

Parental rights and responsibilities

Parental rights and responsibilities can be a difficult area for clinicians to negotiate. This MDDUS guidance sheet is intended to alert clinicians to the overarching principles involved, but also to remind clinicians that the complexity in nature of this area should encourage a lower threshold for seeking advice where a specific situation arises. The most important factor in this area is that decisions made must always primarily consider the best interests of the child.

What are parental rights and responsibilities?

Parental responsibility indicates the rights and responsibilities that parents have in law for their child/young person, including the right to consent to medical treatment for them. These responsibilities 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.

Is parental responsibility absolute?

Clinicians should be aware that parental responsibility can become limited and diminish as the child matures. Young people can gain situation-specific capacity to consent before the age of 16 if assessed as competent to understand the nature, purpose and possible consequences of the treatment proposed.

Again, decisions should always be made with consideration of the best interests of the child in mind and advice sought from the MDDUS where required. This is recommended particularly where there is disagreement between parents with equal parental rights and responsibilities.

Are there any consent and confidentiality considerations?

Clinicians should be aware of consent and confidentiality issues in relation to parental rights and responsibilities. Adequate and robust assessment must be undertaken and detailed notes recorded when assessing a young person's capacity to consent to medical treatment without the responsible parent's participation.

The clinician should also be aware of the duty of confidentiality to a young person under the age of 16 whom they have deemed as having capacity. And as such should give careful consideration to disclosure of information without the young person's consent, unless it is deemed in their best interests.

Consideration should also be given to developing a system to alert administration and reception staff to a 'competent' young person's right to confidentiality in relation to access to health records, test results, prescriptions and appointment details, for example:

Who has parental rights and responsibilities?		
Status	Responsibility	Exceptions/conditions
Parents married at time of birth	Equal rights for both parents.	Removal of parental responsibilities by court order.
Separated or divorced parents	Equal rights, regardless of custody position (as above).	Removal of parental responsibilities by court order.
Unmarried parents at birth of child before 15 April '02 (NI), 1 December '03 (Eng), or 4 May '06 (Scot)	<ul style="list-style-type: none"> • Mother. • In Scotland only, the father acquires rights if he marries the mother at any point following the child's birth. • In NI only, the father acquires rights if he marries the mother at any point following the child's birth only if he lives in NI at the time of the marriage. 	Father may acquire rights through a parental responsibility agreement with mother, or by court order.
Unmarried parents at birth on or after above dates	<ul style="list-style-type: none"> • Mother. • In Scotland and NI, father if named on birth certificate. 	Father has automatic rights if named on birth certificate.
Same sex parents who were married or in a civil partnership at the time of treatment	Both parents may have equal rights and responsibilities.	Removal of parental responsibilities by court order.
Same sex parents who are not married or in a civil partnership at the time of treatment	Both parents can obtain parental responsibilities. Due to complexities in this area	

Child is subject of care order	Local Authority and those with parental responsibility before order made.	If parental rights removed then local authority has sole responsibility for the child.
Child is resident in local authority accommodation voluntarily	Parents (subject to above caveats).	As above.
<ul style="list-style-type: none"> • Parental responsibilities can be delegated to others involved in the child's care i.e. grandparent or child-minder where medical care is required, provided they are acting in the best interests of the child and actions are in line with those of the parents. • Adoptive parents, testamentary guardians, guardians appointed by court will also acquire responsibilities. 		