

Grandparents - precedent client guide (with drafting notes)



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- Geraldine Morris, Solicitor, Head of LexisPSL Family

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Grandparents—client guide

This document provides general guidance for grandparents regarding an application for a child arrangements order that makes provision for contact with grandchildren. Your family lawyer will be able to provide specific advice based on your circumstances.

What can I do if I am not allowed to spend time with my grandchildren?

In the event that there is a breakdown in the relationship between the parents of your grandchildren it is to be hoped that arrangements could still be made for the children to continue to spend time with their grandparents. In those circumstances grandparents often play an important role in the lives of their grandchildren.

Sometimes it is possible to resolve things by mediation and other forms of dispute resolution. Mediation may help avoid the need for costly legal proceedings that can be quite stressful. In fact, before issuing an application for an order providing that you can spend time with your grandchildren (called a child arrangements order (CAO)) you are now required by the rules governing these applications to attend a meeting with a mediator to see whether mediation might be suitable, rather than using the court. The meeting is known as a mediation information and assessment meeting (a MIAM). This requirement applies unless certain exemptions, including issues relating to the safety of the child or domestic violence, apply. Your family lawyer can explain whether your circumstances are such that the court would not expect you to attend a MIAM. The other party to the proceedings will also be encouraged to attend mediation. If you are willing to attend together then the mediation meeting may be conducted jointly; otherwise, separate meetings will be held.

If it is not possible to reach an agreement in relation to when and for how long you spend time with your grandchildren, then an application may be made to the court for a CAO that specifies the contact to take place between you and your grandchild.

What is a child arrangements order?

A CAO is an order that regulates arrangements for a child that relate to any of the following:

- > with whom the child is to live, spend time or otherwise have contact
- > when the child is to live, spend time or otherwise have contact with any person

Contact simply means the time that a child spends with an adult. There are several ways that contact may take place:

- > direct contact between the child and the person named in the order
- > overnight staying contact
- > supervised contact, and
- > indirect contact through letters or cards

In rare circumstances, where the best interests of the child dictate, the court can order that there is no contact.

A CAO may also show the person with whom a child is to live, but not specifically where.

Who can apply?

Generally grandparents do not have an automatic entitlement to make an application for a CAO and they must obtain permission from the court before they can apply. However, some grandparents will be entitled to apply depending on whether they meet the specific criteria contained in the Children Act 1989, e.g. they have the consent of every person with parental responsibility for the child. Your family lawyer will discuss with you whether your circumstances meet the criteria. In the event that you do not, then as a first step you must make an application to the court requesting permission to apply for a CAO.

What is the procedure?

If it is not possible to reach an agreement about the time you can spend with the children you can apply to the court for an order. Unless you meet the specific criteria then as a first step you will need to make an application to court for permission to apply for a CAO.

An application is made on a specific court form, which sets out the details of all the adults and children in the case. It then requires you to say what orders you are asking the court to make and why.

When the court considers an application for permission it must take account of the following list of considerations:

- > the nature of the proposed application
- > the applicant's connection with the child

- > any risk there might be of that proposed application disrupting the child's life to such an extent that they would be harmed by it, and
- > where the child is being looked after by a local authority what the authority's plans for the child's future are, and the wishes and feelings of the child's parents

When the court receives the application for contact, it will set a time and place for you and the other person or people involved to have a first court appointment (called a first hearing dispute resolution appointment (FHDRA)). Information about this appointment and a copy of the application form must usually be sent to any other adults involved so that they have time to prepare a response. The person starting the court process is called the applicant and the parent, and any other adult with parental responsibility or looking after the child, is a respondent.

The respondent(s) must complete certain forms and send them to court to confirm they have seen the papers.

What happens at court?

The FHDRA is when the court investigates the issues and enquires into the possibility of a settlement. If agreement cannot be reached the court will identify the outstanding issues and will direct how the case should proceed. The court might order that a Cafcass (Children and Families Court Advisory and Support Service) officer prepares a report to help the judge at the final hearing, or it might order that the child be legally represented in the proceedings. Sometimes the court will adjourn the case for mediation to take place.

If the issues can't be sorted out the court will hold a final hearing. Here, a judge will hear evidence from the adults involved, the Cafcass officer and any other necessary experts, and then make a binding decision.

How does the court decide what should happen?

The first concern of the court when considering an application for contact is the child's welfare. The Children Act 1989 provides a list of considerations for the judge who has to decide the case, which help guide them in making a decision:

- > the wishes and feelings of the child concerned
- > the child's physical, emotional and educational needs
- > the likely effect on the child if circumstances changed as a result of the court's decision
- > the child's age, sex, background and any other characteristics that will be relevant to the court's decision
- > any harm the child has suffered or may be at risk of suffering
- > the capability of the child's parents (or other relevant people) in meeting the child's needs, and
- > the powers available to the court

Some of these considerations will be more relevant than others depending on the circumstances of the case. The court must also be satisfied that making an order is better for the child than not making an order at all.

Grandparents—client guide (drafting notes)

General Notes

This Precedent Letter may be sent directly to a client by a family practitioner to explain the steps to be taken by a grandparent seeking contact with their grandchild. It explains the meaning of a child arrangements order under section 8 of the Children Act 1989. It also includes an explanation of when permission to apply is required and the factors the court will take into account in such an application, pre-action requirements, the procedural aspects of an application for a child arrangements order and the factors considered by the courts.

What is a child arrangements order?

Section 12 of the Children and Families Act 2014 (CFA 2014) amended section 8(1) of the Children Act 1989 (ChA 1989) by removing the definitions of ‘contact order’ and ‘residence order’ and inserting instead a new single order called a child arrangements order (CAO).

See Practice Notes: *Child arrangements orders* and *Child arrangements orders—contact*.

Who can apply?

Under the ChA 1989 certain applicants are entitled to apply for an order under ChA 1989, s 8 on the basis that they are persons who are usually closely connected with the child, while others require permission from the court before they can apply. There are also distinctions depending on the type of order being applied for.

See Practice Notes: *Permission to apply for a section 8 order* and *Grandparents and children proceedings*.

What is the procedure?

The rules in respect of private law proceedings relating to children are largely contained in Family Procedure Rules 2010 (FPR 2010), SI 2010/2955, Pt 12 and the accompanying FPR 2010, PD 12B, the Child Arrangements Programme (CAP). The CAP is designed to assist families to reach safe and child-focused agreements for their child, where possible out of the court setting. If parents/families are unable to reach agreement, and a court application is made, the CAP encourages swift resolution of the dispute through the court. Applications for permission to start proceedings are governed by the FPR 2010, 2010/2955, Pt 18 and the corresponding FPR 2010, PD 18A.

See Practice Notes: *Permission to apply for a section 8 order*, *Child Arrangements Programme—the procedure for section 8 applications* and *Grandparents and children proceedings*.

How does the court decide what should happen?

The ChA 1989 provides that when determining an issue in relation to a child, the child's welfare shall be the court's paramount consideration, see Practice Note: Paramourncy of the child's welfare. Although welfare is not defined in ChA 1989, there is a checklist of seven relevant factors to which the court must have regard when applying the paramourncy principle.

See Practice Notes: *The statutory checklist*.

When considering whether to make an order under ChA 1989, the court shall not make the order unless it considers that doing so would be better for the child than making no order at all.

See Practice Notes: *The no order principle*.

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