

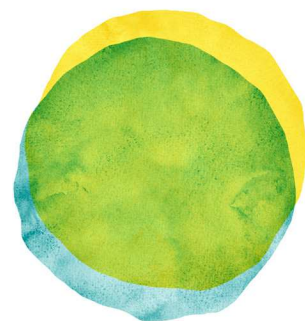
CHILDREN AND THE LAW: PARENTAL RESPONSIBILITY

Other **Children and the law** guides:

When social services are involved

When families cannot agree

Adoption for women prisoners



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Introduction

This guide looks at parental responsibility from the point of view of a mother in prison. It only covers the law in England and Wales. **This guide contains general legal information, it is not legal advice as everyone's situation will be different.**



Many women find it upsetting to think about their family while they are in prison. If you are affected by any of the issues discussed in this guide, make sure you speak to someone about it.



You can get legal advice about your circumstances from the Prisoners' Advice Service.



Or you may want to talk to someone about how you are feeling. You can speak to the family engagement worker, a peer mentor, the chaplaincy, the mental health team or the Samaritans.

See the **Useful contacts** page at the end of this guide.

Special thanks to the women at HMP Send and HMP Bronzefield who provided invaluable feedback on the contents of these guides.





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What is parental responsibility?

Parental responsibility describes the legal duties and responsibilities a person has to a child. It affects the role that someone plays in making important decisions about a child's life. Going to prison does not end your parental responsibility for your child.

More than one person can have parental responsibility for your child. This is called sharing parental responsibility. For example, a mother and father can both have parental responsibility.

KEY FACTS

- Going to prison does not end your parental responsibility for your child.
- Birth mothers automatically have parental responsibility.
- Fathers do not automatically have parental responsibility. Go to page 7 for information on when a father has parental responsibility.
- Family members can gain parental responsibility but only through a court order.
- Parental responsibility is not about contact. If the father of your child has parental responsibility, this does not mean he will automatically have contact with them.
- If the father of your child has parental responsibility, this does not mean your child will automatically live with him.
- When the court makes decisions about your child, they are most interested in what is best for your child. Who has parental responsibility is only one of many factors the court will look at.
- You might be able to get free legal advice for some of these issues. See the [Useful contacts](#) page at the end.



How does everyone with parental responsibility make decisions?

Normally, the person who cares for your child on a day to day basis makes decisions about their day to day life without speaking to everyone who has parental responsibility.

For example, your child is living with their grandparents under a child arrangements order. The grandparents can make decisions about your child's day to day life without speaking to everyone who has parental responsibility. This will include where they go that day, what they eat, what they wear and who they see.

These everyday decisions can be made by the person caring for your child.

There are some decisions that can only be made if everyone with parental responsibility agrees. If you don't agree then the only way it can happen is if there is a court order.

These are the decisions that can only be made if you agree, or with a court order:

Everyone with parental responsibility **must agree** to:

- **Health and medical treatment**

The person caring for your child will need to make some decisions about your child's health without discussing these with you, for example, in an emergency or if it is a very small issue like cuts or bruises. However, if your child is going to have serious medical treatment, the doctors should confirm that you consent because you have parental responsibility. This may be in writing.

For example, your child needs to have four teeth pulled out. The doctor wants to put your child to sleep to do this. Your consent is required for the doctor to do this.

- **Changing your child's name**

Your child's name cannot be changed without the consent of everyone with parental responsibility or a court order. You would have to sign a document confirming that you agree to your child's name being changed.

- **Going abroad**

It is a criminal offence for someone to take your child abroad without the consent of everyone with parental responsibility or a court order, even if it is only for a holiday.



There are some decisions that need to be discussed with everyone with parental responsibility. Everyone who has parental responsibility should try to agree on what is best for your child. This includes you, even if you are in prison.

These are the types of decisions that everyone with parental responsibility should try to agree on:

Everyone with parental responsibility should **try to agree** to:

- **Where your child lives**

For example, your child is living with your parents under a child arrangements order and your child's father decides that he would like the child to live with him. He needs to discuss this with you and your parents because you all have parental responsibility.

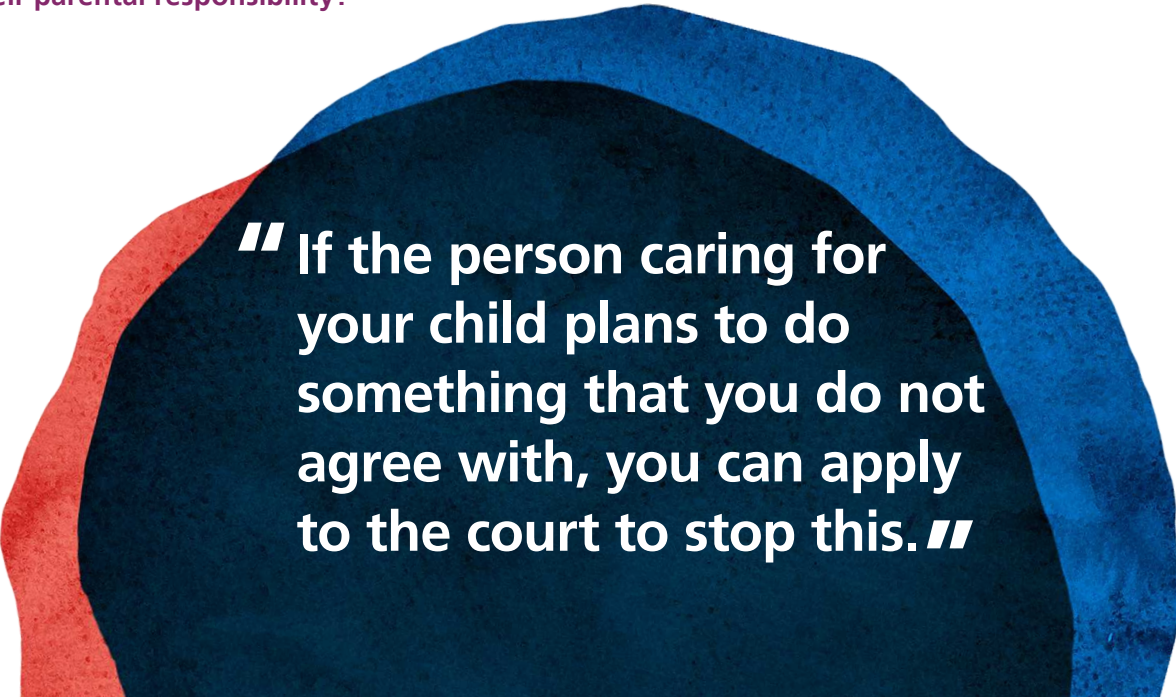
- **Education**

For example, your sister is caring for your child and wants to move them to a new school. She needs to discuss this with you and find out your views before she moves them.

- **Religious upbringing**

For example, your child's father is caring for your child and he starts a relationship with someone of a different religion. His new partner is insisting that your child practices her religion too. Your child's father should not change the religion practiced by your child without discussing this with you.

It's not always possible to agree. If the person caring for your child plans to do something that you do not agree with, you can apply to the court to stop this. See the pages on **What if you don't agree with how someone is using their parental responsibility?**



“If the person caring for your child plans to do something that you do not agree with, you can apply to the court to stop this.”

What if you don't agree with how someone is using their parental responsibility?

If the person caring for your child is planning to make changes in your child's life, like changing their education, religion or where they live, they should discuss this with you first and try to get your agreement.

Talk to someone about what is happening. Everyone's situation is different and what works for some families will not work for others.

You may find it helpful to talk about what is happening with someone in the prison. They may help you focus your thoughts on why you are not happy about what is happening.

You can speak to the family engagement worker in prison to talk about your concerns. They may be able to help you speak to the person caring for your child.

If you are not able to see the family engagement worker for a few days and you feel upset about any of these issues, you can speak to someone else about it. You can speak to a peer mentor, the chaplaincy, the mental health team or Samaritans. See the [Useful contacts](#) page at the end of this guide.

Here are some options for you if you are not happy about the plans for your child:

1. FIND OUT ALL OF THE INFORMATION

You can ask for more information about why the person caring for your child is suggesting this change. You can ask them to write to you with this information. You may have another family member who could help you to find out more information. There may be reasons that have not been explained to you.

For example, the father of your child wants to change their school. You do not agree. Your child is happy and has friends at their current school. You later find out that your child has started to be bullied at their school and is finding this very difficult. They would like a clean start at a new school.

2. TRY TO THINK ABOUT DIFFERENT OPTIONS THAT WILL WORK FOR EVERYONE

If there are choices involved, for example, choosing a new school, you could ask the person caring for your child for information about all the different schools so that you can tell them which you prefer.

You may want to think about getting the person caring for your child to agree to certain things you would like.

For example, your child is living with your sister. She has a child arrangements order that says your child lives with her. Your sister wants to change your child's school so that it is easier for her to take them to school and get to work on time. You are not very happy about this but can understand your sister's problem. You might want to suggest other options to her such as another family member taking your child to school. Or you might be worried about your child losing their friends, so your sister could explain that she will make sure your child stays in contact with them.

3. THINK ABOUT WHAT IS BEST FOR YOUR CHILD

Sometimes you may not be happy about a decision but understand that it is best for your child. You may find it helpful to talk about the decision with friends or the family engagement worker.

Think about the reasons that you do not agree with the decision – are they focussed on your child or about something else?

If a court is asked to decide, they will make the decision based on what they believe is in your child's best interests.

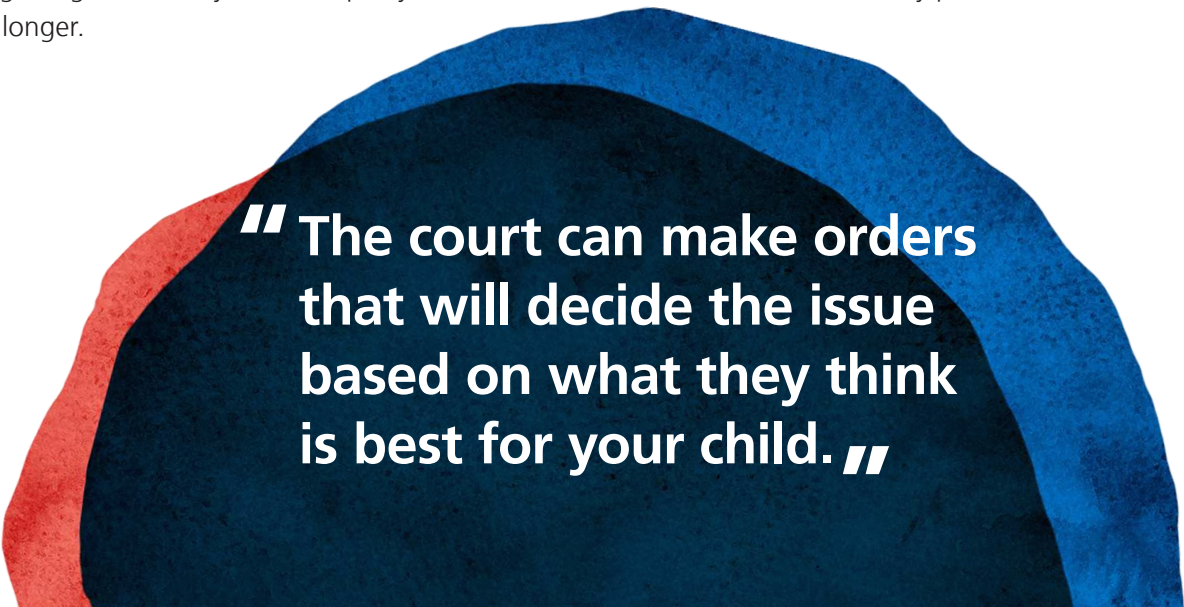
4. WRITE TO THE PERSON CARING FOR YOUR CHILD AND ASK FOR A RESPONSE

If you have tried all of the steps above but are not getting very far with the person caring for your child, you can write to them to explain your views and ask them to write back to you. It may help them to see it in writing and to have to give you a written answer because it gives them time to reflect on what they want and hopefully to think about what is best for your child.

You could think about whether it is a good idea to write to the person caring for your child about all kinds of issues. This may be a good way for you to stay in touch with them generally and keep them up to date on what is happening with you. You may want to raise questions you have about your child's day to day care that you don't want to ask during your contact.

For example, during your contact session with your child, you notice that they haven't had their hair cut in a long time and it is getting quite long. You don't raise this at the time because you don't want to cause a scene. You could write a polite letter to the person caring for your child informing them that you used to get their hair cut every 4 weeks.

If you write to the person caring for your child about these smaller issues, be prepared to accept that there are some things you will not be able to change. It may be that there is another reason why the person caring for your child is doing things differently, for example, your child is older and has decided that they prefer their hair to be a bit longer.



“ The court can make orders that will decide the issue based on what they think is best for your child. ”

Once you have all the information, you may still think that what is happening is not the right plan for your child. You should explain the reasons why you think this to the person caring for your child.

Sometimes, going to court is the only option. You should think carefully about whether this is best for your child before making an application.

Going to Court

The person caring for your child can ask the court for an order giving them permission to do something that you do not agree with. This is called a **specific issue order**.

For example, your child's father is caring for your child and he starts a relationship with someone of a different religion. His new partner is insisting that your child practices her religion too. Your child's father should discuss this with you. You have told him that you do not agree to this as your child follows your religion which is important to you and your child. The father of your child can apply to the court for a specific issue order before doing anything else and the court will decide what is best for your child's religious upbringing.'

If the person caring for your child goes ahead anyway, without your permission, you can apply to the court for an order to stop it. This is called a **prohibited steps order**.

For example, your child's father is caring for your child and he starts a relationship with someone of a different religion. His new partner is insisting that your child practices her religion too. You have raised your child in your religion and want them to continue to practice the same religion. You have been told that he is taking your child to church and has stopped celebrating your child's current religious holidays. You can apply to the court for a prohibited steps order which can stop your child's father from changing your child's religion.'

The court will decide what orders to make based on what they think is best for your child's welfare.

If you need help in relation to any of the orders above, please see our guide **Children and the law: when families cannot agree**. You might be able to get legal representation, see our **Useful contacts** page at the end of this guide.

Who has parental responsibility?

Mothers

Birth mothers do not need to do anything to get parental responsibility. As soon as your child is born, you will have parental responsibility.

Going to prison will not end your parental responsibility.

Other people may share parental responsibility for your child with you. The other people who can have parental responsibility for your child are described below.

If you are in a same sex relationship and your partner has given birth to a child, you might have parental responsibility depending on how and when the child was conceived. If you are named on the birth certificate you will have parental responsibility. You should seek legal advice if you are in this situation. See our **Useful contacts** page at the end of the guide.

Married fathers

If you were married at the time of your child's birth, your husband will have parental responsibility for your child. They will keep parental responsibility even if you get divorced after your child is born.

The court will assume that your husband is the father of your child unless you can show that he is not.



Unmarried fathers

If you were not married at the time of your child's birth, your child's father will not have parental responsibility unless one of the following has happened:

- You marry your child's biological father after the birth of your child. He will gain parental responsibility at the time of the marriage.
- Your child was born on or after 1st December 2003 and the father is named on the birth certificate. He will have parental responsibility from when your child's birth was registered. If your child was born before 1st December 2003, being named on the birth certificate does not give an unmarried father parental responsibility.
- You have entered into a **parental responsibility agreement** with the father of your child. It will be difficult to prepare a parental responsibility agreement once in prison because it must be signed and witnessed by an appropriate professional.
- The court has made a **parental responsibility order** or a **child arrangements order** that says your child lives with the father. If your child's father is caring for your child while you are in prison and he does not have parental responsibility, you may want to consider whether to apply to the court for an order to give him parental responsibility. This means he will be able to make decisions in relation to your child while you are not there (see our guide **Children and the law: when families cannot agree**).

If none of the above have happened, the father of your child does not have parental responsibility.

If the father of your child has parental responsibility because he meets one of the tests above, then he will continue to have parental responsibility no matter what contact he has with your child. This is still the case, even if he has no contact at all.

Second Female Parent

If you conceived your child through assisted reproduction and were married or in a civil partnership at the time that the treatment took place, your civil partner or wife will have parental responsibility for your child as long as she consented to the treatment taking place.

How do other people get parental responsibility?

It is possible for people other than parents to gain parental responsibility for your child. There may be situations where you want this to happen.

For example, if your child is being looked after by your parents and you want them to be able to make decisions for your child to make things easier for everyone, then it will help if they have parental responsibility.

When you are released from prison, you can ask the court to end any orders which gives someone other than the father parental responsibility.

There may also be situations where a family member has applied for a court order and you do not agree that the order should be made.

For example, if you are serving a short sentence, you may not want the court to make an order for your child because you will not be in prison for long and will care for your child again when you are released.

If someone has asked the court to make an order for your child, you must be told about this. You should be sent a form by the court which you should fill in and return. In the form, tell the court that you want to go to the hearings and ask them to arrange this by making a **production order**.

Court orders can affect who has parental responsibility and how it is used. Please see below how different orders affect parental responsibility.

You should contact **Prisoners' Advice Service** as soon as you receive any papers from the court. Depending on the situation, you might be able to get free advice from a solicitor through legal aid.

Child arrangements order

A **child arrangements order** sets out who a child lives with and when they have contact with someone else.

A child arrangements order can say that your child lives with someone else, for example, a family member. If someone has a child arrangements order that states that your child lives with them, this gives them parental responsibility.

You still have parental responsibility that is equal to the person with the child arrangements order.

Parental responsibility given by a child arrangements order will end when the order ends.

See our guide **Children and the law: when families cannot agree** for more information.

Special guardianship order

A **special guardianship order** is normally used when your child is living with a friend or family member and the local authority has been involved because of concerns about your parenting. It appoints someone as your child's **special guardian**. This is normally the person who your child is living with. They get parental responsibility under the order. Their parental responsibility can overrule your parental responsibility if you do not agree with a decision they have made.

If a special guardianship order is in place, the special guardian still has to discuss important decisions with you.

For example, your mother is caring for your child under a special guardianship order. She lets the father of your child see them every weekend. You have asked her not to do this because you believe he is using drugs. Your mother has stated that she does not agree and will continue to let the child see their father. If you believe your child is at risk of harm because of this, you can speak to the social worker first. You could also make an application to court to prevent it if you believe this is necessary.

See our guide **Children and the law: when families cannot agree** for more information.

Local authorities

A local authority can get parental responsibility for your child if the court makes an emergency protection order, interim care order or care order for your child. You can get free legal advice and representation for these cases through legal aid.

This does not end your parental responsibility. The local authority has a duty to inform you of what is happening with your child and discuss important decisions with you.

The local authority can make decisions that you do not agree with as long as they believe it is in your child's best interests.

If a local authority is involved in your child's life, see our guide **Children and the law: when social services are involved** for more information.

Adoption

An **adoption order** is an order that transfers parental responsibility to different people who become your child's legal parents. An adoption order will end your parental responsibility for your child.

If someone applies to adopt your child, you must be told about this.

It is possible for step-parents to adopt their partner's child. This does not end the parental responsibility of their partner. It does end the parental responsibility of the other parent.

For example, your child lives with your husband who is not the biological father. He can apply to adopt your child. If he is successful, you and your husband will have parental responsibility. Your child's biological father will lose his parental responsibility.


Adoption is the only order that is permanent. It is almost impossible to remove an adoption order once it has been made. You may have options available to you before the order is made. This area of law is complicated, please see our guide **Children and the law: adoption for women prisoners** for more information.

Is it possible to lose parental responsibility?

The only way a birth mother can lose parental responsibility is if the court makes an adoption order. See our guide **Children and the law: adoption for women prisoners** for more information.

The only way a married father can lose parental responsibility is if the court makes an adoption order.

It is possible to apply to the court to remove an unmarried father's parental responsibility. It is unusual for a court to make this order. It is not enough that your child's father does not have any contact. The court will only make an order if it is in your child's best interests but generally, your child needs to be at risk of serious harm from the father for the court to agree to remove a father's parental responsibility.



“ The only way a birth mother can lose parental responsibility is if the court makes an adoption order. ”

How does the court make decisions about parental responsibility?

When the court makes decisions about a child's upbringing, the most important thing they consider is your child's welfare. The court will only make an order if it is best for your child.

If your child's father applies for a parental responsibility order for your child, the court will also think about the following:

- **Your child's father's commitment to his child**

If the father of your child has not seen them for a long time and has shown no interest in seeing them in the past, this suggests that he is not committed to his child.

- **Your child's attachment to their father**

This is about the relationship your child has with their father – do they know them? Do they want to see their father?

- **The father's reasons for making the application**

If the father of your child is only making the application to upset you, this will make it less likely that the court will make an order.

It is likely that the court would make a parental responsibility order in favour of your child's father if he has a relationship with them. The factors above are all taken into account to help the court decide what is in your child's best interests.

When the court makes decisions about who your child lives with and who your child has contact with, parental responsibility is only a small part of what they think about. They will make orders that promote your child's welfare.

For example, your child is living with your sister. Your child is happy and enjoys living with your sister. Your sister is doing a good job in caring for your child. The father of your child has not seen you or your child for 5 years but he has parental responsibility and has just found out that you are in prison. He has made an application to the court for your child to live with him. The court will only make an order for your child to live with his father if they believe this is best for your child. It will be an important factor in their decision that your child is happy, well cared for and wants to stay with your sister. The older your child is, the more weight the court will put on what they want.

Who can help you in the prison



The **family engagement worker** can provide a lot of support including contacting family or social workers on your behalf.



Prisoners' Advice Service (PAS) can provide free legal advice and support and will be able to tell you if your case is eligible for legal aid.



Samaritans can provide emotional support if you need a safe place to talk.



The **chaplaincy** can provide emotional support and someone to talk to about your problems.



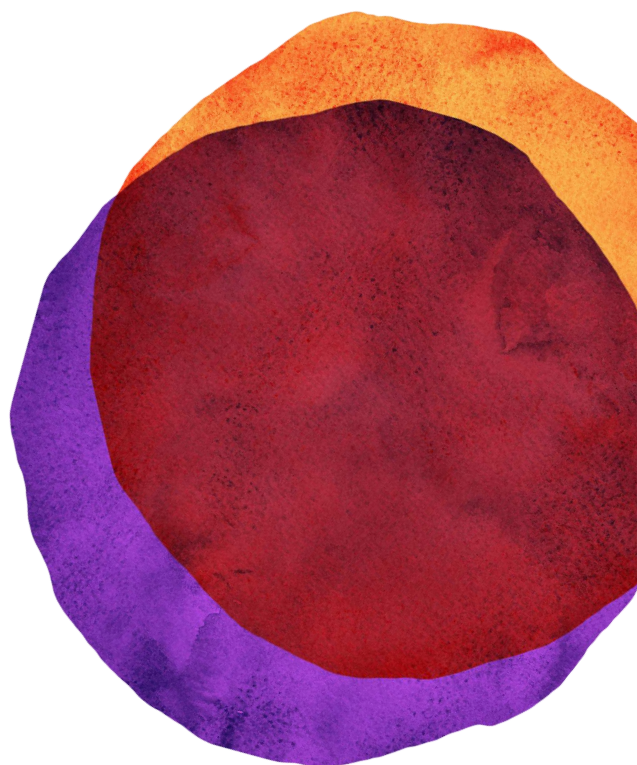
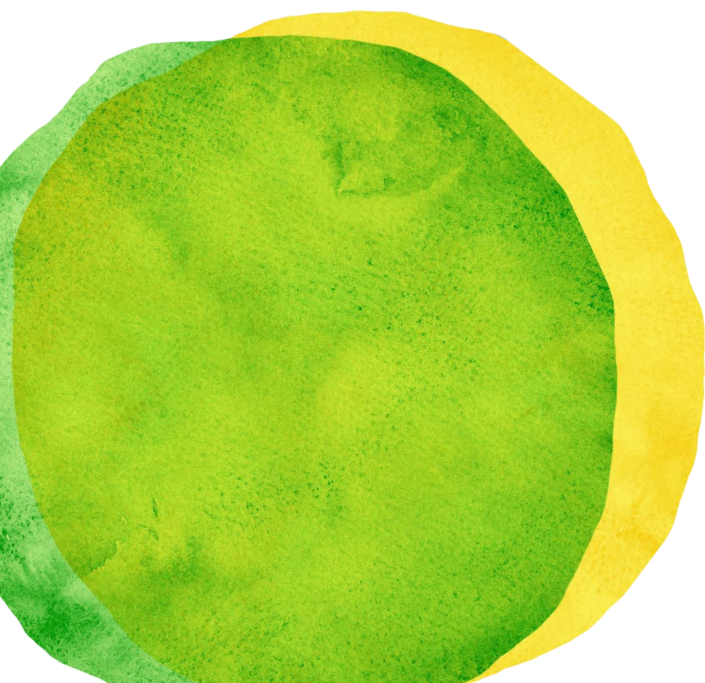
A **peer mentor** can help you talk through your problem.



The **mental health team** are available if you feel you are being affected by any issues in relation to your family



Speak to a **custody officer** if you feel overwhelmed and need support immediately.



Useful contacts

Please be aware that most of the services listed below work across England and Wales but some are limited to certain areas or specific prisons. We have included services that may be limited in this way because availability changes and a service that is currently only available in some prisons, may be available in all prisons in the future. It is always worth exploring what support you can get.

PRISONERS' ADVICE SERVICE

For free legal advice and support

T: 020 7253 3323

Monday, Wednesday and Friday.
10:00-12:30 and 14:00-16:30

Prisoners' Advice Service
PO Box 46199
London EC1M 4XA

www.prisonersadvise.org.uk

RIGHTS OF WOMEN

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children

Family law advice

T: 020 7251 6577

Mon-Thurs: 7-9pm & Fri: 12-2pm

Immigration law advice

T: 020 7490 7689

Mon and Thurs: 10am-4pm

ADVOCATE

(previously Bar Pro Bono Unit)

For representation at court. A solicitor will have to refer you for support

www.weareadvocate.org.uk

PERSONAL SUPPORT UNIT

For support during court hearings

T: 020 7947 7701

REUNITE

For legal advice about child abduction

Advice line: 01162 556 234

NATIONAL YOUTH ADVOCACY SERVICE

Helpline for support and advice for your child if they are in care or involved in court proceedings

Helpline: 0808 808 1001

FAMILY RIGHTS GROUP

Support for parents and family members when social services are involved

Freephone 0808 801 0366

THE LAW SOCIETY

For help finding a solicitor

T: 020 7242 1222

SOLICITORS REGULATION AUTHORITY

For information about how to complain about poor service from a solicitor

www.sra.org.uk

LOCAL GOVERNMENT OMBUDSMAN

To complain about a local authority once you have been through their complaints process

Helpline: 0300 061 0614

SAMARITANS

Emotional support if you need a safe place to talk

Freephone: 116 123

WOMEN IN PRISON

For advice and guidance in prison, on release and in the community

Freephone: 0800 953 0125

BIRTH COMPANIONS

Support for pregnant women and new mothers

Dalton House
60 Windsor Avenue
London SW19 2RR

FAMILY LIVES

Support for parents and families on a broad range of issues including adoption

Helpline: 0808 800 2222

AFTER ADOPTION - BIRTH TIES

Helpline for birth parents of children who have been adopted

Helpline: 0800 840 2020

NATIONAL OFFENDERS' FAMILIES HELPLINE

Support for your family

Telephone: 0808 808 2003

HIBISCUS

Support for black, Asian, minority ethnic or migrant women in prison

Telephone: 020 7697 4120
E: info@hibiscus.org.uk

ADVANCE - THE MINERVA PROJECT

Support for women in contact with the criminal justice service to prevent re-offending

*It is not possible to refer yourself - speak to the offender service about whether they can help and ask them to call: **020 8741 7008***

MIND

A national charity offering support in relation to mental health

Infoline: 0300 123 3393

MENCAP LEARNING DISABILITY HELPLINE

Advice and information about learning disability

Helpline: 0808 808 1111

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

July 2019

PRISONERS' ADVICE SERVICE

THE INDEPENDENT LEGAL CHARITY PROVIDING INFORMATION AND REPRESENTATION TO PRISONERS

JUSTICE BEHIND BARS



Lancaster University
Law School

PAS offers free legal advice and information to adult prisoners throughout England and Wales regarding their rights, conditions of imprisonment and the application of the Prison Rules.

We pursue prisoners' complaints about their treatment in prison by providing advice and information and, where appropriate, taking legal action.

Examples of issues we can advise on include: parole, temporary release, indeterminate sentences, categorisation, adjudications, sentence calculation, licence and recall, discrimination, resettlement and healthcare matters. We also provide advice on Family Law and on Immigration Law to prisoners with issues relating to detention or deportation.

If you have something that you'd like to discuss with one of our Caseworkers, you can:

Write to us at: **Prisoners' Advice Service, PO Box 46199, London EC1M 4XA**

(Mark your envelope Legal Mail Rule 39 in all correspondence with PAS)

Call us Monday, Wednesday or Friday between 10:00-12.30 and 14.00-16.30 on 020 7253 3323

We produce the quarterly Prisoners' Legal Rights Bulletin, which shares information about key cases and changes in Prison Law, and is free to prisoners. To sign up for this, please write to the address above.

www.prisonersadvice.org.uk

Prisoners' Advice Service (PAS) is a registered charity (No: 1054495) and is a company limited by guarantee (No: 3180659).

RIGHTS *of*
WOMEN
helping women through the law

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Charity number: 1147913