

What about the kids?

Jason's story

“ I was nineteen when we first started going out. We soon moved in together and, after a while, had two children. We never really thought to get married.

After fourteen years, it all fell apart. It was such a shock when we finally split up – neither of us handled it well. My ex started using the kids to get her own way. She wanted more child support, but I couldn't afford it, so she stopped me seeing them. She gave in after I got the solicitors involved and I began to see them on a regular basis. Even so, my solicitor warned me that I didn't have parental responsibility for either of them. For a while, it didn't seem to matter. But when my daughter became ill, I wasn't able to consent to her having an operation – the hospital had to get that from my ex.

The simplest way for me to get parental responsibility would be to make an agreement with my ex but, since the split, that's not been an option – she's not going to make things easy for me. My only alternative is to go to court but, now we've got contact sorted, I don't really want to rock the boat. I wish I'd known about parental responsibility when we were still together. ”



What about step-parents?

This guide explains where unmarried step-parents stand in separate boxes, labelled 'Step-parents'. If you are living with someone who has children from a previous relationship, this information is for you. It also applies to people in same-sex relationships who are not civil partners.

Who isn't covered by the information in the guide?

- adoptive parents
- people with special guardianship.

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Introduction

You might have assumed that all parents were treated the same, whether or not they were married to each other. But this isn't quite right. If you are a parent (or about to become one) and are not married to your partner this guide is for you.

We explain what your legal position is and what you need to think about, including 'Parental Responsibility', what you need to do to protect your children in case you die, and what would

happen if you and your partner split up.

If you are a second female parent (see box) and you are not the civil partner of the birth mother then you are in the same legal situation as an unmarried dad.

If your partner's child was conceived before 6th April 2009 or conception did not take place in a UK licensed clinic, then you are in the same position as a step-parent.

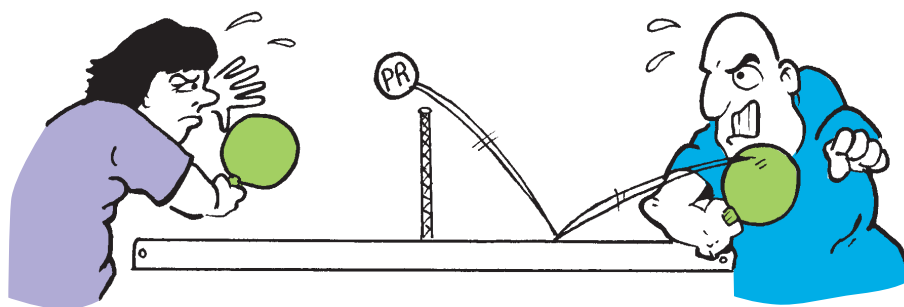
A second female parent is the female partner of a woman who has had a child through a fertility clinic in the UK, licensed by the Human Fertilisation and Embryology Authority. You have to have chosen to be treated as parents together before conception takes place. Conception has to have taken place on or after 6th April 2009.

Parental responsibility

What is it?

It's how the law describes the responsibilities and rights that go with being a parent. If you have parental responsibility (PR) for a child, you have a legal duty to care for and protect that child and a legal right to make decisions about that child's future, which will be recognised by schools, hospitals, local authorities and everyone else.

It includes things like choosing your child's names, the religion they'll be brought up in and what schools they'll go to. It also means you'll be able to do things like consent to medical treatment for them, apply for a passport for them, consent to their marriage if they want to marry before they're 18, and look after any property they are entitled to until their 18th birthday.



How do I get it?

Mums

Birth mums always have it.

Unmarried Dads

You will have PR automatically if the child's birth was registered on or after 1 December 2003 and your details were included in the registration. If not, you can get it by:

- marrying the child's mother
- re-registering the birth to add your details (this

won't be possible if your details were already registered before 1 December 2003)

- making a PR agreement with the child's mother (see page 3 for a step by step guide),
- applying to the court for an order (if your child's mother will not agree to any of the above)
- being appointed the child's guardian if the mother dies.

Second female parents (of children conceived on or after 6th April 2009)

You will have PR automatically if your details were included in the birth registration on or after 1st September 2009. If not, you can get it by:

- becoming the mother's civil partner
- making a PR agreement with the birth mother
- applying to the court for an order
- being appointed the child's guardian if the birth mother dies.

Why do I need it?

It's not really a big deal day-to-day because anyone with PR, can delegate their rights and responsibilities to whoever is looking after the child. And, in an emergency, that person can consent to medical treatment for the child even if they don't have PR.

But you might feel more secure putting your relationship with your child or step-child on an official footing, so that it will be recognised by others. And, if the mother (or the parent the child lives with in the case of step-parents) were to die, you would need PR to be able to take care of the child yourself.

Step-parents

You can only get PR by applying to court for a 'residence order'. If the court makes the order, it will say that the children should live with you – either permanently, or for a particular period. It will also give you PR for them for as long as the order lasts.

Unmarried step-parents (in male-female and same-sex couples) can also adopt their partner's children.

See our step-by-step guide **How to get Parental Responsibility for your partner's children for more details.**

www.advicenow.org.uk/living-together/children

How to make a Parental Responsibility Agreement with the child's mum – for Dads and second female parents

- 1 Get the official form. Dads need form C(PRA1) and second female parents need form C(PRA3). You can download it from the Court Service website www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do or get it from your local Family Proceedings or County Court. You need one form for each child.
- 2 The instructions about filling in the form are on the back. You must follow these carefully.
- 3 You have to sign the form at a Family Proceedings Court, or a County Court. If you are in London, you could also go to the Principal Registry of the Family Division. The address is on the form.
- 4 Make sure that you take the documents you need with you. These are listed on the form. If you can't find the children's birth certificates, you will need to get replacements. You can get them from www.gro.gov.uk/gro/content/certificates.
- 5 Once you have signed the forms you must send them, along with two photocopies, to the Principal Registry to have them registered. There is no fee for this. The Registry will record the agreement, stamp the forms and send the copies back to you. You need to keep them safely.

Protecting your children in case you die

No-one wants to think about dying. But, if you've got children, you should plan ahead for their sakes. There are two issues you need to sort out: what you want to leave them and who you want to look after them if you were to die while they're still young. You can do both of these things by making a will.

Wills and inheritance

If you die without making a will, the law decides who inherits your money and property. It will not be based upon your wishes or even what is sensible for people in your situation. If you are an unmarried parent (or second parent), everything you leave behind will be divided equally between your children. Your partner won't get anything automatically. If they were dependent on you for financial support, they might be able to apply to court for a share of your property but this is far from ideal and will take a great deal of money, effort and stress. Going to court is the last thing they'll want to face at such a difficult time.

Even worse, is if you die while you are still technically married to someone else – no matter how long ago you split up – your ex-husband or wife will get all your personal possessions, the first £250,000 of your property and savings and a life interest in half of anything that is left. Your current

Step-parents

Your step-children won't inherit anything from you automatically if you die without making a will. If they were dependent on you for financial support, they might be able to apply to court for a share of your property but this isn't something you should rely on. If you'd like them to inherit from you, you need to make a will.

partner, your children, or your step-children won't get anything. So, make sure you make a will!

If you have children under the age of 18, you will need to think about how you will provide for them in your will. If you want to leave them money or property, you will need to set up a 'trust'. You should get advice from a solicitor about how to do this. Find your nearest solicitor who specialises in will-making by visiting the Law Society website at: www.lawsociety.org.uk/choosingandusing/findasolicitor.law

For more information on making a will, download our guide, 'Wills & LivingTogether' from: www.advicenow.org.uk/living-together/wills-inheritance-issues

Denise's story

"I divorced Sean's dad when Sean was just a toddler. A couple of years later I met Ian and we'd been together ever since. We had a boy of our own, Carl, but Ian has always treated both of them equally – as if Sean was his own son too. In fact I doubt Sean can even remember his real dad.

But Ian died a year ago and he'd never got round to making a will. I've since found out that this means Carl inherits everything: Sean and I aren't entitled to anything automatically. I know that's not what Ian would have wanted. I know he would have wanted to provide for all of us so I'm trying to make a claim against his estate at the moment. But it's so stressful when I am trying to hold everything together on my own. I just wish we'd both thought about making wills before it came to this."

Who will look after your children?

If someone else has PR, then legally the responsibility for your children passes to them if you die. If you appoint a guardian, this appointment can't take effect if someone else has PR.

If you are an unmarried mother, and you would want your children's father or their second-parent to look after your children if you were to die, make sure that they have PR or that you have appointed them as guardian (which brings PR with it). Otherwise, they will have to go through the stress and expense of having to apply to court for PR on your death. Unmarried birth mothers, of course, have PR automatically.

How to appoint a guardian

You need to think about who you think would be the best person or people to look after your child if you were to die when he or she was still under 18. Once you have made your choice, do discuss it with the people whom you have chosen and find out whether they feel that they could take on this responsibility.

Although you don't need to make a will to appoint the guardian(s), you should think about making a will so that you can provide for them and your child financially.

You can use the form on the next page.



You must sign and date the document and put it in a safe place. Tell the people whom you have appointed and give them a copy of it too. It would also be sensible to tell other family members, so that you avoid any sort of quarrel after your death.

Step-parents

If you are a step-parent and you play a big part in the children's lives, it might make sense for you to be appointed as guardian in the event of your partner's death. Be aware that, if there is another parent who has PR, the appointment might not work automatically. You should get some legal advice. See page 8 for information on how to find your nearest solicitor or advice agency.

If you are a couple and both have PR (and you are not married or in a civil partnership) and you want to appoint a guardian for your children in the event of you both dying, you should each complete a form.

James' story

“James was a toddler when both his parents were killed in a road accident. His parents, Karen and Roy had made home-made wills before he was born, but had not updated them since. Nobody was appointed to be his guardian in the event of their deaths, and they hadn't made any financial provision for him.

Karen's sister and her husband thought that they were best placed to look after James, but so did Roy's brother, Gareth, and his partner, and Roy's parents, Brenda and Bob. The three couples were unable to agree and they eventually went to court over it.

The result was an expensive, lengthy fight that caused great stress and grief to two families who were already devastated by the deaths of Karen and Roy. The three couples are still on bad terms and James has lost his harmonious extended family as well as his mum and dad.”

In accordance with section 5 of the Children Act 1989

I [insert your full name]

appoint [insert name(s)]

.....

.....

of [insert address(es)]

.....

.....

.....

to be the guardian(s) of my child(ren) [insert the child(ren)'s name(s) and date(s) of birth]

.....

.....

.....

.....

.....

.....

Signed [sign your signature]

Dated [insert the date]

If you were to split up ...

If your relationship were to break down, you would need to decide:

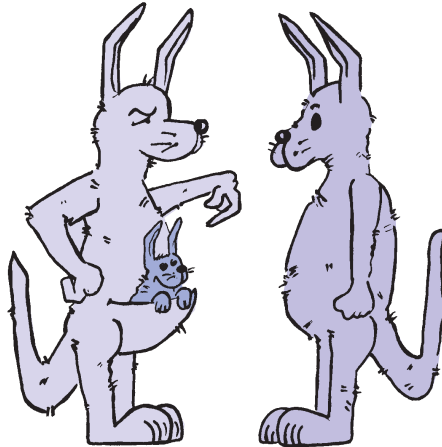
- who the children will live with ('residence')
- when and how the children will have contact with the other parent ('contact')
- how much that parent will pay towards their upkeep ('child support').

The law is different for parents and step-parents.

Residence and contact

It is usually thought to be better for your children, and your relationship with each other, if you can agree on these things between you – either by yourselves, or with the help of a mediator or solicitor. But if there's no way you're ever going to see eye to eye, you may have to get the court involved.

The law puts the child's welfare above the wishes or 'rights' of the parents. If you ask the court to decide who your children should live with and what contact the other parent should have the judge will take a number of things into account, including: the children's wishes (bearing in mind their ages and understanding), the children's needs, the likely effect of change on the children, any harm the children have suffered or are suffering, and the children's ages, sex and background. In most cases, the court will accept that it is best for the children to establish and maintain as good a relationship with both parents as possible.



For more help and information on how to make arrangements for your children on a separation, download our guide, 'Parents Apart' for free at: www.advicenow.org.uk/parentsapart

Step-parents

If you can't agree on arrangements after a separation, you might need to get permission from the court before you can apply for a residence or contact order. If you are thinking about doing this, we recommend that you get advice from a family solicitor.

Most good family solicitors are a member of Resolution. Resolution members are committed to helping their clients resolve disputes fairly, with as little stress and conflict as possible. You can find one near you by visiting their website at: www.resolution.org.uk/find_a_member

Child support

All parents are financially responsible for their children (including adopted children and children conceived by artificial insemination). So, if you were to split up, the parent that wasn't looking after them on a daily basis would be obliged to pay child support.

Child Maintenance Options website and helpline (**0800 0834 375**) can give you advice on child support for your children. They will advise you on your choices and help you sort out an agreement if possible. If you can't agree then they will tell you how to use the Child Support Agency.

Step-parents

You are not legally financially responsible for your partner's children if you are not married or in a civil partnership.

In reality, you might choose to make a financial contribution to their upbringing if you and your partner separate. It would be useful to set this out in a binding agreement. A solicitor can help you draw this up as a 'deed' which makes it enforceable.

Q & A

Q My son was born in 2002. I'm not married to my partner but I'm on the birth certificate as his dad. Does that mean I have parental responsibility?

Jamil, London

A No, you won't automatically have parental responsibility (PR). It wasn't until 1 December 2003 that unmarried dads got PR by including their details in the birth registration.

To get PR, you'll have to either:

- marry your son's mother
- enter into a PR agreement with your son's mother
- apply to court for a PR order if she won't make an agreement.

Q I don't have parental responsibility for my daughter – her mother won't let me have much to do with her at all – so how come I have to pay child support?

Jarred, Leeds

A Parental responsibility (PR) and child support are separate issues. All parents have a duty to financially support their biological children if they have the means, whether or not they have PR. But, if you want to have more contact with your daughter and her mother is stopping you, you should try mediation or go to see a family law solicitor about applying to court for a contact order. They'll also be able to advise you about getting PR.

Q My partner has a daughter from a previous relationship. We've been together ever since she was a toddler so I think of her as my own but I don't know where I stand legally. Would I be recognised as her mother if me and her dad got married?

Jemma, Nottingham

A To get the rights and responsibilities for her associated with being a parent, you would need to have parental responsibility (PR) for her. You won't get this just by getting married to her father. But you can get it. You and your partner could ask the court to grant you a residence order which would also give you PR for as long as the order lasts or until she reaches 18. Another option would be to adopt her – legally this would make her your daughter in all respects. You should get advice about this.

Parental responsibility, residence, contact and child support are particularly complicated areas of law. If you are having problems in this area, get some legal advice. See box below.

Where to get advice

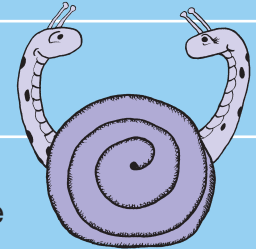
You can find your nearest advice agency, CAB, or family solicitor using the Community Legal Advice directory at: www.communitylegaladvice.org.uk/en/directory/directorysearch.jsp or by telephoning their helpline on: **0845 345 4345**.

You can also find family solicitors near you by using the Resolution website. Members of Resolution are committed to helping their clients resolve disputes fairly, with as little stress and conflict as possible. www.resolution.org.uk/find_a_member

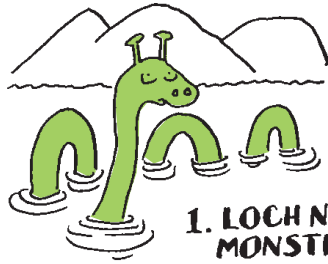
Don't be afraid to call around and compare prices.

Jargon buster

| The jargon | What it means |
|---|--|
| Child support: | Money paid by the parent the children do not live with to the parent they do live with to help cover the children's living expenses. |
| Civil partners: | Same-sex couples that have entered into a civil partnership. |
| Cohabitants: | Couples that have been living together and are neither married, nor civil partners. It includes both male/female and same sex couples. |
| Contact: (this used to be called "access") | When and where a child can see a parent they don't live with or another adult (such as a grandparent), or have contact with them in other ways, such as phone calls, letters, presents. |
| Court order: | An official decision by a court. In certain circumstances, courts can impose penalties if court orders are disobeyed. This could be community service, paying compensation, or even imprisonment. |
| Guardian: | A guardian is a person who is appointed to take care of a child if the parent dies. |
| Inheritance: | Property received by someone on the death of someone else. |
| Intestate: | Dying without making a will. |
| Life interest: | Limited rights for your lifetime over the property of someone who has died, such as the right to live in a house for the rest of your life, or the right to income from an investment for your lifetime. |
| Parental responsibility: | All the rights and duties that go with being a parent. See page 2 for details of who has it and how you can get it. |
| Residence: (this used to be called "custody") | Who a child is to live with. |
| Trust: | Money or property looked after day-to-day by a responsible person or organisation (a 'trustee') on behalf of another person or group of people. |
| Will: | A document, which says what is to happen to your money and property when you die and which is completed with certain formalities. |



THREE THINGS THAT DON'T EXIST.



1. LOCH NESS MONSTER



2. CATS' NINE LIVES



3. COMMON LAW MARRIAGE

This leaflet is one of a series produced by Advicenow's LivingTogether campaign. Other titles in the series include:

- Living Together Agreements
- LivingTogether & Inheritance Tax
- Wills & LivingTogether
- Pensions & LivingTogether
- Benefits & LivingTogether
- Breaking up checklist
- How to get Parental Responsibility for your partner's children
- Housing & LivingTogether

The LivingTogether Campaign applies to **England and Wales** only. The law in Scotland and Northern Ireland is significantly different.

The law is complicated and everyone's situation is different. Always get advice.

The LivingTogether campaign aims to increase awareness and understanding of the legal issues around living together. We explain exactly what rights couples living together *really* have, and show you practical ways you can protect yourself and your partner.

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The LivingTogether campaign is led by Advice Services Alliance in partnership with One Plus One (www.oneplusone.org.uk) and is funded by the Ministry of Justice.

Advice Services Alliance (ASA) is the co-ordinating body for UK advice services. ASA members include AdviceUK, Age UK, Citizens Advice, DIAL UK, Law Centres Federation, Shelter and Youth Access. ASA works with its membership and government to develop policy on delivery of legal and advice services; champions the development of high quality information, advice and legal services; and provides supporting services to advice networks.

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