

Agenda: Advice for grandparents on keeping access open



Agenda: Advice for grandparents on keeping access open

By Denise Laverty, Associate, BTO Solicitors' Family Law team

THERE have been a number of reports recently calling for the **Government** to enshrine in law the right for grandparents to see their grandchildren after a divorce. What would this mean?

Grandparents do not automatically acquire legal rights; provided they have an "interest" they can apply to the court for a Contact Order. Under the Children's **Scotland** Act 1995 the court can make an order to regulate with whom a child should live or regulate maintaining "personal relations and direct contact", commonly known as a Contact Order.

What would the difference be if the proposed reforms were enacted and grandparents acquired automatic rights to contact with their grandchildren? It might reinforce to any parent considering denying the grandparent contact that this just isn't on.

The grandparent should always try to first speak to the parent who is denying the contact. There might be reasons why they are doing so. I have come across situations where a parent doesn't want the children to see their grandparents because, for example, there may be a fear that the grandparent asking for contact is only doing so as a way to secure contact for their own child with whom the parent already has a contact dispute. If you can speak to the parent and recognise any concerns they may have, you can discuss ways to overcome these.

If that doesn't work or you feel unable to speak directly to the parent, then you could try mediation. Mediation would provide you with an independent third party who can help facilitate the conversation between the grandparent and the parent with a view to trying to help you reach an agreement.

Ultimately, if neither of the two options above are possible or do not work, then the grandparent can apply to the court for a contact order, but this should be seen as a last resort.

If you are a grandparent, there are things you can do to prevent contact being denied. In my experience where parents themselves are able to reach an agreement as to contact then, usually, there isn't a difficulty with grandparents seeing the children. However when the parents are in conflict, this can extend to grandparents. It is difficult in these situations not to be seen to be taking sides. You naturally want to support your own child but in doing so you are possibly unaware that anything you might say about their ex-partner can find its way back to them and can be the cause of their refusal to allow the grandparent to see the children. My advice would be to try to remain out of the parents' own conflict. Try contacting the parent directly. Offer to meet up with them or to help, which could include babysitting or picking up the children after school. It is important to let them know that whilst they may have issues with your child you always want to remain a good grandparent and don't want anything to diminish your relationship with the grandchildren. Don't be dragged into the disagreements and never disparage the parent in front of the children.

There is much emphasis on grandparents being given automatic legal rights and whilst this is currently in the hands of the Scottish Government, grandparents should not think that they have to wait until the time comes, if that time ever comes, when legal rights are automatically given to them before doing anything about being denied contact with their grandchildren. The court will be supportive of a grandparent applying for contact unless there is good reason why the child should be kept away from them. The overriding principle is what is in the best interests of the child.