

## Transfers

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### ***If I want a transfer what is my position legally?***

Under English law, people sent to prison in England and Wales (either on remand or after conviction) can be held in any prison (Prison Act 1952, section 12). This means that a prisoner has no legal right to be transferred to a prison of his or her choice.

This remains the legal position despite the fact that Prison Rule 4 (1) (Prison Rules 1999) states that: “*Special attention shall be paid to the maintenance of such relationships between a prisoner and his family as are desirable in the best interests of both.*”

Article 8 (1) of the European Convention on Human Rights states: “*Everyone has the right to respect for his private and family life, his home and correspondence.*”

Article 8 (2) states: “*There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals, or for the protection of the rights and the freedoms of others.*”

The European Court of Human Rights has ruled, in relation to applications from prisoners in France who claimed

that being transferred far from their families disrupted visits and thus interfered with their Article 8 rights, that such interference was legitimate. However, such interference must be proportionate to the aims set out in Paragraph 2. In the 1992 case of *McCotter v UK*, the ECtHR ruled that only in ‘exceptional circumstances’ would the detention of a prisoner a long way from home breach Article 8.

In 2014 an Ukrainian prisoner’s complaint that his elderly and semi-disabled mother had not been able to travel extensive distances to visit him in 10 years was upheld as the prison authorities could not demonstrate that they had considered placing him in any prison closer to his mother or that they had considered family ties when assessing the transfer requests.

### ***How do I apply for a transfer?***

Transfer decisions are made by the governor of the holding prison, although the prison you are being moved to will also have a say in whether to accept you or not.

Some prisons have their own internal methods of making an application for a transfer – a query at the wing office should clarify this. However in all prisons a transfer can be requested through the applications system.

### ***How long does it take?***

If an answer to an application has not been received within seven days it

would be reasonable to submit a further application before deciding whether it would be appropriate to submit a formal complaint using form COMP1.

***What factors might influence the decision about my transfer application?***

It can be difficult for routine transfers to be authorised simply due to the ongoing overcrowding in the prison system. However, factors which may give an application priority include:

- If the main visitor has medical problems which make normal visiting impossible. A doctor's letter confirming this would be necessary.
- Sentence planning may require that a prisoner complete a course that is unavailable in the holding prison. For prisoners whose release is determined by the Parole Board, completion of certain courses can play a highly significant role in this process.
- Problems such as bullying or assaults. Once staff have been informed about such problems, there is a legal obligation to take reasonable steps to keep individual prisoners safe. A transfer may be a solution in such a situation although it is not the only option open to the prison in terms of keeping the individual safe.
- A prisoner should not normally be held at a prison where he or she is involved in legal proceedings (either criminal or civil claims for compensation) concerning staff at that prison.

***How do I appeal if I am unhappy with the governor's decision?***

If the decision is clearly unreasonable then it may be appropriate to pursue a complaint via form COMP1. If the issue is still unresolved to your satisfaction once the two stages of the complaints procedure have been exhausted the next and final stage is to complain to the Prisons and Probation Ombudsman (Third Floor, 10 South Colonnade, London E14 4PU). Prisoners can write in confidence to the Ombudsman at public expense.

The Ombudsman will only act if the prisoner makes a complaint personally or through a legal adviser, and has first gone through the internal complaints system. He will not investigate if contacted by friends or family of a prisoner. A complaint to the Ombudsman must be submitted within three months of the final response from the prison.

***Can I take legal action?***

This is difficult as the law allows for prisoners to be held in any prison in the country. The only legal mechanism available is through judicial review – a process which allows the High Court to overturn unlawful decisions by the Prison Service. However, an application for judicial review would be unlikely to be successful unless exceptional circumstances existed and it could be shown that the governor had failed to take these into account.

PRISONERS' ADVICE SERVICE PO BOX 46199, LONDON, EC1M 4XA Advice line: TEL: 020 7253 3323 Mon, Weds, Fri 10am-12.30 and 2-4pm
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