Parental Responsibility

This is a conversation between solicitor and client.

Solicitor: Hello Paul. Come in. This is a 15-minute free interview so would you like to give me a quick overview of what you're here to see me about?

Client: I had a shortish relationship with a girl called Annie. We didn't get married but we had a child together. A lovely little lad named Harry who is now 6 months old. I'm naturally keen to be involved in his future.

Solicitor: Do you see Harry at all. Do you have contact with him?

Client: I do, but I'd like to put it on a more formal footing.

Solicitor: Of course. Well the law defines PR 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.'

Basically PR covers all the decisions and responsibilities that a parent may make on behalf of their child while they're under 18 and can include:

- Access to the child's medical records;
- Access to a child's school reports;
- Consenting to medical treatment;
- Deciding where a child is educated;
- Teaching a child about the family's religion or culture;
- Providing suitable food, clothing and discipline;
- Deciding where a child shall live.

Clearly, when a child is very young, PR will encompass most, if not all, of the decisions made on behalf of a child. As the child gets older and more able to make decisions concerning their own lives, PR applies more to the larger decisions in a child's life.

Client: So, have I got PR?

Solicitor: A mother of a child will automatically have PR for the child irrespective of her marital status.
A father will automatically have PR if he was married to the mother at the time of the child's birth or subsequently marries the mother of his child. As you are not married you do not automatically have PR.
The law states that a father who was not married to the mother at the time of the child's birth has PR if his name is placed on the birth certificate at registration or re-registration of the birth. In reality a father cannot register his name without the consent of the mother. This amendment came into force on the 1st December 2003 and so children born before that date will not be covered by this amendment.

Client: I'm not on the birth certificate; Annie registered the birth without me. I think that she wants me to drop out of the picture.

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Solicitor: The law is changing on the issue of registering births but it won't help you. We'll have to look at other options.
Where a child's father and mother were not married to each other at the time of his birth the court may, on the application of the father, order that he shall have parental responsibility for the child, or the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child.
This means that there are a number of options for an unmarried father. Where the parents agree that the father should have PR, they can enter into a PR agreement. A PR agreement is a straightforward document which the parents can obtain from and complete at a Family Proceedings Court.

Client: I'm pretty sure that Annie will not agree to this

Solicitor: If the mother of the child will not agree to the father having PR, he will have to apply for a PR order from the court.
The court will always consider the commitment of the applicant father to the child, the degree of attachment between father and child, and the father's reasons for applying for PR. These factors are not exhaustive and the court must take into account all relevant circumstances, including a lack of a responsible attitude towards the child or evidence that the grant of PR will be used to undermine the mother's care of the child. In these circumstances the court may refuse to make an order. The court will also consider the welfare checklist
If you were to get a residence order, which means that Harry would come to live with you, you would automatically have PR. But I assume you're happy for Harry to remain with Annie?

Client: Oh yes. I think that I may need to talk to Annie about this and to see if she can agree; I'd hate to go to court. Even if I get PR for Harry, Annie can be pretty awkward and she will want her own way. What would happen if we didn't agree on something?

Solicitor: Because more than one person may have parental responsibility for the same child at the same time, decisions generally have to be made equally and jointly. Nobody with PR has more say than the other person.
The parent with day-to-day care of the child will make ordinary decisions concerning the child and should be allowed to do so without undue interference from those with PR who do not live with the child. For instance, Annie could decide what Harry has for his tea, what clothes he wears and what bedtimes he has. But the big decisions, things like what religion the child is brought up in, where they go to school, have to be resolved between the two parents with PR. If you can't agree you can apply for something called a Specific Issue Order, but I would hope, and I'm sure that you would, decide these issues between you.

Client: I have a new fiancée, Isobel. We are getting married in a few months and I want her to be a big part of Harry's life...

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Solicitor: Congratulations. S4A CA1989 allows a step parent to acquire PR either with the agreement of those parents with PR for the child concerned or by order of the court. S4A CA 1989 requires that the step parent be married to, or be in a civil partnership with, the parent of the child concerned; being a cohabitant will not suffice. PR acquired in this way can be ended by a court order on the application of a person with PR or the child itself (with the leave of the court), but this would be a good way for Isobel to be part of Harry's life.

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Step parents without PR still have duties toward the child. So Isobel would still have a duty to do what is reasonable to safeguard and promote Harry's welfare.

Is that everything for today?

Client: I think so, yes, thank you.

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