

Family Briefing

When can an unmarried father lose parental responsibility for his child?

A guide to the case law.



Valerie Sterling

Valerie Sterling is Head of the Family Team at New Park Court Chambers and is recommended in the **Legal 500 2017** for 'a broad range of family matters'.

Practice Areas:

Matrimonial Finance

Care Proceedings

Children Act and Private Law

Key Contacts:

Teresa Pugh
Practice Director
Tel: 0113 203 5504

Janet Jackson
Senior Practice Manager
(Family)
Tel 0113 203 5503

An unmarried father automatically acquires parental responsibility ('PR') for his child if the father's name appears on the child's birth certificate – see section 111 of the Adoption and Children Act 2002 which amended the Children Act 1989 to introduce the automatic status of PR where an unmarried father is named on the birth certificate after 1st December 2013 - but if the father behaves badly then there *may* be scope for the mother to apply to revoke his PR – it will be a rare scenario but there may be an arguable case to be put. Section 2A of the Children Act 1989 provides that a person who has 'acquired' PR under subsection (1) shall cease to have that responsibility 'only if' the court so orders.

Consideration should be given to annexing to any such application to revoke PR an application pursuant to section 91 (14) to *limit* any future applications to the court without leave.

The test for termination of a father's PR will be the 'welfare' test ie that the welfare of the child will be 'paramount'; each case will turn on its own facts; termination of parental responsibility will be regarded as a very 'draconian' step; and is likely to be a rare event which should not be viewed as an opportunity to 'punish' the father for his behaviour.

The first authority is that of Re P (Terminating Parental Responsibility) (1995) 1 FLR 1048, a decision of Mr Justice Singer, which was a case concerning unmarried parents where a parental responsibility agreement had been entered into. When the child was 9 weeks old she was admitted to hospital with serious injuries which were found to be non-accidental and the father was charged in respect of the injuries and sentenced to a term of imprisonment having entered a guilty plea. The mother made applications under s 4 (3) of the Children Act 1989 to bring father's PR to an end and for an order preventing him from making any applications in respect of P without the leave of the court and the applications were both granted. Singer J held that an order to end the father's PR was justified because the father had 'forfeited' his parental responsibility; and that the father should not be 'on a par' with the mother and thus should not have PR.

This 1995 authority was reconsidered and confirmed in Re DW (Termination of Parental Responsibility) (2013) EWHC 854 (Fam). It was argued in DW that it was discriminatory for the PR of an unmarried father to be liable to be ended in a

way that the PR of a married father was not but Baker J held that Re P was still good law.

The key point in such cases will be whether the continuation of the parental responsibility would put the child at risk of 'harm'.

PR for the unmarried father comes into play when there are important decisions at stake for the child in terms of say health, education or religion.

The leading authority is that of Re D (Withdrawal of parental responsibility) (2014) EWCA Civ 315 Court of Appeal, Arden, Gloster and Ryder LJJ 26.3.14 which is a case about a father who - when the parties' child was five years old - pleaded guilty to sexual offences committed against the mother's two daughters - he was sentenced to 48 months' imprisonment. Upon his release, the mother applied to terminate the father's parental responsibility - and the father cross-applied for a specific issue order requiring the mother to provide him with annual reports about the child's progress.

Father submitted that he had no intention of applying for any order under section 8 of the Children Act 1989 - he had not had any contact with the child since he was 3 years old. An order was made withdrawing the father's PR and the father unsuccessfully appealed to the Court of Appeal.

In the case of B and C (Change of Names - Parental Responsibility - Evidence) (2017) EWHC 3250 (Fam) Cobb J at paragraph 40 enunciated 12 principles to be drawn from Re D and said that an order ending a father's PR is 'draconian' and it was 'vitally important to encourage the exercise of PR by fathers' and that 'children have a right to that benefit'.

--- o O o ---