

# **Parental Responsibility; what is it? who has it; can it be terminated or restricted?**

## **What is parental responsibility?**

The Children Act 1989 explains that parental responsibility refers to all of the rights, responsibilities, duties and authority that a person has in relation to a child and their property.

Parental responsibility ends when a child reaches 18, the child is 16 or 17 and marries, a child arrangements order ends or is discharged or if a court makes an order terminating parental responsibility.

## **Who has parental responsibility automatically?**

There are people who automatically acquire parental responsibility when a child is born:

- the child's birth mother;
- a transgender father who gives birth to a child (who will be referred to as the birth mother on the birth certificate); and
- a parent who is married or in a civil partnership with the birth mother when the child is born.

## **Who can acquire parental responsibility?**

Other people can acquire parental responsibility by taking one of the following actions.

A parent who is not married or in a civil partnership with the birth mother can do so by:

- marrying or entering into a civil partnership with the birth mother;
- being named as the other parent on the child's birth certificate, or by re-registering the birth to record the same;
- entering into a parental responsibility agreement with the birth mother; or
- obtaining a court order (including an adoption order) giving them parental responsibility.

Any other person can acquire parental responsibility if:

- they become the child's guardian or special guardian;
- they enter into a parental responsibility agreement with any/all other person(s) with parental responsibility (this might be a choice taken, for example, by a step-parent); or
- they obtain a court order (including an adoption order) giving them parental responsibility.

## **Who can have parental responsibility terminated?**

Neither mothers nor fathers who were married or in a civil partnership to the biological mother at the time of birth can have their parental responsibility removed (please note it can be terminated through adoption- see below).

However, any person with parental responsibility for the child, or indeed the child themselves, can apply to discharge parental responsibility held by a step-parent or civil partner who holds parental responsibility, a father who is not married to or in a civil partnership with the mother or a second female parent.

## **When might parental responsibility be terminated?**

There must be very serious reasons why it is no longer in a child's best interests for a person's parental responsibility to be terminated. Such applications are not common.

It goes beyond the scope of this article to set out specific examples, but where the court considers that the parental responsibility will be abused, this could be a circumstance where the court would consider that it is in the child's best interest to terminate parental responsibility.

## **When might parental responsibility be restricted?**

In circumstances where the court does not have the power to remove parental responsibility, or it is not considered necessary, a person may apply to restrict the exercise of parental responsibility. Again, the court's paramount consideration will be the child's best interests.

The court can make a prohibited steps order. This will then prevent a party taking certain steps, which would usually be taken by a parent in meeting their parental responsibility for a child. The court can also determine how long the restriction should be in place.

Examples could be:

- The parent with care no longer has to provide any information to the other parent regarding the child or to consult with them in respect of certain decisions affecting the child.
- Restricting a parent's access to information from medical or educational settings.

## **Adoption and parental orders**

If a child is adopted or a parental order is made (transferring legal parenthood from a surrogate mother and her husband or civil partner to the intended parent) these orders will automatically discharge the parental responsibility of the parents.

## **Disputes about how to exercise parental responsibility**

When people sharing parental responsibility are not able to agree on what is the right or best decision for the child, an application can be made to the court for a specific issue order or a prohibited steps order.

## **How and when to exercise parental responsibility**

What is not so easily defined is how a person exercises that responsibility.

This note provides some guidance to assist persons with parental responsibility on what decisions they can make alone and those that they cannot. It is not an exhaustive list.

Whether or not a parent has parental responsibility, or indeed spends time with the child, it is a requirement that they ensure that their child is supported financially.

## **Issues where you must agree or seek an order from the court**

If you have parental responsibility you can make decisions about:

- naming a child or change of name;
- relocation;
- significant non-urgent medical treatment including stopping prescribed medication;
- holidays abroad (unless you hold a Live with or residence order); and

But you must always notify the other person(s) with parental responsibility about your proposals, and agree these issues — or seek legal guidance/make an application to the court if so advised.

### **Issues where you should notify the other person(s) with parental responsibility**

You must also always notify the other person or people with parental responsibility about the following:

- medical treatment for the child in an emergency;
- booking a holiday (when the child will be in your care at the time of the holiday in accordance with a CAO or agreement);
- if there will be a change to the persons living in your household;
- moving home (provided that this won't necessitate a change of school or the arrangements to spend time/live with the other person); and
- planned GP appointments.

If they object, you may need to seek legal guidance.

### **Sharing information**

Good communication including updates and sharing of information between holders of parental responsibility, where possible, is always in a child's best interests.

In those circumstances where it is not possible to reach agreement, before applying to court, parental responsibility holders should consider the variety of methods of resolution available to assist persons in resolving parenting disputes.

Our experienced Family Solicitor's Heather Weavill and Steven Barratt can assist if you have issues. Please ring 01285 653281 for an appointment.