

# Parental responsibility

This article looks at the issues of parental responsibility, firstly by looking at the present legal framework, procedure and practice as to who has, can acquire or be deprived of parental responsibility. The [Children Act 1989](#) ("the 1989 Act") changed the terms used to describe the legal relationship of children and adults and introduced the concept of parental responsibility. Parental responsibility is defined in ([the 1989 Act s.3](#)) as *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*. The legislation thus emphasises the duties that a parent must exercise towards their child rather than rights which the parent may have over a child. It is not intended to deal with the day-to-day exercise of parental responsibility or disputes between parents about how to resolve disagreements about this exercise.

## Overview of Topic

- 1. Who Has Parental Responsibility?** The [Children Act 1989](#) defines who has parental responsibility for children. In most cases, identifying who has parental responsibility is relatively straightforward as follows:
  - a. The *mother* of a child. This can only be removed if a child is adopted or placed for adoption under a placement order ([s.2](#)).
  - b. The *married father* of a child (whether he was married to the mother of the child before or after the child was born and even if the marriage is void) ([s.2](#)).
  - c. The *unmarried father* of a child if either he is named on the birth certificate (after 1 December 2003) or he and the mother have signed a parental responsibility agreement (and completed the necessary formalities - see later in this document for more information) or the court has made a parental responsibility order ([s.4](#)).
  - d. The *step-parent (including civil partner or married/unmarried partner)* of a parent if a parental responsibility agreement is made between them (with the consent of the other natural parent) or by order of the court ([s.4A](#)).
  - e. The *holder(s) of a residence order* (an order saying that the child should live with them) as long as the order is in force ([s.12](#)).
  - f. A *Special Guardian* appointed under [s.14C](#).
  - g. The *holder(s) of an adoption order (s.67 of the Adoption and Children Act 2002)* (and prospective adopters once a child is placed with them pursuant to a placement order) ([Adoption and Children Act 2002 s.25](#)).
  - h. Someone who has been appointed (through a will or by the court) as the *child's legal guardian* (not the same as a guardian appointed to represent the child in court).
  - i. A *local authority* which has been granted an *interim or final care order* under [s.31](#) or [38](#) or an *emergency protection order* under [s.44](#).
- 2.** The situation is more complex in cases governed by the [Human Fertilisation and Embryology Act 2008](#). The child's mother (defined as the woman who physically bears the child) will have parental responsibility. Her husband will have parental responsibility if he consented to the conception. The married male partner will have parental responsibility if he consented to the conception. The husband will also be treated in law as the father (for all purposes) even where the conception takes place after his death, provided he consented to the use of his sperm after his death. If the husband did not provide the sperm he will still be treated as the father if the embryo

was created during the marriage and he consented to the placing of the embryo after his death. The unmarried male partner will be treated in law as the father (subject to notice and consent provisions) and can acquire parental responsibility in the usual way (agreement or order) and can also be treated as the father if he died (also subject to notice and consent). A civil partner will have parental responsibility if she consented to the conception. The female partner of the mother will be treated in law as the parent (subject to notice and consent provisions) and can acquire parental responsibility by agreement or order. There are similar provisions as to treating the female partner as a parent if she dies before treatment is completed. These provisions apply whether the placement of the embryo or sperm or eggs in the mother takes place in the UK or elsewhere. Neither a sperm donor nor an egg donor per se will be treated as parents unless they fall into the previously mentioned categories or have adopted the child.

3. **Surrogacy:** it is important to note that, at birth, the surrogate mother will have parental responsibility for the child as will her husband, if she is married. The intended parents of children born as a result of a legal surrogacy arrangements can acquire parental responsibility by a variety of means or by applying to the court for a parental order under [s.54 of the Human Fertilisation and Embryology Act 2008](#). If the surrogate is married, if there is a pressing need to regularise the legal position, it is possible for the intended parents to apply for a residence order which would confer parental responsibility. More commonly, the situation would be regularised by application for a parental order. If the surrogate is not married and one of the intended parents is a legal parent then a parental responsibility agreement or court order can confer parental responsibility and the partner parent can acquire parental responsibility as set out above.
4. **Parental Responsibility Agreement:** a parental responsibility agreement will be valid if the parents have filled in form C(PRA)1 (form C(PRA)2 for second female parents, form C(PRA)3 for step-parents) and taken it to a County Court or Family Proceedings Court to be signed and witnessed. The parents will need to produce the child's birth certificate as well as proof of identity. The form should then be sent to the PRFD (Principal Registry of the Family Division) which acts as a central repository. The agreement will remain in force until the child is 18 unless it is brought to an end earlier by court order. Parental responsibility agreements can be discharged by order of the court (on the application of any person with parental responsibility or the child, with permission).
5. **Amending the Birth Certificate:** a child's birth can be re-registered and the birth certificate can be amended to include details of the unmarried father or the father who subsequently marries the mother. The certificate will also be amended following a declaration of parentage by the court under [s.55A of the Family Law Act 1986](#). This will in turn mean that the father acquires parental responsibility.
6. **Parental Responsibility Order: Who Can Apply?** Note: the mother or other existing holder of parental responsibility cannot apply to force the father, for example, to take parental responsibility and a child cannot apply. The following people can:
  - a. a father;
  - b. the spouse or civil partner of a parent with parental responsibility;
  - c. the second female parent of a child.
7. **What must be established before a parental responsibility order is made?** As usual, the court must consider the welfare checklist and the relevance of each factor to the application.

8. In [H \(Minors\) \(Local Authority: Parental Rights\) \(No.3\), Re \[1991\] Fam. 151](#) there were three material (though not necessarily exhaustive) tests:
  - a. the degree of commitment the father has shown towards the child;
  - b. the degree of attachment which exists between father and child and;
  - c. the reasons of the father for applying for the order (a genuine motive).
9. Commitment is not measured in terms of financial contribution. A father who does not pay any money towards the child's maintenance will not necessarily be refused parental responsibility just because of that. He may not be able to pay, because he is on income support. The parents may be in the process of a divorce and the money side of things has not been sorted out. Sometimes a mother has refused to accept any money from the father. Very often parents get locked in a vicious circle: one parent will not pay, the other parent will not allow contact. The courts try to ensure that money and children are kept separate.
10. In practice, it is extremely rare for the courts to refuse parental responsibility, as is illustrated by the cases below:
  - a. [J-S \(A Child\) \(Contact: Parental Responsibility\), Re \[2002\] EWCA Civ 1028; \[2003\] 1 F.L.R. 399](#): The father was using contact to intimidate and harass the mother. The trial judge ordered that direct contact should be terminated and that parental responsibility should not be granted. The Court of Appeal granted the appeal, reinstating the contact order and making a parental responsibility order. Ward L.J. considered the proper test for such applications was found in the judgment of Balcombe L.J. in [H \(Minors\) \(Local Authority: Parental Rights\) \(No.3\), Re \[1991\] Fam. 151](#). The particular father would easily establish all three criteria. Ward L.J. endorsed the judgment of Butler-Sloss L.J. in [H \(A Minor\) \(Parental Responsibility\), Re \[1998\] 1 F.L.R. 855](#): Parental responsibility is a question of status and is different in concept from the orders which may be made under [the 1989 Act Pt II s.8](#). The grant of the application declares the status of the applicant as the father of that child. It has important implications for a father whose child might, for example, be the subject of an adoption application or a Hague Convention Application. Ultimately, of course, the matter is dependent on the welfare of the child; and in some circumstances, as the authorities show, the father may have behaved so irresponsibly as to be denied parental responsibility.
  - b. [J \(Parental Responsibility\), Re \[1999\] 1 F.L.R. 784](#): Magistrates refused a father's application for a parental responsibility order on the basis that he did not have the requisite degree of (1) attachment and (2) commitment as per the three-stage test. They further held that while he originally applied for parental responsibility as a result of concerns about the mother's drug use, this was no longer a concern and, therefore, there was little or nothing that the father could contribute to the child's welfare by virtue of having parental responsibility. Stuart-White J. held that the appeal should be dismissed, because there was ample evidence in relation to the attachment and commitment. He did, however, hold that the magistrates might have misconstrued the real nature of a parental responsibility order, which was to confer status. Any exercise of parental responsibility which was abusive could be controlled by [s.8](#) orders. Therefore, the fact that the father may not have contributed anything obvious to the child's welfare was not a proper consideration in a parental responsibility order application.
11. The reality is that most biological fathers who apply for parental responsibility will normally get it, unless they have done something really outrageous. Even the non-

biological father in the role of step-father and even if not living with the mother might be eligible ([R \(Parental Responsibility\), Re \[2011\] EWHC 1535 \(Fam\); \[2011\] 2 F.L.R. 1132](#) - although in the particular case he was not on the basis that it would place him at the heart of all future important decisions about the child in a way that was very likely to lead to conflict with the mother. He was nonetheless granted contact. In [S \(Relocation: Parental Responsibility\) \[2013\] EWHC 1295 \(Fam\); \[2013\] 2 F.L.R. 1453](#), the non-biological father and psychological parent (husband of the mother, lawfully named on a foreign birth certificate as the father (but not recognised as such by UK law), the biological father playing no role in the child's life) was granted parental responsibility, with the mother being given permission to remove the child permanently from the location.

**12. Cases in which parental responsibility has been refused:**

- a. [H \(A Minor\) \(Parental Responsibility\), Re \[1998\] 1 F.L.R. 855](#): The Judge found that the father had caused injuries to the child indicating cruelty and possible sadism, refused the application for a residence order, granted supervised contact, and refused to grant parental responsibility. The judge stated that the purpose of granting parental responsibility was not to satisfy the desires of the parent, but something which could benefit the child. The fact that this father continued to deny abuse showed that he lacked the requisite responsibility. The father appealed. Butler-Sloss L.J. in the Court of Appeal reiterated the trial judge's comments above, and stated parental responsibility was a question of status and is different in concept from the orders which may be made under [s.8 CA 1989](#). The grant of the application declares the status of the applicant as the father of that child. It has important implications for a father whose child might, for example, be the subject of an adoption application or a Hague Convention application. In each of those examples, a father with parental responsibility would have the right to be heard on the application. He would have the right to be consulted on schooling, serious medical problems and other important occurrences in the child's life. The three-stage test of Balcombe J. was a starting point, but not exhaustive. The child's welfare was paramount. An order had to be appropriate on the facts of each case. If there are factors adverse to the father tipping the balance against the making of an order then it should not be made even if the three tests were met. This father was not a suitable person to be given parental responsibility.
- b. [P \(A Minor\) \(Parental Responsibility\), Re \[1998\] 2 F.L.R. 96](#): The father sought defined contact and a parental responsibility order. The father had tried to get the child to make allegations on video about the mother's new partner, he had pestered the child's school and had obscene photos of his grandchildren which he refused to acknowledge were in any way wrong. In dismissing his appeal in relation to parental responsibility, the Court of Appeal held that while contact and parental responsibility were not linked, they were related in the sense that they both required consideration of the best interests of the child. Even though the three-stage test was met, a balancing exercise had to be performed weighing the factors for and against the granting of parental responsibility having regard to the paramountcy principle. The risk the father posed clearly weighed heavily against parental responsibility in this case. Given the father's reasons for wanting parental responsibility, and the finding that these were "demonstrably improper and wrong", the court should not make the order, despite the provisions of [s.8](#) which could limit its exercise.

- c. [S \(A Minor\) \(Parental Responsibility\), Re \[1995\] 2 F.L.R. 648](#): A father was applying for parental responsibility. He had been convicted for possession of obscene literature after the parents separated, but he was now enjoying staying in contact with his daughter. The mother objected to the granting of parental responsibility because of his conviction. The Court of Appeal held that it was wrong to place undue and therefore false emphasis on the rights and duties comprised in parental responsibility. It was a burden which was taken on, rather than a right. Attachment and commitment were requisites for an order, but granting the order was not the same as allowing the father to exercise the rights of a parent. Parental responsibility would also help to work towards creating a positive image of an absent parent, and the self-esteem of the child.
- d. [C and V \(Minors\) \(Contact: Parental Responsibility Order\), Re \[1998\] 1 F.L.R. 392](#): The father applied for a contact order and parental responsibility. The Judge held they were linked and refused both applications. Ward L.J. in the Court of Appeal stated that [s.8](#) orders and parental responsibility orders were not linked. They were entirely separate. Parental responsibility was about status for an unmarried father who wished to assume the mantle of responsibility in law which nature had already thrust upon him, but also something which could bolster the self-esteem of the child. The Judge should not have been speculative about the potential abuse of a parental responsibility order unless there was a clear demonstration that this would happen. In cases where there was merely a possibility of abuse, any actual abuse could be curbed by orders under [s.8 of the Children Act 1989](#) at a later date.
- e. In [W \(A Child\) \(Parental Responsibility Order: Inter-Relationship with Direct Contact\), Re \[2013\] EWCA Civ 335; \[2013\] 2 F.L.R. 1337](#), the Court of Appeal revisited and approved the principles established by [Re C and V](#) immediately above. The father's status which conferred responsibilities not rights should be considered separately from any issues of contact.
- f. In [M \(A Child\) \(Parental Responsibility Order\), Re \[2013\] EWCA Civ 969; \[2013\] Fam. Law 1256](#), the Court of Appeal declined to overturn the refusal by the first instance judge to grant a father parental responsibility. He was named on the birth certificate but the child (now 11) was born before 1 December 2003; therefore, this did not confer parental responsibility. The father had absconded with the child at one point and continued to display entrenched views in which he portrayed himself as a victim of parental alienation beset by a corrupt family justice system. The mother had in fact supported significant contact before the abduction and beyond. The child did not want involvement with his father, or for his father to have information about his school, and so on. The court held that status was not a separate "stand-alone" factor. It had to be weighed in the balance with welfare considerations and, on the facts of the case, the judge was entitled to conclude that it was not in the child's interests.

13. **Can more than one person have parental responsibility?** Several people can have parental responsibility for the same child. Parents who are married both have parental responsibility and do not lose it because of divorce. A person with a residence order in their favour also obtains parental responsibility. For example, a grandmother, aunt, etc may have a residence order which would give them parental responsibility. The mother (and maybe the father) will still have parental responsibility. A natural parent would still have parental responsibility for a child where a step-parent had obtained it. The local authority will always share parental responsibility with parents of which



they can only be divested by the making of an adoption order or an order of the court discharging parental responsibility. However, it is right to say that some holders of parental responsibility are more equal than others. A Special Guardian is generally entitled to exercise parental responsibility to the exclusion of anyone else ([s.14C](#)) and can take a child out of the country for up to three months without the consent of anyone else with parental responsibility (though not permanently).

14. **Local Authorities:** A local authority's parental responsibility under an emergency protection order is short-lived and severely curtailed by the Act (for example, in relation to medical examination). It must only be used to safeguard or promote welfare within the matter of days for which it remains in force. Under an interim or final care order, however, the local authority not only has parental responsibility but has the power to determine the extent to which anyone else with parental responsibility may exercise it ([s.33\(3\)](#)) provided that it is necessary to do so to safeguard or promote the welfare of the child ([s.33\(4\)](#)).
15. However, a local authority responsible for a child under a care order has no power to prevent the child's mother from entering into a parental responsibility agreement with the child's unmarried father ([X \(Children\) \(Care Proceedings: Parental Responsibility\)](#), [Re \[2000\] Fam. 156](#) - where the court held that the facility under [s.4\(1\)\(b\)](#) for parents of a non-marital child to enter into a parental responsibility agreement is self-contained and does not depend on the exercise of such responsibility. However, where a child is simply accommodated by a local authority under [s.20](#), parental responsibility remains solely vested in the child's parents (i.e. is not shared by the local authority, as would be the case if a care order or interim care order were in force) and the local authority has no right to move the child from residential care to the home of foster parents without the consent of the child's parents, since parental responsibility includes the right to decide where the child lives ([R. v Tameside MBC Ex p. J \(A Child\) \[2000\] 1 F.L.R. 942](#)).
16. As to the granting of a parental responsibility order by the court where a care order is in force, see [G \(A Minor\) \(Parental Responsibility Order\)](#), [Re \[1994\] 1 F.L.R. 504](#) (the court should apply the test in [Re H](#) (see below); even if the (previously absent) father had shown a lack of insight into the girl's needs, was awkward, difficult and unable to get on with the social workers, this would not be a reason in itself to refuse him a parental responsibility order) and [CB \(A Minor\) \(Parental Responsibility Order\)](#), [Re \[1993\] 1 F.L.R. 920](#) (the court should look at the issue of granting parental responsibility independently of other considerations, such as whether to grant a care order or approve a rehabilitation plan). In a similar vein, in [A Local Authority v A \[2011\] EWHC 2062 \(Fam\); \[2012\] 2 F.L.R. 601](#), Hedley J. declined to discharge parental responsibility where a care order was in place. The father was a violent man, with a history of using violence to achieve his desired outcome. He had had no contact with the five-year-old child because he had been in prison. The local authority sought care orders, with the child and her half-siblings to remain with the mother in a new undisclosed location. The father was allowed some very limited indirect contact. However, given the fact that the local authority could prevent the exercise of father's parental responsibility if it needed to, by virtue of the care order, together with the father's acceptance of restrictions on his ability to exercise it, his parental responsibility would not be revoked.
17. **Exercising Parental Responsibility:** the exercise of parental responsibility can be limited in a number of ways. Firstly, it may be inherent by virtue of the holder as referred to above in the case of Special Guardians and local authorities. It may be limited by the making of specific issue orders and prohibited steps orders and the

court can impose a decision about residence and contact through orders if the parents cannot reach agreement. The court can also restrict a parent's access to the courts through the use of orders under [s.91\(14\)](#). The interplay of orders available to the court which can regulate the exercise of parental responsibility often have an influence on the court such that it is only in rare cases that parental responsibility will be refused or discharged.

18. **Losing Parental Responsibility:** ([s.4\(2A\)-\(4\) of the Children Act 1989](#)) there are few reported cases in which the court has been asked to consider discharging or revoking parental responsibility. Neither a mother nor a husband who is the father can be stripped of their parental responsibility.
- a. In the case referred to above ([A Local Authority v A \[2011\] EWHC 2062 \(Fam\); \[2012\] 2 F.L.R. 601](#)), Hedley J. declined the application to revoke.
  - b. [P \(Terminating Parental Responsibility\), Re \[1995\] 1 F.L.R. 1048](#) (a decision of Singer J.): the father pleaded guilty to causing serious injuries to the child then aged nine weeks as a result of which she would be permanently and seriously disabled. He could not be described as meeting the [Re H](#) criteria and the court concluded that continuing parental responsibility would undermine the child's best interests. The court also commented that, had the father been required to apply for parental responsibility (rather than having acquired it by agreement), he would scarcely have been likely to succeed. The court felt it to be an unreasonable and unnecessary burden on the local authority to continually have to consider whether to control the father's exercise of parental responsibility.
  - c. In a more recent case, [DW \(A Child\) \(Termination of Parental Responsibility\), Re \[2013\] EWHC 854 \(Fam\); \[2013\] 2 F.L.R. 655](#), however, Baker J. revoked a father's parental responsibility. The father of the subject child had been convicted of sexually abusing his two half-siblings. He considered the earlier case of [Re P](#) above and concluded that the principles emerging from it were unimpeachable. This was a father who would not be granted parental responsibility if he had to apply for it. The father's commitment to the child was wholly undermined by his actions in abusing the older children. There was no real attachment because the father had been in prison for some years. The court shared the mother's concern that the father's motivation was to become more involved in the child's life, which would be to his detriment. The child might not have been directly abused but he had suffered harm because of the abuse to his sisters.

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## **Key Acts**

[Children Act 1989](#)

[Family Law Reform Act 1987 para.24](#)

## **Key Subordinate Legislation**

None.

## **Key Quasi-legislation**

None.

### **Key European Union Legislation**

None.

### **Key Cases**

[H \(Minors\) \(Local Authority: Parental Rights\) \(No.3\), Re \[1991\] Fam. 151](#)

[H \(A Minor\) \(Parental Responsibility\), Re \[1998\] 1 F.L.R. 855](#)