

No such thing as bad PR?

Exploring Parental Responsibility

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Webinar Agenda

1. Types of “Parent”
2. What is PR?
3. Who can have PR?
4. Acquisition
5. Case Law
6. Loss of PR
7. Restrictions of PR



1. Types of “Parent” and Orders

- Biological Parent
 - Mother (birth) is not the same as Mother (genetic)
 - Father (assumed) vs Father (genetic)
- Legal Parent
 - Declaration of parentage
- Lives-with and Spends-time-with
- Parental Responsibility



2. PR – What is it?

- S.3(1) Children Act 1989 - “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- Important decisions in respect of a child’s life will require agreement of those who hold parental responsibility in respect of the child, e.g.:
 - medical treatment;
 - what (if any) religion the child should have;
 - where a child should live;
 - where a child is educated;
 - significant movement of the child (i.e. to leave the country for a holiday);
 - the child’s name.



3. Who can have PR?

- Automatic – mothers and married fathers (s.2(1) CA 1989)
- Unmarried fathers:
 - Birth Certificate (s.4(1)(a) CA 1989)
 - Parental Responsibility Agreement (s.4(1)(b) CA 1989)
 - Standalone Court order (s.4(1)(c) CA 1989)
- Lives-with order
- Human Fertilisation and Embryology Act 1990



Section 2 Children Act 1989:

- (5) More than one person may have parental responsibility for the same child at the same time.
- (6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.
- (7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.
- (8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Act.
- (9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

4. Automatic Acquisition – Case Law

- *Re B (Parentage)* [1996] 2 FLR 15 at 21
- *Re J, M and P (Parental Responsibility)* [2026] EWCA Civ 344
- *Re X (female partner non-acquisition of parental responsibility)* [2026] EWFC 252 (B)



Re B (Parentage) [1996] 2 FLR 15 at 21

- Following the Human Fertilisation and Embryology Act 1990, Bracewell J:
'I find that if Parliament had intended to alter or amend general principles as to parenthood, specific enactment would have been made in the 1990 Act, particularly as certain gamete donors are specifically excluded from being treated as fathers under s 28(6). I find fatherhood concerns genetics and the provision of sperm which results in the birth of a child, unless either there is a presumption of legitimacy which affects the situation or there is statutory intervention such as, for example, the change of status afforded by adoption or freeing for adoption.'

Re J, M and P (Parental Responsibility) [2026] EWCA Civ 344

Cases before appeal:

- **Re J** - AJ and MJ were in a relationship when MJ became pregnant. J was born in 2020 and AJ, believing himself to be the biological father, was registered as the father. Two years later, MJ told AJ he might not be the father; DNA testing confirmed another man was J's genetic father. AJ sought to retain parental responsibility. Debra Powell KC (sitting as a Deputy High Court Judge) held that AJ, never being J's legal father, had never acquired parental responsibility.
- **Re M** - MM and AM purchased donor sperm online from an anonymous donor outside a licensed clinic. M was born in 2019 and AM was registered as father. DNA testing later confirmed AM was not M's biological father, and the judge found AM had dishonestly held himself out as such. Within care proceedings, HHJ Tucker declared AM was not M's father and held any parental responsibility was lost.
- **Re P** - MP had sexual intercourse with identical twin brothers TP1 and TP2 within four days of each other around conception. DNA testing could not distinguish which twin was P's father; each had a 50% probability. TP1 was registered as father. HHJ Reardon held that paternity could not be established to the balance of probabilities and declined to make any declaration under FLA 1986, s 55A.

Re J, M and P (Parental Responsibility) [2026] EWCA Civ 344

- Whether the definition of ‘father’ in the Children Act 1989 is limited to the biological/genetic father or extends to psychological/social fathers.
- Whether parental responsibility attributed by registration attaches to a registered ‘father’ who is not the biological father.
- If so, whether such parental responsibility terminates automatically on a declaration of non-paternity under FLA 1986, s 55A, or requires a separate CA 1989 order.
- If a separate order is required, whether the decision is governed by the child’s welfare as paramount consideration.

Re J, M and P (Parental Responsibility) [2026] EWCA Civ 344

- Common law principle, Bracewell J in *Re B (Parentage)* [1996] 2 FLR 15 and Peter Jackson LJ in *P v Q and F* [2024] EWCA Civ 878
 - **a child's legal parents are the gestational mother and the genetic father, subject only to specific statutory modifications (e.g. HFEA 2008, adoption).**
- Registration is evidence but not conclusive of parentage and does not create a legal presumption.
- For parental responsibility to arise under s 4(1)(a), two conditions must coexist: the person must be the genetic father AND be registered as father.
- Where a non-father is registered, parental responsibility never arises in the first place

Note!

- Appeals all refused
- *These non-fathers may still be granted PR, just not automatically under registration*
- Section 8 orders

Re X (female partner non-acquisition of parental responsibility) [2026] EWFC 252 (B)

- AR, and BM, a same-sex couple, started a relationship around early 2023. BM was pregnant with X (genetic father not in life or proceedings).
- On the birth certificate, BM is listed as 'mother', and AR is listed as 'parent'.
- AR applied for a CAO in respect of X. BM opposed the application and alleged domestic abuse by AR, which AR disputed. AR's case was that, by virtue of being named on X's birth certificate, she had acquired parental responsibility for him.

Re X (female partner non-acquisition of parental responsibility) [2026] EWFC 252 (B)

- The acquisition of parental responsibility is provided for in sections 2, 4, 4ZA and 4A of the CA.
- Under section 4ZA, the unmarried female partner of a mother acquires parental responsibility by being registered as the child's 'second female parent', but **only where she is a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 ('HFEA')**, that is, where the child was conceived through assisted reproduction in a licensed clinic, with the requisite consent in place.

Loss of PR - Removal

- *Re P (terminating parental responsibility)* [1995] 1 FLR 1048
- *CW v SG (Parental Responsibility: Consequential Orders)* [2013] EWHC 854 (Fam)
- *Re D (a child)* [2014] EWCA Civ 315
- *PM v CF (Section 91(14) Order: Risk to Mother and Children)* [2018] EWHC 2658
- A person who has acquired PR by virtue of a CAO or SGO will lose it when that order is discharged. A *parent* however, cannot lose PR unless an adoption order is made in respect of the child, or, in the case of unmarried fathers who have acquired PR under s 4(1) CA 1989, if a court removes it by way of an order. Beyond adoption, orders removing PR are **extremely rare**.



Restrictions on PR

- Prohibited Steps Orders
 - Travel
 - School
- Specific Issue Orders
- ***Re T-D (Children: Specific Issue Order) [2024] EWCA Civ 793***
- ***His Highness Sheikh Mohammed Bin Rashid Al Maktoum v Her Royal Highness Princess Haya Bint Al Hussein [2021] EWHC 3480 (Fam), [2023] 1 FLR 12***
- ***Re A (Parental Responsibility) [2023] EWCA Civ 689***



Questions

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Thank you for attending

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