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Contact with children accommodated by the local authority

References

- CA:** Children Act, 1989
ECHR: European Convention on Human Rights and Fundamental Freedoms
HRA: Human Rights Act 1998;
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 'accommodation'. '**Accommodation**' means that a child is being looked after by the local authority with the agreement of the parents/those with parental responsibility¹.

See advice sheet on parental responsibility

If your child is in care under a court order, for example an emergency protection order or a care order, rather than by agreement, you should ask FRG to send you advice sheet 14.

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

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.

What are the legal requirements about contact?

Duty to promote contact:

The local authority must try to 'promote' between children and their parents, guardians, anyone else with parental responsibility, relatives, friends and others connected with them "**unless** it is not reasonably practicable or consistent with the child's welfare". Contact means visits, overnight stays, letters, phone calls, the exchange of photos, and other ways that children and their families can keep in touch.

*Schedule 2, para
15(1) CA*

This means that the local authority should take positive steps to arrange for any child who is accommodated to see, or be in touch with you unless this was not in your child's best interests.

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

Section 22(4-5) CA

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- 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.

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 also take reasonable steps to keep the child's parents and others with PR informed about where s/he is living.

Sched 2 para 15(2)
CA

What about the Human Rights Act?

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

HRA 1998, ECHR

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

Section 6 HRA

- **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.

Article 6 ECHR

Article 8 ECHR

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

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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; and
- '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*

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 the care system.
- Continuing contact helps to protect children against the more adverse effects of public care.
- There are fewer breakdowns of foster placements when contact is maintained. It is more possible than many social workers believe to find foster carers willing to encourage contact. Barriers to contact stem more from the attitudes of social workers than foster carers.
- Children need contact with important people from the past in order to develop their sense of identity which is essential for their well-being.
- Continuing contact with grandparents is almost wholly beneficial, and is particularly important for older children.

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

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)*

Thoburn, 1994, Child Placement: Principles and Practice (Wildwood House)

Rowe, J., Cain, H., Hundleby, M., Keane,

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- Continuing contact with sisters and brothers is very important, and 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.
- 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, but all the more so for disadvantaged children who move around and whose family structures change whilst they are away.

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, 2002 (Stationery Office)

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).

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 child. 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;
- 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.

*Schedule 2, para 16
CA – see above*

*See FRG Advice
Sheet, 'Making a
Complaint'.*

Applying to the Court for Contact with a child who is accommodated by the Local Authority

If you are a person who had contact with a child before s/he was accommodated (such as a father who did not live with his child or a grandparent) and you cannot reach agreement with the local authority and the parent about the amount or type of contact you have with the child since they have been accommodated, you may want to apply to the court for a contact order.

Section 8 CA

How do I apply to court for a contact order?

It is rare to need to apply to court for contact with an accommodated child, but if you cannot agree contact arrangements yet the child is to remain in accommodation, the following information may be useful:

Do I need to see a solicitor?

You should consider contacting 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.

Am I eligible for free legal advice and representation?

You should ask a solicitor if you are eligible for public funding (legal aid) to cover your legal costs.

- To be eligible you will have to satisfy the Legal Services 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. You can contact Family Rights Group for further advice on this.

Am I entitled to apply?

You have the right to apply to court if:

- you are a parent, or guardian or special guardian of the child;
or
- you have a residence order on the child; or

Section 10(4-5) CA

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- you are married to a parent of the child and have had the child living with you; or
- the child has lived with you for three of the past five years; or
- you have the consent of anyone with a residence order for the child; or
- you have the consent of the parents or anyone else with parental responsibility.

If you are none of the above, you will need to ask the court for 'leave' (permission) to apply for contact. This is usually necessary for grandparents and other relatives or friends. But note: a local authority foster carer for the child cannot apply for leave unless:

Section 10(2) CA

- s/he has the consent of the local authority, or
- s/he is a resident of the child or
- the child has lived with him/her for one year before s/he makes the application

Section 9(3) CA

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.

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

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 for a s.8 contact order "in person". Ask them to give you the forms you need to complete. 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.

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; *Section 1(1) CA*
- 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 *Section 1 (3) CA*
- not to make the order unless it will positively benefit the child. *Section 1(5) CA*

What orders can the court make?

The court has the power to:

- make an order allowing the child to visit or stay with the person named in the order, either as a result of an application by any of the people listed above, or of its own accord; and *Section 10(1) CA*
- give directions and/or attach conditions to the order, for example regarding location, frequency, supervision etc. *Section 11(7) CA*

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 Monday-Friday 10am-3:30pm or visit their website www.frg.org.uk/advice where you can download other advice sheets.
- To find a children panel solicitor, ask the local Citizens Advice Bureau to recommend one in your area or search on www.lawsociety.org.uk.
- Alternatively, you can contact Community Legal Service Direct on Tel: 0845 608 1122 www.clsdirect.org.uk. They will work out if you qualify for legal aid and if so provide free confidential legal advice.

*Last updated October
2008*