

Q: What else can I do to make sure my grandchildren get the best care if I die before they grow up?

This depends on the reasons you are caring for your grandchildren. Your grandchildren may have a parent with parental responsibility but live with you because their parent is unable or unwilling to provide appropriate care. You may be afraid that the children will come to harm if their parent has sole responsibility. If your grandchildren were previously in local authority care or accommodated by social services you may find it helpful to speak to a social worker about your concerns. The social worker could help you put your concerns in writing and note your wishes for your grandchildren's care on the children's files.

If you are looking after your grandchildren as a private arrangement, and social services have never been involved, consider whether there is another suitable member of the family who could look after your grandchildren. Talk to that person and see if he or she would be willing to undertake the responsibility. You will need to explain your concerns about the future and inform the person that he or she could apply to the court for a residence order or, where there is no parent with parental responsibility, to be appointed guardian. If there is no member of the family, consider whether there is another person close to the children who could look after them. However, in this case, the person would be a private foster carer and would need to tell social services that he or she was looking after the children, unless they obtain a Residence Order.

You might wish to make a note in your will about your wishes or to leave a sum of money to the person to help cover the costs. Talk to your solicitor about this.

Further information and advice

For legal advice and information contact a solicitor on The Grandparents' Association Lawyers List, a CAB or legal advice centre.

For further information about applying for a Guardianship Order ask your court office for a copy of the Court Service's booklet 'Children and Family Courts'.

For further information about the guardian's allowance contact your local Benefit Office and ask for their notes about guardian's allowance and claim pack.



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GUARDIANS

Many grandparents ask the Grandparents' Association whether they can become guardians of the grandchildren they are bringing up. Others worry about what will happen to the grandchildren they are caring for if they die before the children are grown up and independent. This leaflet tries to answer the questions and problems put to the Grandparents' Association most often. We hope it will help you. If after reading it you are still unclear about anything, please contact us again or see a solicitor.

Q: My grandchildren live with me and I worry about what will happen to them if I die. Can I appoint a guardian to take my place?

This is a big fear for many grandparents but unfortunately you cannot appoint a guardian to take your place unless you yourself are a guardian or a Special Guardian, and either the children's parents are dead, or the mother is dead and the father does not have parental responsibility for them. (Each case must be looked at individually).

Q: Does it make a difference if I have a Residence Order for my grandchildren?

No it does not. A Residence Order says who the child is to live with. A person with a Residence Order has parental responsibility as long as the order lasts. Others may have parental responsibility at the same time.

Q: What if I have a Special Guardianship Order in respect of my grandchild?

Any person who is a Special Guardian (that is who has been appointed as such by an order of a court) has the power to appoint another individual to be the child's guardian when he or she dies. The appointment of the guardian must be either made in a will, or in writing, which is dated and signed by the Special Guardian. It will take effect on the death of the, or the last surviving, Special Guardian.

Q: Who can appoint a guardian?

Any parent with parental responsibility, a guardian or a Special Guardian or the court may appoint a guardian.

Q: Who will be responsible for the children if I die?

This depends - usually one or both parents.

Q: My grandchildren live with me because neither of their parents is alive. Is it possible that you were appointed the children's guardian in a will or other document signed by a parent?

If you were properly appointed, you have the same powers to appoint a guardian as a parent with parental responsibility. An appointment must be in writing, dated and signed by the person making the appointment or be in a valid will or codicil to a will. If no appointment was made you could apply to the court to be made the children's guardian. The court has power to appoint a guardian in cases where there is no parent with parental responsibility. If neither parent is alive you may be entitled to a guardian's allowance. Talk to your solicitor, Citizens Advice Bureau (CAB) or local Benefit Office.

Q: My grandchildren live with me because their father has died.

In this case the children's mother still has parental responsibility. You cannot apply to the court to be made a guardian. Even if the father appointed you as guardian, the appointment will not take effect during the mother's life unless the father had a Residence Order in his favour alone when he died.

Q: My grandchildren live with me because their mother has died.

If the parents were married or the father obtained parental responsibility (by agreement with the mother, by joint registration of the child's birth, or by court order) the father will still have parental responsibility. The position will be similar to that described above when the father has died. However, if the parents were not married and the father has not obtained parental responsibility, you may apply to the court to be made guardian and if the mother appointed you as guardian, that appointment is effective. In certain circumstances you will be eligible for a guardian's allowance if one parent has died.

Q: There are no living parents with parental responsibility, how do I ask the court to appoint me as guardian?

You can apply in the course of any family proceedings already before the court or by making a separate or 'freestanding' application. The procedures laid down in the court rules must be followed. Once the application form has been filed and served on the appropriate people a directions appointment will be arranged to settle other matters such as the evidence to be given and the hearing date. In making decisions about guardianship the court will give paramount consideration to the children's welfare.

Q: Can more than one person be appointed a guardian?

Yes, two or more guardians may be appointed.

Q: What if there are disagreements between guardians?

Disputes between guardians, or between a surviving parent and guardian may be settled by the court if they cannot solve the problem themselves or by mediation. Mediation is a process in which a neutral third party helps parties to a dispute to reach agreement.

The court may make an order or even decide to bring to an end the guardian's appointment. Courts may resolve disputes by making an order such as a Residence, Contact, Specific Issue or Prohibited Steps Order. These are Children Act orders and are often referred to as section 8 Orders.