

Note for Bristol Royal Infirmary Inquiry

(Issue: consent to medical treatment and access to medical records)

PARENTAL RESPONSIBILITY

The current law on parental responsibility in England & Wales

Under the Children Act 1989, parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property.

- Under the current law, if the father and mother are married at the time of the child's birth they each have parental responsibility for the child.
- If the parents are not married at the time of the birth the mother alone has parental responsibility automatically.
- An unmarried father can acquire parental responsibility by marrying the mother of his child, by entering into a parental responsibility agreement with the mother or by applying to the court for a parental responsibility order.
- In addition, if the court makes a residence order that the child should live with a particular person, that person acquires parental responsibility by virtue of the order.
- There is no provision for step-parents or grandparents to acquire parental responsibility except as the consequence of a residence order in their favour.

Exercise of parental responsibility

- More than one person may have parental responsibility for the same child at the same time.
- Where more than one person has parental responsibility, each of them may act alone and without the other(s) in meeting that responsibility, but this does not affect the operation of any law which requires the consent of more than one person in a matter affecting the child.
- A person with parental responsibility cannot surrender or transfer any part of it to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.
- A person who does not have parental responsibility for a particular child but has care of the child may (subject to the provisions of the Children Act 1989) do what is reasonable in the circumstances to safeguard or promote the child's welfare.
- Any applicant who has obtained an emergency protection order from the court to safeguard the welfare of the child will have parental responsibility for the duration of the order. (An emergency protection order can among other matters authorise the prevention of the removal of the child from hospital.)

Consent to medical treatment

The consent of the person with parental responsibility will usually be required for medical treatment for an under 16 year old, subject to the following:

- As the child grows older, the more likely it is that the court will consider the child's views;
- A person with parental responsibility under an emergency protection order can consent to day-to-day treatment but not to major elective surgery;
- The court can override the consent or refusal of consent of the person with parental responsibility

Access to medical records

Under s3(1)(cc) of the Access to Health Records Act 1990, any person with parental responsibility has the right to apply to the holder of health records for access to them, subject to the child's consent if the child is capable of understanding the application.

Section 8 orders

Under section 8 of the Children Act 1989, orders relating to the child can be made, including "a prohibited steps order" that no step which could be taken by a parent in meeting his parental responsibility which is of a kind specified in the order can be taken without the consent of the court, and "a specific issue order" that the court makes to determine a specific question which has arisen or may arise in connection with any aspect of parental responsibility for a child. Prohibited steps orders and specific issue orders can both be made in the context of medical treatment. A parent without parental responsibility might be entitled to receive medical reports or to consent to medical treatment under a specific issue order. A parent with parental responsibility might nevertheless be barred from receiving medical information or consenting to medical treatment under a prohibited steps order.

- Any parent or guardian of the child is entitled to apply to the court for any section 8 order, as is anyone with a residence order in force for the child, provided the child has not been freed for adoption. Other categories of people may apply with the leave of the court.
- A prohibited steps order can cover someone who is not party to the proceedings.
- Although a specific issue order can be used in relation to sterilisation of a minor, the Official Solicitor has advised that it is preferable for applications to be made under the inherent jurisdiction of the High Court.
- Parent is not defined in the Children Act 1989. The definition for the purposes of Department of Health guidance or regulations on the disclosure of medical information or consent to medical treatment is a matter for the Department of Health

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