

Parental responsibility

Parental responsibility and rights can cause practical problems which sometimes require consideration and determination by MDDUS members. This advice sheet explores some common issues.

Basic Considerations

Parental responsibility refers to the rights and responsibilities that parents have in law for their child/young person, including the right to consent to medical treatment and access medical records. While the legal position differs throughout the UK, these responsibilities generally continue up to the age of 16 in Scotland and 18 in England, Wales and Northern Ireland – although ability to consent to medical treatment is usually assumed at 16.

The law is similar across the UK but there are some differences to consider in the devolved nations.

- **Scotland.** The birth mother has automatic parental responsibility unless this has been removed by a court. The father has parental responsibility if he was married to the mother at time of conception or was unmarried but named on the child's birth certificate (children born on or after 4th May 2006). He may also have obtained a parental responsibility agreement with the mother, or been granted a parental responsibility order by a court.
- **England and Wales.** The birth mother has automatic parental responsibility unless removed by a court. The father also has parental responsibility if married to the mother at the time of birth, or unmarried but named on the birth certificate (children born on or after 1st December 2003). He may also have obtained a parental responsibility agreement with the mother or been granted a parental responsibility order by a court.
- **Northern Ireland.** The birth mother has automatic parental responsibility unless this has been removed by a court. The father also has parental responsibility if married to the mother at the time of the child's birth or after if living in Northern Ireland at the time of marriage. An unmarried father will have parental responsibility if named on the birth certificate (children born on or after 15th April 2002) or having obtained a parental responsibility agreement with the mother or been granted a parental responsibility order by a court.

Age of consent

A child may normally be considered old enough to be competent to consent or refuse to have their personal information disclosed generally around 11 to 12 years of age. In such circumstances their capacity should be assessed, their views sought, considered and respected unless there is a strong public interest reason to override these.

Best interests

Parents have a recognised parental responsibility in law to protect the health, welfare and development of their child. This means that in the majority of circumstances it would be reasonable for a parent to argue that it is in the child's best interests for their father or mother to be aware of clinical details – though this may not always be the case, particularly in complex child protection situations. Seek advice from a relevant authority (e.g. social work department) if in any doubt or by contacting MDDUS.

Third-party information

Care should be taken to redact third-party information before disclosing a child's medical records. Failure to do so can cause particular difficulties in acrimonious marital separations, for example if a mother's personal contact details are accidentally disclosed to an estranged father or vice-versa

Common advice queries

Is consent required from one parent with parental responsibility to disclose information from a child's clinical records to the other parent who also has parental responsibility?

No. Parental responsibility allows access to a child's clinical records with no need for consent by the other parent. If a child has capacity to make the decision, only the child's consent would be required to disclose his/her medical information.

Does the other parent require to be informed when one parent with parental responsibility requests information from their child's records?

There is no legal requirement to do so. However, if there is uncertainty around the child's best interests, it may be advisable to discuss the request with the other parent first to gain a better understanding of the situation before coming to a decision. It may be appropriate to inform the requesting parent of your intention to discuss the issue with the other parent.

Do step-parents have parental responsibility?

A step-parent married to someone with parental responsibility does not automatically have parental responsibility themselves. There are a number of ways to obtain this, for example through a parental responsibility agreement with the other parent/guardian who still retains parental responsibility, or through a court order. This is a complex area of law and advice should be sought from an MDDUS adviser.

Do the parents of adopted children have parental responsibility?

Parental responsibility is awarded to adopting parents (and removed from the biological parents) once the formal adoption process is completed.

What is the status of same-sex parents?

Same-sex parents who were civil partners or married at the time of fertility treatment will both have parental responsibility. If they were not civil partners at the time of fertility treatment, the second parent can either apply for parental responsibility if an agreement was made or become a civil partner of the other parent and make a parental responsibility agreement, or jointly register the birth.

What about grandparents?

It is not uncommon for grandparents who are bringing a child to a medical/dental appointment to assume they can provide consent to the child's treatment. However, this would only be the case if they have obtained parental responsibility, which is normally obtained by a court order.

What if two people with parental responsibility for a child disagree on the mode of treatment to be provided?

Although consent is required from only one person with parental responsibility, if the treatment is not urgent the best way forward may be to ask those with parental responsibility to consider their positions away from the practice, with input from the child where appropriate.

Common Pitfalls

- Disclosure of a child's personal information to a parent who does not hold parental responsibility or has had it removed by a court. When in doubt, seek proof of current parental responsibility before disclosing.
- Withholding the personal information of a child (not legally competent) from either parent because they are now separated or divorced. This has no effect on the legal status of parental responsibility.
- Failure to consider whether a child has capacity to consent to the disclosure of their personal information.
- Failing to consider whether the child's best interests are being maintained when information is being shared with others.
- Failure to redact third-party or other sensitive information from a child's records concerning the personal details or whereabouts of one or both parents.
- Failure to correct the assumption of some family members (e.g. grandparents, older siblings) that they have parental responsibility when they do not (unless acquired as above).

Key points

- Parental responsibility can be a complex area of law to navigate.
- Contact MDDUS for specific advice on parental responsibility if in any doubt.
- Specific cases and approaches relating to step-parents, fostering or adoption matters can also be referred to MDDUS for advice, as can enquiries which relate to children in care of local authorities.

Further guidance

- Children's Act 1989 and Adoption and Children's Act 2002 (England & Wales):
<https://www.legislation.gov.uk/ukpga/1989/41>
<https://www.legislation.gov.uk/ukpga/2002/38>
- Children (Scotland) Act 1995:
<https://www.legislation.gov.uk/ukpga/1995/36/contents>

- Family Law (Scotland) Act 2006: <http://www.legislation.gov.uk/asp/2006/2/contents>
- Children (Northern Ireland) Order 1995:
<http://www.legislation.gov.uk/nisi/1995/755/contents/made>
- The Family Law Act (Northern Ireland) 2001:
<http://www.legislation.gov.uk/nia/2001/12/contents>

MDDUS Training & CPD resources: <https://www.mddus.com/training-and-cpd>