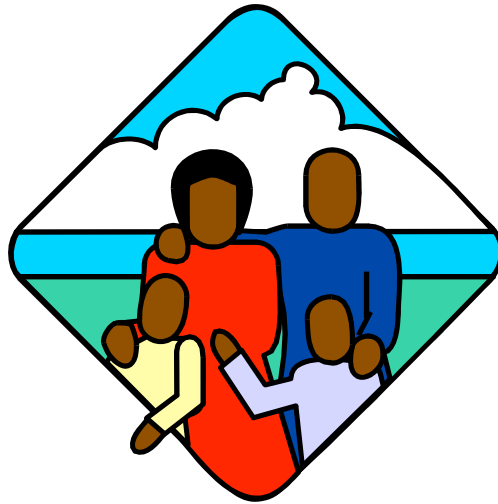


PARENTAL RESPONSIBILITY

A BRIEF GUIDE



What is Parental Responsibility?

Parental responsibility is “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.”

In practice, a person with parental responsibility has the right to be involved in the major decisions relating to a child’s upbringing and welfare, including for example:

- ∞ The child’s religion
- ∞ The child’s name
- ∞ Where and with whom the child should live
- ∞ What medical/ dental treatment the child should have
- ∞ What school the child should attend
- ∞ With whom should the child have contact

How does it work?

Parental responsibility is often shared between several people. This means each person should be consulted about major decisions. Day to day decisions are generally decided by the person caring for the child at the time.

However, one person with parental responsibility can take a decision unless the other party objects. For example, if a child needed an operation, one person with parental responsibility could give their consent. If another objected, the operation would be delayed until the court decided what was in the best interests of the child.

Who has Parental Responsibility?

- ∞ The mother.
- ∞ The biological father has parental responsibility automatically IF he is married to the mother when the child is born and/or conceived, or if he later marries the child’s mother. OR He is the father of a child whose birth is registered after 1st December 2003, and he goes with the mother to register the child’s birth or makes a statutory declaration of paternity
- ∞ An adoptive parent
- ∞ A legal guardian.
- ∞ Any person having a residence order concerning a child has parental responsibility whilst that residence order is in place.
- ∞ Any person with a pre-existing custody or care and control order.

Who can acquire Parental Responsibility and how?

- ∞ A biological father can acquire parental responsibility by:
 - i) entering a *Parental Responsibility Agreement* with the child’s mother. This must be in the required legal form and registered at the Principal Registry OR
 - ii) an application to the court.
- ∞ A Local Authority can acquire parental responsibility by obtaining
 - i) a Care Order, or
 - ii) an Emergency Protection Order
- ∞ Anyone who has a residence order for a child gains parental responsibility.

- ∞ A court-appointed Guardian if no one else has parental responsibility.

The Courts and Parental Responsibility

A father without parental responsibility may apply to the court for an order granting parental responsibility.

In considering the application, the court will have regard to the principle of the child's welfare as its paramount consideration. It must also consider whether making an order is better for the child than making no order at all.

The following factors are likely to be relevant when the court is considering whether or not to grant an application for a parental responsibility order:

- ∞ Whether or not the father has a real 'family' tie with the child, beyond being just the biological father.
- ∞ The degree of commitment that the father has shown to the child
- ∞ The degree of attachment that exists between father and child
- ∞ The reasons that the father has applied to the court. The court will not favour applications designed to undermine the mother's care of the child.
- ∞ The circumstances of the father at the time
- ∞ Hostility and lack of trust between the parents is not sufficient reason to grant parental responsibility.
- ∞ The father must show a level of responsibility as well as attachment.

Proposals for Change

The Adoption and Children Act 2002 has been passed by Parliament and is planned to be brought into force in September 2005. In addition, step parents will be able to obtain parental responsibility with the agreement of both natural parents (if they both have parental responsibility) or by a court order. In addition a new order of "special guardianship" will be available, giving parental responsibility to a non parent, and the right to exercise it to the exclusion of others with parental responsibility save any other special guardians. This is intended to be an alternative to adoption, and does not sever the links with a natural family. It will only be granted where this is in the child's best interests.

Note:

This is only a brief introduction to the law relating to Parental Responsibility and is not a substitute for detailed legal advice. If you wish to know more, it would be appropriate to seek legal advice. You may be eligible for Public Funding (formerly Legal Aid) to assist you.

Should you require any further advice please do not hesitate to contact either Sarah Palmer or Kirti Patel on telephone number 01329 823322.