Who can consent on behalf of a baby or child who lacks capacity?
Someone with parental responsibility, provided the decision is in the best interests of the child.

Do all parents have parental responsibility?
No. Not all parents have parental responsibility. Throughout the United Kingdom, a mother automatically acquires parental responsibility at birth. However, the acquisition of parental responsibility by a father varies according to where and when the child's birth was registered.

When does a father acquire parental responsibility?
- For births registered in England, Wales or Northern Ireland. A father acquires parental responsibility if he is married to the mother at the time of the child's birth or subsequently. An unmarried father will acquire parental responsibility if he is recorded on the child's birth certificate (at registration or upon re-registration) from 1 December 2003 in England or Wales and from 15 April 2002 in Northern Ireland.
- For births registered in Scotland. A father acquires parental responsibility if he is married to the mother at the time of the child's conception or subsequently. An unmarried father will acquire parental responsibility if he is recorded on the child's birth certificate (at registration or upon re-registration) from 4 May 2006.
• For births registered outside the United Kingdom. The above rules for the UK country where the child resides apply.

Can other people have parental responsibility?
An unmarried father, whose child’s birth was registered before the dates mentioned above, or afterwards if he is not recorded on the child’s birth certificate, does not have parental responsibility even if he has lived with the mother for a long time. However, the father can acquire parental responsibility by way of a court registered parental responsibility agreement with the mother or by obtaining a parental responsibility order or a residence order from the courts. Married step-parents and registered civil partners can acquire parental responsibility in the same ways. Parental responsibility awarded by a court can only be removed by a court.

Other people can also acquire parental responsibility for a child:
• a guardian named in a will if no one with parental responsibility survives the person who wrote the will
• a guardian appointed by a court
• when a child is adopted, the adoptive parents
• a local authority (shared with anyone else with parental responsibility) while the child is subject to a care or supervision order. Foster parents rarely have parental responsibility
• for a child born under a surrogacy arrangement, parental responsibility will lie with the surrogate mother (and her husband if she married) until the intended parents either (a) obtain a parental
order from a court under the Human Fertilisation and Embryology Act 1990, or (b) adopt the child.

Parents are also entitled to authorise another person to take over particular responsibilities. For example, a parent may sign consent for another person to take the child for immunisation or to collect medication.

**What if the parents are divorced?**

Parents do not lose parental responsibility if they divorce – nor can a separated or divorced parent relinquish parental responsibility. This is true even if the parent without custody does not have contact with the child and does not make any financial contribution.

**Until what age can parental responsibility be exercised?**

In England, Wales and Northern Ireland, parental responsibilities may be exercised until a young person reaches 18 years. In Scotland, only the aspect of parental responsibilities concerned with the giving of ‘guidance’ endures until 18 years – guidance meaning the provision of advice. The rest is lost when the young person reaches 16 years, although some may be lost before this if the child attains legal capacity to act on his or her own behalf.

**What is the role of parents who do not have parental responsibility?**

It should be noted that parents who do not have parental responsibility may also play an essential role in determining best interests and may have a right,
under the Human Rights Act, to participate in treatment decisions.

**What happens if there is a disagreement between people with parental responsibility?**
Generally, the law requires doctors to have consent from only one person in order lawfully to provide treatment. In practice, however, parents sometimes disagree and doctors are reluctant to override a parent’s strongly held views, particularly when it is not clear what is best for the child. Discussion aimed at reaching consensus should be attempted. If this fails, a decision must be made by the clinician in charge whether to go ahead despite the disagreement. The onus is then on the parent who refuses treatment to take steps to stop it. If the dispute is over an irreversible, controversial, elective procedure, for example male infant circumcision for religious purposes or immunisation when it is known one of the parents objects, doctors must not proceed without the authority of a court (see Card 6 on disputes – when to seek legal advice). In Scotland, however, the Children Act imposes an obligation on any person exercising a parental responsibility or parental right to have regard to the views of any other person with the same rights and responsibilities.

**What if the parents aren’t communicating with each other?**
There are occasions when parents do not communicate with each other but both want to be involved in their child’s health care. For example, GPs are frequently asked to tell the parent with whom the child is not resident when
the other parent brings the child to the surgery. There is no requirement on GPs to agree to such requests, which could entail a lot of time and resources if the child presents frequently. It is clearly better if parents are able to communicate with each other about their child’s health, although doctors may agree to contact the absent parent under certain circumstances, for example if there is a serious concern.

Where a procedure is controversial, however, for example non-therapeutic circumcision, if a child presents with only one parent, the doctor must make every effort to contact the other parent in order to seek consent.

**Key advice**
- BMA. *Parental responsibility*. Available at www.bma.org.uk/ethics