

# Parental responsibility



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Parental responsibility refers to the rights and responsibilities that most parents have in respect of their children. This factsheet gives advice on who has parental responsibility and where responsibility lies in situations in which there are disagreements over the best interests of the child.

## Basic principles

Parental responsibility includes the right to consent to medical treatment on behalf of the child and the disclosure of information held by healthcare professionals about the child. Those with parental responsibility also have a statutory right to apply for access to their children's health records, unless the child is capable of consenting.

Those with parental responsibility are conferred with the rights and responsibilities for the upbringing and care provided to a child until he achieves the age of majority. These rights exist in order to allow those with parental responsibility to exercise their duty of care towards their child. This is a dynamic process, and as the child becomes competent to make more decisions for himself, the extent of the parents' rights to act on his behalf diminishes.

It is good practice to involve a child in his care and treatment decisions, irrespective of his ability to consent. If the child is capable of giving consent, they have a right to be consulted and to make their own decisions about their care. Capacity is decision specific, so a child may be competent to decide certain aspects of his care but not others. In England, once a young person reaches 18, he is regarded in law as an adult and parental responsibility no longer applies.

## Who has parental responsibility?

For children whose births were registered from 15 April 2002 in Northern Ireland, from 1 December 2003 in England and Wales and from 4 May 2006 in Scotland, parental responsibility rests with both parents, provided they are named on the birth certificate, regardless of whether they are married or not. For children whose births are registered prior to these dates, the father would only automatically have parental responsibility if he was married to the mother. Otherwise, he could acquire parental responsibility through a Parental Responsibility Agreement with the mother or a Parental Responsibility Order through the courts. A married step parent or civil partner may also obtain parental responsibility in this way.

If the parents are divorced, both parents retain parental responsibility for the child. The situation is more difficult if the child was conceived by assisted reproduction. Legal parentage in these circumstances is addressed by the Human Fertilisation and Embryology Act 2008. Specific advice should be sought for individual cases.

If the child is the subject of a Care Order, the Local Authority has parental responsibility which is shared with the parents. If the child is in care voluntarily, parental responsibility remains with the parents.

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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There are others who can be granted parental responsibility, such as anyone granted a Residence Order (or Special Guardianship Order). The Local Authority may rely on a Protection Order (EPO or IPO) to acquire parental responsibility temporarily.

Parental responsibility is lost by those giving the child up for adoption. Once a child is put up for adoption parental responsibility is granted to the agency whilst placement is sought. When the child has been formally adopted, the adoptive parents take on parental responsibility.

Those with parental responsibility may delegate particular responsibilities to others – for example, authorising schools to give treatment for minor ailments. In an emergency, a person without parental responsibility – for example, a grandparent or childminder – may do “what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare”. This could include giving consent to urgent medical treatment.

## Limitations

Parental responsibility includes the right to refuse and consent to treatment. This does not, however, compel the doctor to uphold the parents’ wishes if he believes they are contrary to the child’s best interests. If the matter cannot be resolved by discussion and mutual agreement, it may be necessary to seek a view from the courts. While waiting for this, you should only provide emergency treatment that is essential to preserve life or prevent serious deterioration.

## Disagreements

Generally, consent from only one person is needed for the treatment to be lawful. This means that if the minor is competent to consent then that is sufficient; if not, then consent from one parent or other person with parental responsibility is sufficient.

If there is disagreement, you should try to reach a consensus while avoiding being drawn into disputes that are not relevant to the child’s treatment. If the investigation or treatment is minor and not essential then harmony should be sought before proceeding. For immunisation it is explicitly required that it does not occur, where parental disagreement exists, until both parents accept the vaccine or the court orders it.<sup>1</sup>

While consent of only one party is required in law, it is good practice to consider the views of both parents if there is a disagreement. If agreement cannot be reached, the doctor must exercise his professional judgment as to what is in the best interests of the child. If the matter under consideration is complex, or there are potentially serious implications for the child, a second opinion should be sought and consideration given to seeking the authority of the court. If there is dispute over controversial procedures, for example male circumcision, the doctor should not proceed without the authority of the court.

1. Department of Health, *Immunisation against infectious disease – ‘The Green Book’* 2006, updated edition – [www.dh.gov.uk](http://www.dh.gov.uk)

## Further information

- GMC, *0–18 Years: Guidance for all Doctors* 2007 – [www.gmc-uk.org](http://www.gmc-uk.org)
- BMA, *Guidance from the Ethics Department – Parental Responsibility* 2006 – [www.bma.org.uk](http://www.bma.org.uk)
- The Children Act 2004 – [www.opsi.gov.uk](http://www.opsi.gov.uk)
- The Children Act 1989 – [www.opsi.gov.uk](http://www.opsi.gov.uk)

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