

NOWELL MELLER SOLICITORS LTD FAMILY LAW SERVICE

LEAFLET NO.3 – STEP-PARENTS AND PARENTAL RESPONSIBILITY

An introduction

The Children Act 1989 changed the terms used to describe the legal relationship of children and adults. The focus of the new law is that parents are responsible for their children not that they have rights over them.

What is Parental Responsibility?

Parental Responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to his or her child”. This means that a person with Parental Responsibility is responsible for the care and well-being of their child.

The Children Act does not set out a precise definition of these rights, duties, powers and responsibilities. The most important aspects are considered to be:

- Providing a home for the child
- Having contact with the child
- Protecting and maintaining the child
- Arranging the child’s education
- Determining the religion of the child
- Consenting to the child’s medical treatment
- Naming the child
- Agreeing to the child’s change of name
- Consenting to the child’s marriage
- Agreeing to the child’s adoption
- Agreeing to and vetoing the issue of a passport

- Taking the child outside of the UK
- Administering the property of the child
- Appointing a guardian for the child
- Having physical possession of the child
- Allowing the child to be interviewed
- Consenting to the taking of blood for testing
- Allowing confidential information relating to the child to be disclosed

Parental Responsibility continues until a child is 18 although children can make more decisions for themselves as they get older.

Parents keep Parental Responsibility if they separate or divorce, even if they do not then live with the child. A parent will only lose Parental Responsibility if the child is adopted by someone else.

Who has Parental Responsibility?

The law states that the following people have Parental Responsibility:

- Mothers
- Fathers if:
 - They are or have been married to the mother at any time since the birth of the child
 - They are registered jointly with the child's mother on the birth certificate (since 1 December 2003)
 - They have acquired it by formal legal agreement with the mother (called a Parental Responsibility Agreement) or by court order (Section 4 Children Act 1989).
- Step-parents, if they have acquired parental responsibility by formal legal agreement with both parents with parental responsibility (Section 4A Children Act 1989 introduced in December 2005)
- Anyone else who had been granted parental responsibility under a court order such as a residence order, a special

guardianship order or an adoption order

- A Local Authority where there is a care order in force
- Guardians who have been formally appointed under Section 5 Children Act 1989 (see below).

Parents may wish another person, e.g. a relative or friend, to carry out their role while they are in hospital or abroad. Parents who do this remain responsible for their child.

It is important to note that people who are not parents, like step-parents (meaning a spouse or civil partner of a parent), grandparents or other relatives, do not have Parental Responsibility even though a child is living with them.

A step-parent does not get Parental Responsibility just by marrying or entering into a civil partnership with the child's parent. However, following the introduction of Civil Partnerships in December 2005, a step-parent can acquire parental responsibility for a child of his spouse or civil partner by agreement in the prescribed form.

Why would a step-parent want Parental Responsibility?

A step-parent may want the authority, stability and recognition of parental responsibility if they are the full-time carer, especially a step-mother of a young child; if there is no contact with the other parent, or the other parent is abroad, unknown or dead.

How does a step-parent do so?

When a Court makes a Residence Order in favour of someone who is not a parent, e.g. a step-parent, it must make an order giving that person parental responsibility. The step-parent will only have parental responsibility for as long as the residence order is in force.

In order to obtain a Residence Order the step-parent must apply under the Children Act to the Court. A married step-parent may have an automatic right to apply, as may a step-parent who has lived with the child for three years or more or who has the consent of everyone with parental responsibility.

What happens in an emergency if a step-parent does not have parental responsibility?

Any person who has care of a child may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

How does the court decide?

The Court will decide what is best for the child and will make an order if it seems better to make an order than not to.

The Court will consider the applicant's connection with the child, the risk of harmful disruption and the consent or otherwise of any others with parental responsibility.

Applications by step-parents for a residence order may be unlikely to succeed unless supported by both birth parents and where the stepchild has established a pattern of living with the step-parent. The step-parent should be married to or in a registered civil partnership with the parent and the step-child should have been living with the step-parent for a period of three years.

What happens if the parent dies and the step-parent does not have parental responsibility?

If the child's other parent has parental responsibility they will be responsible for the child. This is the case even if the step-parent has been appointed as a guardian by the dead parent, as that appointment will not take effect until the surviving parent has also died, unless the appointing parent had a residence order in which case the step-parent will share responsibility with the survivor.

What could happen if a step-parent has parental responsibility?

If the resident parent died the step-children could continue living with their step-family rather than return to live with the other parent. The step-parent and the other parent would share parental responsibility.

The other parent might feel estranged and excluded from key decisions in the child's life especially where the step-parent has a different religion, culture or language.

The step-children might feel forced to choose between different parental influences, or might be enabled to understand differences and make their own decision.

The step-parent is recognised and valued in their role as a significant extra adult actively concerned for the well being of the child.

Remember

It takes time to build relationships. A step-parent acquiring parental responsibility may be seen as a threat to the non-resident parent who may fear exclusion, or a reassurance to the stepchild who welcomes additional support. You should seek advice before making any decision about the future.

NOTE: The above is intended as a general guide for your information. It is NOT intended as a substitute for proper legal advice. Each case is different and advice cannot be given without a proper analysis of your own circumstances.