

Parental Responsibility (PR) and the Legal Framework

What is parental responsibility?

Parental responsibility means the rights and responsibilities parents have, to care and provide for their children and make important decisions about their upbringing.

A person with parental responsibility can make most key decisions about how their child is raised (such as consenting to medical or dental treatment or school trips). Unless a court order says something different in their case, they don't normally have to have the agreement of anyone else with parental responsibility to their decisions, although it is usually better for the child if they do. However they do need the agreement of everyone else with parental responsibility to take the child abroad unless:

- they have a residence order (or special guardianship order in the case of a non-biological father-figure) on the child in which case they can take the child abroad for one or three months respectively without everyone else's agreement; *or*
- the child is in care under a care order in which case Children's Services can arrange for a child to be taken abroad without the agreement of others with parental responsibility.

Does a birth father automatically have parental responsibility for his child?

No. All mothers automatically have parental responsibility for their child from the child's birth, but the birth father will only have parental responsibility automatically if:

- He is married to the mother at the time after the child's birth; *or*
- He is registered as the child's father on the birth certificate and the registration (or re-registration) took place after 1st December 2003.

Otherwise he can get parental responsibility in one of three ways:

- if their child was born before 1st December 2003 the parents can re-register the birth which would give the father parental responsibility. The re-registration must be done jointly with the child's mother or the father can do it alone if the mother signs a statutory declaration that he is the child's father; *or*
- if the parents both sign a formal, authorised agreement (under s.4 Children Act 1989) giving him parental responsibility using form PRA1 (click here <http://www.thecustodyminefield.com/CourtForms/cpra1.pdf> to download the form). Once they have signed it in front of an authorised person (usually a JP or Justices Clerk), they need to send it to The Principal Registry of the Family Division for it to become effective; *or*
- by the father applying to court for a parental responsibility order under s.4 Children Act 1989 (click here <https://www.gov.uk/parental-rights-responsibilities/apply-for-parental-responsibility> to get more detailed information about parental responsibility).

Can a non-biological father figure acquire parental responsibility?

Yes. A non-biological father figure who is either married to the mother, or in a same sex-civil partnership with a birth father who has parental responsibility, can get parental responsibility in three ways:

- if both parents with parental responsibility agree to his having parental responsibility, he can make a **FORMAL AGREEMENT** with both of them on an authorised form (PRA2) which you can obtain by clicking here http://www.direct.gov.uk/prod_consum_dq/groups/dq_digitalassets/@dq/@en/documents/digitalasset/dq_181743.pdf. Once this has been signed by all in front of an authorised person, it needs to be lodged with the Principal Registry of the Family Division; *or*
- by applying to the court for an **ORDER** which grants parental responsibility under s. A Children Act 1989; *or*
- by applying to court for a different legal order, for example a residence order, which gives the holder of the order parental responsibility, but they may need the court's permission (i.e. leave) to do this.

What difference does it make to the father if he has parental responsibility?

Although day-to-day, a father's parental responsibility status tends to make little difference, fathers without parental responsibility can't authorise medical treatment for their children¹, see their medical records, manage any money they've inherited, appoint a guardian for their child for after their death, or prevent their adoption or change of surname or removal abroad. Also if a father does not have parental responsibility this may also:

- undermine the family's sense of his commitment (dad feeling less involved, mum less secure and more responsible);
- potentially undermine his involvement in his children's lives for example when the parents separate;
- make it less likely that agencies concerned with his children's welfare will engage with him as a risk or as a resource for them²;
- mean he must obtain parental responsibility through the courts to be able to take care of his children officially, if their mother dies or leaves.

“ Except in the relatively small number of cases where the father's involvement is very harmful, it is generally positive for children and their parents if fathers acquire parental responsibility early on in their children's lives, preferably at the birth.³ ”

Fathers who abuse or neglect (continued)

What if there are objections to the father acquiring parental responsibility?

Many parents don't understand what parental responsibility means. So it's important to discuss and explain it to them, signposting to them to good legal advice if necessary and encouraging them to consider whether the father should acquire it.

Both mothers and fathers may have concerns about whether or not the father should have parental responsibility:

- Mothers may worry it will mean loss of control, and may want to discuss their anxieties with you (you may learn lots about the family in the process).⁴ Where mother and father can't agree on major issues, then the mother may want to apply to court for a prohibited steps or specific issue order to resolve the dispute.
- Fathers' anxieties may include:
 - > the fear that seeking parental responsibility might impact on their relationship with their children (in an unstable situation, will asking for parental responsibility make things worse?);
 - > concern that it may harm the mother (if she's on benefits, will his getting parental responsibility reduce her access to them - *answer* 'no');
 - > concern that it may harm himself (will he have to pay (more) child support?);⁵ or
 - > the fear that contact with 'the law' will expose him to deportation, prosecution etc.?

The process of thinking about parental responsibility for the father also encourages parents to reflect on their expectations of the father's role.

What difference does it make to Children's Services if a father has parental responsibility?

The term 'parent' is defined in the Children Act 1989 to include all biological fathers whether or not they have parental responsibility.⁶

Government guidance (DCSF, 2010) says that local authorities should work in partnership with both parents, provided it is safe. Therefore when providing services to a vulnerable child, whether by way of family support, child protection or as a looked after child, social workers should endeavour to work in partnership with both parents, including the father (and any significant father figures for the child) by involving him in planning and decision-making, **IRRESPECTIVE OF WHETHER HE HAS PARENTAL RESPONSIBILITY.**

For example:

- when children are looked after, the wishes and feelings of the child's parents and other significant people in the child's life about any decisions and plans should be 'ascertained and given due consideration' (s.22 (4) & (5) Children Act 1989). Therefore fathers as well as mothers must be consulted about all decisions and should be involved in the planning process, invited to reviews and sent records of meetings when their child is looked after, irrespective of whether he has parental responsibility, unless there is evidence that this would place another person at risk or might make the child feel too uncomfortable to speak;

and

- any decision to accommodate a child under s.20 should also be made, wherever possible, following consultation with **BOTH PARENTS**. But a father needs to have parental responsibility to be able to **REMOVE** the child from accommodation.

However, the situation is different when it comes to plans for adoption because the term 'parent' in the Adoption and Children Act 2002 is defined to mean a **PARENT WITH PARENTAL RESPONSIBILITY**. Therefore although fathers without parental responsibility should still be consulted about any plans for the adoption of their child, it is essential that social workers know if the father has parental responsibility in order to know whether or not his consent to the plans for adoption, or having his consent to adoption dispensed with, is required.

In terms of social work practice, it is also useful to know who has parental responsibility in order to:

- identify who is legally responsible for children in a social worker's caseload;
- be clear whether social workers have a legal duty to provide information to the father (for example if anyone else with parental responsibility asks you not to);
- find out if the father has a right to remove their child from accommodation
- help identify whether a man is a biological father or a father-figure, and find out more about his role in the family.

For more information see the Family Rights Group advice sheet *Duties on Children's Services when children are in the care system* available at http://www.frg.org.uk/images/Advice_Sheets/11-powers-and-duties-of-local-authorities.pdf

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Fathers who abuse or neglect (continued)

Why should social workers engage in routine practice with men who do NOT have parental responsibility?

Government guidance in Working Together (Chapter 5 para 5.37-8) says the assessment should look at the *parents'* capacity to meet the child's needs and what support, if any, they require from the local authority to do this. The aim is to provide support which will help the whole family to care for the child.

Therefore, whether or not the birth father or a father-figure has parental responsibility, he should be involved in the assessment and planning process and be told what is happening. The exception to this would be if involving him would place the child at risk of harm.

If a child becomes looked after, the first choice of placement is with the other parent provided it is consistent with their welfare (s.22C Children Act 1989). So the birth father should always be consulted (and where appropriate assessed) when you are considering where to place a looked after child, whether or not he has parental responsibility.

If a father or father figure disagrees with the outcome of the assessment, his views should be recorded, placed on the child's file and responded to accordingly.

Some of the men who pose the greatest risk to a child and/or who can be a resource to the child are men who are playing a fatherly role in that they have day-to-day access to the child, but do not have parental responsibility. These men should not be ignored: they should be taken as seriously as birth fathers.

Sources drawn on for this resource

- Advice Now: http://www.advicenow.org.uk/living-together/children/parental-responsibility_10266_FP.html
- Families Need Fathers: <http://www.fnf.org.uk/law-and-information/parental-responsibility>
- Family Rights Group advice sheet *Duties on Children's Services when children are in the care system* http://www.frg.org.uk/images/Advice_Sheets/11-powers-and-duties-of-local-authorities.pdf
- Fatherhood Institute <http://www.fatherhoodinstitute.org/2012/dads-faqs-parental-responsibility/>
- Gingerbread <http://gingerbread.org.uk/factsheet/19/rights-and-responsibilities-of-parents>
- Rights of women: http://www.rightsofwomen.org.uk/pdfs/Legal/parental_responsibility_2011.pdf

Footnotes

- 1) Except in a medical emergency.
- 2) This should not be the case, but anecdotal evidence suggests that this may sometimes be the case.
- 3) A father acquiring PR by being on the birth certificate has the added advantage that his child can then definitely find out about their biological parentage – a very significant right for children.
- 4) A good leaflet for mothers to read can be downloaded from http://www.advicenow.org.uk/fileLibrary/pdf/what_is_PR.pdf.
- 5) Fathers who don't have PR are as liable as other fathers to pay child support.
- 6) The same principle applies in relation to child maintenance: according to s.1 Child Support Act 1991, fathers are liable to support their children irrespective of whether they have parental responsibility or not.

For all the references in this document, see our REFERENCES AND BIBLIOGRAPHY online resource at www.fatherhoodinstitute.org/2013/engaging-with-men-in-social-care/