

Dunn & Baker Family Team

4. CHILDREN – PARENTAL RESPONSIBILITY

Parental Responsibility means:

'All the rights, duties, powers, responsibilities and authority, which by law, a parent of a child has in relation to the child and his/her property'.

Parental Responsibility entitles the person to share in the 'policy decisions' concerning a child with other persons with Parental Responsibility. This means the important decisions concerning a child's future, such as religion, education and consent to major medical treatment – not the every day sort of decisions such as bedtime, pocket money, holidays and homework. It is the every day carer who should make the every day decisions.

Married Parents

Parental Responsibility is conferred by operation of law on the mother and father, if the father is married to the mother at the time of the child's birth, or subsequently marries her.

This means that it is now assumed that married or formerly married parents jointly have the same rights to make major decisions about their child. As this right is assumed, there is no need for a Court Order to be made. The right is automatic and continues even after Divorce.

Unmarried Parents

If the parents of a child are not married, then Parental Responsibility is automatically conferred on the mother.

An unmarried father does not automatically obtain Parental Responsibility but may acquire Parental Responsibility by:

- (a) marrying the mother; or
- (b) entering into a written agreement with the mother (a Parental Responsibility Agreement – which is then registered); or
- (c) by applying to the Court for an Order to acquire Parental Responsibility; or
- (d) After the 1st December 2003 if the father is named, or later becomes named as father (ie on a re-registration) on the child's birth certificate; or
- (e) by obtaining from the Court a Residence Order (an Order specifying the child must live with the father) in which case the Court will automatically confer a Parental Responsibility upon the father.

An unmarried father seeking Parental Responsibility will need to show the Court that it is in the child's best interest for him to have Parental Responsibility.

The Court considers: -

- The degree of the unmarried father's commitment
- The degree of attachment to his child and the current relationship between them
- His reasons for applying for a parental responsibility order

Commitment and Attachment are particularly crucial factors. The fact that a father has failed to pay maintenance for his child or has not had regular contact (offered to him) could show evidence of lack of commitment. Any domestic abuse, even if not directly against a child but particularly where it has taken place in the home environment where a child has been present will be a significant factor in the decision making process. (Such violence may prevent both contact and parental responsibility). The Court can additionally take into account the wishes and feelings of an older child who may be against the unmarried father and therefore opposed to any order.

The Court must apply the principle that the child's welfare is paramount and it must be satisfied that making an order would be better for the child than making no order.

However where an unmarried father has shown commitment to the child, there is a normal presumption that a parental responsibility order **should** be made. Wherever possible, the law should confirm on a concerned father

approval of the fact that he has shown himself willing and anxious to pick up the responsibilities of fatherhood, and not to deny it or avoid it.

The Court can make a parental responsibility order in favour of an unmarried father even where he cannot exercise his rights for example in respect of his child who is in care. The advantage of this, is that the father has legal standing to apply to the Court and in the example of care proceedings his consent to any future freeing of the child for adoption would have to be considered.

An unmarried father will be denied a parental responsibility order if the Court believes he intends to use it for improper or inappropriate ends, such as interfering with and possibly undermining the mother's care for the child. The Court may also think such an Order inappropriate if the birth of the child is the result of a casual relationship between the parents, and if the unmarried father has had no previous involvement in bringing up the child, and the Court does not believe the father genuinely wants to undertake parental responsibility.

Whether or not a father has Parental Responsibility, a natural father is under a duty to maintain the child financially.

Non-parents

In addition, non-parents, may obtain Parental Responsibility for a child by Order of the Court, (such as a Guardian or Special Guardian) or by an appointment in writing or in a Will made by a person with Parental Responsibility or Guardian, which takes effect from the death of the parent or Guardian. A person with a Residence Order will also automatically have Parental Responsibility.

Local Authority

If a Local Authority obtains a Care Order in relation to the child, the Local Authority will acquire Parental Responsibility for the child and share it with any parent that has Parental Responsibility.

Contact

If a father obtains Parental Responsibility, it does not compel the mother to allow the father to have contact with the child. This is a separate issue, which must either be resolved by agreement, or be determined by the Court.

Disputed Paternity

If paternity is in dispute, paternity will usually be settled by way of DNA testing prior to an Order for Parental Responsibility being made. DNA paternity is indisputable proof as to who the father is.

Exercise and Challenge of Parental Responsibility

Where more than one person has parental responsibility, each may act independently of the other in meeting that responsibility. They do not necessarily have to consult or notify each other, though in practice they ought. The advantage of independent action is that each person with parental responsibility can, for example, consent to emergency medical/dental treatment.

The Court takes the view that persons with parental responsibility must consult each other on important issues, such as change of a child's name, a child's school and any decision to permanently leave the jurisdiction (England and Wales).

Should you wish to stop your partner taking or continuing with a step of which you disapprove, again you would have to apply for a prohibited steps order or a specific issue order (please refer to our fact sheet).

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.