



New Park Court

## Family Briefing

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# Family Briefing

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*"Her practice covers the full spectrum of family law matters."*  
**Legal 500 2018**

## Declarations of Non-Parentage and Discharge of Parental Responsibility

### Case Background

DNA testing proves that the father, who is listed on the birth certificate, is not the biological parent of a child. Upon learning that he is not the biological parent, an application is made for declaration of non-parentage.

### Question:

If the court makes a declaration of non-parentage, should parental responsibility automatically be discharged?

### Answer:

HHJ Case says no, HHJ Moradifar says yes.

At least, that appears to be the way things stand at present. What the case law does agree on is that a court order is required to terminate parental responsibility as per s4(2A) Children Act 1989:

*A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.*

Where there appears to be less clarity in the law, however, is in respect of the issue pertaining to whether discharge of parental responsibility should be an automatic consequence of a declaration of non-parentage, or whether this should be a separate welfare decision.



### **A Local Authority v SB & Ors [2022] EWFC 111 (15 July 2022)**

HHJ Case considered a mother's application for declaration of non-parentage and discharge of parental responsibility for the unmarried man who had been thought to be the father of the child at issue and was named on the birth certificate as such, however DNA testing subsequently showed that he was not the child's biological father. The court made the declaration of non-parentage, but refused to discharge the parental responsibility without first having conducted a welfare analysis, concluding as follows:

- 1) The Children Act 1989 Section 4 (2A) is the only means by which the court can consider removing parental responsibility from a father who has gained it under subsection (1);
- 2) That it is a welfare-based decision;
- 3) That the fact that the man in question has been found not to be the biological father will feed into that welfare consideration, but that the discharge of parental responsibility is not automatic. The importance of the lack of a biological link is one which will vary from case to case.

The judgment also noted the following from *Re D (Withdrawal of Parental Responsibility)* (2014) EWCA Civ 315:

*"When a court is considering an application relating to the cessation of parental responsibility, the court is considering a question with respect to the upbringing of a child with the consequence that by section 1(1)(b) of the Children Act 1989 the child's welfare will be the court's paramount consideration.*

*Ryder LJ goes on to say that there is no requirement to consider the welfare checklist, although the court may find it a useful analytical framework, not least because welfare has to be considered and reasoned. He also added that the cessation of parental responsibility is an order of the court, "Therefore the court must consider whether making such an order is better for the child than making no order at all".*

### **A Local Authority v SB & Ors [2023] EWFC 58 (23 March 2023)**

Some months later, HHJ Case revisited her previous decision, clarifying that she had not intended to suggest that in every case where there is an application to discharge parental responsibility in respect of a person who had been proved not to be the biological father, there was a particular analytical framework which needed to be applied, still less particular evidential requirements which would need to be followed.

Her Honour continued by stating that it had been her intention to summarise her legal analysis by concluding that a welfare-based decision is required in respect of every application under the Children Act 1989 s4(2A), in which the paramountcy principle, no order principle and no delay principle would need to be applied, and reflecting Ryder LJ, said that whether to use the welfare checklist as an analytical framework will be a matter for the judge in any individual case.



This decision came only a matter of weeks after the decision of HHJ Moradifar in *C & A, Re (Children: Acquisition and Discharge of Parental Responsibility by an Unmarried Father)* [2023] EWHC 516 (Fam) (09 March 2023); Her Honour concluded that she was not bound by this judgment, and expressly disagreed with the reasoning of HHJ Moradifar. However, Her Honour ultimately made the order discharging the parental responsibility after applying the welfare checklist.

***C & A, Re (Children: Acquisition and Discharge of Parental Responsibility by an Unmarried Father)* [2023] EWHC 516 (Fam) (09 March 2023)**

HHJ Moradifar, sitting as a judge of the High Court, was also considering applications for a declaration of non-parentage and discharge of parental responsibility of an unmarried man who was named on the birth certificate of a child but where it was subsequently established that he was not the biological father. His Honour took the following approach:

*“In summary, where a man has gained parental responsibility for a child by being registered as the father of the child, such a registration and the consequential award of parental responsibility by operation of the law is based on the rebuttable presumption that he is the biological father of the said child. If that presumption is rebutted, the foundation for the acquired parental responsibility is displaced. Subsequently parental possibility will be lost by the order of the court that reflects the status of the individual adult and does not require a welfare analysis. By contrast, where there is an application for a parental responsibility order or other orders that would grant parental responsibility to the applicant, the court will be tasked with under taking a welfare analysis. This is a separate and different route through which parental responsibility may be awarded to the instance case.”*

**Assessment:**

Until a more definitive answer is settled, this will likely continue to be a situation where each individual judge will apply their own interpretation of the law to the facts before them, and practitioners will rely on the cases which best support their own position.