

A Guide to Parental Responsibility





Background

In 2007 Action for Prisoners' Families (APF) produced a booklet for women prisoners called 'Staying in Touch'. The booklet provided information on letters, telephone calls, visits, etc. and the idea was that it would be given out on reception and at induction. In 2008, in a collaboration between APF and Clean Break, 'Missing Out', a play by Mary Cooper was toured to many women's prisons. The play and workshop which accompanied it were well received by staff and women prisoners. Having access to women's prisons gave us the opportunity to find out whether 'Staying in Touch' was being given out. We found that it rarely was and that many prisons didn't even know about it despite information about it having been sent to all prisons. It has now been distributed across the women's estate.

In talking to the women about the issues which arose from the play, we found there was little or no written information about rights and entitlements regarding children. To this end we are producing four briefings – this is the second – to bridge that gap and to give women information about their children. The briefings have been written by the organisation Rights of Women. Rights of Women is an organisation committed to informing, educating and empowering women concerning their legal rights.

About this guide

The issues relating to parental responsibility can be complex and we have provided a very basic overview of the words used, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning Rights of Women legal advice line on 020 7251 6577 Tues, Wed and Thurs 2-4 and 7-9, and Fri 12-2, or a solicitor.

Please note that the law as set out in this briefing is the law as it stood at the date of publication. The law may have changed since then so it would be best to take up to date legal advice. Rights of Women cannot accept responsibility for any action taken on the legal information contained in this briefing. It is designed to give general information only.

Using this Guide

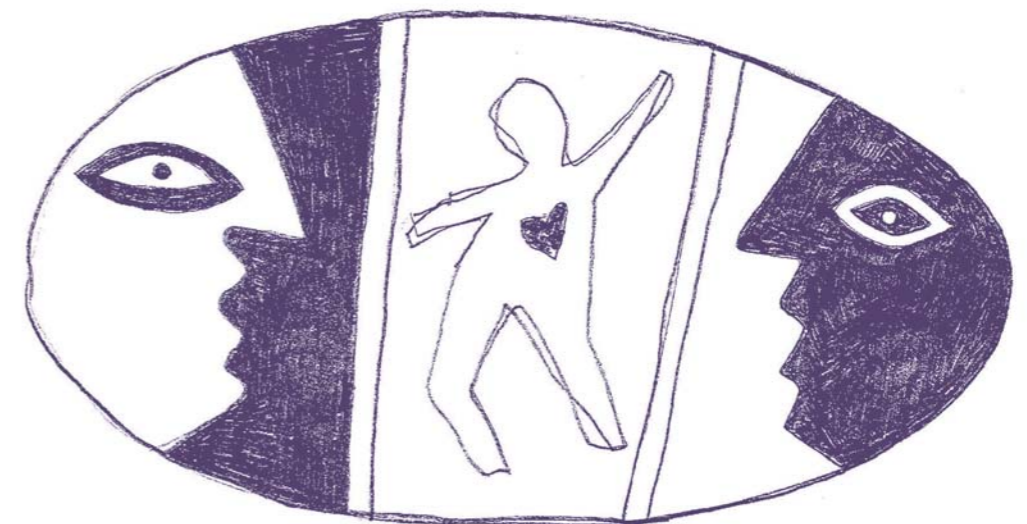
We are aware that there are often difficulties for women in accessing information and getting support in prison. We have included web addresses in the 'Useful Contacts' section at the end although we are aware that prisoners do not have access to the internet. This is because the briefings will be available to staff as well as prisoners and they will also be available to download on our websites, so friends or family, who are more likely to have internet access, may be able to help out with accessing information.

The list of people who may be able to help you in prisons, is a very general one, and it may be that someone totally different can help you out, or a representative from an outside organisation. It is by no means an exhaustive list.

Introduction

Parental Responsibility (PR) is defined in the Children Act 1989 (CA 89) and the Adoption and Children Act 2002 (ACA 02). The CA 89 describes PR as 'all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child and his property.'

PR is the responsibility a parent has for a child rather than the rights they have over the child. PR is the ability to make or be involved in the important decisions necessary in a child's life including education (where a child should go to school and the right to receive school reports), health and medical treatment (whether a child should receive medical treatment or vaccinations), religion (what religion a child should follow), going abroad permanently or on holiday, as well as the day-to-day care provided by the child's parents or carers.



Who has Parental Responsibility?

Mothers

As the biological (birth) mother of your child you will automatically have PR for your child.

Married fathers

If you are or were married to the father of your child at the time of the birth, or marry your child's biological father after the birth he will automatically have PR for your child. It is presumed that if you are married at the time of your child's birth your child is the biological child of your husband.

Unmarried fathers

If you are not married to the father of your child and your child was born before 1st December 2003 he does not automatically have PR for your child. He can gain PR as set out below.

If you are not married to the father of your child and your child was born on or after 1st December 2003 and the father is named on the birth certificate he will automatically have PR for your child.

You will not lose PR because you are in prison. You will still have PR for your child if you are in prison. However, the extent to which you can exercise PR will be limited by the fact you are not physically there to look after your child. The **only** way you can **lose** PR is if an adoption order is made. For more information see APF's/ Rights of Women's **Guide to Adoption** in this series.

How can an unmarried father, who does not automatically have PR, obtain it?

PR can be acquired in one of 3 ways:

- By entering into a **PR Agreement** with the mother of his child.

Form C(PRA1) is available from the Magistrates Court, County Court or to download from the court service website (see 'Useful Contacts').

- By the court making a **PR Order**

An unmarried biological father has the right to apply to the court asking for a PR order. This application may be made at the same time as any other application, such as contact or residence.

- By **marrying the mother**

If the biological father marries the biological mother of his child after the birth, the father will acquire PR.

If given PR the father will have it until his child is 18 or the order is brought to an end by the court. It is extremely rare for the court to terminate a father's PR.

In particular when deciding whether the father should have PR the court will consider:

- whether the father, by his actions during and since the application, has shown sufficient commitment to the child to justify giving him PR
- what the level of attachment is between the father and the child
- his reasons for applying for PR

It is more likely than not that the court will give an unmarried father PR. Even in cases where a father applies for a contact or residence order and does not succeed, the court may still grant PR as it gives the status of fatherhood that he would have had if he were married to the mother or named on the birth certificate.

How can a non-parent such as a grandparent, partner or a friend obtain PR?

Other people can also acquire PR for your child. These might include grandparents, other relatives, step-parents, partners, or friends. This could be important while you are in prison so that your child can be looked after and decisions can be made in your absence. Non-parents can acquire PR for a child if:

- They **adopt** the child.
When an adoption order is made the adoptive parent or parents gain PR for the child and the biological parents lose PR. If the adoption is a joint adoption between a biological parent and her or his partner, when the adoption order is made the biological parent who is adopting keeps her or his PR, the person they are adopting with gains it and any other person who has PR loses it. For more information see Action for Prisoners' Families and Rights of Women's **A Guide to Adoption**
- They are appointed as a **guardian** of the child.
A person with PR can appoint another person to be the child's guardian after his or her death. The appointment can be made in writing (and must be signed and dated) or in a will. The appointment will only take effect on the death of the person making the appointment. If there is no one with PR for a child the court may appoint a guardian.
- The court makes a residence order in their favour.
When the court makes a residence order in favour of a non-parent such as a grandparent, the person with the residence order acquires PR for the child. That person will have PR for the duration of the residence order but PR would be lost if the order is brought to an end by the court. For more information on residence orders see APF's/Rights of Women's **Guide to Children and the Law: When families don't agree** in this series.

- The court makes a **special guardianship order**.
This order is an alternative to adoption. It provides the child with a legally secure family home but unlike adoption the parents do not lose their PR. A special guardian, however, can overrule the PR of the parents when making decisions about the child. For more information on special guardianship see APF's/Rights of Women's **Guide to Children and the Law: When social services get involved** in this series.



Local authorities

A local authority social services department can acquire PR for a child if the court makes a care order (including an emergency protection order or interim care order) in respect of that child. The local authority will then share PR with anyone else who has PR for the child. For further information about these issues please see APF's/Rights of Women's **Guide to Children and the Law: When social services get involved.**

Married step parents and civil partners

Married step-parents and civil partners can now acquire PR for a step child or child of the family by either entering into a PR agreement or by asking the court to make a PR order. Form C(PRA2) is available from the Magistrates Court, County Court or to download from the court service website (see useful telephone numbers below).



What does having PR mean?

The Children Act 1989 allows everyone who has PR to be involved in the important decisions that have to be made as your child grows up. This means your consent is required for decisions about your child's education, health and medical treatment, religion and leaving the country. Being in prison does not affect your PR. However, it makes it more difficult for you to exercise your PR and make decisions about your child.

More than one person can have PR for a child and no one person has a greater right to have a say in decisions than the other or others with PR, with the exception of special guardians or where the local authority decide to limit a person's PR where a child is subject to a care order. See APF's/Rights of Women's **Guide to Children and the Law: When social services get involved**. No one should override a decision made by the other without a court order to do so. Everyone who has PR has an **equal right** to make or be involved in the important decisions in a child's life. This should not be affected because you are in prison. If you are concerned that you are not being involved in important decisions in your child's life seek legal advice.

If more than one person has PR, they should try to reach an agreement about the decision but if they cannot, then any of them can apply to the court for a decision. This is called an application for a **specific issue order (SIO)**. A SIO is an order the court can make when the people who have parental responsibility for a child cannot agree about an important decision in a child's upbringing. This means if you disagree with a decision made by someone who has PR to send your child to a particular school or whether your child should be brought up in one religion or another, you can ask the court to make a SIO.

The court can also stop a person with PR from making a decision about a child (for example removing them from school or taking them abroad) by making a **prohibited steps order (PSO)**. A PSO is an order

that the court can make to forbid a person who has PR for a child from taking certain action in relation to that child. For example if you were concerned that someone else with PR was going to take your child abroad to live permanently or you are not happy about your child coming into contact with certain people while you are in prison, you can apply to the court for a PSO.

The court can make these orders in an emergency situation and without the other person being made aware of the court hearing. The court can decide to make a temporary or interim PSO and arrange another hearing when the other person can attend and put their side of the story. A PSO could also be made to last indefinitely.

An application for a prohibited steps order or a specific issue order can be made on a **C100** which is available from the Magistrates Court, County Court or to download from the Court Service website (see 'Useful Contacts' below). When making any decision about any aspect of a child's upbringing, the child's welfare is the most important factor the court will consider and the court must also consider the factors listed at a-g overleaf.

The law recognises that the exercise of PR has to be realistic. The court is unlikely to become involved in less important decisions about the way in which your children are brought up, such as the day to day decisions that are made by the person who is looking after your children while you are in prison. For example the court is unlikely to interfere in decisions about the clothes your child wears or the food that they eat.

If another person gets PR for a child the other people who already have PR do not lose it unless the court makes an order. PR cannot be surrendered or transferred to another person by the person with PR.



What will the court consider when making a decision on PR?

The Children Act 1989 says that when the court makes any decision about a child, the child's welfare must be the court's "paramount consideration". This means it must consider the child's welfare above everything else. When making a decision the court must consider all your child's circumstances and in particular the following factors:

- a) your child's wishes and feelings depending on their age and understanding (generally the older your child is the more attention the court will pay to those wishes and feelings)
- b) your child's physical, emotional and educational needs (this includes practical needs such as accommodation and food as well as love and affection)
- c) the likely affect on your child of any change in their circumstances (the court generally considers that change is disruptive to a child)
- d) your child's age, sex, background and any characteristics the court thinks relevant (this could include any cultural or religious needs your child has or any special needs or disability)
- e) any harm your child has suffered or is at risk of suffering (this includes risk of physical, sexual or emotional abuse and also includes any domestic violence your child has seen or heard)
- f) how capable both parents are of meeting your child's needs (the court can consider parenting skills and whether these are affected, for example, by substance misuse)
- g) the range of powers available to the court (the court has very wide powers and on any application under CA 89 can make orders that neither party has applied for, such as contact or residence orders. For more information on these see APF's/Rights of Women's **Guide to Children and the Law: When families don't agree.**

Who can help you in the prison?

- The Legal Aid Officer
- Your personal officer
- The Offender Management Unit is the link between you and social services and will also be attending Family Court
- Prison library
- Prison chaplain
- The CABx (Citizens Advice Bureaux) – they may come into the prison on a regular basis. Alternatively, you will need to get someone on the outside to contact them on your behalf, or you can phone them.

Rights of Women offer free confidential legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting. Call the **Rights of Women Advice Line** on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** **Tuesday, Wednesday and Thursday 2-4pm and 7- 9pm Friday 12 noon-2pm** or write to Rights of Women, 52-54 Featherstone Street, London, EC1Y 8RT.

For free confidential legal advice on criminal law, sexual violence or immigration please call Rights of Women Sexual Violence Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone).**



Useful Contacts

You may also find the following contacts useful:

(Please note, we have provided web site addresses although we realise the majority of prisoners do not have internet access. This is because prison staff may also use these booklets on your behalf and they *will* have internet access).

Action for Prisoners' Families (APF)
www.prisonersfamilies.org.uk

Tel: 0208 8812 3600.

Unit 21, Carlson Court, 116 Putney Bridge Road, London, SW15 2NQ.

APF is the national organisation for those interested in the well being of prisoners' families. It works to reduce the negative impact of imprisonment on families.

After Adoption
www.afteradoption.org.uk

General Number: 0161 839 4932.

After Adoption is a voluntary adoption agency and one of the largest providers of adoption support services in the UK.

Head Office, Unit 5 Citygate, 5 Blantyre Steet, Manchester M15 4JJ.

BirthTies **0800 840 2020** is the After Adoption helpline for birth parents whose child is at risk of being adopted or has been lost to adoption.

CAFCASS
www.cafcass.gov.uk/

This is the Children and Family Court Advisory and Support Service. CAFCASS is independent of the courts, social services, education and health authorities and all similar agencies.

Community Legal Advice
www.communitylegaladvice.org.uk

Tel: 0845 345 4345

(to find a family solicitor)

HM Court Service
www.hmcourts-service.gov.uk

National Family Mediation (NFM)
www.nfm.org.uk

Tel: 01392 271610

NFM is a network of local not-for-profit family mediation services in England and Wales which offers help to couples, married or unmarried, who are in the process of separation and divorce.

Gingerbread
www.oneparentfamilies.org.uk

Tel: 0800 018 5026

Gingerbread works for and with single parent families.

Prisoners' Families' Helpline
www.prisonersfamilieshelpline.org.uk

Freephone 0808 808 2003

Resolution
www.resolution.org.uk

Tel: 01689 820272

(for finding a family solicitor)

Samaritans
www.samaritans.org.uk

Tel: 08457 909090

South West Adoption Network
www.swan-adoption.org.uk

Tel: 0845 601 2459

(for women based in the South West)

Women in prison
www.womeninprison.org.uk

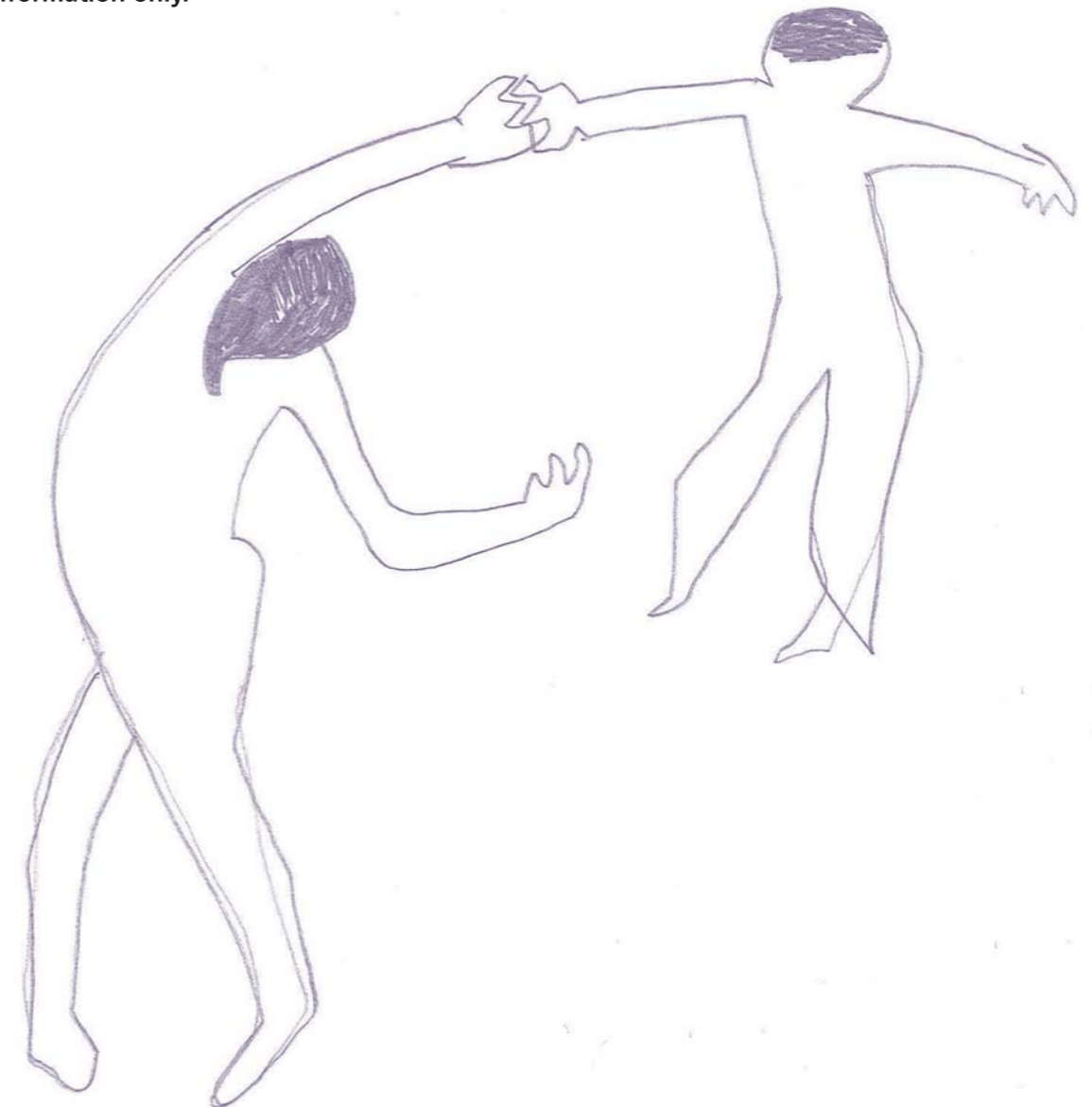
Freephone 0800 953 0125

Women in Prison supports and campaigns for women offenders and ex-offenders.



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Rights of Women,

52-54 Featherstone Street,
London, EC1Y 8RT,

www.rightsofwomen.org.uk

Tel: 020 7251 6575

Industrial and Provident Society No: 23221R



Action for Prisoners' Families,

Unit 21, Carlson Court, 116 Putney Bridge Road,
London, SW15 2NQ.

www.prisonersfamilies.org.uk

Tel: 0208 812 3600

Charity No. 267879, Company No. 1168459

This guide is the second in the series 'Your Children, Your Rights'.

Three other guides are available on:

- Adoption
- Children and the Law: when families can't agree
- Children and the Law: when social services are involved

Copies of these guides will be given out on reception and/or induction. There will also be copies available in libraries. If you have any problems getting hold of the guides please contact Action for Prisoners' Families.

APF would like to thank Wates Foundation and Nationwide Foundation for supporting these briefings.