



## Guidance

# Understanding and dealing with issues relating to parental responsibility

Updated 3 September 2018

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## Introduction

Schools are required by law to engage with pupils' parents in a number of different ways. They can find themselves caught up in disputes between a number of adults, each claiming to have parental responsibility for a particular child. Schools are also expected to navigate complex living arrangements, particularly for children who are living in social care, where parental responsibility can be confusing or unclear.

We have produced this guidance to help schools understand their obligations and duties in relation to the rights and responsibilities of parents, as recognised by education law. We use the terms:

- must – where a school has a duty
- can – where a school has a power (not a duty) under statutory or common law
- should – for guidance on good practice

This guidance should not be treated as a complete and authoritative statement of the law. We refer to legislation that sets out schools' legal duties. If you have any queries about the legislation referred to in this guidance you should contact your legal advisors in the first instance.

Some primary legislation may have been amended since their publication.

We use the terms 'resident' and 'non-resident' parent to distinguish between parents who do and do not live with a child.

The welfare of the child must be the paramount consideration for schools. In the event of a concern being raised where the school is unclear how to act, independent legal advice should be sought to ensure that a parent's rights and responsibilities are not infringed and the actions of the school are compliant with education law.

### Review date

The department will review this advice before September 2022, subject to any legislative changes.

### Who is this advice for?

This advice is for:

- school governing bodies
- school leaders
- school staff
- local authorities
- diocesan boards

It applies to:

- maintained schools – including sixth form and nursery year groups
- maintained nursery schools
- academies and free schools – including sixth form and nursery year groups

### Who is a parent?

It's important that schools and local authorities are aware that parents may be recognised differently under education law, than under family law. Section 576 of the Education Act 1996 states that a 'parent', in relation to a child or young person, includes any person who is not a parent (from which can be inferred 'biological parent') but who has parental responsibility, or who has care of the child.

For the purposes of education law, the department considers a 'parent' to include:

- all biological parents, whether they are married or not
- any person who, although not a biological parent, has parental responsibility for a child or young person - this could be an adoptive parent, a step-parent, guardian or other relative
- any person who, although not a biological parent and does not have parental responsibility, has care of a child or young person

A person typically has care of a child or young person if they are the person with whom the child lives, either full or part time and who looks after the child, irrespective of what their biological or legal relationship is with the child.

#### Example

This may be a foster carer or family and friends carer who does not have parental responsibility but has been delegated the responsibility for taking day-to-day decisions about the child.

In cases where a person is not the biological parent of a child, does not have 'parental responsibility' for that child and that child no longer lives with them, it's unlikely that they will be recognised as a 'parent'. Any disputes about whether a person is a child's 'parent' within the meaning of section 576 Education Act 1996, are for the courts to decide.

### What is parental responsibility?

In [family law](#), parental responsibility means all the rights, duties, powers, responsibilities and authority that a parent has in relation to the child.

A person with parental responsibility can make decisions about the child's upbringing and is entitled to information about their child. For example, they can give consent to the child's medical treatment and make decisions about the child's education. They also have the right to receive information about their child's health and education.

There are specific examples in [general principles for schools and local authorities](#).

## Who has parental responsibility?

A child's birth mother (the person who carried the child) has parental responsibility unless it's removed by an adoption order or a parental order following surrogacy.

Where a child's father and mother were married to each other at the time of the child's birth, they each have parental responsibility for the child. Where the parents were not married to each other at that time, the child's father can gain parental responsibility:

- by registering the child's birth jointly with the mother
- by subsequently marrying the child's mother
- through a 'parental responsibility agreement' between him and the child's mother which is registered with the court
- by obtaining a court order for parental responsibility

Where two female parents have a child through fertility treatment, the mother's female partner is treated in the same way as a father. She has parental responsibility if she is married to or in a civil partnership with the mother at the time of the treatment (or if the two women agree in writing that she will be the child's second parent). She can also acquire parental responsibility in the same way that a child's father can.

People who are not the child's biological mother, father or second female parent can also [acquire parental responsibility](#).

Civil partners have parallel rights to married people in terms of parental responsibility. The same provisions for married people apply to them in terms of:

- acquiring parental responsibility - adoption, agreement with their civil partner or by an order from the court
- holding parental responsibility

## Key effects of a father or second female parent acquiring parental responsibility

When a father or second female parent acquires parental responsibility they:

- become a 'parent' for the purposes of adoption legislation and can therefore withhold consent to an adoption
- can object to the child being accommodated in local authority accommodation under section 20 of the Children Act 1989 and remove the child from local authority accommodation (unless the child is over 16 and agrees to be provided with accommodation)
- will automatically be a party to care proceedings
- can appoint a guardian
- can give valid consent for his child's medical treatment (subject to the competency of the child to give their own consent or object to the treatment being proposed)
- has a right of access to his child's health records
- can withdraw a child from sex education and religious education classes and make representations to schools concerning the child's education
- must give consent if child's other parent seeks to remove the child from the jurisdiction
- can sign a child's passport application and object to the granting of a passport
- has sufficient rights in relation to a child to invoke the international child abduction rules
- can consent to the marriage of a child aged 16 or 17

## Other ways to acquire parental responsibility

Parental responsibility can be acquired in other ways:

- adoption - only the adoptive parents will hold parental responsibility
- when a child is placed with prospective adopters they get parental responsibility for the child along with others holding parental responsibility, such as the local authority
- obtaining a parental order following surrogacy
- in the case of step-parents, through agreement with the child's mother - and other parent if that person also has parental responsibility for the child - or as the result of a court order
- being granted a child arrangements order determining that the child should live with him or her, or if the court determines that a parent should only spend time with the child, the court may also decide to grant parental responsibility
- being appointed a guardian or special guardian
- being named in an emergency protection order - although parental responsibility in such a case is limited to taking

reasonable steps to safeguard or promote the child's welfare

A local authority can also acquire parental responsibility, if it's named in the care order for a child.

More than one person, and even several people, can hold and exercise parental responsibility for a child. The parental responsibility of one party does not necessarily stop simply because another person is also given it, although this can happen. Therefore, in some cases, several people may exercise parental responsibility on behalf of a child.

Parental responsibility is not given to a foster parent or key worker in residential care but it's essential that schools engage and work with these individuals, who are often the most influential and important people in the child's life. How a school engages with social workers and the birth parents of the child in each case needs to be defined locally, but it's an essential part of supporting the child's school and care environment.

## Court orders and parental responsibility

Court orders under section 8 of the Children Act 1989 (often-called section 8 orders) settle areas of dispute in relation to the exercise of parental responsibility or a child's care or upbringing, and can limit how an individual exercises their parental responsibility.

There are different types of section 8 orders, which can be made to address particular issues.

### Prohibited steps order

A prohibited steps order imposes a specific restriction on the exercise of responsibility. This means that no step specified by the court, which a parent could take in meeting his/her parental responsibility, can be taken without the consent of the court.

#### Example

One parent wants to take the child abroad for an extended period or prevent the child from attending a form of religious worship, against the wishes of the other parent.

### Specific issue order

A specific issue order is an order giving directions for the purpose of determining a specific question that has arisen, or may arise, in connection with any aspect of parental responsibility.

#### Example

An order allowing one parent to agree to a pupil changing school against the wishes of the other parent.

### Child arrangements order

A child arrangements order sets out the arrangements relating to whom a child is to live with and when, and arrangements relating to whom a child spends time with or otherwise has contact with. It replaces the former residence and contact orders.

Schools should ask parents to ensure they provide schools with a copy of the most recent court order in place, to support the school's duties in respect of child safeguarding.

 **Parents may first need to seek the permission of the court to share orders with third parties, including the child's school.**

### Care order

If a care order is in place, the role that parents can play in their child's life and schooling may be limited by the local authority.

 **Schools should note that court orders limiting a parent's exercise of their parental responsibility does not necessarily prevent or restrict a school from carrying out their [duties under education law](#).**

### Terminating parental responsibility

While such cases are rare, in very limited circumstances, the court can also make an order under section 4(3) of the Children Act 1989 to terminate parental responsibility that has been acquired (except where parental responsibility was acquired through marriage of the father or second female parent to the child's mother).

More information about [court orders and pre-proceedings](#) is available.

## General principles for schools and local authorities

Everyone [who is a parent](#), as recognised under education law can participate in their child's education.

This is supported by the duty on the Secretary of State for Education, when exercising or performing all their respective powers and duties under the Education Acts, to have regard to the general principle that pupils are to be [educated in accordance with the wishes of their parents](#). Governing bodies of maintained schools must also have [regard to any views expressed by parents of registered pupils](#).

All parents can also [receive information about the child](#), even though, for day-to-day purposes, the school's main contact is likely to be a parent with whom the child lives on school days.

Individuals who have parental responsibility for, or care of, a child have the same rights as biological parents. For example to:

- receive information – such as pupil reports
- participate in statutory activities – such as voting in elections for parent governors
- be asked to give consent - such as to the child taking part in school trips
- be informed about meetings involving the child - such as a governors' meeting on the child's exclusion

School and local authority staff must treat all parents equally, unless a court order limits a parent's ability to make educational decisions, participate in school life or receive information about their children. In most circumstances, the question schools must ask themselves when making decisions is not just whether the parent holds parental responsibility but whether they are a parent under education law.

All parents also have legal obligations. For example, to ensure that a child of compulsory school age receives a [suitable full-time education](#).

Where a parent's action, or proposed action, conflicts with the school's ability to act in the child's best interests, the school should try to resolve the problem with that parent but avoid becoming involved in conflict. However, there may be occasions when a school needs to decline requests for action from one or more parents.

In cases where schools cannot resolve the conflict between separated parents, they should advise the aggrieved parent to pursue the matter through the Family Court.

## Information Sharing

It's important that schools balance the requests of parents with their statutory duties. Having parental responsibility does not allow a parent to obstruct a school from carrying out their duties under legislation.

### Example

A biological parent, with parental responsibility, informs their child's maintained school that they do not wish their child's step-parent, who does not have parental responsibility but does have care of the child, to receive educational information about that child. The school must inform the biological parent that they cannot comply with that request.

Under the Education (Pupil Information) (England) Regulations 2005, some schools are required to provide access to, or copies of a child's educational record to parents upon request. Therefore, if the school were to abide by the request of the biological parent they would be in breach of their obligations under education law.

## Legislation on information sharing

Under the principles of the General Data Protection Regulations 2018 (GDPR) and the Data Protection Act 2018 (the DPA 2018), children and young adults can assume control over their personal information and restrict access to it from the age of 13.

However, parents are entitled to request access to, or a copy of their child's educational record, even if the child does not wish them to access it. This applies until the child reaches the age of 18. A parent is not, however entitled to information that the school could not lawfully disclose to the child under the GDPR or in relation to [which the child would have no right of access](#). If

you have any queries about GDPR please contact the [Information Commissioners Office](#).

### **Example**

A non-resident parent who has limited contact with their children, contacts the school to find out how well they did in their exams. Both the children and the resident parent do not wish to share that information and they inform the school of this. The school refuses to release the information on the basis that the children are old enough to control access to their personal information. The school has therefore breached education law by failing to provide information to which the non-resident parent is entitled.

## **Information sharing and academies**

Requirements on academies differ slightly and are derived from Part 6 of the Schedule to the Education (Independent School Standards) Regulations 2014.

Under Part 6, academies must provide an annual written report of each registered pupil's progress and attainment in the main subject areas taught, to the parents of that registered pupil (except that no report need be provided where the parent has agreed otherwise).

## **Informing non-resident parents**

In cases where a school does not know the whereabouts of a non-resident parent, it should make the resident parent aware that the other parent is entitled to be involved in their child's education and request that information is passed on.

If the resident parent refuses to share information with the other parent and also refuses to provide contact details so that the school can deal direct with the non-resident parent, the school can do nothing more. It should be noted, however, that the resident parent might be genuinely unaware of the non-resident parent's whereabouts.

If the non-resident parent subsequently contacts the school and requests access to information, the school should provide it to that parent direct, after taking reasonable steps to satisfy itself that the individual is, in fact, the child's parent.

Schools are not required to seek the consent of the parent with whom the child resides before either recording the contact details of the non-resident parent, or sending them their child's prescribed statutory educational information. There is also no requirement for a school to request a solicitor's letter from a parent who does not live with the child, as evidence that they are a parent entitled to educational information about their child. Nor does a school need a court order directing them to provide statutory information to any parent who is entitled to it.

## **Obtaining consent**

Where schools need parental consent to outings and activities, headteachers should seek the consent from the resident parent unless the decision is likely to have a long-term and significant impact on the child, or the non-resident parent has requested to be asked for consent in all such cases.

In cases where the school considers it necessary or has been asked to seek consent from both parents, you may wish to assume that parental consent has not been given unless all parents agree. Such an approach ensures that the school has treated the views of each parent equally and will also help to safeguard the position of the school in terms of exposure to any potential civil liability where, for example, the child is injured while on a school trip.

Schools should avoid becoming involved in any disagreement between parents but might want to suggest that where parents cannot agree they seek independent legal advice about obtaining a court order setting out exactly what decisions each parent can make in respect of the child (a Specific-Issue or Prohibited Steps Order as appropriate).

## **Medical treatment – seeking consent following accident or injury**

Schools may experience problems when a child has had an accident and consent might be needed for emergency medical treatment. The [Children Act 1989, section 3](#) provides that people who do not have parental responsibility but nonetheless have 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.”

This would allow schools to act 'in loco parentis', in place of a parent, or allow them to seek consent from a parent who may not hold parental responsibility.

It would clearly be reasonable for a school to take a child who needs to have a wound stitched up to hospital, but the parents, including the non-resident parent who has asked to be kept informed of events involving the child, should be informed as soon as possible.

## Safeguarding

All schools must have regard to the [Keeping Children Safe in Education](#) (KCSIE) statutory guidance, which explains what schools and their staff must do and should do to safeguard their pupils.

Safeguarding is defined in KCSIE as:

“ Protecting children from maltreatment; preventing impairment of children’s health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes.”

KCSIE emphasises that everyone who comes into contact with children and their families has a role to play in safeguarding children. School and college staff are particularly important, as they are in a position to identify concerns early and provide help for children, to prevent concerns from escalating. They should consider, at all times, what is in the best interests of the child.

If a child is in immediate danger or is at risk of harm, a referral should be made immediately to children’s social care and/or the police as appropriate. All schools should have a designated safeguarding lead. A full job description is provided in Annex B of [KCSIE](#).

It will be for schools, on a case-by-case basis, to consider the level of information (if any) that is provided to parents where referrals have been made to children’s social care.

The designated safeguarding lead working with children’s social care should generally lead on any decisions about sharing information related to safeguarding concerns with parents. Information sharing should always be in the best interests of the child. It will be especially important that a school works closely with children’s social care, to consider next steps, if there is reason to believe sharing information with a parent will potentially put a child at greater risk of harm.

Safeguarding information sharing advice can be found in:

- Chapter 1 of [Working together to safeguard children](#), which includes a myth-busting guide to information sharing
- [Information sharing advice for practitioners](#)

## Changing a surname

A change of surname is a private law matter and should be resolved between parents. Where one parent seeks to change the surname by which their child is known, schools should ensure that they do not change the surname without written evidence that consent has been given by the other parent or by anyone else who has parental responsibility for the child. Schools should source this evidence independent of the parent seeking to make the change.

Regulation 5(1)(a) of the Education (Pupil Registration) Regulations 2006 requires a school to record the full name of every pupil in alphabetical order in the admissions register. This means the child’s full legal name and not any other name that the child is known by.

However, there may be circumstances where an informal name change has already been adopted in the school and it would not be in the best interests of the child, who might be called by a new name, to refer back to a different name. In these circumstances, schools should decide what action to take but the best interests of the child must be the paramount consideration when making a decision.

Where a child is subject to a special guardianship order, there are particular considerations in cases where a school receives a request to use a different surname for a pupil.

Section 14C(3) of the Children Act 1989 (CA 1989) states that:

“ While a special guardianship order is in force with respect to a child, no person may cause the child to be known by a new surname.....without either the written consent of every person who has parental responsibility for the child or the leave of the court. Schools must therefore decline requests from special guardians for a child to be known by a different surname unless the above criteria are met.”

## Parent governors

Schools must not restrict eligibility to nominate, vote or otherwise participate in parent governor elections, to parents holding parental responsibility. Under the School Governance (Constitution) (England) Regulations 2012, ‘parent’ includes

not just those with parental responsibility but biological parents and anyone who cares for a child.

There are a number of different organisations that schools can approach if they require further advice on this issue. However, some of these organisations charge schools a fee to access information and advice.

## Administration

In accordance with Regulation 5(1)(c) of the Education (Pupil Registration) (England) Regulations 2013, headteachers must ensure that:

- names and addresses of all parents are included in the admission register
- the school register contains at least one telephone number to contact each resident parent in case of an emergency

Headteachers should therefore:

- ask parents or guardians for contact details, including names and addresses, of all parents when they register a pupil
- ensure that they note details of court orders in a pupil's record

Such information will be necessary when decisions need to be made about who can give parental consent for a school visit, or be contacted if the child is ill, as well as what to do in more difficult situations.

### Example

If a biological parent, rather than a foster-parent, comes to collect a child in local authority care from school.

Schools should also be mindful to protect the private data of each parent from any other and avoid inadvertent disclosure.

This is particularly important given that some parents will have been, or may be at risk of being, a victim of domestic violence.

### Example

Annual attendance registers, commonly issued together with the end of year report, generally include the pupil's current address so the school should be careful who they send this to. Similarly, if the school copies one parent into what they have sent the other, they may disclose their private email address and correspondence.

Schools need to take the same care when providing information to foster parents and biological parents, where a child is in care. There may be circumstances where foster parents' details must not be disclosed to the biological family, as part of safeguarding the child.

## Working with social workers

There may be occasions where a child's social worker collects them from school. This needs to be by prior agreement with the birth parents and/or foster carers depending on the individual circumstances. Social workers should not enter school premises to collect children to attend care review meetings or go to contact meetings without the prior agreement of teachers, foster carers, parents or the children themselves.

Social workers will need to be contacted in some incidents. For example, in matters relating to health or absenteeism. However, in most circumstances, it's the primary carer who is best placed to have that conversation and then report on to social workers.

## Further information

### Useful resources and external organisations

- [The Children Act 1989](#)
- [The Education Act 1996](#)
- [The Education \(Pupil Information\) \(England\) Regulations 2005](#)
- [The Education \(Pupil Registration\) Regulations 2006](#)
- [The Children and Families Act 2014](#)
- [Court Orders and Pre-Proceedings](#)

- [Ministry of Justice](#) - this department is now responsible for government policies relating to private family law. The Department for Education retains policy responsibility for public family law
- [National Governance Association](#)

#### Other relevant statutory guidance and departmental advice

- [Keeping Children Safe in Education](#)
- [Statutory Guidance for Schools on Complaints Handling 2019](#)
- [Health and safety guidance](#)
- [Governors Handbook](#)

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