



Helping women
through the law



Your Children, Your Rights

Children and the Law: When Social Services are involved





Background

In 2007 Action for Prisoners' Families (APF) produced a booklet for women prisoners called 'Staying Close'. 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 Close' 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 their rights and entitlements regarding their children. To this end we are producing four guides – this is the first – to bridge that gap and to give prisoners (and staff themselves) the information they need about their children. The guides 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 children 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 the 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 of this guide although we are aware that prisoners do not have access to the internet. However, the guides will be available to staff as well as prisoners and they will also be available to download on our website, so staff, 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 might 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.

When Social Services get involved

If the social services department of your local authority (LA) consider your child is at risk of harm or in need of help, they have a duty to investigate what actions they should take to safeguard your child or promote your child's welfare.

There are a number of reasons why the social services department of your local authority might get involved with your child. You may enter into an agreement with the local authority to look after your child whilst you are in prison. Alternatively, if the local authority believes your child has suffered harm or is at risk of suffering harm they can apply for a care order allowing them to remove your child from your care and make decisions about him or her. However, this will only happen if the court thinks it is in your **child's best interests**.

This guide provides an overview of the law and procedure in relation to local authority children proceedings from the point of view of the biological (birth) mother. This is a very complex area of law and if social services are involved with you and your child you should seek legal advice from a solicitor who is a member of the Law Society Children Panel as soon as possible (see '**Useful Contacts**'). If the local authority is taking steps to remove your child from your care, you will be eligible for free legal advice and representation by a solicitor in these court proceedings regardless of your financial circumstances.





Care Proceedings

If the social services department of your local authority believe your child has suffered harm or is at risk of significant harm they can apply for a court order to remove your child from your care and allow them to make decisions about your child. The legal process is often referred to as **care proceedings**. Care proceedings can be initiated by the social services department of your local authority or the NSPCC.

The decision to remove a child from their parent(s) is only made after very serious thought by the court as it affects the lives of all those involved.

The court will only make an order to remove your child from your care if it is decided that this is necessary to protect your child's best interests.

As the biological (birth) mother of your child you will automatically have parental responsibility (PR) for your child (for further information see APF's/Rights of Women's **Guide to Parental Responsibility** in this series.)

PR is the legal term which describes the rights and responsibilities that a parent has for a child.

Those who have PR can make or be involved in the important decisions necessary in your child's life including education, health, medical treatment, and the day to day care provided to your child. (For further information see APF's/Rights of Women's **Guide to Parental Responsibility**). You will still have PR for your child if you are in prison, but the extent to which you can exercise PR will be limited by the fact you are not physically there to look after your child. If the court makes a care order the local authority will share PR for your child and can limit your right to exercise PR for example by deciding where the child should live. 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**.)

The Law

The law relating to child care proceedings and local authority support for children is set out in the **Children Act 1989 ('the act')**.

Role of the Local Authority

The social services department of the local authority has a duty to ensure the safety and welfare of children in their area. Whenever a local authority believes a child is at risk they have a responsibility to investigate the child's circumstances. If they think that your child might be harmed they have a legal obligation to protect your child.

Child in need

The local authority has a duty to protect **'children in need'** in its area. The definition of a child in need is very broad and can include children who suffer from mental or physical disabilities, as well as children whose parent(s) have drug or alcohol problems and can include children who have a parent in prison. If your child is identified as being 'in need' this means that the local authority has a duty to assess whether they should provide appropriate services to assist your child.

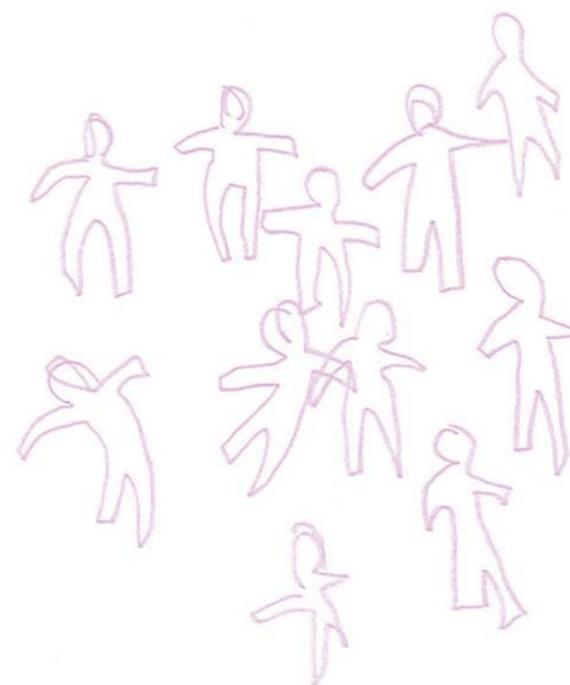
A looked after child

Your child will be described as looked after if he or she is provided with accommodation by the local authority, for example by way of a voluntary agreement; or if an interim or final care order is made with regard to your child.

Child protection case conference

If the local authority investigations indicate that your child has suffered - or is at risk of suffering - harm they may arrange a child protection case conference to consider and decide whether your child should be made the subject of a child protection plan. This should be done prior to the local authority seeking a court order unless it is an emergency situation (see emergency protection orders and police protection). A child protection conference is a confidential meeting to discuss the welfare of your child. The meeting is usually attended by you and any other persons with parental responsibility (see APF's/Rights of Women's **Guide to Parental Responsibility**), social services and other professionals involved with you and your child such as teachers, doctors, police, support workers and health visitors. The social workers will examine the information gathered and the other professionals will be asked to explain what they know about your child and your family. You will have the opportunity to comment on the information gathered and the concerns that have been raised about your child, and you will be able to give your views on your child's situation.

If the professionals attending the child protection case conference believe that your child is in need of protection they may decide to make your **child subject to a child protection plan**. The child protection plan will be outlined at the conference and will set out what needs to happen to address the concerns the local authority have, outline steps that you need to take with regard to your child and support that will be provided by the local authority. It may also state whether social services intend to apply to the court for any order and if so which order (e.g. care or supervision order) and their reasons for doing so. The child protection case conference will meet every 3-6 months until the child protection team decide your child is no longer at risk of harm. In some situations a child protection plan will come to an end when a care plan is put in place (see **CARE ORDERS**).





If a child protection plan is necessary, a **core group meeting** of the key professionals will be arranged approximately 10 days after the case conference and should then meet regularly to review the situation. The purpose of the core group meeting is to ensure that what was discussed at the child protection conference is put into action and to keep under review the child protection plan. You should attend and participate in the core group meeting to discuss the progress of the plan for your child and how you see the situation, as well as what help you think you and your child need.

The child protection plan is separate to court proceedings and the only decision which the conference can make is whether a child protection plan is necessary and, if so, to set out the plan.

What if I cannot attend the child protection case conference?

It is very important that you co-operate with the local authority and other professionals involved with your child to demonstrate that you are committed to discussing and resolving any issues of concern.

If you are unable to attend the case conference, or you choose not to, you can write to the child protection co-ordinator explaining your views and asking them to tell the conference.

What if I am unhappy with the outcome of the child protection case conference?

You may be able to appeal against the decision made to make your child subject to a child protection plan. If you are unhappy with the outcome of the case conference you should seek legal advice from a solicitor (see **'Useful Contacts'**). All agencies involved in the conference will have their own complaints processes.

Voluntary agreements

While you are in prison you will be prevented from living with your child and providing day to day care, unless your child is a baby. If you have a baby under 18 months old your baby may be able to live with you in a mother and baby care unit in prison. For more information on mother and baby units please contact Action for Prisoners' Families (see **'Useful Contacts'**).

You will have to consider who your child will live with while you are in prison. Your child may live with his or her father or anyone who has PR for your child or you may want your child to be looked after by a relative or a friend. (For more information see APF's/Rights of Women's **Guide to Parental Responsibility** and the fourth briefing in this series **Children and the Law: When families don't agree**).

If there is no one else with parental responsibility and no one suitable to care for your child you can agree that social services will accommodate your child temporarily in foster care while you are in prison. **Foster care** means placing your child in the day to day care of a family which is not his or her own. This is a **voluntary agreement** between you and the local authority. The local authority does not gain PR in relation to your child. You will continue to have PR while you are in prison and you can take your child home when you are released from prison, unless the local authority secure a care or supervision order.

Before you are released from prison there should be discussions between you and the local authority about your child and what is going to happen when you are released from prison. You should seek advice about making arrangements for your child from a specialist child care solicitor before you are released from prison.

If you do not enter into a voluntary agreement and there is no one to look after your child there is a legal requirement for the local authority to provide your child with accommodation and the local

authority may take action without your agreement to protect your child by applying for a care or supervision order.

Police protection

If social services think your child needs immediate protection from some kind of harm they can ask the police to place your child under police protection, which allows the police to take your child and place them in temporary foster care for up to 72 hours. For example, this might happen if you are given a prison sentence at court and there is no one to look after your child and you have not made any arrangements for your child with the local authority or other people, such as friends or relatives.

Emergency Protection Order (EPO)

If there is an emergency situation and your child requires immediate protection the local authority or any other person can apply to court for an **emergency protection order** (EPO). If there are exceptional circumstances and the court believes your child will be in danger of harm if they are not removed from the place they are living and provided with accommodation by the local authority or a relative, it can make an EPO. The EPO usually lasts for 8 days but it can be extended. It is most likely your child will be looked after by foster carers during this time.

An EPO does not end your PR but it means you will share PR with the local authority (see APF's/Rights of Women's **Guide to Parental Responsibility**). The local authority can limit the extent that you can exercise your parental responsibility.



Care orders

If the local authority believes that your child has suffered harm or is at significant risk of suffering harm they can apply to the court for a care order. If a care order is made you will continue to have PR for your child but you will **share** PR with the local authority and any other person who has PR. The local authority will decide the extent to which you can exercise your PR and can overrule decisions that you make with regard to issues, such as your child's education (see APF's/Rights of Women's **Guide to Parental Responsibility**). If the local authority is going to apply for a care order they must produce a care plan. The **care plan** will detail your child's needs and how the local authority propose to deal with these and what orders, including care and supervision orders, they intend to apply to court for and their reasons for doing so. It should also set out the proposed arrangements for contact with you and other significant family members (for further information see **'Contacts'**).

A child under 18 years old cannot represent themselves in care proceedings and the court will appoint a **children's guardian**. The role of the children's guardian is to provide an independent assessment of what outcome would be in your child's best interests. The guardian will meet you and your family and any professionals who are involved, such as social workers, and will read social services' file. Your child will also be represented by a solicitor who will treat your child as their own client. The solicitor will be instructed by the guardian, unless the child is older and has a different view about things than the guardian. Both your child's solicitor and the guardian should investigate your child's background in detail, often instructing experts to assess his or her needs. The guardian's report to the court should address the points in the welfare checklist (see below.)

Changing or ending a care order

A care order usually lasts until your child is 18, he or she marries or it is changed or ended by the court. Within 14 days of a care order being made, either you or your child can appeal against the care order.

Alternatively, you can apply to have a care order discharged (ended). In addition, your child and the local authority can apply to end the care order in the same way. If an application is unsuccessful you must wait 6 months or seek the court's permission to apply to have the care order brought to an end. If the care order is discharged by the court, care of your child will be returned to you and anyone else with PR.

Contact

The local authority has a duty to promote contact between you and your child unless it is not practical or would interfere with your child's welfare. Any contact order already in place is discharged (ended) when a care order is made. The local authority can decide that you should have direct contact; this is where you will see your child face to face. Alternatively, the local authority may decide it is not possible for your child to visit you but they will often allow you to have indirect contact with your child. This is where your child will not visit you but you may be able to speak on the telephone and exchange letters.

If you are in prison, the local authority might decide that regular contact is not practical due to the location of your prison, or they may decide that it is upsetting for your child to meet with you in prison. The local authority has to seek an order from the court if it wants to refuse contact between you and your child. For this reason contact arrangements will usually be made by agreement between you and the local authority. In an emergency, the local authority may temporarily suspend contact.

If you are not allowed to have contact with your child, or you are unhappy with the level of contact you have been given with your child - during the care proceedings, you can ask the court to consider



interim contact arrangements. You can also make an application for contact following the court's decision to make a care order. If you would like to make an application to the court for contact or to change the contact arrangements after the making of a final care order, you should seek legal advice from a solicitor (see 'Useful Contacts'). If your application for contact with your child is refused by the court, you cannot make another application for contact for 6 months unless you receive the permission of the court.

A contact order may be varied or discharged by an application made to court by you or anyone else with PR, the local authority, or your child.

Supervision orders

Rather than making a care order the court can make a supervision order. A supervision order usually means that your child can live at home but you will be supervised by the local authority or a probation officer who will visit you and monitor your child. As your child will usually continue to live with you, it is unlikely a supervision order will be made unless you have been released from prison or are due to be released near the time the court makes its decision.

The effect of a supervision order is less severe than a care order. You will retain full PR for your child but the local authority will advise and assist you in caring for your child. A supervision order can be made for up to 1 year and can be extended by the court for 2 more years. The supervision order will often have requirements attached to it designed to help your child. You might be required to ensure your child attends school; or you may be required to undergo some kind of treatment, for example, drug/alcohol abuse treatment or parenting classes.

Special Guardianship Orders

The Adoption and Children Act 2002 created a new type of order called a special guardianship order (SGO) as an alternative to adoption (see APF's/Rights of Women's **Guide to Adoption**).

A **special guardianship order** (SGO) is often made in situations where your child cannot live with you but there is a family member or person close to the family who is able to care for the child. It is appropriate where your child would benefit from a permanent relationship with their day to day carer(s) and also some continued contact and links with his or her birth parents (although sometimes only limited contact is possible). When making a SGO the court must consider whether an order for you to have contact with your child should be made (see **Contact**). If the court is considering making an SGO the possible special guardian will have to undertake an assessment.

If a **special guardianship order** is made your child will not live with you and will be provided with day to day care by the special guardian. The special guardians will have PR and will be responsible for all the day to day decisions involved in caring for your child and for making decisions about their upbringing, for example your child's education. In law you will remain your child's parent and you will continue to have PR, but the extent to which you can exercise PR will be very limited. An SGO will end a previous care order.

How will the court decide whether to make an order and what type of order to make?

Step 1: Threshold criteria

The court will only consider making a care or supervision order if the **threshold criteria** are satisfied. This means the court must decide whether your child is suffering or is likely to suffer significant harm; and the harm is caused by the fact that the standard of care that is being given to the child by their parents is not satisfactory; or your child is beyond parental control. These are the minimum conditions which the court must be satisfied with before it can even consider whether it is in your child's best interests to make a care or supervision order.



Significant harm is defined as ill-treatment or the impairment of (injury to) health or development. Examples of significant harm include direct physical or sexual abuse; as well as serious neglect, as a result of drug or alcohol abuse; or emotional or psychological impairment (harm) caused to your child by seeing or hearing domestic violence.

Step 2: Welfare principle

If the court decides that the threshold criteria have been met, they must go on to consider whether it is necessary to make a care or supervision order to protect your child's best interests.

When the court is making the decision about whether to make an order and what type of order to make, the law says that the child's welfare must be the court's "paramount consideration". This means the court must consider the child's welfare above everything when making the decision; in particular the court must address the **welfare checklist**:

- a) your child's wishes and feelings, depending on their age and understanding (generally the older the child is, the more attention the court will pay to those wishes and feelings)
- b) your child's particular needs – physical, emotional and educational needs (this includes practical needs such as accommodation and food, as well as love and affection)
- c) the likely effect on your child of a change of circumstances and the effect of being removed from their family

- d) your child's age, sex, background and any of the other characteristics which are considered relevant (this includes your child's religious and cultural needs as well as your child's age)
- e) any harm, abuse, or neglect your child has suffered or is at risk of suffering (this includes any risk of sexual, physical or emotional abuse and any domestic violence your child has seen or heard)
- f) how capable you and anyone else with parental responsibility (or anyone the court considers relevant, such as relatives or friends who your child might live with) are of meeting your child's needs
- g) the court must consider the range of different orders it can make and decide which is most appropriate (the court may decide it is not necessary to make a supervision or care order as a residence order in favour of a relative might be appropriate – see APF's/Rights of Women's fourth guide in this series **Children and the Law: When families don't agree**).

This is a complex area of law and if social services become involved with your child you need to seek specialist legal advice from a solicitor on the Law Society Children Panel (see 'Useful Contacts').

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 2pm-4pm and 7pm-9pm Friday 12noon-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. The reasoning behind this is that 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.gingerbread.org.uk

Tel: 0808 802 0925

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.



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 third in the series 'Your Children, Your Rights'.
Three other guides are available on:

- Parental Responsibility
- Adoption
- Children and the Law: when families can't agree

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 copies please contact Action for Prisoners' Families.

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