

## SECTION R

### VARIOUS PAPERS OF INTEREST

This section will include a miscellany of papers of interest that do not naturally fall within any other section of these Diocesan Guidelines, Policies and Regulations.

#### R.1 Parental Responsibility

1. Clergy and others involved in baptisms, issues of consent in church schools, major medical treatment and other circumstances where consent is needed or where parents should be consulted will not always find it easy to determine just who should be involved. This is especially so where parents have separated or children are living with another member of the extended family.
2. The key question is: who holds parental responsibility (a term defined in the Children Act 1989 as amended)? That is not the same question as: who are the parents? The routes to parental responsibility have developed and changed since 1989 and it may be helpful if they are set out.
3. The birth mother has parental responsibility automatically and can only lose it in respect of a specific child as and when that child is made the subject of an adoption order to another.
4. The natural father who is married to the mother has parental responsibility on the same basis as the mother. That will be so even if they marry after the birth of the child but only as from the date of the marriage.
5. The natural father who is not married to the mother does not have parental responsibility until he acquires it and he may do so in one of the following ways –
  - (i) his name is registered on the child's birth certificate;
  - (ii) he enters into a formal written agreement with the mother to acquire parental responsibility;
  - (iii) he is named in a court order as a person with whom the child should live (a 'residence order');
  - (iv) he has been granted parental responsibility by a specific order of the court to that effect.

Parental responsibility acquired in these ways lasts (in the case of (i), (ii) and (iv)) during the child's minority or until earlier being brought to an end by court order; as to (iii) it lasts for as long as the residence order remains in force. Where (iii) applies, the father is usually entitled to the order at (iv) but needs to ask for it. An adoption order terminates parental responsibility.

6. A man who has a contact order does not acquire parental responsibility simply by that order.
7. A step-parent does not automatically acquire parental responsibility even on marriage to the mother. However, he may acquire it (if married or a civil partner) –
  - (i) by formal written agreement with the mother and father (if he held parental responsibility);
  - (ii) by being named in a residence order;
  - (iii) by obtaining a free-standing order from the court;

These may be brought to an end in the same way as in the case of an unmarried natural father.

8. Where a child is the subject of a care order (whether interim or final) to a local authority, that authority 'shares' parental responsibility with any who held it at the date the order was made or who subsequently acquire it. However, no-one may exercise parental responsibility otherwise than as agreed by the authority. A foster carer usually does not hold parental responsibility save where the child has been 'placed' by the authority for the purposes of adoption by that carer: a placement order will be in force.
9. Adoptive parents hold parental responsibility if they are named in the adoption order. Otherwise the position is the same as though the child was a natural rather than adopted child.
10. Children living with relatives may be doing so under a number of legal auspices which have different consequences so far as parental responsibility is concerned –
  - (i) a private fostering arrangement: this does not confer parental responsibility which remains with the parent(s) who held it when the placement was made;
  - (ii) a kinship placement in which they are foster parents: this does not confer parental responsibility which effectively is held by the local authority;
  - (iii) under a residence order: this confers parental responsibility on those named in the order but does not displace the parental responsibility of the mother or (if he held it) the father;
  - (iv) under a Special Guardianship Order: this confers parental responsibility on anyone named in the order who may exercise it independently of anyone else who holds it and is thus significantly different to a residence order;
  - (v) under an adoption order: this confers exclusive parental responsibility.
11. Sometimes children are living with those who are not relatives at all. As a general rule such people will not hold parental responsibility. However, long term foster parents may now obtain a special guardianship order with the consequences for parental responsibility described above.
12. I should also note that a parent who holds parental responsibility or any person who holds a special guardianship order may appoint a guardian for a child in the event of that person's death. A person who then becomes a guardian on the death of that person acquires parental responsibility in respect of any child named in the appointment.
13. Where a major decision is to be taken in the life of the child, all holders of effective parental responsibility need to consent and it is good practice to consult those who hold parental responsibility but cannot exercise it (because a care or special guardianship order is in force). If holders of effective parental responsibility cannot agree, the Children Act provides a mechanism for resolution. Clearly baptism and the entry to or leaving a school are such decisions.
14. In practice the two most difficult situations are separated parents and children living with relatives. It used to be the case that only a minority of unmarried fathers held parental responsibility but, with the change of law regarding entry on birth certificate conferring parental responsibility, an increasing number of fathers of younger children will hold parental responsibility. Children living with relatives require particular care. Any relative claiming to hold a court order should on reasonable notice be able to produce it; this may need insisting on if the relative wishes to exclude a parent from the decision.

15. For the sake of completeness it should be noted that the Children Act provides that where a carer does not hold parental responsibility he may “do what is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the child’s welfare.” This, however, will not include taking major decisions to the exclusion of those who hold parental responsibility.
  
16. Although this appears a minefield, it is one of importance not least because families do not always know who does or does not hold parental responsibility. Parental responsibility is not vital where one is dealing with ordinary day to day events where the consent of the carer is sufficient. However where anything involving a major decision is concerned, it becomes important to know where parental responsibility is held in a family.

*End of Section R – January 2011*