



# Parental Responsibility and Delegated Authority: FAQs

Written for the Delegated Authority Project by the Family Rights Group

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## 1 What is parental responsibility?

- Parental responsibility (PR) is defined in law as: 'All the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his property'.
- This means that a person with parental responsibility is responsible for the care and wellbeing of their child and, unless a court order says something different, that person, and anyone else that also has parental responsibility, can make important decisions about the child's life (subject to important exceptions set out in the *Delegated Authority Handbook for Social Workers and Foster Carers\**).

## 2 Who has PR?

- A child's foster carer never has PR.
- The child's mother has PR from birth.
- The child's father, if married to the mother at the time of the child's birth, has PR.
- Where a child's father was not married to the mother at birth he can acquire PR if he subsequently marries the mother or:
  - *he becomes registered on the birth certificate as the child's father (for a child born after December 2003)*
  - *he and the child's mother make a parental responsibility agreement providing for him to have PR for the child*
  - *the Court makes a parental responsibility order in favour of the father.*
- The local authority also has PR if the child is subject to a Care Order, Interim Care Order or Emergency Protection Order. **Note that when a child is accommodated by agreement (s20 CA1989), the parents (and others with PR) retain their PR and the local authority does not have PR.**
- A person with a residence or Special Guardianship Order from the court has PR.
- Prospective adopters who have a child formally placed with them for adoption by the Court have PR, although the adoption agency may restrict their exercise of PR.
- An adoption agency has PR throughout the time that a child is authorised to be placed for adoption.
- Adoptive parents have PR and the birth parents cease to have PR from the moment the adoption order is made.
- A step-parent or civil partner may obtain PR by agreement with all the people who have PR, or via a Court Order.
- A guardian who is appointed after the death of a parent or other person with PR has PR, provided the proper legal formalities have been followed.
- A second female parent can acquire PR in a similar way to an unmarried father.

### 3 Can anybody else share PR with the parent(s)?

- PR can be shared by more than one person at the same time.
- In certain situations, one party with PR may limit the other holder's exercise of their PR.
- When a child is in care under a care or emergency protection order, the parent retains their PR but the local authority also has it and may limit the extent to which the parent (or others with PR) may exercise their PR.
- When there is a Special Guardianship Order in force, the special guardian can, for the most part, exercise PR to the exclusion of anyone else with PR (apart from another special guardian) – although parents/others with PR could still apply to challenge a special guardian's decision about the child in court.
- When a child is placed for adoption the parent and the prospective adopters have PR in certain circumstances but the adoption agency can limit the extent to which either may exercise their PR.

### 4 What does it mean to delegate authority?

- A person with PR may not surrender or transfer any part of it to another person; however, a person who has PR may arrange for all or some of their responsibilities to be met in certain circumstances by someone else (including someone else who also has PR for the child). This is called 'delegating authority' and may be given for a particular event or arrangement (such as a medical appointment or a school trip).
- The law also says that the person who does not have PR for a child but has care of the child (eg a foster carer) may 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'. This means that in an emergency, if no agreement has been made about what to do, the foster carer may do what is 'reasonable' in order to safeguard the child. Statutory guidance states that what is reasonable will depend upon the urgency of the situation and how practical it is to consult a person with PR.
- Foster carers often find they need the authority to make certain day-to-day decisions, such as whether the child they are caring for is allowed to stay overnight with a particular friend, or whether she or he can go on a school trip. The Children Act 1989 Volume 2 Statutory Guidance on Care Planning, Placement and Case Review, which came into force on 1 April 2011, requires local authorities to ensure that the placement plan, which sets out the arrangements for the child to live with and be cared for by the foster carers, specifies any arrangements for the delegation of authority from the parents to the local authority. This should include any arrangements for further delegation from the local authority to the foster carer. The placement plan should help the foster carer understand what decisions they can make. Where there are issues that a foster carer believes it would be in the child's interests for them to decide, and these are not covered in the placement plan, then the foster carer should discuss this with the child's social worker during the statutory visits.

### 5 Are there some situations where authority cannot be delegated?

There are a number of situations in which consent of those with PR for the child is essential and therefore cannot be delegated to another person. For example, consent to removal from the jurisdiction (UK) must be given by all the people who have PR, unless the child is in the care of the local authority (under a Care Order, Interim Care Order or Emergency Protection Order), in which case it can be specifically authorised by the local authority for up to one month. Other examples of where authority cannot be delegated are outlined in the *DA Handbook*.

### 6 What is the difference between having PR and having delegated authority?

- A person with PR may not surrender or transfer their PR.
- A person with delegated authority may only do what they are authorised to do (unless it is an emergency, in which case they can do what is reasonable to keep the child safe), whereas a person with PR can make almost any decision about a child's upbringing.
- Any arrangement with a temporary carer is not legally binding and a person who holds PR may take back their child, and/or the authority they have delegated, at any time, unless a court order says they may not.
- Any delegation does not relieve the parent, or other person delegating, of any liability that may arise as a result of a failure to meet that parental responsibility,
- Where PR is shared, and the parties cannot agree how to exercise PR, the parties may go to court to decide the issue. Even where one party with PR has the right to limit the extent to which the other exercises their PR, eg the local authority when the child is under a Care Order, the parent may challenge the local authority decision in court if they think they are acting unlawfully.

### 7 Who takes legal responsibility for decisions made by a person with delegated authority?

- Where authority has been delegated, the person who has PR still remains liable in law for any failure to meet any part of his parental responsibility.
- A person to whom authority has been delegated may also be liable in law if the decision they made was negligent or criminal.

### 8 How does a foster carer know if the person delegating authority is able to make that decision?

- If the local authority has an Emergency Protection Order or Care Order, the foster carer may assume that any officer of the local authority has the authority to delegate responsibility. However, if the local authority does not have such an order, it is the parent or someone else with PR who has to agree to delegate any authority to the foster carer.
- A written record should be kept in the placement plan of all decisions to delegate authority.

### 9 What happens if the foster carer disagrees with what the local authority is proposing?

- The foster carer's placement plan will set out some circumstances in which authority will be delegated to them. Where there is disagreement, it is helpful to discuss the issue with the supervising social worker to understand the reasons that have led to the decision and to be clear about what options are available to the foster carer to take the matter further. Depending on the circumstances, the foster carer could, in the first instance, discuss matters with the child's independent reviewing officer (or an advocate, if the child has one) if the foster carer feels that decisions taken are not in the child's best interests.

### 10 What should I do if there is no one with PR for the child?

- The local authority has primary responsibility for a child that they have placed with a foster carer, regardless of whether anyone has PR for the child.
- A foster carer should therefore be guided by the local authority when making decisions for or on behalf of the child.
- However, a person with care of a child who does not have PR may do what is reasonable in the circumstances for the purpose of safeguarding or promoting the child's welfare. This applies equally if the person with PR cannot be contacted within the timescale necessary. This means that in an emergency, if it is not possible to refer back to the local authority, the foster carer can do what is necessary to keep the child safe.

### 11 What happens if the young person is 16?

- There are some things that a young person who is 16 or over, or under 16 but mature, can consent to in their own right, for example:
  - *A young person aged 16 (or a young person under that age who is considered by medical staff to have sufficient understanding of the implications of treatment) can consent to their own medical treatment.*
  - *From the age of 16 a young person can consent to their own care plan when they are looked after by the local authority and there is no court order in place.*

### 12 Who is included in the definition of parent in the Education Act 1996?

- The Education Act 1996 (section 576) defines 'parent' to include anyone who has parental responsibility for a child, or who has day-to-day care of him or her. This means that someone, including a foster carer, can be a 'parent' for education purposes without having parental responsibility for the child in question. Because of this, it is important that foster carers understand their responsibilities and rights.
- Education law makes parents responsible for a child's regular attendance at school. If a fostered child does not attend school regularly, his or her foster carer may be requested to enter into a parenting contract. If the child's attendance does not improve, and the foster carer is unwilling to work with the school or the local education authority to improve the child's attendance, it is possible that the foster carer may be prosecuted or fined.
- A significant number of children who are looked after have special educational needs (SEN), or would benefit from being assessed for SEN as a route to gaining appropriate education support. If a child has a Statement of SEN, his or her foster carer/s should have a copy of this. An appeal to the Special Educational Needs & Disability Tribunal (SENDIST) on issues such as refusal to assess whether a child has SEN, or disagreement about the school named in a Statement of SEN, may be made by a foster carer.
- Despite these legal rights, foster carers are advised not to act without consulting the parties who have parental responsibility for the child (the local authority and/or the child's parents, as appropriate). Equally, the local authority and the child's school and SENDIST should ensure that carers are consulted and involved in decisions about a child's education, alongside those who have PR for the child.