still make a child arrangements order.

Is getting an order really going to be worth it? What if our son's former partner won't co-operate with it?

Once an order has been granted, of course that is not the end of the story. Sometimes child

arrangements orders are breached, and have to be enforced via parenting courses, unpaid work and on occasion, imprisonment. It does seem very extreme, but if someone continues to breach a child arrangements order, they are risking harming their child's welfare, and repeated breaches without reasonable excuses can mean imprisonment. However, in many cases it is a start that can relax into a better relationship all round, once the difficulties of the divorce or separation die away.

Article by Charlotte Skea-Strachan, Senior Associate in the Family Department. For further information, please contact Charlotte by email or your usual contact in the Family Department or, alternatively, telephone on 020 7465 4300.
