

Grandparents' rights

December 2020

The breakdown of a marriage or long term relationship where there are children can be stressful for all concerned, but particularly so for grandparents whose contact with grandchildren is denied.

Statistics from England show that 42% of grandparents lose contact with their grandchildren when their parents separate, which is a staggering statistic by any standards.

Grandparents, by the very nature of their special relationship, often have much to offer their grandchildren especially through the difficult times that may follow when the parents separate. Grandparents can provide invaluable support, both physically and emotionally, to all concerned and yet it seems that on separation or divorce grandparents are often forgotten.

The Law

For parents, the law has over many years established that there is a presumption of contact between children and their absent parent. Contact is said to be a right of the child, which can only be taken away or restricted in serious cases of domestic abuse or for some other very good reason.

The situation is not the same for grandparents. There is no presumption in law that a grandparent should have contact with a grandchild. Indeed, Guernsey law for many years restricted the right of grandparents to apply to the Court for contact. Until recently, the law prevented a grandparent from bringing an application for contact, unless one of the parents had also applied to the Court or an order had previously been made regarding residence or contact.

In practice, applications by grandparents were relatively rare which probably means that either they were able to agree arrangements to see their grandchildren or grandparents were left to suffer in silence.

In more recent years, the law has moved to recognise the important role that grandparents can play in children's lives and that their influence is likely to be beneficial.

Against this background, 'The Children (Guernsey & Alderney) Law, 2008' may now provide assistance for grandparents. This Law came into force on 4th January 2010. Whilst the Law itself provides no specific provisions relating to grandparents, what is now permissible under the Law is that a grandparent, or indeed anyone with sufficient connection to the child, can apply to the Court not only for contact but also for any other order relating to children, such as a residence, prohibited steps or specific issue orders.

There can be no doubt that the new Law is a significant step forward for grandparents, or anyone who has a close connection to a child, who need to make an application to the Court. As you might expect, the Law imposes certain safeguards to prevent spurious applications. This is done by requiring any applicant, other than a parent of the child or someone with parental responsibility, to have the permission of the Court before any application can be brought. There are exceptions to this rule where a child has resided with the applicant for a period immediately prior to issuing the application, or where those with parental responsibility agree in writing to the application being brought. In this way, the Court operates as a gatekeeper.

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These are still early days for the new Law. There can be no doubt that this new legislation is eminently more flexible than its predecessor, however only time will tell as to whether grandparents avail themselves of the opportunity provided by the new Law or whether they continue to make do with contact as offered.