



Brothers and sisters in public law proceedings - assessment, placement, permanence and contact

Introduction

This briefing considers the law and the role of social workers in the assessment of, and decision-making about, brothers and sisters involved in public law proceedings. The last section focuses on particular issues relating to adoption.

In 2018, the authors of this briefing published *Siblings, contact and the law: an overlooked relationship?* (Monk and Macvarish 2018). This study involved the analysis of legislation and case law and interviews with legal and social work practitioners and members of the Family Justice Young People's Board. Unless otherwise indicated, quotes throughout are from these interviews. Other key studies which informed this briefing include:

- > Shelagh Beckett's (2018) *Beyond Together or Apart: Planning for, Assessing and Placing Sibling Groups*.
- > The Rees Centre research about siblings in foster care by Meakings, Sebba and Luke (2017).
- > Beth Neil's research on adoption and birth family contact (Neil, 2006; Neil et al, 2015).
- > Christine Jones's research and advocacy in Scotland (Jones and Jones, 2018).

The briefing has five sections:

1. What are the issues?
2. Who is a sibling?
3. Assessing sibling relationships
4. Children in care: Ongoing relationships with brothers and sisters
5. Relationships with birth siblings post-adoption

A note on terminology

While the term 'sibling' is not one that many brothers and sisters use, it is common in the family courts and in social work practice. The Family Justice Young People's Board and the children involved in the *Language that Cares* collaboration (The Adolescent and Children's Trust [TACT], 2019) recognise that 'sibling' will often be used in formal language, but prefer terms like 'our brothers and sisters' or 'people who are related to me', especially in spoken language. A combination of these is used in this briefing.

1. What are the issues?

Despite a strong ethical commitment to maintaining close bonds between brothers and sisters, professionals are aware that these relationships can raise complex questions in public law proceedings. Relationships between siblings are a factor that the courts must take into account in determining a child's 'best interests' in both care and adoption law proceedings.

However, acknowledging the interests of all members of a sibling group can be challenging. Judges have described decisions concerning siblings as 'the most difficult' and in some cases have held that more weight should be placed on these relationships (*Re P-M (A Child)* [2013] EWHC 1838; *J (BT & GT) Children: twins - adoption* [2018] EWFC; *Re B (A Child)* [2018] EWCA Civ 20). Although data is limited, academic research has shown the following:

- > Children in care are very likely to have brothers and sisters and are more likely to come from a larger sibling group (Jones and Henderson, 2017).
- > Two thirds of children in care live apart from at least one of their 'biological siblings' (sisters and brothers who share one or both birth parents), and two fifths are living apart from all of them (Jones and Henderson, 2017).
- > Only 37 per cent of children placed for adoption were placed with siblings (Ivaldi, 2000). After adoption, a child is more likely to have direct face to face contact with brothers and sisters than with other birth relatives, but this is predominantly with siblings who have also been adopted (Neil, 2018).

The family members that children consider to be their brothers and sisters may well include:

- > those with whom they have only one biological parent in common
- > children with no biological connection to one another who are part of the same family, including step and foster siblings
- > a mix of ethnic or cultural backgrounds
- > a range of special or additional needs
- > children coming into care at different times and/or being placed in different types of placement
- > some remaining with parents or other family members.

As in every aspect of child and family assessment, it is important to avoid generalising assumptions and to pay attention to the specific relationships between a child and those they identify as their brothers and sisters.

I'm the only one who came into care in my family, I think because we have different dads [...] I don't feel like I am part of my family.¹

¹ The quotes highlighted with speech bubbles throughout this briefing are taken from a Research in Practice consultation with young people associated with the National Leaving Care Benchmarking Forum (NLCBF):

2. Who is a sibling?

Children's rights and the placement of siblings in alternative care

The UK is a signatory to the United Nations Convention on the Rights of the Child and, while it is not formally part of domestic law, the courts have regard to it. In 2016, the UN Committee on the Rights of the Child, in its report on the United Kingdom, noted its concern about 'siblings being separated from each other without proper reason' and reiterated that wherever possible alternative care placements should 'facilitate contact with... siblings' (UNCRC, 2016: 52(d), 53(c)).

The General Assembly of the United Nations had previously passed the following resolution:

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 (UNGA, Resolution: 64/142. Guidelines for the Alternative Care of Children, 2010, para 17).

A key provision in the *Children Act 1989* makes clear that, where reasonably practicable, a local authority is required to accommodate children in care together with their siblings (s 22C(8)(c)).

I have ten siblings and I got stopped from seeing them for 15 years. It is better now.

It doesn't really matter whether it's 'full' or 'half', they're still your sisters at the end of the day (Young person with experience of public care proceedings).

There are many references to siblings in legislation but there is a lack of consistency in the language used. The *Children Act 1989* is the first piece of legislation to use the term 'sibling' while the *Adoption and Children Act 2002* uses the words 'brothers and sisters'. The legal statuses of 'twin', 'full', 'half', 'step', 'foster' or 'social' siblings are not defined in either of these Acts.

In care plans and court judgments, distinctions between these different types of sibling relationship can sometimes appear to represent a hierarchy of significance. In addition, relatives who are considering taking on the care of a child may regard the biological ties between them as very important. However, children do not tend to understand or experience their relationships with those they identify as brothers and sisters in terms of 'blood', therefore, when professionals make distinctions between 'half' and 'full', it can seem irrelevant or upsetting to them.

Some siblings may be harder for professionals to 'see' or identify and are therefore more likely to be overlooked, for example those who:

- > are not part of the child's current household
- > are not biologically related
- > are not subject to proceedings
- > are half-siblings on the paternal side.

Relationships which children consider to be important will always be relevant in ascertaining the child's 'best interests' and this is emphasised by the *Working Together* (HM Government, 2018) guidance:

Every assessment should reflect the unique characteristics of the child within their family and community context... frequently, more than one child from the same family is referred and siblings within the family should always be considered. Family assessments that include all members of the family should always ensure that the needs of individual children are distinct considerations (HM Government, 2018).

The Social Work Evidence Template (SWET) includes genograms as a tool for mapping the family connections of children subject to proceedings: <https://coppguidance.rip.org.uk/social-work-evidence-template>. Working with a child to complete a genogram can provide a valuable opportunity to find out who they see as their brothers and sisters and the language they use to refer to them.

My relationship with my step-brother was the thing that made me ok.

Practice points

- > Be attentive to children and young people's lived experience and their own understandings of how they define family relationships. What is *this* child's perspective on their existing bonds with those they consider brothers and sisters?
- > Be prepared to question when and why weight is placed on the full/half sibling distinction.
- > Ensure that children's understandings of who matters to them inform genograms and written descriptions of family relationships.

I have two older siblings [step-siblings] who have kids. They weren't on the contact list and I had to put in a special request. It was a slow process - about four months.

3. Assessing sibling relationships

It is more common than it used to be for people to appreciate the need for Together and Apart assessments, but the quality of those varies hugely (Judge).

Information about brothers and sisters is crucial to decision-making in both care and adoption proceedings. Although there is no reference to ‘sibling relationship assessments’ in statute, case law makes clear that they are often expected by the courts and a good deal of practice guidance exists, for example *Beyond Together and Apart* (Beckett, 2018) and *Working Together* (HM Government, 2018).

Research suggests that decisions to place brothers and sisters together or apart are influenced by assessments of their relationships, but also by other factors - including the timing of each child’s entry into care relative to one another, each child’s age on entry into care, sibling group size and placement type (Meakings et al, 2017).

Adoption guidance advises that agencies ‘may wish to have a formal assessment process in place to assist with analysis and decision-making’ (DfE, 2013). In some cases, an inadequate or absent sibling assessment has been grounds for extending care proceedings beyond 26 weeks (see, for example *Re A, B, C, D and E (Children: Care Plans)* [2017] EWFC B56). Sibling assessments, often known as ‘Together and Apart’ assessments are usually carried out by social workers. They sometimes involve child psychologists but this has become less common since 2014, when the revised *Public Law Outline* and *Children and Families Act* came into effect and changed the emphasis on the use of expert evidence in family court proceedings.

Case analysis and interviews with practitioners in the *Siblings, contact and the law* study (Monk and Macvarish, 2018) found that the purpose of assessments can often lack clarity and, indeed, any assessment activity must start with the question ‘*What is this for?*’ (see Brown et al, 2014). In this context, assessment of sibling relationships may be part of a process of gathering evidence of significant harm – committed by a parent or carer, or harm between brothers and sisters themselves. Often such assessments provide evidence in relation to a recommendation to separate sisters and brothers.

Good practice makes clear that an assessment should help inform the court’s understanding of the relationships between brothers and sisters, and not simply legitimise placement options about siblings. An assessment that provides a rigorous analysis requires:

- > talking to a child about their relationships with their brothers and sisters
- > observations of interactions between siblings
- > information-gathering from birth families, foster carers and other adults involved in caring for the children
- > consideration of the experiences the children have shared in the past
- > consideration of the impact of separation on each child
- > possibly, psychological assessments of each child and of the parent-children dynamics
- > corroborating evidence, drawing on information from multiple sources

- > references to research about placement outcomes can be helpful but, as ever, care needs to be taken in applying aggregated research findings to individual case decision-making. As Ryder remarked: ‘Generalisations are dangerous, the intensity of sibling relationships can be very different’ (*Re K* [2014] EWCA, Civ 1195 at 40).

Attachment theory

There is a lot of debate about whether attachment theory is overused or misapplied by social workers and it is questionable whether the concept can be applied meaningfully to sibling relationships at all. Practitioners can be more confident in expressing observations and recommendations in the everyday language of ‘relationships’, ‘love’, ‘closeness’ and ‘bonds’ rather than applying or misapplying the language of attachment theory (Beckett, 2018; Shemmings, 2018, 2019).

Parentification

... it’s usually to say well, ‘that child has been parenting their younger siblings and they need to be given an opportunity to be a child’ so they get separated off, and that strikes me as something that could be quite damaging (Solicitor).

I was 12 and from when she was about four months old I brought her up a lot more than my mum did. I did everything, like bed, nappies... they kept saying to me, ‘oh you realise you’re not her parent’... they were on about adoption and stuff. It’s literally all about the baby (Young person with experience of public care proceedings).

The term ‘parentification’ is used to describe relationships where one sibling has taken on caring responsibilities for another. Research conducted by the authors shows that ‘parentification’ is used both to justify placing siblings together and placing them apart. Shelagh Beckett recommends using the term ‘caregiving’ rather than ‘parentified’ behaviour to avoid the implication that the care a child has provided for younger siblings is dysfunctional (Beckett, 2018). A further factor to consider here is the extent to which a child’s caregiving reflects a family’s cultural expectations of domestic responsibilities. It is also worth noting that children caring for parents tend to be treated differently by practitioners from those caring for brothers and sisters, despite the fact that both could be recognised in law as ‘young carers’ (*Children Act 1989*, ss17ZA-17ZC).

Age

A child’s age is, of course, a significant factor in shaping their needs. However, some practitioners in this study expressed concern about ‘age-driven’ decision-making, in particular where a younger sibling is seen as ‘adoptable’ while their older brother or sister might be seen as a potential barrier to that route to a permanent placement. Similarly, when a large group of siblings is to be placed in care, assumptions that those who are closest in age should be placed together may be informed by placement availability rather than on an assessment of emotional closeness.

The court should speak to the child and find out what they want.

4. Children in care: Ongoing relationships with brothers and sisters

Practice points

A good Together and Apart assessment was described by one judge as follows:

... all the positives and negatives, if you can call it that. The different vulnerabilities and attributes of each child and how they then interact with their siblings and how they see each other... something that gives me a feeling about how the children feel about each other, so getting them to talk about each other. So they'll be seen individually and then they'll, I hope, be observed as a group so you can see how they interact and I'll get a picture of how they are together and that's what I would call a good Together and Apart assessment.

- > When conducting a sibling assessment, is there clarity about its purpose?
- > Assessment is about developing an understanding of the particular dynamics of the family relationships in question. Part of this process is the interrogation of assumptions, such as might be made based on a child's age or perceived cultural norms.
- > Aim for assessments and recommendations that describe and analyse in clear, commonsense language, avoiding jargon.



Further reading

A useful resource for practitioners' individual and team-based learning is *Beyond Together or Apart: Planning For, Assessing and Placing Sibling Groups* (Beckett, 2018).

Law and policy

The conventional starting point for contact to a child in long-term foster care is for existing relationships with family members to be maintained by a regime of fairly regular direct contact unless there are specific child-focused reasons for taking an alternative course (Re G (A Child) [2014] EWCA Civ 1173, McFarlane LJ, at 35).

The law indicates a strong presumption in favour of 'together' placements or 'regular, direct' contact between separated brothers and sisters in care. The *Children Act 1989* makes clear that, where reasonably practicable, a local authority is required to accommodate children in care together with their siblings (s 22C(8)(c)). Furthermore, before making a care order the courts are required to 'consider contact arrangements and invite comments on them from the parties' (s 34(11)). However, the explicit duty on local authorities to allow children in care contact with their parents and adult carers (s 34(1)) does not extend to brothers and sisters.

Many practitioners highlight the challenges for contact which can arise when sisters and brothers are placed across different types of placement. In particular, special guardianship orders which place a child with someone in the birth family network raise complexities in relation to contact which are different from those where children are placed with foster carers. Similarly, reunification of some but not all children in a sibling group can prove challenging for contact planning, as can maintaining contact between younger siblings and older children accommodated under a Section 20 order.

Some overarching issues which impact on contact and may undermine sibling relationships include:

- > lack of specific sibling policies in many local authorities
- > lack of options for placing brothers and sisters together
- > lack of resources to support contact
- > geographical distance between placements
- > competing demands on carers to facilitate contact and maintain a normal life for children
- > difficulties in managing the emotional complications of contact.

It is perhaps unsurprising that child and adult participants in the research conducted by the authors of this briefing described how easy it is for brothers and sisters to 'drift' apart over time. In such circumstances, it can be very difficult for children and young people to understand why they do not see their siblings.

I missed out on seeing my brothers for four years.

Contact in the care plan

It is good practice to separate out the planning for contact between brothers and sisters from that for other relatives, although there is currently no special section in the care plan for sibling arrangements and the 26-week time frame may limit the time available for detailed consideration. Clarity and nuance are critical when recommending different types of contact. In particular, it is important to establish what constitutes 'direct' contact, and to consider whether indirect contact is adequate (Bainham, 2015). There also needs to be consideration of the implications and potential uses of social media for contact.

Guardians are very important in ensuring that sibling contact is given proper consideration in the care plan. The Independent Reviewing Officer (IRO), as the only professional with oversight after proceedings, has a crucial role in ensuring adherence to the plans for contact and explaining to children the reasoning behind the plans. There is also a need for regular reviews, not just to monitor adherence but to ensure that contact meets the changing needs and wishes of children. Services such as the National Youth Advocacy Service are also important in representing young people's views about their sibling contact to local authorities and IROs.

Foster carers dictate too much about how the young person is treated, including contact.

Before the age of 18, more support to enable brothers and sisters to see each other is needed.

Section 34 Orders

The courts have the power to make contact orders between children in care and other people, including their brothers and sisters - these are referred to as 'Section 34 Orders' (for discussion of these orders see Strather, 2012). Siblings dissatisfied with the amount of contact allowed may themselves apply to the court for these orders. In practice there is very little evidence of Section 34 orders being used. This may be for a number of reasons.

Unlike parents, siblings must ask for permission from the court to apply (*Children Act 1989* ss 10(8), 34(3)(b)) for an order. This requirement may act as a deterrent and some argue for its removal. However, it is also likely that the lack of access to legal advice and advocacy services is a more significant barrier to children and young people making applications. Amongst practitioners, it is generally assumed that contact is best dealt with through reliance on the care plan and negotiated between local authorities and children's carers, rather than resorting to orders. However, raising the possibility of applying for a Section 34 order is reported by some practitioners to have been effective in getting a child's concerns about contact with brothers and sisters taken seriously.

Practice points

Social Workers, Guardians and IROs

- > Beckett (2018) offers a helpful charter for professionals to help them meet children's needs - for example, ensuring children have information about their brothers and sisters, understand why they are separated and know who to go to for help in maintaining meaningful relationships.
- > Check how compliance with contact arrangements in care plans is assured and that IROs are able to fulfil their function. Ensure that you understand how a young person can be assisted to seek independent legal advice.
- > When brothers and sisters are placed together for foster care or adoption, Selwyn (2019) advocates that social workers and carers need to plan how to provide ongoing support to the children to build the skills for healthy relationships with each other, when these skills may well have been impaired by family dysfunction.
- > Placement needs may be better met where specialist sibling group foster placements are developed and retained for such placements and where those carers are trained and provided with specialist support.

Solicitors

- > At the end of care proceedings, children's solicitors should provide advice about the possibility of applying for contact orders, particularly where contact arrangements are stipulated in care plans or recitals.

5. Relationships with birth siblings post-adoption

There is a growing body of research on adoption and birth family contact, much of it accessible through the Research in Practice open access website:

<https://contact.rip.org.uk>

The remainder of this briefing will concentrate on the legal considerations involved in placing siblings for adoption and planning for contact between brothers and sisters separated through adoption.

'Open' and 'closed' adoption

I will be legally unrelated to my birth sibling for my entire life, and our children will also be unrelated. This is in spite of us always considering ourselves as siblings and acting as such (Young person quoted in Featherstone et al, 2018).

Adoption 'severs' the legal relationship a child has with his or her birth family, including their brothers and sisters. In law, an adopted child is treated 'as if born of the adopter or adopters' (*Adoption and Children Act 2002 s 67(1)*) and birth relatives are defined in law as persons who 'but for his adoption would be related to him by blood' (*ibid ss 51A (3)(a), 81(2)*, italics added).

Where children are adopted together, their legal status as brothers or sisters continues, because they share the same adopted parents. They may also have new brothers and sisters if the adopters already have children.

The legal language reflects a longstanding view of adoption as 'closed' - that adopted children should no longer be related and no longer have any contact with their birth family (Pepper, 2018a, 2018b, 2017). In contrast, the *Adoption and Children Act 2002* reflected a move towards the possibility of 'open adoption', where adopters have parental responsibility, but some form of relationship with birth relatives may be considered (Sloan, 2014).

The quote from the solicitor below was a typical response amongst practitioners:

There was a fashion of open adoptions and there was a big push for whether they were a better idea and that all seemed to fizzle out.

Navigating mixed policy messages about 'closed' and 'open' adoption poses challenges for practitioners, including determining the importance of sibling contact after adoption. The legal framing of birth relationships post-adoption has also not been without controversy. For example, the Law Commission of New Zealand (2000) described birth relatives being treated in law as no longer blood relatives as 'a repugnant and unnecessary distortion of reality'.

Down to the adopters? It shouldn't be down to them. Why should they have the choice? Not knowing is damaging.

Placement for adoption

Alongside the overarching focus on the child's 'best interests', when considering adoption the courts have to take into account:

- > the likely effect on the child (throughout his/her life) of having ceased to be a member of their birth family
 - > the relationship which the child has with relatives, including
 - the likelihood of any such relationship continuing and the value to the child of it doing so
 - the wishes and feelings of any of the child's relatives.
- (*Adoption and Children Act 2002* s 1(4)(c), (f)(i), (iii))

In practice, this raises difficult questions - how should the interests of different siblings be balanced and to what extent should a court take into account the interests of any siblings who are not subject to the proceedings?

Addressing these issues is part of the rigorous analysis that the courts have emphasised is required to justify the making of an adoption order (*Re B-S* [2013] EWCA Civ 1146; *Re B* [2013] UKSC; *Re A* [2014] EWCA Civ 1625; *Re W* [2016] EWCA Civ 793; Doughty, 2015; Masson, 2018).

While the focus of these cases has been birth parents, it is clear that sibling issues also require careful analysis. Determining how much weight to place on sibling relationships will vary from case to case and the Court of Appeal has emphasised that it is 'wholly inadequate' to reduce the issue to one of 'permanency v sibling contact' and that a more rigorous analysis

and assessment is required (*In the Matter of W-C (Children)* [2017] EWCA 250). In other words, the perceived benefits of permanency afforded by adoption might not necessarily outweigh the benefits of a close ongoing relationship with a brother or sister. Indeed, giving greater consideration to sibling relationships may raise important questions about the meaning of 'permanency'.

Article 8 of the European Convention on Human Rights (the Right to Respect for Private and Family Life) can add weight to the need to take into account the interests of all brothers and sisters (see Hansen, 2019). While the case law is not precise about its application to siblings, especially in the context of adoption, it is important to remember that the right does not just apply to parents (see *Re T (Children)* [2014] EWCA Civ 1369; *Re B (Child)* [2011] EWCA Civ 509; *Re TJ (Relinquished Baby: Sibling Contact)* [2017] EWFC 6).

There are concerns that the emphasis on parents in adoption proceedings is often at the expense of siblings. Where the effect of adoption on siblings is considered, it is often outweighed by assumptions about the permanence of the adoptive placement and the disadvantages of long-term fostering. A particular concern is that the interests of older siblings are often outweighed by a focus on the perceived advantages of adoption for younger children.

Weighing up the advantages of maintaining the sibling relationship between an older child and a young baby versus the disadvantages to the baby of a placement in foster care for X number of years will invariably come down on the side of adoption (Solicitor).

While placement orders for time-limited searches for joint adoptions are made frequently, there are concerns about the lack of judicial oversight and weak communication between different professional teams during the search period.

Well at the end of the day if they need to be together, they need to be together and what it is, is a backdoor way of splitting the little ones off (Judge).

Where a search for a joint adoption has been unsuccessful, the care plan sometimes reverts to a placement for long-term fostering. However, courts do not have the power to order contingent plans or to be consulted about changes to them. While these plans prioritise keeping sisters and brothers together, they can sometimes raise questions about whether the legal threshold for adoption has been reached or whether an alternative placement should have been considered from the outset.

I have one younger sibling who I've never seen.

Contact and adoption

All too often adoption orders are made with all the best intentions for continuing sibling contact which are then thwarted for no particularly good reason (Re P-M (A Child) [2013] EWHC 1838, Ryder LJ, at 35).

Section 26 and Section 51 contact orders

The courts can order contact between siblings alongside an initial placement order (*Adoption and Children Act 2002, s 26*) or after an adoption order (*Adoption and Children Act 2002, s 51A*). These orders acknowledge the possibility of 'open adoption'.

The potential advantages of contact orders at the placement stage include indicating the importance which the court attaches to ongoing contact with siblings; ensuring that contact will be addressed by the court considering the final adoption order; and increasing attention to contact in the final care plan, even where an application for an order is refused (Bainham, 2015).

The use of a sibling contact order alongside either a placement order or a final adoption order is highly unusual (McFarlane, 2018, 2019). Many practitioners have no experience of them and some are unaware of the possibility of making or applying for such orders. A case from 2008 suggested the courts might take a more proactive approach (see *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535).

However, a recent decision by the Court of Appeal held that while:

... there is research and debate amongst social work and adoption professionals which may be moving towards the concept of greater 'openness' in terms of post-adoption contact arrangements... particularly, between siblings... it will only be in an extremely unusual case that a court will make an order stipulating contact arrangements to which the adopters do not agree (Re B (A child) (Post-Adoption Contact) [2019] EWCA Civ 29, McFarlane P, at 59).

Court orders can lack flexibility and be difficult to enforce, but there is a need for clarity about the role of the courts in supporting sibling relationships after adoption (Bainham, 2015; Neil, 2018).

Assumptions about contact

Research conducted by the authors identifies three deeply ingrained assumptions which inhibit direct contact:

1. Potential adopters will be deterred from applying to adopt by the prospect of birth family contact.
2. Stability of placements will be undermined by contact with siblings (especially those living with, or in contact with, birth relatives).
3. Post-adoption contact *should* and *can* only take place with the agreement of adoptive parents.

There are concerns that these assumptions are not sensitive to the facts in individual cases, are weighted towards adopters and are not child-focused.

Alongside the resistance to direct contact, research indicates that indirect contact appears to be widely accepted as conventional practice post adoption (Neil, 2018).

Courts will accept that your identity needs can be met by way of indirect letterbox contact... you'll know who you are, the family you've come from and you'll get an idea of that without having to see family members face-to-face (Barrister).

However, there are concerns about sustaining indirect contact, the appropriateness of letter writing, and the problem for young people of knowing about brothers and sisters but not seeing them.

They're just pushing something under the rug and hoping something happens in a couple of years' time when it's not their responsibility really (Young person with care experience).

The impact of social media is such that siblings will often be able to find each other. Consequently, some suggest that formalising contact will ensure it is supported and safe.

These siblings are going to find each other and that's brilliant, that's good I think in some ways... I mean with my adoption hat on I'm really worried about it, but I think in terms of siblings, I think it's got great possibility of keeping them together (Solicitor).

Supporting contact

There is increasing acknowledgement that social workers have an important role in maintaining relationships between brothers and sisters. These include emphasising the benefits of sibling contact in the training and recruitment of adopters and the provision of post-adoption support (see Dibben et al, 2018).

Law-based alternatives to contact orders include recording recommendations about contact as a 'recital' - a written statement attached to, or included within, a court order. These are sometimes requested by lawyers or guardians or made by judges independently. While, unlike orders, they are not legally binding, the possible benefits of recitals include:

- > Creating stronger expectations of contact.
- > Ensuring professionals involved at a later stage are aware of the earlier concern.
- > Providing evidence of prior judicial concern at subsequent challenges.
- > Indicating to relatives that concerns about sibling contact are taken seriously.

However, a major concern about recitals is that they have no legal effect.

Nothing short of an order is going to ensure that contact takes place (Judge).

When adopters agree to indirect or direct contact but subsequently change their minds it is possible to challenge their decision in the courts. However, while permission might be granted to siblings to make such a challenge, assumptions about stability, fears about undermining a placement and reluctance to interfere with adopters make the granting of an order unlikely.

There should just be something signed so that they can't go back on what they've said. It should be legally binding (Young person with experience of legal proceedings).

Why is it like we are in jail? Letterbox contact isn't enough.

Practice points

- > Practitioners should recognise that, notwithstanding the legal severance to a relationship, siblings may well continue to consider themselves, and act as, brothers and sisters.
- > What impact does the approach of the courts to adoption generally have on decision-making about sisters and brothers in your practice?
- > What processes are involved in reviewing 'time-limited' searches?
- > What is the role of the Adoption Panel and the Agency Decision Maker? To what extent do they address concerns about siblings in placement orders?
- > Is there a role for the courts in encouraging more direct contact post-adoption?
- > If direct contact with brothers and sisters after adoption is considered important, what measures are in place to make sure it happens? Is it emphasised in care plans at the placement for adoption stage? What support and encouragement is provided for adopters?
- > Should the wishes of adoptive parents to veto contact supersede the wishes and rights of the child?
- > What advice is offered to adoptive parents, adopted children and their brothers and sisters about the use of social media?
- > See <https://contact.rip.org.uk> for support on making post-adoption contact plans and on how to support birth relatives, children and adopters to maintain contact.

Conclusion

From the perspective of any child at the centre of care proceedings, relationships with sisters and brothers are likely to be important connections that need careful consideration in assessing relationships, decision-making and care planning. If we are to follow through on our stated commitment to child-centred family justice, social workers have a key role in ensuring that the court understands relationships between individual children within a family from the child's point of view. Awareness of the importance of meaningful sibling relationships must be embedded, not just into recommendations, care planning and review, but into all stages of work with families.

They are your most important relationships. Friends for life.

Useful links

www.standupforsiblings.co.uk

A Scotland wide partnership aimed at improving and changing legislation, policy and practice.

www.siblings.together.co.uk

A charity that promotes positive contact between brothers and sisters separated in foster care, kinship care, residential care, or adoption.

www.frg.org.uk/involving-families/family-group-conferences/lifelong-links

Family Rights Group is working on the Lifelong Links project with aims to build positive, lifelong, support networks for children in the care system.

www.frg.org.uk/involving-families/family-and-friends-carers/sibling-carers

www.specialguardiansupport.org.uk/content/uploads/2017/10/Sibling-inbteractions-prof.pdf

www.nyas.net

A charity working across England and Wales to provide advocacy to children, young people and adults.

www.localgovernmentlawyer.co.uk/child-protection/309-children-protection-features/39880-sibling-groups-and-care-proceedings

www.cafcass.gov.uk/2017/05/17/family-considering-importance-sibling-relationships-family-proceedings/

www.tactcare.org.uk/content/uploads/2019/03/TACT-Language-that-cares-2019_online.pdf

References and further reading

Adoption and Children Act (2002) (c. 38).

Available online:

www.legislation.gov.uk/ukpga/2002/38/contents

Bainham A (2015) 'Swimming against the tide: Challenging contact arrangements in the public law'. *Family Law* 45 (11), 1356-64.

Beckett S (2018) *Beyond Together or Apart: Planning for, Assessing and Placing Sibling Groups*. London: CoramBAAF.

Brown L, Moore S and Turney D (2014) *Analysis and Critical Thinking in Assessment (2nd edition)*. Dartington: Research in Practice. Available online:

www.rip.org.uk/resources/publications/practice-tools-and-guides/analysis-and-critical-thinking-in-assessment-resource-pack-20132014

Children Act 1989 (c. 41). Available online:

www.legislation.gov.uk/ukpga/1989/41/contents

Council of Europe (1950) *European Convention on Human Rights, as amended by Protocols Nos. 11 and 14*. Strasbourg: Directorate of Information.

Department for Education (DfE) (2013) *Statutory Guidance on Adoption*. London: DfE.

Department for Education (DfE) (2018) *Working Together to Safeguard Children: A Guide to Interagency Working to Safeguard and Promote the Welfare of Children*. London: DfE.

Dibben E, Butcher L and Upright H (2018) *Think Siblings Project: Messages for practice when assessing the needs of siblings for permanent placement and supporting siblings in adoptive families*.

Doughty J (2015) 'Myths and misunderstandings in adoption law and policy'. *Child and Family Law Quarterly* 27 (4), 331-353.

- Featherstone B, Gupta A and Mills S (2018) *The role of the social worker in adoption – ethics and human rights: An enquiry*. Birmingham: BASW.
- Hansen, S. (2019) 'Birth relationships after adoption - is there a role for Article 8?' *Child and Family Law Quarterly* 31(3), 211.
- Ivaldi G (2000) *Surveying Adoption: A Comprehensive analysis of local authority adoptions 1998/1999 - England*. London: British Agencies for Adoption and Fostering (BAAF).
- Jones C (2015) 'Sibling Relationships in Adoptive and Fostering Families: A Review of the International Research Literature'. *Children & Society* 30 (4), 324-334.
- Jones C and Henderson G (2017) *Supporting Sibling Relationships of Children in Permanent Fostering and Adoptive Families. Research Briefing 1*. Strathclyde: University of Strathclyde.
- Jones F and Jones C (2018) *Prioritising Sibling Relationships for Looked After Children. Working Paper*. Edinburgh: University of Edinburgh.
- Law Commission of New Zealand (2000) *Adoption and its Alternatives: A Different Approach and a New Framework*. Wellington: The Law Commission.
- Masson J (2018) 'Disruptive judgments'. *Child and Family Law Quarterly* 29(4), 401-422.
- McFarlane A (2018) 'Contact: A point of view'. *Family Law* 48 (6), 687-692.
- McFarlane A (2019) *Adoption and Contact: A Judicial Perspective*. Paper presented at the 2019 CoramBAAF 'Contact in adoption in the digital age: Where do we go from here?' Conference, The Queen Elizabeth II Conference Centre, London, UK. Available online: https://corambaaf.org.uk/sites/default/files/Conferences/Adoption_and_Contact_A_Judicial_Perspective_Lord_Justice_Andrew_McFarlane.pdf
- Meakings S, Sebba J and Luke N (2017) *What is known about the placement and outcomes of siblings in foster care? An international literature review*. Oxford: Rees Centre.
- Monk D and Macvarish J (2018) *Siblings contact and the law: An overlooked relationship. Summary Report*. London: Birkbeck. Available online: www.nuffieldfoundation.org/sites/default/files/files/Final%20Siblings%20Summary.pdf
- Neil E (2006) 'Coming to Terms with the Loss of a Child'. *Adoption Quarterly* 10 (1), 1-23.
- Neil E (2018) 'Rethinking adoption and birth family contact: Is there a role for the law?'. *Family Law* 1178-1182.
- Neil E, Beek M and Ward E (2015) *Contact after Adoption: A longitudinal study of post adoption contact arrangements*. London: CoramBAAF.
- Pepper J (2017) 'Maintaining sibling relationships in care and adoption'. *Family Law* 47 (10), 1112-1115.
- Pepper J (2018a) *Adoption: The journey to where we are now*. London: Civitas. Available online: www.civitas.org.uk/content/files/adoptionthejourneytowherewearenow.pdf

Pepper J (2018b) *Adoption: The current challenges*. London: Civitas. Available online: www.civitas.org.uk/content/files/adoptionthecurrentchallenges.pdf

Selwyn, J (2019). Sibling Relationships in Adoptive Families That Disrupted or Were in Crisis. *Research on Social Work Practice*, 29(2), 165-175.
<https://doi.org/10.1177/1049731518783859>
https://research-information.bristol.ac.uk/files/156912579/Final_Siblings.pdf

Shemmings D (2019) *Attachment Theory in Practice* (Research in Practice webinar). Dartington: Research in Practice. Available online: www.rip.org.uk/events-and-online-learning/events/past-event-details/?event-id=2148

Shemmings D (2018) 'Why social workers shouldn't use "attachment" in their records and reports'. *Community Care*. Available online: www.communitycare.co.uk/2018/06/28/social-workers-shouldnt-use-attachment-records-reports

Sloan B (2014) 'Post-Adoption Contact Reform: Compounding the state-ordered termination of parenthood'. *The Cambridge Law Journal* 73 (2), 378-404.

Strather J (2012) 'Are We Missing a Trick? Section 34 of the Children Act – An under-used application'. *Family Law Week*. Available online: www.familylawweek.co.uk/site.aspx?i=ed96835

The Adolescent and Children's Trust (TACT) (2019) *Language that cares: Changing the way professionals talk about children in care*. London: TACT.

United Nations Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*. Available online:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En

United Nations General Assembly (2010) *Resolution: 64/142. Guidelines for the Alternative Care of Children*. Available online: www.unicef.org/protection/alternative_care_Guidelines-English.pdf

Authors Professor Daniel Monk and
Dr Jan Macvarish, School of Law, Birkbeck,
University of London.

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Photograph Graham Morgan

Please note, the people featured in the cover image are not
related to the subject matter.

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The Granary, Dartington Hall
Totnes, Devon, TQ9 6EE
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email: ask@rip.org.uk

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