Ethics Department

Parental responsibility

Guidance from the British Medical Association

What is parental responsibility?

Who possesses parental responsibility?

Consent from people with parental responsibility

What are the limits to parental responsibility?

What happens when people with parental responsibility disagree?

Some common questions relating to parental responsibility

- Can a parent who does not live with a child gain access to the child's medical record?
- Can a relative other than a parent give consent to medical treatment on behalf of a child?

Parental responsibility and Human Rights

Competent children and the limits to parental responsibility

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Basic principles

- Parental responsibility refers to the rights, duties, powers and responsibilities that most parents have in respect of their children.
- Parental responsibility includes the right of parents to consent to treatment on behalf of their children, provided the treatment is in the interests of the child.
- Those with parental responsibility have a statutory right to apply for access to their children's health records, although if the child is capable of giving consent, he or she must consent to the access
- Competent children can decide many aspects of their care for themselves.
- Where doctors believe that parental decisions are not in the best interests of the child, it may be necessary to seek a view from the courts, whilst meanwhile only providing emergency treatment that is essential to preserve life or prevent serious deterioration.

Terminology

In this guidance note, the legal scope and limits of parental responsibility are set out. Clearly the concept of parental responsibility has particular importance in relation to young and very young children since competent minors have a right to be consulted and to decide many aspects of their care for themselves.

What is parental responsibility?

Parental responsibility is a legal concept that consists of the rights, duties, powers, responsibilities and authority that most parents have in respect of their children. It includes the right to give consent to medical treatment, although as is discussed below, this right is not absolute, as well as, in certain circumstances, the freedom to delegate some decision-making responsibility to others. In addition, competent children can consent to diagnosis and treatment on their own behalf if they understand the implications of what is proposed (see below). Those with parental responsibility also have a statutory right to apply for access to the health records of their child, although children who are mature enough to express views on the issue also need to be asked before parents see their record. Parental responsibility is afforded not only to parents, however, and not all parents have parental responsibility, despite arguably having equal moral rights to make decisions for their children where they have been equally involved in their care.

Who possesses parental responsibility?

The law in relation to parental responsibility has recently been revised. For a child whose birth was registered from 15th April 2002 in Northern Ireland, 1st December 2003 in England and Wales and 4th May 2006 in Scotland, both of the child's parents have parental responsibility if they are registered on the child's birth certificate.

Throughout the United Kingdom, a mother automatically acquires parental responsibility at birth. However, the acquisition of parental responsibility by a father varies according to where and when the child's birth was registered:

- For births registered in England, Wales or Northern Ireland

A father acquires parental responsibility if he is married to the mother at the time of the child's birth or subsequently. An unmarried father will acquire parental responsibility if he is recorded on the child's birth certificate (at registration or upon re-registration) from 1st December 2003 in England or Wales and from 15th April 2002 in Northern Ireland.

- For births registered in Scotland

A father acquires parental responsibility if he is married to the mother at the time of the child's conception or subsequently. An unmarried father will acquire parental responsibility if he is recorded on the child's birth certificate (at registration or upon re-registration) from 4th May 2006.

- For births registered outside the United Kingdom

The above rules for the UK country where the child resides apply.

An unmarried father, whose child's birth was registered before the dates mentioned above, or afterwards if he is not recorded on the child's birth certificate, does not have parental responsibility even if he has lived with the mother for a long time. However, the father can acquire parental responsibility by way of a court registered parental responsibility agreement with the mother or by obtaining a parental responsibility order or a residence order from the courts. Married step-parents and registered civil partners can acquire parental responsibility in the same ways. Parental responsibility awarded by a court can only be removed by a court.

Parents do not lose parental responsibility if they divorce – neither can a separated or divorced parent relinquish parental responsibility. This is true even if the parent without custody does not have contact with the child and does not make any financial contribution.

Other people can also acquire parental responsibility for a child. A testamentary guardian will acquire parental responsibility if no one with parental responsibility survives the testator. A guardian appointed by a court will also acquire parental responsibility. When a child is adopted, the adoptive parents are the child's legal parents and automatically acquire parental responsibility. A local authority acquires parental responsibility (shared with anyone else with parental responsibility) while the child is subject to a care or supervision order. Foster parents rarely

have parental responsibility. For a child born under a surrogacy arrangement, parental responsibility will lie with the surrogate mother (and husband if married) until the intended parents either (a) obtain a parental order from a court under the Human Fertilisation and Embryology Act 1990 or (b) adopt the child.

In England, Wales and Northern Ireland, parental responsibilities may be exercised until a young person reaches 18 years. In Scotland, only the aspect of parental responsibilities concerned with the giving of "guidance"[1] endures until 18 years, guidance meaning the provision of advice. The rest is lost when the young person reaches 16 years.

Consent from people with parental responsibility

People with parental responsibilities are entitled to give consent for medical treatment on behalf of their children. Usually parents desire to make the right decision about their young child's best interests, and most decision making is, rightly, left to children and parents with appropriate input from the clinical team. In cases of serious or chronic illness, parents may need time, respite facilities, possibly counselling, and certainly support from health professionals, but in most cases they are best placed to judge their young child's interests and decide about serious treatment. There are limits on what parents are entitled to decide, however, and they are not entitled to inappropriate treatment for their children or to refuse treatment which is in the child's best interests. For example, where children need blood products to prevent death or serious deterioration, a refusal by a parent who is a Jehovah's Witness is unlikely to be binding on doctors.

What are the limits to parental responsibility?

The moral authority behind parental responsibility depends in large part on the entirely reasonable supposition that parents will act in the best interests of their children. If it appears, however, that parents are following a course of action which is contrary to their child's interests, their decisions can be challenged. Where doctors believe that parental decisions are not in the best interests of the child, it may be necessary to seek a view from the courts, whilst meanwhile providing only emergency treatment that is essential to preserve life or prevent serious deterioration. When asked to decide about treatment, the courts recognise their duty to protect children and have almost invariably said that serious treatment should be given against the wishes of parents where there is a good chance of it succeeding or providing significant benefit to the child. The courts are required, in their decision making, to have regard to the rights given force by the Human Rights Act, and to have the child's welfare as the paramount consideration.[2]

What happens when people with parental responsibility disagree?

Generally, the law only requires doctors to have consent from one person in order lawfully to provide treatment. In some cases, therefore, the competent minor's consent is sufficient in law although it is always desirable to involve parents with the child's agreement. In practice, however, parents sometimes disagree and doctors are reluctant to override a parent's strongly held views, particularly where the benefits and burdens of the treatment are finely balanced and it is not clear what is best for the child. Disputes between parents can be difficult for everybody involved in the child's care. Health professionals must take care to concern themselves only with the welfare of the child and to avoid being drawn into extraneous matters such as marital disputes. Discussion aimed at reaching consensus should be attempted. If this fails, a decision must be made by the clinician in charge whether to go ahead despite the disagreement. The onus is then on the dissenting parent to take steps to reverse the doctor's decision. If the dispute is over a controversial and elective procedure, for example male infant circumcision[3] for religious purposes, doctors must not proceed without the authority of a court.[4] In Scotland, however, the Children Act imposes an obligation on any person exercising a parental responsibility or parental right to have regard to the views of any other person with the same rights and responsibilities.[5]

Some common questions relating to parental responsibility

Can a parent who does not live with a child gain access to the child's medical record?

Anyone with parental responsibility has a statutory right to apply for access to their child's health records. If the child is capable of giving consent, access may only be given with his or her consent. It may be necessary to discuss parental access alone with children if there is a suspicion that they are under pressure to agree. (For example, the young person may not wish a parent to know about a request for contraceptive advice.) If a child lacks the competence to understand the nature of an application but access would be in his or her best interests, it should be granted. Parental access must not be given where it conflicts with the child's best interests and any information that a child revealed in the expectation that it would not be disclosed should not be released unless it is in the child's best interests to do so. Where parents are separated and one of them applies for access to the medical record, doctors are under no obligation to inform the other parent, although they may consider doing so if they believe it to be in the child's best interests.

Can a relative other than a parent give consent to medical treatment on behalf of a child?

Apart from people with parental responsibility, any person who has care of a child, for example a grandparent or child minder, may do "what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare."[6] This could include giving consent to medical treatment. Parents are also entitled to authorise another person to take over particular responsibilities. This might be because they have arranged for somebody else to look after their child while they are away. It is unlikely to be "reasonable" in the terms of the Children Act for a non-parent to give consent if he or she

knows that the child's parents are likely to object, and treatment should only be given in such circumstances if the situation is an emergency and delay would lead to death or serious harm. In Scotland, the primacy of any known wishes of the parents in these situations has statutory force.[7] If a carer brings a child for treatment, steps should be taken to ascertain the parents' views, and if there is doubt about authority to proceed, doctors should seek legal advice.

Parental responsibility and Human Rights

The Human Rights Act 1998, which came fully into force on 2 October 2000, incorporates into UK law the bulk of the substantive rights set out in the European Convention on Human Rights. Of particular relevance to this area are Article 2, the right to life, Article 3, the right not to be subjected to inhuman or degrading treatment and Article 8, the right to respect for private and family life.[8] How the rights will be used in practice will become clearer as the case law develops, but it is likely that both parents and children will use the act to explore the limits of both their responsibility and autonomy. Doctors are required to observe the Convention Rights in their decision-making, and where they feel that their actions may possibly be in breach of the rights, they should take legal advice.

Competent children and the limits to parental responsibility

As children grow and mature, so their ability to make decisions on their own behalf increases until, on reaching adulthood, they are presumed to be competent to take full responsibility for personal decision-making. During this period of maturation it is possible that children will disagree with their parents as to what constitutes their best interests, and doctors may find themselves confronted with disagreements over a proposed course of action.

In England and Wales, no statute governs the rights of people under 16 to give consent to medical treatment, and there remains some uncertainty in the common law. In the landmark *Gillick* case for example, the judges held that "parental rights were recognised by the law only as long as they were needed for the protection of the child and such rights yielded to the child's right to make his own decisions when he reached a sufficient understanding and intelligence to be capable of making up his own mind".[9] Although this ruling appeared to clarify the decision-making autonomy of competent young people, subsequent cases have retreated from this position, particularly where they have involved treatment refusal by the young person. For treatment decisions that are unlikely to have such grave consequences, however, a young person under 16 can consent to treatment provided he or she is competent to understand the nature, purpose and possible consequences of the treatment proposed. Until such time as the law is clarified, where doctors are confronted with a situation where a competent young person refuses consent for a procedure authorised by a person with parental responsibility, they should take legal advice.

In Scotland, the right of people under 16 to consent to medical treatment, provided they are capable of understanding the nature and possible consequences of the procedure or treatment, is covered by the Age of Legal Capacity (Scotland) Act 1991.

Further reading

British Medical Association. *Consent, rights and choices in health care for children and young people*. London: BMA, 2001.

British Medical Association. *Medical ethics today: the BMA's handbook of ethics and law*. London: BMA, 2004: chapter 4.

British Medical Association. *The law and ethics of male circumcision – guidance for doctors*. London: BMA, 2006.

British Medical Association, Health Education Authority, Royal College of General Practitioners, Brook Advisory Centres, Family Planning Association. *Confidentiality and people under 16*. London: BMA, undated.

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References

1 Children (Scotland) Act 1995 s1(1) (b).

2 Children Act 1989 s1(1). The Children (Northern Ireland) Order 1995 art 3(1). Children (Scotland) Act 1995 s16(1).

3 For further advice on legal and ethical issues in relation to male circumcision, see British Medical Association. *The law and ethics of male circumcision*. London: BMA, 2006.

4 Re J (a minor) (prohibited steps order: circumcision) sub noms Re J (child's religious upbringing and circumcision); Re J (specific issue orders : Muslim upbringing & circumcision) [2000] 1 FLR 571.

5 Children (Scotland) Act 1995 s.6(1).

6 Children Act 1989 s3(5).

7 Children (Scotland) Act 1995 s.5 (1) (b).

8 For further advice on the impact of the Human Rights Act, see British Medical Association. 'The impact of the Human Rights Act 1998 on medical decision making

9 Gillick v West Norfolk and Wisbech AHA [1986] AC 112 at 113.