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Contact with children in the care of the local authority

References

CA: Children Act, 1989

HRA: Human Rights Act 1998;

ECHR: European Convention on Human Rights and fundamental Freedoms;

G&R: The Children Act 1989, Guidance and Regulations, 1991,

Department of Health,

Vols 1-10.

APCR: Arrangements for Placement of Children (General) Regulations, 1991, in G&R Vol. 3.

CCR: Contact with Children Regulations, 1991 in G&R Vol. 3.

RCCR: Review of Children's Cases Regulations, 1991, in G&R Vol. 3

Introduction

In this advice sheet, we have set out the local authority's legal duties and responsibilities in relation to families having contact with children who are in care.

- ❑ **'In care'** means that a child is being looked after by the local authority under an interim or full care order or an emergency protection order.
- ❑ **Contact** means visits, overnight stays, letters, phone calls, the exchange of photos, and other ways that children and their families can keep in touch.

If your child is in accommodation provided by the local authority with the agreement of your family, rather than under a court order, then please ask FRG for advice sheet on *contact with children in accommodation*.

We have listed in the narrow column on the right the full references and abbreviations for all the legislation, regulations and guidance which we refer to in this advice sheet.

What are the legal requirements about contact?

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Parents/carers/others with parental responsibility¹:

Unless the court gives permission to the local authority to refuse contact, they **must allow** a child in care to have *reasonable* contact with:

s.34 CA

- his/her parents,
- his/her guardian and/or special guardian,
- anyone with a residence order immediately before the care order was made and
- step-parents who have parental responsibility for him/her.

The contact must be '*reasonable*' which has been interpreted to be contact which is agreed between the local authority and the parents, or where there is no such agreement, contact which is 'objectively reasonable'. This is not the same as contact at the local authority's discretion.

Re: P (Minors)
(Contact with
Children in Care)
(1993) 2 FLR 156

This means that if you are a parent/carer of a child in care, or you had a residence order immediately before the care order was made, the local authority must allow your child '*reasonable contact*' with you and **cannot stop** contact with you unless they has the court's permission to do so. However, they do have the power to suspend contact for up to seven days in an emergency, "*where they are satisfied it is necessary to do so in order to safeguard and promote the child's welfare*". In these circumstances, they must explain in writing why contact is suspended, for how long, and how their decision can be challenged in court.

Section 34(6) CA

Other relatives and friends:

The local authority must try to '**promote**' contact between a child in care and his/her other relatives, unless it would not be in consistent with his/her welfare.

Sched 2 para 15 CA

This means that the local authority should take positive steps to

¹ **The following people have parental responsibility:** mothers, fathers who are or have been married to the mother at any time since the birth of the child or who jointly registered on the birth certificate as the father (for children born after 1.12.03) or who have acquired PR by formal agreement with the mother or court order under s.4 CA, anyone who has a residence, special guardianship or adoption order in their favour on the child, guardians, step-parents who have acquired PR by formal agreement with both parents with PR or court order under s.4A CA, prospective adopters who have a child formally placed with them for adoption and the local authority when there is an emergency protection or care order in force. For further information, see advice sheet on parental responsibility.

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arrange for your child to see, or be in touch with other people in the family network unless this was not in his/her child's best interests, whilst s/he is in care.

Expenses:

To help with the contact arrangements, the local authority may pay for travel and other expenses, such as meals out and activities, but only if it appears to the local authority that the visit could not otherwise be made without 'undue hardship' and that the circumstances justify payment. In other words the local authority can help with these expenses, where the visit might not happen if it doesn't pay, but it does not have to.

*Schedule 2, para 16
CA*

Planning and reviewing the contact arrangements:

When deciding what contact arrangements should be made for an accommodated child to see his/her family, the local authority must:

- find out, and give 'due consideration to', the wishes and feelings of the child, his/her parents, anyone else with parental responsibility, and other relevant people;
- record the arrangements for contact in the plan for the child; and
- review these arrangements whenever they review a child's case.

Section 22(4-5) CA

*Regulation 3 and
Schedule 1, APCR
Schedule 2, RCCR*

This means that the local authority must discuss with you when you will see your child and keep this under review.

Finally the local authority must endeavour to keep the child's parents (and other with parental responsibility) informed of the child's whereabouts but they are not obliged to do so if there is reasonable cause to believe that doing so would prejudice the child's welfare.

*Schedule 2, para
15(2&4) CA*

What about the Human Rights Act?

The Human Rights Act 1998 incorporates the European Convention of Human Rights into our domestic law.

It is "*unlawful for any public authority to act in a way which is incompatible with a Convention Right*". This means that any

s.6 HRA 1998

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decision made by a local authority and/or a court must be compatible with a person's rights under the Convention. The key ones which are most relevant to decisions about contact are:

- **Article 6:** the right to a fair trial in relation to decisions which affect a person's civil rights; and
- **Article 8:** the right to respect for privacy and family life. This is not an absolute right. The State may interfere with family life provided that it is "necessary in a democratic society for the protection of health or morals, or the protection of the rights and freedoms of others", and that the interference is "proportionate" in the circumstances of the case.

Both children and adults benefit from these rights, although none of them give you or your child an absolute right to see each other, because sometimes this may not be in his/her best interests. However, it does mean that the local authority should be arranging for your child to see you unless there is a good reason why not, and when making any decision about these arrangements, they must involve you in discussions.

If they are not being fair in how they make their decision about contact, then you should consider taking advice about whether or not you can make an application to court for breach of your human rights (see 'where to get further help' for further details).

*See for example:
Re: C (A Child) [2007]
EWCA Civ 2; Re: J
(Care; assessment;
fair trial) [2006] 2
FCR 107; [2007] 1
FLR 77
Section 7 HRA*

What does the government's guidance say about contact?

The government issued guidance in conjunction with the Children Act which tells local authorities that:

- 'for the majority of children...their interests will be best served by efforts to sustain or create links with their natural family';
- 'contact, however occasional, may continue to have value for the child even where there is no question of the child's return to (their) family;
- 'it is important to make plans about contact, including getting the right setting for visits and organising travel and other details.'

*Para 6.9, Chapter 6
G&R Vol 3*

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What does research say about contact?

The main research findings about contact for children in the public care system show that the well-being of children who do not live with their family is improved, in the majority of cases, if they can maintain links with their parents and other family members, for example:

- Continuing contact is the key to children returning home early from care.
- Children do better if they are visited frequently by their family despite the stresses that contact can bring.
- Children need contact with important people from the past in order to develop their sense of identity that is essential for their well-being.
- Continuing contact protects children against the more adverse effects of public care.
- There are fewer breakdowns of foster placements when contact is maintained. It is possible that many social workers believe it is hard to find foster carers willing to encourage contact. Barriers to contact stem more from the attitudes of social workers than foster carers.
- Continuing contact with grandparents is almost wholly beneficial, and is particularly important for older children.
- Continuing contact with sisters and brothers is the most common type of contact for children in permanent placements. Geographical distance can be a barrier to this contact, so local authorities need to plan for the payment of the associated travel expenses.
- The venue for contact can affect the quality of the contact visit. Although visits in the family home only occur in a minority of cases, both children and parents value such visits because they enable children to see other relatives and friends and re-acquaint themselves with typical family activities, whilst parents are also enabled to continue to parent their child. By contrast, social services' venues are seldom popular as they offer little privacy and restrict family activities.

Bullock, R, Gooch, D and Little, M, 1996, Children Going Home: The Reunification of Families (Aldershot, Ashgate). Fanshell and Shinn, 1978, Children in Foster Care: a longitudinal investigation (Columbia UP)

Thoburn, 1994, Child Placement: Principles and Practice (Wildwood House) Wedge and Mantel, 1991, Sibling Groups and Social Work (Avebury Gower) Berridge and Cleaver, 1987, Foster Placement Breakdown (Blackwell); Fratter, 1989, Family Placement and Access (Barnado's Barkingside)

Rowe, J., Cain, H., Hundleby, M., Keane, A., 1984, Long Term Foster Care (Batsford) Berridge and Cleaver (as above);

Macaskill (2002) Safe Contact? Children in Permanent placement and Contact with their Birth Relatives. (Lyme Regis, Russell House) Macaskill (2002) as above; Cleaver, H, (2002) 'Fostering Family Contact' in Department of Health, Children Act Now,

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- Factors associated with successful contact experiences are continuity of social work support for, and the involvement of the foster carers in, planning the arrangements for contact.
- Contact arrangements may be more positive with some members of the family than others, and therefore arrangements for contact may need to vary for selected family members. In some cases, this may involve indirect contact where direct physical contact is not considered to be of benefit to the child.
- Maintaining emotional relationships at a distance is immensely difficult in any circumstances, and all the more so for disadvantaged children who move around while separated and whose family structures change whilst they are away.

2002 (TSO)
 Schofield, G and colleagues (2002) *Growing Up in Foster Care* (BAAF, London); Cleaver, H, (2002) as above
 Bullock, R, Gooch, D and Little, M, 1996, *Children Going Home: The Reunification of Families* (Aldershot, Ashgate).

Bullock, R, Gooch, D and Little, M, 1996, *Children Going Home: The Reunification of Families* (Aldershot, Ashgate).

So how is contact arranged in practice?

If you want to make (or change) arrangements for you to see your child, you need to approach the local authority. Here are some tips to help you negotiate:

- be clear about the sort of contact you think will be best for your children. This might include: seeing your child at your family home (rather than the foster or children's home), or when others are around to help you, or having arrangements which fit in with your child's activities, your work, times of buses etc;
- ask the social worker to write to you with the arrangements for contact, so everyone is clear about the plans;
- if you have difficulty paying the costs of contact visits, you can ask the social worker for help with this. Payment can be made for things besides travel, such as meals you have to buy or the cost of a special outing. It could be paid to anyone visiting the child, not just parents, or to help a child visit their family;
- keep a note for yourself about how each visit goes. This might be useful when you have meetings to discuss progress;
- if you are unhappy about any restrictions imposed on the contact arrangements, ask for the reasons in writing, and try and work out ways of overcoming the social worker's worries;

Schedule 2, para 16
 CA – see above

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- if you want the arrangements to be changed, ask for this in writing, giving your reasons, and ask for a written reply;
- if you need to, remind the social worker politely about the legal duties and research evidence about contact (above); and
- if the local authority fails to follow the legal requirements and/or government guidance, you could consider making a formal complaint.

If you cannot reach agreement with the local authority about the amount or type of contact with your child, you may want to apply to the court for a contact order.

Applying to court for a s.34 contact order

If you are a parent involved in care proceedings, you will have a solicitor and should discuss your wish to apply for a contact order with him/her. If you do not have one, either because you are not a parent or because a full care order has been made, you will need to consider whether you want to contact a solicitor.

Do I need to see a solicitor?

You can contact a solicitor to advise you and help you with the application, but you don't have to. You can apply on your own (see below).

If you do want a solicitor, it is a good idea to find one who specialises in childcare law – they will usually be on the Law Society's Children Panel. You can find one in your area by contacting the Law Society's information line on 0870 606 6575 or on www.lawsociety.org.uk

Who pays for the solicitor?

If you are a parent and there are live care proceedings, the costs of any contact application will be paid by the Legal Services Commission as part of the costs of your representation in the care proceedings. If you are not in this situation, ask the solicitor if you are eligible for public funding (legal aid) to cover your costs.

- To be eligible you will have to satisfy the Legal Services

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Commission that you are within their financial eligibility limits and that your case should be funded on the merits.

- ❑ If you are not eligible, you will need to discuss with the solicitor what the costs are likely to be, and how you can pay for them.
- ❑ If your solicitor's costs are too expensive for you to pay (and you are not eligible for public funding) you can still make the application yourself, on your own.

Am I entitled to apply?

You have a right to apply to court if:

Section 34 (3) CA

- ❑ you are a parent or guardian or special guardian of the child;
or
- ❑ you had a residence order immediately before the care order was made on the child.

If you are none of the above, you will need to ask the court for 'leave' (permission) to apply for a contact order. This is usually necessary for grandparents and other relatives or friends.

In deciding an application for leave, the court must apply the criteria set out in the Children Act, as follows:

- ❑ the nature of the application;
- ❑ the applicant's connection with the child;
- ❑ any risk of disruption to the child's life caused by the application to the extent that s/he would be harmed by it;
- ❑ the local authority's plans for the child; and
- ❑ the wishes and feelings of the child's parents.

*Section 10(9) CA
Re W (Care Proceedings: Leave to apply) [2005] 2 FLR 488*

In a case in which a grandparent applied for 'leave', the court of Appeal held that the statutory checklist set out above in s.10 (9) should be given its proper recognition and weight, and that in order to protect a grandparent's human rights under Article 6 and 8 of the ECHR (see above), the court should not dismiss his/her application for leave without a full enquiry.

Re: J (Leave to issue application for a residence order) [2003] 1 FLR 114

However the court is likely to refuse leave if you have already made a number of similar applications in the past which have been refused and there is no change in circumstance or there is no real prospect of you succeeding in your application for contact. In addition the court is likely to refuse the application if the person seeking leave has identical interests to someone who is already a

*Section 91 (14) CA
Re: M (Care: Grandmother's Application for Leave)[1995] 2 FLR 86; Re: J (Leave to issue application for a*

party to the proceedings.

residence order
[2003] 1 FLR 114

Note: if you have made an application for a contact order which has been refused, you will not be able to make another application for a contact order for a further 6 months without the leave of the court. This rule applies whether your child is under an interim or full care order at the time of the first application.

s.91(17) CA

How do I apply on my own if I don't have a solicitor?

You should contact your local court office and explain that you are applying "in person". Ask them to give you the form you need to complete to apply for contact with a child in care. They will usually advise you about how to fill in the form and about any procedural steps you need to take. For example they will explain to you:

- ❑ whether you need to apply for leave (see above) and if so, how to do it;
- ❑ who the "respondents" will be, and who you need to give notice to;
- ❑ how to "serve" the application on the other parties in the case;
- ❑ the timetable of the case, when you need to attend court, what a directions hearing is etc.; and
- ❑ which documents you need to prepare.

*For further advice
contact FRG*

However you will have to speak for yourself when you are in court.

How does the court reach a decision about contact?

The court must hear the evidence, and then apply the welfare principle in s.1 Children Act when deciding whether or not to make a contact order. This requires the court:

- ❑ to make the child's welfare the paramount consideration;
- ❑ to apply the welfare checklist which includes things like the child's wishes and feelings, and physical and emotional needs; any risk of harm; the effect on him/her of any change in circumstances; his age, sex and background; and the extent to which his/her parents or others are capable of meeting his/her needs
- ❑ not to make the order unless it will positively benefit the child.

Section 1(1) CA

Section 1(3) CA

Section 1(5) CA

What orders can the court make?

The court has the power to make “such order as it considers appropriate” regarding contact between a child and a named person, as a result of an application by the local authority, the child, any of the people listed above, or anyone else who has obtained leave, or of its own accord. It must also consider the arrangements for contact before making a care order.

*Section 34 (2,3&5)
CA*

Section 34(11) CA

The range of orders it can make about contact include:

- defining the arrangements for contact;
- attaching conditions to a contact order, for example about how often it will occur, where it will take place etc.
- authorising the local authority to refuse contact with a named person on the application of the LA or the child. But it cannot make an order *requiring* that there should be no contact.

Section 34(7)

Section 34 (4)

How has the welfare principle been applied by the courts?

The court must carry out a careful balancing exercise when applying the welfare principle, taking account of the potential benefits to the child of maintaining important relationships with his/her family without undermining his/her new placement.

Berkshire County Council –v- B [1997] 1FLR171;

Re D and H (Care: Termination of Contact) [1997] 1 FLR 841

West Glamorgan CC –v- P [1992] 2 FLR 369

A –v- M & Walsall MBC [1993] 2 FLR 244

Re T (Termination of Contact: Discharge of Order) [1997] 1 FLR 517

West Glamorgan CC –v- P [1992] 2 FLR 369

In the short term, the courts favour maintaining contact for children in care and it has been held that the court should not make an order refusing contact where it is still possible that the child may return home. However, the court:

- does have the power to make an interim order giving the local authority permission to refuse contact pending a final hearing if it is in the child’s interests to do so, but this should only happen where the circumstances are so exceptional and the risk so severe that contact must be stopped.
- may make an interim contact order as a holding position even after a full care order has been made as long as it is not doing this in order to review the local authority’s implementation of the care plan.

In the long term, local authorities often want to reduce or terminate contact when children cannot return home on the basis that the child needs to settle in their new placement. However, the Court of Appeal has confirmed that in some circumstances continued contact may still be of benefit to a child in care even if

Berkshire County

s/he cannot return home, provided that his/her welfare requires it.

*Council –v- B [1997]
1FLR171;*

Where contact is considered by the court to be of benefit to the child, the court should not give the local authority leave to terminate it on the basis that circumstances may change in the future.

*Re: E (A Minor)(Care
Order: Contact)
[1994] 1FLR146*

In one case it was held by the Court of Appeal that contact between parents and children was generally to be terminated only where there was no likelihood of rehabilitation and post adoption contact was not considered to be in the child's best interest. The fact that the local authority in this case felt that a cessation of contact was necessary in order to ensure the safe passage from foster care to adoption did not justify a departure from this general principle.

*Re: S (Parental
Contact) [2005] 1FLR
469*

*Re H (Termination of
Contact) [2005] 2
FLR 408*

Where can I get more information?

- Ask your local library to get a copy of the government guidance and research studies mentioned above.
- Contact FRG's freephone advice line for further advice, on 0808 801 0366 between 10am-3:30pm Monday-Friday or visit www.frg.org.uk/advice_sheets where you can download other relevant advice sheets.
- Contact a solicitor who specialises in child care law. Ask your local Citizens Advice Bureau to recommend one or check the Law Society's website www.lawsociety.org.uk. If you are on a low wage, or on income support or job seekers allowance, you may be able to get free advice initially under the Legal Help Scheme.

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