



BAD PRACTICE ON CONTACT: Where are the 'red lines'?

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Scope of LA duty re contact – care proceedings

- Statute
 - s34 CA 1989
 - Schedule 2, para 15(1) CA 1989
- Regulatory
 - CA 1989 Guidance & Regs: Volume 2

s34(1) – duty to allow contact

- (1) *Where a child is in the care of a local authority, the authority (subject to the provisions of this section and their duty under s22(3)(a)...allow the child reasonable contact with –*

- *(a) his parents;*
- *(b) any guardian or special guardian of his;*
- *(ba) any person who by virtue of section 4A has parental responsibility for him;*
- *(c) where there was a child arrangements order in force with respect to the child immediately before the care order was made, any person named in the child arrangements order as a person with whom the child was to live; and*
- *(d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction, with respect to children, that person.*

s34(2) – provision for an order

- *(2) On an application made by the authority or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.*

s34(6) – emergency power to refuse



- *(6) An authority may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if –*
 - (a) they are satisfied that it is necessary to do so in order to safeguard or promote the child’s welfare; and*
 - (b) the refusal –*
 - (i) Is decided upon as a matter of urgency; and*
 - (ii) Does not last for more than seven days.*

s34(6A) – suspension of the duty to promote*

- *(6A) Where (by virtue of an order under this section, or because subsection (6) applies) a local authority in England are authorised to refuse to allow contact...paragraph 15(1) of [Schedule 2] does not require the authority to endeavor to promote contact...*
- ** s34(6B) similar provision in Wales.*

s34(4) – the power to refuse

- *(4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) – (d) of subsection (1) and named in the order.*

s34(3) – provision for an order

- *(3) On an application made by –*
 - (a) any person mentioned in paragraph (a) - (d) of subsection (1); or*
 - (b) any person who has obtained the leave of the court to make the application;*

The court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

s34(5) – court’s powers even if no application

- *(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of a local authority, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.*

Scope of LA duty re contact – adoption proceedings

- s1(4)(c), (f))(i), (ii) ACA 2002

In coming to a decision relating to the adoption of a child the court must take into account the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person...and...the relationship which the child has with relatives...including: the likelihood of any such relationship continuing and the value to the child of its doing so and...the wishes and feelings of any of the child's relatives...regarding the child.

Scope of LA duty re contact – adoption proceedings

- s46(6)

Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

Scope of LA duty re contact – adoption proceedings

- s26, s51A

The court also has the power to make a contact order between siblings both at the time of making a placement order and when making an adoption order, or at any time afterwards.

The potential red lines?

- What does 'reasonable contact' actually mean?
- With whom?
- How far should the court interfere?

Current themes

- Current theme is a shift in focus on post-adoption contact and rethinking the significance of sibling relationships.
 - BASW research 2018
 - McFarlane LJ speech to NAGALRO 2018
 - Nuffield research 2018

Contact with siblings

- Care Planning, Placement and Case Review (England) Regs 2010, Schedule 1: Care Plans
 - *3 Family and Social Relationships*
 - (1) *If C has a sibling for whom the responsible authority or another authority are providing accommodation, and the children have not been placed together, the arrangements made to promote contact between them, so far as is consistent with C's welfare.*

Contact and adoption – the BASW research

- 2016 BASW commissioned Enquiry into UK adoption
- Explored ethical and human rights dimensions of social work practice.
- Report *'The role of the social worker in adoption – ethics and human rights: An Enquiry'* (BASW 2018 – Featherstone, Gupta & Mills)

Contact and adoption – the BASW research

- Recommends a significant rethink of approaches to contact and connection between adopted children and their families.
- Rethinking the ‘happy ever after’ narrative.
- Move away from a model of cessation of direct contact.

Contact and adoption – the BASW research

- Key finding
 - The current model of adoption should be reviewed and the potential for a more open approach considered.
- Conclusions and recommendations
 - Need to move away from standardised approach to individualised contact planning.
 - Consideration of the impact of child's age.
 - Recognition of multiple attachments and complex identities.
 - Identity development is a life-long process.

Sibling contact - the Nuffield research



- *Siblings, contact and the law: an overlooked relationship?* (Nuffield Foundation, Nov 2018 - Monk & Macvarish)
- First UK socio-legal research to foreground siblings.
- Highlights the impact on practice of underlying professional assumptions and shifting legal and procedural framework.

Sibling contact - the recent research

- *‘Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. in any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes and feelings.’*
 - UN General Assembly, Resolution: 64/142 – Guidelines for the Alternative Care of Children, 2010, para 17.

Sibling contact – key research findings



1. The importance of sibling relationships
 - Recognised as most enduring in a child's life BUT significance easily and routinely outweighed by other considerations.

Sibling contact – key research findings



2. Who is a sibling?

- Lack of clarity and consistency in terminology used to describe siblings.
- Discrepancy between professional and legal definitions.
- Relationships between step-siblings rarely given weight in legal decision making.

Sibling contact – key research findings



3. Sibling relationship assessments

- Is lack of clarity in law and practice re when and how sibling relationships should be formally assessed – no standard format.
- Concerns re impact of time/resource limitations.
- Assts not always used as tools for decision making.

Sibling contact – key research findings



4. Placement planning and contact

- Contact arrgts heavily determined by placement type.
- Facilitating contact for children in care and SGO placements raises challenges in practice.

Sibling contact – key research findings



5. Closed adoption is the norm.

- When siblings placed separately, adoption is the most serious risk to the continuity of their relationship.
- Powerful assumptions may outweigh promotion of anything other than indirect contact – adopters' agreement, potential undermining of placements.

Sibling contact – key research findings



6. Effect of B-S and lack of clarity about analysis required when considering decisions that affect a sibling group (especially when siblings are not all subjects of the proceedings).

Sibling contact – key research findings



7. Contact and adoption

- Indirect contact post-adoption now widely supported BUT professional and ethical support for direct contact is routinely outweighed by other factors.

Nuffield recommendations

- Review of primary & secondary statutory material is needed -
 - to clarify refs to step siblings in child and adoption law,
 - to remove refs to 'blood' in definitions of siblings in context of adoption, and
 - to consider devtpt of internal guidance re siblings.

Nuffield recommendations

- Be attentive to children's own understandings of their sibling relationships
- Avoid use of distinctions such as 'half', 'full', 'step' and 'foster'.

Nuffield recommendations

- Extend to siblings the existing s34(1) duty on local authorities to allow all looked after children reasonable contact with their parents.

Nuffield recommendations

- Remove the requirement in ss10 and 34 CA89 that siblings must first apply for permission to make an application.
- At the the end of care proceedings, children's solicitors to provide advice re possibility of applying for contact orders.

Nuffield recommendations

- Provision of judicial guidance to clarify the circumstances in which it is appropriate to make contact orders under ss26 and 51A ACA2002.

Nuffield recommendations

- Enhance rigour in assessments of sibling relationships.
- Emphasise importance of reflexiveness in application of assumptions re age, 'attachment' & 'parentification' by -
 - wide dissemination of Beckett 2018 guidance;
 - review existing professional training about sibling relationships