



[Organisation Name]

## Parents, Parental responsibility and information sharing

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# Parental responsibility and information sharing

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## Parental responsibility and information sharing

# Parents, parental responsibility and information sharing

Information sharing in schools has become a much more complicated issue as modern families have evolved and changed to incorporate many different types of parenting and arrangements for children.

Schools 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 engage with all parents and navigate increasingly complex living arrangements, particularly for children who are looked after and living in social care, or where parents are separated and in other situations where parental responsibility can be confusing or unclear.

This guidance will help schools understand their obligations and duties in relation to the rights and responsibilities of parents and how GDPR relates to and can assist in this process. It will assist schools to generally understand who they can share information within respect of a child and what information can be shared.

This is a good practice guide and should not be treated as a complete and authoritative statement of the law. We refer schools to the legislation that sets out schools' legal duties. If schools have any queries about the legislation referred to in this guidance they should contact their legal advisors in the first instance for assistance and clarification.

The terms 'resident' and 'non-resident' parent are used 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, whilst a parent's rights and responsibilities are not infringed, the actions of the school are compliant with education law and the welfare of the child remains paramount. If the matter concerns information sharing the school should consult with the Data Protection Officer.

## Parental responsibility and information sharing

### Who is a parent?

Schools and local authorities should be aware that parents may be recognised differently under education law, than under family law.

### Parents and the Education Act 1996

Under Section 576 of the Education Act 1996 a 'parent', in relation to a child or young person, includes any person who is a biological parent or if not a biological parent any person who has parental responsibility, or any person who has care of the child. So for the purposes of education law, a 'parent' will include the following:

- 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 because they are living with them either full time or part time and they are looking after them. This can typically include a foster carer, special guardian or family and friends who have been designated the responsibility for making day to day decisions about the child.

*Therefore Under section 576 of the Education Act 1996 if you have a situation where an individual is not the biological parent of a child, does not have 'parental responsibility' for the child and the child does not live with them, it is unlikely that this individual will be recognised as a 'parent' for the purposes of education law.*

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.

## Parental responsibility and information sharing

### Parents and the Children Act 1989

This is the family law legislation that created and defined the concept of parental responsibility.

Parental responsibility is defined in S.3 of the Children Act 1989 as all the rights, duties and responsibilities and authority which by law a parent of a child has in relation to the child and his property.

A person who has parental responsibility will:

- Become a 'parent' for the purposes of all adoption legislation and can therefore consent or withhold consent to an adoption.
  - Have the right to object to the child being accommodated in local authority accommodation under section 20 of the Children Act 1989 and can remove the child from local authority accommodation (unless the child is over 16 and agrees to be provided with accommodation)
  - Automatically be a party to care proceedings
  - Be able to appoint a guardian for the child
  - Have the ability to 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)
  - Have a right of access to his child's health records
  - Have the right to withdraw a child from sex education and religious education classes and make representations to schools concerning the child's education
  - Be required to give consent if child's other parent seeks to remove the child from the jurisdiction
  - Have the right to sign a child's passport application and object to the granting of a passport
  - Have sufficient rights in relation to a child to invoke the international child abduction rules
  - Will have the right to consent to the marriage of a child aged 16 or 17
- 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 are the person who is responsible for the child.

A person who has parental responsibility for a child has the right to receive information about that child's health and education in order to discharge their responsibility towards the child.

## Parental responsibility and information sharing

# Who has parental responsibility and how is it acquired?

### **Birth mothers.**

The child's birth mother is the person who carried and gave birth to the child and she will automatically acquire parental responsibility upon the birth of the child unless it is subsequently removed. It can be removed by an adoption order or a parental order following surrogacy.

### **A mother and father who were married to at the time of the child's birth.**

If this is the case then both will have parental responsibility for the child.

### **A father not married to the child's mother at the time of the birth of the child who acquires parental responsibility.**

Parental responsibility can be acquired by an unmarried father in the following ways:

- By registering the child's birth jointly with the mother;
- By marrying the child's mother after the birth of the child;
- By 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; and
- By obtaining a residence order in respect of the child

### **Married female parents who were married to each other or in a civil partnership at the time of fertility treatment.**

Where two female parents have a child through fertility treatment, the birth mother's female partner is treated in the same way as a father. The female partner will have parental responsibility if she is married to or in a civil partnership with the birth mother at the time of the treatment.

### **Unmarried female partners where the child is conceived and born as a result of fertility treatment.**

The unmarried female partner can acquire parental responsibility in the same way that a father who was not married to the mother at the time of the child's birth can (see above).

The female partner will also have parental responsibility if the birth mother and the female partner have agreed in writing that the female partner will be the child's second parent.

### **Civil partners**

Have parallel rights to married people in terms of parental responsibility. The same provisions for married people apply to civil partners in terms of acquiring parental responsibility by adoption, agreement with their civil partner or by an order of the court.

## Parental responsibility and information sharing

# Other people who can acquire parental responsibility

### **Adoptive parents.**

Adoptive parents will hold parental responsibility for a child in the following two circumstances:

- When a child is placed with the prospective adopters they will hold parental responsibility for the child concerned along with others holding parental responsibility, such as the local authority.
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- When the adoption order has been made the adoptive parents will then acquire sole parental responsibility for the child concerned.

### **Surrogacy**

The intended parents of the child acquire parental responsibility by obtaining a parental order following the surrogacy and birth of the child concerned. Until the parental order is obtained the surrogate will have parental responsibility for the child.

### **Step parents**

Step parents can acquire parental responsibility :

- By an order of the court
- Agreement with the mother of the child concerned and the other parent of the child, if that person also has parental responsibility.

### **People who have been granted a child arrangements order under section 8 of the Children Act 1989**

This could be a parent, grandparent, guardian or special guardian, sibling, or any person that the child has lived with in the last 3 years.

A child arrangements order sets out the day to day living arrangements to be made for the child.. They were previously known as residence and contact orders. These orders are made under section 8 of the Children Act 1989 (often-called section 8 orders) and settle areas of dispute in relation to the exercise of parental responsibility or a child's care or upbringing.

If the order deals with residence, parental responsibility will be acquired by the person the order states the child is to live with, if this person does not already have parental responsibility.

If the order deals with contact issues only, then it will not confer parental responsibility on someone who does not already have it. In order for parental responsibility to be granted in these circumstances, the court must also grant a parental responsibility order.

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## **Special Guardians**

Acquire parental responsibility upon being appointed a guardian or special guardian by order of the court

## **People who are named an emergency protection order**

In cases such as this parental responsibility is limited to taking reasonable steps to safeguard or promote the child's welfare.

## **Local Authorities**

A local authority can acquire parental responsibility by being named in the care order for a child. This can be acquired by way of an interim and well as a final care order. Care orders once made will remain in place until the court discharges the order or when another order is made giving parental responsibility to another person for example through an adoption order or by way of a special guardianship order.

A care order does not extinguish the parental responsibility held by those who have acquired parental responsibility prior to the granting of the care order, *however* the Local Authority can and are expected to exercise their parental responsibility for the child named in the order over and above that of the other individuals who hold parental responsibility in so far as it is necessary to safeguard the welfare of the Child.

Consequently more than one person, and even several people, can hold and exercise parental responsibility for a child in these circumstances. The parental responsibility of one party does not necessarily stop upon the granting of a care order by the court simply because another person is also given it. Therefore, in some cases, several people may exercise parental responsibility on behalf of a child. The local Authority will always be the primary holder of PR in these circumstances. It is therefore necessary and good practice to establish the situation in relation to a child on a case by case basis with the Local Authority who have primary responsibility for a child under a care order..

If there is a care order in respect of the child, parental responsibility is not given to a foster parent or key worker but it is however essential that schools engage and work with these individuals, as they are often the most influential and important people in the child's life who the school will see on a day to day basis. How a school engages with social workers, key workers, foster carers and the birth parents in each case needs to be carefully considered and defined locally as it is an essential part of supporting the child in the school and care environment. It would be good practice for schools to agree information sharing in such cases on a case by case basis and to record the arrangements made in the safeguarding file.

# The effect of other court orders on parental responsibility

### **Prohibited steps order**

This is an order made under S.8 of the Children Act 1989 that limits how an individual exercises parental responsibility in respect of a child. 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.

An example of this is when a parent obtains a prohibited steps order that prohibits the other parent of the child from receiving any information about the educational record of a child to another parent. The school would have a legal basis under GDPR to refuse to share this information with a parent if such an order had been made.

### **Specific issue order**

This is an order made under S.8 of the Children Act 1989 that can also limit how an individual exercises parental responsibility in respect of a child. A specific issue order is an order made by the court where directions are given by a Judge for the purpose of determining a specific question or issue that has arisen, or may arise, in connection with any aspect of parental responsibility.

An example of this would be an order allowing one parent to agree to a child changing school against the wishes of the other parent. Or an order allowing one parent to consent to a child attending a school event or a ceremony that the other parent objects to.

### **Care Order**

When a care order is made it will confer parental responsibility on the local authority or other authorised person. At present the only other authorised person is the NSPCC (not including Scotland). The local authority will share parental responsibility with those who already have it. If a care order is in place, the role that parents can play in their child's life and schooling will therefore be limited by the local authority.

It is, therefore, good practice to ensure that that school has effective protocols in place with the local authority and the child's designated social worker in respect of the arrangements that have been put in place for the child and that this is kept current and up to date so that the school is fully aware of the welfare arrangements made for the child and who they can and cannot share information with and why.

Schools should note that court orders which limit a parent's exercising parental responsibility do not necessarily prevent or restrict a school from carrying out their duties under education law.

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This means that absolute clarity on these issues needs to be sought and recorded on a case by case basis for each child who is subject to orders of the court such as a prohibited steps order, a specific issue order, a care order with a care plan. This will ensure that the school can carry out their duties under education law and regulations and safeguard the welfare of the child concerned whilst abiding by orders made by the court and the obligation to safeguard information and sharing it with the right people under GDPR.

The school's policies on information sharing and safeguarding are the best place to set out and deal with these issues so that parents are made aware.

## 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).

## What to do when orders have been made in relation to the welfare of a child

When orders have been made in relation to the welfare of a child, the school should ask parents or those with parental responsibility to ensure they provide the school with a copy of the most recent court orders in place. This will help support the school in meeting its duties in respect of child safeguarding and sharing of information.

Schools should also ensure that they ask parents or those with parental responsibility to obtain the permission of the Court to share such orders made with them. Schools should ask parents or those with parental responsibility to check the position on sharing a court order with the school with their lawyers. Usually, if the court has given permission for an order to be shared with a school, the order will specifically state this or another order may have been made (or may need to be made) so that information sharing with the school can take place without divulging parts of a court order that do not concern the school in order to provide privacy for the child and the parties before the court.

## Parental responsibility and information sharing

# General principles for schools and when sharing information with parents and careers

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 their 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 a day to day basis or in a shared care arrangement, it may be the parent with whom the child is living with on that particular school day.

Individuals who are not biologically related to a child, but who have acquired parental responsibility for, or care of a child, have the same rights as a biological parent who has parental responsibility. For example rights to:

- Receive information such as pupil reports
- Participate in statutory activities such as voting in elections for parent governors
- Be asked to give consent to the child taking part in school trips
- Be informed about meetings involving the child. An example of which might be 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 order to safeguard the welfare of a child.

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

## Information sharing is a balancing act

It is important that schools balance requests of parents or carers of children for information sharing with their statutory duties under the Education Acts and regulations and under the Data Protection Act 2018 and other regulations.

Having parental responsibility does not allow a parent to obstruct a school from carrying out their duties under legislation whatever that legislation is.

For 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. Under GDPR the legal basis of has been established to allow information sharing.

Even where the child is 13 or over, and entitled to assume control over their personal information under the principles of the General Data Protection Regulations 2018 (GDPR) and the Data Protection Act 2018 (the DPA 2018), and restrict access to it, it would be a breach of the schools legal obligations and duties to comply with the biological parents request.

If you have any queries about GDPR please contact your Data Protection Officer who will assist you or you can contact the Information Commissioner's Office.

## 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).

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### Information sharing with 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 directly 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 or sharing of information, the school should provide it to that parent directly, 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 recording the contact details of the non-resident parent, or before 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 and 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 but as mentioned above a school needs to ensure that they have taken reasonable steps to satisfy themselves that the individual is indeed the child's parent.

### Obtaining consent school trips and activities

Where schools need parental consent to outings and activities, schools should seek the consent from the parent that the child resides with on a day to day basis or the local authority if the child is a looked after child. In the case of a looked after child there should be an agreed protocol recorded for the person who is to provide any such consent for a child.

If a non-resident parent has requested that the school should also ask them to provide their consent to school trips and activities, their consent should also be obtained.

In cases where the school considers it necessary and in the child's best interests, or when the school has been asked to seek consent from both parents, the school may wish to assume that parental consent has not been given unless all parents agree. This will ensure 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

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a court order setting out exactly what decisions each parent can make in respect of the child in a Specific-Issue or Prohibited Steps Order as appropriate. If the school has concerns about how to deal with such issues, they should of course seek legal advice.

## 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.

Section 3 (5) of the Children Act 1989 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 provision allows 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 unless there is an order of the court that prevents a parent from receiving such information.

## Safeguarding and information sharing

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](#)

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

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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 description of the role of the designated safeguarding lead is provided in Annex B of [KCSIE](#).

Information sharing should always be in the best interests of the child. It will therefore be for schools, to decide on a case-by-case basis working closely with Children's Social Care, to consider the level of information (if any) that is provided to parents where referrals have been made to children's social care.

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.

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.

## Changing a surname

A change of surname is a private law family matter and should be resolved between the parents of the child. 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.

Best practice would be for schools to 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.

**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.

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# Administration and avoiding inadvertent disclosure

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

- names and addresses of all parents are included in the admission register
- 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.

However care must be taken to avoid inadvertent disclosure of this information or of private information from one parent to another when discussions or communications are taking place with the parents of a child

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 if this is the case and redact accordingly to prevent inadvertent disclosure.

Similarly, if the school copies one parent into what they have sent the other by email or letter, they may inadvertently disclose a private email address or correspondence address. Schools need to ensure such data remains private and is not shared without consent by redacting the information when sharing in this way or obtaining consent to its disclosure.

Schools need to take the same care when providing information to foster parents and biological parents, where a child is in care or there are other safeguarding concerns. For example there may be circumstances where information or data must not be disclosed to the biological family, as part of the process of safeguarding the child. Similarly in cases of violence or abuse there is a need to safeguard information.

## 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.

## Parental responsibility and information sharing