

## **Information Sheet**

### **A Brief Guide on Children Law**

**Parental responsibility** confers the legal status of parenthood and determines who has parental rights for the child. It comprises all the rights, duties, powers, responsibilities and authority which by law the parents of a child have in relation to the child and his/her property.

If the parents are unmarried, the mother automatically has parental responsibility. The unmarried father will also have it if his name was entered on the birth certificate after 1<sup>st</sup> December 2003. The unmarried father can also acquire it by court order or by signing a Parental Responsibility Agreement with the mother, or subsequently by marrying the mother.

Parental Responsibility may be exercised independently by each parent. Where there is a dispute between parents over the welfare of their children, the court can make a number of different orders: -

- **A Residence Order**

This settles with whom the child will live. A residence order may be made in favour of more than one person. If these people are not living together, it may also specify the periods to be spent in each household.

Shared or joint residence orders can be made where children spend a significant amount of time living in each parent's household.

- **A Contact Order**

This requires the person with whom the child lives (or is to live), to allow him/her to visit or stay with the person named in the order, or for that person and the child to have contact with each other.

- **A Prohibited Steps Order**

This will prevent a parent from taking certain actions. For example, a prohibited steps order could be used to prevent a child being taken out of the country or to forbid a change of school.

- **A Specific Issue Order**

This will decide a specific question that has arisen in connection with an aspect of parental responsibility for a child. For example, if there is a dispute between parents over choice of school or change of name for the child.

Residence orders usually come to an end when the child reaches the age of 16 unless the court orders otherwise. Orders in respect of older children or

orders to continue after the child is 16 can only be made in exceptionally circumstances.

## **Guardianship**

A parent who has parental responsibility may appoint a guardian either within their testamentary will or in a separate document in a form prescribed by the Children Act 1989. On that parent's death, the guardian himself acquires parental responsibility. However, if, on the appointing parent's death, there is a surviving parent who has parental responsibility, the appointment of the guardian does not automatically take effect until there is no such parent. This could happen, for example, when the survivor dies or if a father loses parental responsibility under certain circumstances.

There is one exception where the appointment of a guardian takes effect, even if the surviving parent has parental responsibility. This is where the parent who has died was the only person in whose favour a residence order had been made under the Children Act 1989 (or a care and control order under previous legislation).

In such circumstances both the guardian and the surviving parent have parental responsibility. However, it should be noted that the parent could seek a court order to bring the guardian's appointment to an end.

The court also has the power to appoint a guardian where a child has no surviving parents with parental responsibility or where there is a residence order in force and the parent or guardian in whose favour the order was made has died.

**For further information or advice contact any member of the family law team at Howell Jones.**