

## SEPARATED FAMILY POLICY

Reference: CF28

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When parents separate it is a difficult situation for all concerned. We understand that emotions run high and this policy lays out how we will support the child and their family within the setting at this difficult time including our staff team.

### Registration

During the admissions process it is important for the setting to know all details about both parents. This includes details about who does or does not have parental responsibility as this will avoid difficult situations that may arise at a later date. For further details regarding Parental Responsibility, please see Appendix 1.

We request that all details are logged on the child's admissions form. If a parent does not have parental responsibility, or there is a court order in place to prevent this, the setting needs a copy of this documentation for the child's records.

If a child is registered by one parent of a separated family, the setting requests that all details relating to the child and other parent are disclosed wherever possible, e.g. court orders, injunctions. This will allow us to have all the appropriate information in order to support the child fully.

Newsletters and progress/development plans can be sent to both parents via email on request. Occasionally notices are displayed within the setting and are paper copies only. We would expect parents to communicate these messages to each other as and when appropriate.

The setting will:

- Ensure the child's welfare is paramount in all operations relating to their time within the setting.
- Comply with any details of a Court Order where they are applicable to the setting's situation, provided the setting has a copy attached to the child's file
- Provide information on the child's progress within the setting to both parents on request.
- Ensure any incident or accident within the setting relating to the child is reported to both parents if applicable.

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- Ensure that all matters known by the staff pertaining to the family and the parent's separation shall remain confidential and shared only on a need to know basis.
- Ensure that no member of staff takes sides within the separation and treats both parents equally and with due respect.
- If a parent makes a Data Subject Access Request (SAR) the setting will respond as set down by the Information Commissioner's Office (ICO). Further information on this can be found in Appendix 2.

The setting cannot restrict access to any parent with parental responsibility unless a formal Court Order is in place. We respectfully ask that parents do not put us in this position.

We ask parents to:

- Provide us with all information relating to parental responsibilities, Court Orders and injunctions.
- Update information that changes any of the above as soon as practicably possible.
- Work with us to ensure continuity of care and support for your child.
- Not involve setting staff in any family disputes, unless this directly impacts on the care we provide for the child.
- Talk to the manager/key person away from the child when this relates to family separation in order to avoid the child becoming upset. This can be arranged as an informal chat or a more formal meeting.
- Not ask the setting to take sides in any dispute. We will only take the side of your child and this will require us to be neutral at all times.

The setting will release children to parents in accordance with arrangements notified on the child's admissions form. If one parent seeks to remove the child from our setting in breaching of the notified arrangements, and the parent to whom the child would normally be released has not consented the following steps will be followed:-

- The Manager or designated deputy will meet with the parent seeking to remove the child and, in his/her presence, telephone the parent to whom the child would normally be released and explain the request.
- If the parent to whom the child would normally be released agrees, the child may be released, and the records will reflect that the permission was granted orally.

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- In the event that the parent to whom the child would normally be released to can't be reached, the staff member dealing with the issue may make a decision based upon all relevant information available to him/her.
- The Manager or staff member may have to refuse permission if consent cannot be obtained.
- During any discussion or communication with parents, the child will be supervised by an appropriate member of staff in a separate room, if possible.
- In extreme circumstances if there is a belief that a possible abduction of the child may occur or if the parent is disruptive, the police should be notified immediately.

**As an organisation our main responsibility is the welfare of the child and therefore this policy works in line with our Partnership with Parents Policy and Safeguarding Policy.**

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## APPENDIX 1

### Parental responsibility

Parental Responsibility is defined as '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'. Therefore, if you have Parental Responsibility (PR) you are recognised in the eyes of the law as having all the legal powers to make appropriate decisions in relation to the upbringing of your child.

The EYFS states that a record of who has parental responsibility and legal contact must be kept by the setting.

Only a person with PR can give valid consent for medical permissions etc. It is possible to delegate the responsibility of looking after a child to a child minder, teacher, friend or relative, but the person with parental responsibility is still liable and responsible to ensure that proper arrangements are made for the child. This must be given in writing.

### Who has Parental Responsibility?

The Children Act 1989 sets out who has PR:

- A mother automatically has Parental Responsibility for her child, as does a married father irrespective of whether the marriage to the mother occurred before or after the birth of the child.
- As from the 1st December 2003 unmarried fathers of children whose birth is registered on or after this date, provided they are named on the birth certificate of the child, also have Parental Responsibility.

For children born prior to 1<sup>st</sup> Dec 2003, the biological father does not have PR. They can get this by:

- marrying the mother of the child
- by entering into a voluntary Parental Responsibility Agreement with the mother
- by obtaining an order of the court (Parental Responsibility order)

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In summary, a Parental Responsibility Agreement is required for all unmarried fathers where the child's birth was registered before 1st December 2003: in cases where an unmarried father of a child whose birth is registered on or after 1 December 2003 is not on the birth certificate for some reason: where a heterosexual couple marry and the other party already has a child: in all Civil Partnerships where either party already has a child, or gives birth after the couple become civil partners.

### What about step parents?

- A step parent, even if married to a parent of children, does not automatically acquire PR for a child. This needs to be legally obtained through the courts.

### What about adoptive / foster parents?

- An adoptive parent would have parental responsibility via an adoption court order. If the adoption is in process, then setting could liaise with the adoptive parents and the adoption social worker about the legal situation and who holds PR.
- A foster parent generally does not have parental responsibility. The setting could liaise with the foster parents/child's social worker about the legal situation and who holds PR.

### What about care orders?

- When a child is made the subject to a care order, the local authority has PR for the child.

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## APPENDIX 2

### INFORMATION COMMISSIONER'S OFFICE (ICO)

#### Data Subject Access Requests.

##### Requests for information about children

Even if a child is too young to understand the implications of subject access rights (SAR), data about them is still their personal data and does not belong to anyone else, such as a parent or guardian. So, it is the child who has a right of access to the information held about them, even though in the case of young children these rights are likely to be exercised by those with parental responsibility for them.

Before responding to a SAR for information held about a child, you should consider whether the child is mature enough to understand their rights. If you are confident that the child can understand their rights, then you should respond to the child rather than the parent. What matters is that the child is able to understand (in broad terms) what it means to make a SAR and how to interpret the information they receive as a result of doing so. When considering borderline cases, you should take into account, among other things:

- Where possible, the child's level of maturity and their ability to make decisions like this.
- The nature of the personal data.
- Any court orders relating to parental access or responsibility that may apply.
- Any duty of confidence owed to the child or young person.
- Any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment.
- Any detriment to the child or young person if individuals with parental responsibility cannot access this information.
- Any views the child or young person has on whether their parents should have access to information about them.

##### Recognising a subject access request 13

In Scotland, the law presumes that a child aged 12 years or more has the capacity to make a SAR. The presumption does not apply in England and

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Wales or in Northern Ireland, but it does indicate an approach that will be reasonable in many cases. It does not follow that, just because a child has capacity to make a SAR, they also have capacity to consent to sharing their personal data with others – as they may still not fully understand the implications of doing so.

Taken from ICO Subject Access Code of Practice.

The full document can be found at <https://ico.org.uk/media/1065/subject-access-code-of-practice.pdf>