

Duty of Care

Anyone entrusted with the care of another person's child, young person or vulnerable adult has a responsibility to take reasonable care for their safety and welfare. This is sometimes referred to as acting 'in loco parentis' (literally 'in place of the parent'), but this phrase does not itself confer any legal authority in relation to the child, young person or vulnerable adult and it is important to remember that the legal authority for a child, young person or vulnerable adult's care rests primarily with the parent/carer(s) or others to whom it is given by a formal agreement or court order.

This section examines some aspects of the legal framework in which our work with children, young people and vulnerable adults is undertaken.

The legal authority to make decisions about a child's welfare and upbringing is called 'parental responsibility'. This is defined by the Children Act 1989 ('CA1989') as 'the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property': CA1989, s 3(1).

Parental responsibility therefore confers on a person certain rights and duties in relation to the child, young person or vulnerable adult concerned (e.g. the right to consent to medical treatment and to make other major decisions). A parent/carer who does not have parental responsibility may not have the right to make or object to major decisions for the child, young person or vulnerable adult (e.g. change of name or removal from the UK).

A person who does not have parental responsibility for a particular child, young person or vulnerable adult; but has care of the child, young person or vulnerable adult may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child, young person or vulnerable adult's welfare: CA1989, s 3(5).

When you run or help with a group...

Where a parent/carer entrusts a child, young person or vulnerable adult to your care (e.g. at a youth club, choir, Guides, Scouts etc.) you have a responsibility to exercise reasonable care for the child, young person or vulnerable adult and you may take reasonable steps to safeguard the child, young person or vulnerable adult's welfare.

However, you do not acquire parental responsibility for the child, young person or vulnerable adult and cannot exercise parental authority over the child, young person or vulnerable adult (e.g. by consenting to medical treatment).

This is why, for example, a Medical Consent Form is required from a child, young person or vulnerable adult's parent/carer before the child, young person or vulnerable adult is allowed to take part in activities organised by your group, enabling medical treatment to be given in case of emergency.

It follows that a consent form should be signed by a parent or other person who has parental responsibility for the child, young person or vulnerable adult.

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Who has parental responsibility?

A child's mother automatically has parental responsibility for the child: CA1989, s 2(1).

A child's father automatically has parental responsibility where he and the child's mother were married to each other at the time of his birth, or subsequently marry each other.

Where the parents are not married, the father will only have parental responsibility (under CA1989, s 4) if:

- he was registered as the child's father on or after 1st December 2003;
- he and the child's mother have entered into a parental responsibility agreement; or
- the court makes an order conferring parental responsibility.

A step-parent (including a civil partner of the parent) may acquire parental responsibility by agreement or court order: CA1989, s 4A.

Any person in whose favour a residence order or a special guardianship order has been made in respect of a child has parental responsibility for that child as long as the order remains in force. Parental responsibility may also be conferred or acquired under the CA1989 in the case of a child born following assisted reproduction. Where more than one person has parental responsibility for a child, they should normally try to exercise it jointly, i.e. by consulting on any major decisions.

Orders for residence, contact etc.

Where a child's parents cannot agree about the arrangements for the child's care, or in other cases where the child's welfare requires it, the court may make orders under CA1989, s 8 regulating the arrangements. In most cases these orders will relate to the child's residence (a residence order) or the contact which the child is to have with the non-resident parent (a contact order). Orders may also be made prohibiting a person from taking certain steps in relation to a child, e.g. removing a child from the UK (a prohibited steps order) or resolving disputes about the exercise of parental responsibility, e.g. as to medical treatment or education (a specific issue order).

In certain circumstances the court may make an order under CA1989, s 14A, appointing a person (other than a parent) as special guardian for a child. A child's special guardian may exercise parental responsibility for the child without reference to any other person who has parental responsibility (e.g. the parents).

Adoption

Where a child is adopted, the adoptive parents become the child's legal parents and have parental responsibility for the child. The child's birth parents cease to have any legal status in relation to the child and no longer have parental responsibility.

Children in care

A child may be received into the care of a local authority by agreement (by being 'accommodated' under CA1989, s 20) or by court order (a 'care order' under CA1989, s 31). Where a child is accommodated by a local authority, the parents retain parental responsibility and the right to make decisions about the child's welfare. Where a care order is made in respect of a child, the local authority acquires parental responsibility for the child and may

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restrict the exercise of parental responsibility by the child's parents. For example, a local authority may give consent to the child taking part in youth activities or receiving medical treatment, without the need for consent to be obtained from the child's parents.

It is important for those working with a child, young person or vulnerable adult to know of any orders which are in force in relation to the child, in case any question arises in relation to the child, young person or vulnerable adult's care.

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