



Parental Responsibility: What Is It?

"Your children are not your children. They are sons and daughters of Life's longing for itself. They come through you but not from you, And though they are with you yet they belong not to you"

(Extract from "On Children" Kahlil Gibran)

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What is Parental Responsibility?

It is defined as being:

"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".

This describes not the parents' rights over their child but their duties towards their child.

In practical terms, all those people with parental responsibility have a voice when reaching an important decision in the upbringing of that child. There should be consultation on all matters of importance. If there is disagreement on a major decision then family mediation should be considered as a method of resolving any conflicts as amicably as possible. Applications to the court should be considered an option of last resort. Any

decision will be based on what the court considers to be in the best interests of the child. The court will not intervene or make an order unless it can be shown that there is a positive need and benefit to the child in doing so.

Having parental responsibility should not undermine the ongoing day to day responsibilities and decisions taken by the parent with care of the child and it should not interfere with this. Mothers and married fathers automatically have parental responsibility and will not lose this even if they divorce at a later date. Unmarried fathers do not automatically have parental responsibility, though there are a number of ways in which he can acquire the same.

What is the position of the unmarried father?

If an unmarried father has had a child after 1st December 2003 and he is registered on the birth certificate he will have parental responsibility. If a child was born before

this date, even if a father was registered on the birth certificate, he will not have acquired parental responsibility. If the father was not named, the child can be re-registered to include the father's name and this would result in him acquiring parental responsibility but would require the consent of the mother. There are also other ways in which he can acquire parental responsibility:

- *By marrying the mother;*
- *By his name being registered or re-registered on the birth certificate;*
- *By entering into an agreement with the mother;*
- *By obtaining an Order of the court;*
- *By obtaining a Residence Order from the court;*
- *By becoming the child's guardian upon the death of the mother.*

Some common questions:

1. Can I change my child's surname?

All those with parental responsibility must agree to

any change. The court takes very seriously the change of a child's surname. If a parent with parental responsibility has been out of a child's life and is un-contactable, then in those circumstances the court may agree to a change of surname.

2. Can I take my child abroad?

Technically, the resident parent will not need the consent of the other parent should they be considering taking the child abroad for less than one month (subject of course to there not being a court order preventing the same). This is, however, another example where parents should act reasonably and with courtesy, taking care to obtain an agreement from the other parent and give them sufficient notice and details of travel arrangements. It follows that, should the resident parent wish to remove the child from the UK for a period longer than one month then it is vital that the necessary consent of all those

with parental responsibility is obtained.

Parents should be reminded that the emphasis is on their duties towards the child and not their rights over that child. Inevitably these duties and responsibilities will diminish as the child grows up and is able to make their own decisions.



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Pre-Nuptial Agreements

Not only for the rich and famous?!



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What is a pre-nuptial agreement?

These are agreements, commonly known as pre-nups, made between a couple before marriage relating to the arrangement of financial matters and division of property in the event of their divorce.

I love you now.....

We are all aware of the pre-

nups that are common place in the world of the celebrity. These contracts make clear what will happen in the event the marriage breaks down and the parties go their separate ways. We in this country have rather shied away from the notion of contemplating disaster when we embark on the path of true love

Why would you need one?

With the landscape of our society ever changing, there is an inevitable burden placed on couples by our 24-7 lifestyle. The pressures can be relentless and, as a consequence

the divorce rate is high. There is an ever increasing need to ensure the individual is protected if the honeymoon period comes to an end. Couples are increasingly less likely to want to run the risk of the fallout if clear arrangements are not put in place at the beginning. One only has to look at the Mills McCartney debacle, who famously omitted to have a pre-nup in place.

How it stands at the moment

Pre-nuptial contracts in England and Wales are as yet not binding on the parties.

They are persuasive and are good evidence as to the parties intention, but cannot be enforced. There is a now a debate as to whether these types of agreements should be allowed to predominate in divorce proceedings and whether English law will allow their enforceability.

Plans for the future

The law is often lagging behind a shifting society. Our modern structures demand a more modern approach, one that is flexible, accessible and ultimately one which with careful planning and reasonable

terms can achieve a fair result. Reform is looming with the Law Commission investigating the circumstances in which the Courts should uphold these agreements; their aim is to draw up a draft bill by 2012 and by doing so attempt to bring the law into line with modern society.

Such agreements promote certainty and it is hoped would be cost effective by minimising disagreement when a breakdown occurs. All in all, is there now a good case for the enforceability of pre-nups?

Collaborative Law

The Amicable Alternative

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Collaborative Law was introduced to England in 2005 and was dubbed the revolutionary new way to manage a divorce. It was revolutionary because it avoided involving the court and actively encouraged all parties to sit down and discuss the way to a solution.

Four years on this is no longer a "revolutionary new way" but another way to address family separation. Nockolds Family Team have whole heartedly embraced the concept of Collaborative Law and have vast expertise in this area.

Peter Dodd, a partner in the family team, was one of the first English solicitors to train as a collaborative lawyer and has been actively involved in the promotion and development of Collaborative Law. Nockolds LLP has five collaboratively trained lawyers in their team.

The main features of collaborative law are:

- Both parties' solicitors will be trained collaborative lawyers.
- All parties will formally agree to resolve their divorce without the intervention of the court.
- All parties must approach this method without any ulterior motives, it is not a way to get what one party wants at the expense of the other.
- All meetings are conducted with both clients and their lawyers present.

- The process will deal with the basic elements; resolving the finances, obtaining the divorce or separation agreement but can also extend to other issues which may arise, for example regarding the children.
- The parties can instruct "professional neutrals" who can provide advice in their field of expertise which is not biased to either party but looks at things in an impartial manner. Examples of the professional neutrals would include; financial advisers, property surveyors, accountants and psychologists.
- Any problems which arise during the process, can be addressed in meetings with the clients and their representatives in a timely manner so that the problems are not allowed to fester.

Why clients choose the collaborative route:

- Because, although they have decided to divorce they want to preserve the relationship that they have, particularly where there are children to protect.
- Unlike mediation, they can have their legal representative present at the meetings.
- It allows them to be in control, the meetings can be arranged to meet the parties' requirements and they can lead the issues that are to be raised in the meetings.
- It is an open process so correspondence is kept to a minimum and matters are discussed which enable both parties to keep track of what is happening.
- They can express what they mean themselves rather than it being interpreted in solicitors' correspondence.

Important things to remember when considering the collaborative route:

- Trust is crucial to ensure that the parties can discuss matters openly.

- Both parties interests must be taken into account and neither is more important than the other.
- The parties' lawyers must be collaboratively trained.
- It can be quicker as the timetable is set by the parties, not a court, but it will usually go at the pace of the slowest party to ensure that both are at the same point when discussing important issues.
- It is not just for married couples who are separating – unmarried couples can use the process to achieve the solutions for their separation.
- Even once the divorce or separation agreement is concluded, should issues arise later the parties can return to the process to address and resolve them, usual examples may be matters concerning maintenance or children.
- It is not an option for everyone.

If you would like to know more about Collaborative Law or discuss any particular matter contact Peter Dodd on

01279 712561.