

In the context of a care order, how are you to balance the competing rights and welfare interests of siblings which may mean splitting them up?

BACKGROUND:

In June 2007 the Government published a White Paper, **Care Matters: Time for Change**.

This set out the Government's plans to improve outcomes for looked after children and care leavers. The White Paper built on the proposals in the Green Paper: **Care Matters:**

Transforming the Lives of Children and Young People in Care which was published for consultation in November 2006 and the conclusions of four working groups established to investigate best practice in making provision for looked after children.

The purpose of the Act was to reform the statutory framework for the care system in England and Wales by implementing the proposals in the White Paper that require primary legislation. This formed part of the Government's programme to ensure children and young people receive high quality care and support.

This led to **The Children and Young Persons Act 2008** placing a duty on local Authorities to accommodate siblings together in care "so far as is reasonably practicable and subject to welfare considerations."

Children and Young Persons Act 2008

Section 22 (C) (8)

The local authority must ensure that the placement is such that—

(a) it allows C to live near C's home;

(b) it does not disrupt C's education or training;

(c)if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;

This is also provided for by:

The Children Act 1989 – Guidance and Regulations Volume 2: Care

Planning, Placement and Case Review

In accordance with **section 22C(8)**, the responsible authority must ensure that, as far as reasonably practicable, the placement:

- allows the child to live near his/her home;
 - does not disrupt his/her education (particularly at Key Stage 4);
 - **enables the child and his/her sibling to live together, if the child has a sibling who is also looked after by the local authority;**
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1. STUDY

What happens to siblings in the care system?

Report by Cathy Ashley and David Roth, Family Rights Group 2015

This report investigated the current experience of siblings in the care system and whether some placement types are more likely than others to enable siblings to be raised together. It also explored how many foster carers are siblings of the children they are raising. A set of questions were sent to all English local authorities under the **Freedom of Information Act 2000**. Their responses are summarised in this paper.

Summary of findings

- a) Half (49.5%) of sibling groups in local authority care are split up.

- b) 37% of children in care who have at least one other sibling in care - are living with none of their siblings. There is also considerable regional variation, with almost a half split up from any sibling in the East Midlands.
- c) Of sibling groups all placed together - 23% were living in family and friends foster care. This is more than double the proportion of all looked after children in kinship foster care placements (11%). In other words although relatively few looked after children live in kinship foster care, it appears to be particularly conducive to supporting siblings to be able to live together.
- d) Only 1% of sibling groups who were all placed together were living in residential care. Government figures show 10% of all children looked after are placed in residential care.¹
- e) On average local authorities reported that there were 50 children being raised by connected persons i.e. family and friends foster carers. However, the average number of sibling foster carers was just 1 per authority. Indeed less than 3% of the connected foster carers were sibling carers. In fact most local authorities that provided data reported having no sibling foster carers although Northamptonshire had 14. This finding is particularly interesting because it is in such sharp contrast to picture drawn from the analysis of the 2001 census² which found that 38% *of all children in kinship care* (i.e. all children being raised by a relative other than a parent) were being raised by sibling carers. Research³ has found that access to support for children in kinship

¹ DfE (2014) <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption>

² Nandy S, Selwyn J, Farmer E, Vaisey P (2011) Spotlight on Kinship Care (University of Bristol)

³ Hunt J and Waterhouse S (2012) Understanding family and friends care: the relationship between need, support and legal status (University of Oxford & FRG)

care is largely determined by whether or not they are in or outside the care system. This is likely to partly explain why sibling carers and the children they are raising often struggle to get basic help from their local authority and other agencies⁴.

It is also worth noting Farmer & Moyers' [Professor Elaine Farmer and Sue Moyers School for Policy Studies University of Bristol] research finding,⁵ funded by the department of education and skills in 2008, that when children are placed with siblings their placement is less likely to be disrupted. However, this is not necessarily the findings of all researchers in this field.

Recommendations

1. *The presumption should be that it is in the interests of siblings to be placed together unless it is contrary to an individual child's welfare needs.* Each child's welfare needs throughout their life, will include identity needs. Where support is needed with their relationship, the plan should clearly set out the support that will be provided;

Discussion: This might be considered to be in contrast with the court of appeal decision of **Re W (A child) 2016 EWCA/Civ/2016/** which essentially decided that there is no presumption that a child should remain with their natural family post S31 threshold findings in care proceedings. Instead this should be a decision based on **S 1 Children Act 1989** and **Adoption and Children Act 2002** [welfare interests of the child throughout their lifetime].

Re W made clear:

⁴ Ashley C, Roth D, Lindley B (2011) Big Bruv, Little Sis (Family Rights Group)

⁵ Farmer E and Moyers S (2008) Kinship Care: Fostering Effective Family and Friends Placements

*The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged. In **Re H (A Child) [2015] EWCA Civ 1284** this court clearly stated that there is no presumption in favour of parents or the natural family in public law adoption cases at paragraphs 89 to 94 of the judgment of McFarlane LJ. [However, I question whether this decision would apply in a similar way where instead of adoption [permanency outside the family] what is proposed instead is long term fostering – for another day!]*

C/F

The various studies and reviews conducted in relation to sibling placements which suggests there should be a presumption that siblings will be placed together unless there is a clear welfare reason why this should not happen.

2. *Where children are not living with their siblings, their relationship should be supported and nurtured*, potentially drawing upon specialist resources such as **Siblings Together and Shaftesbury Young People's Siblings United project**, which arrange contact between separated siblings. Where the placement needs of siblings who are looked after appear to be in conflict, a thorough assessment should be undertaken of any potential risks that would arise if the children were to be placed together and what support could be put in place to address these risks. If following assessment, it is contrary to an individual child's needs to be placed with their sibling(s), the care plan should set out what the contact arrangements should be in

place including potential overnight stays: how often should contact take place, its whereabouts, and whether it needs to be supervised.

3. All local authorities should undertake an audit of the needs of their looked after population⁶ and regularly publish data on sibling placements, to ensure that they ***make suitable provision to meet the needs of sibling groups.***

4. There should be a new legal duty on local authorities to ensure that ***potential placements with family and friends carers are always explored and assessed for suitability*** including offering all families the opportunity to have a ***family group conference*** before a child enters the care system (unless there is an emergency). This would maximise the prospects of children, who are unable to live with their parents, being able to be raised safely with their siblings within the family network. This is consistent with optimising the children's outcomes including supporting them to feel more emotionally secure, have fewer behavioural problems and help them to do better in all areas including academically. Research confirms that most children in kinship care thrive and do significantly better than those in unrelated care.⁷

5. Currently legal status, in particular whether a child is in the care system or not is all too often the key determinant as to whether a child in kinship care gets support. Research shows that children raised by their sibling carers are particularly disadvantaged. The Government should ***regulate to require local authorities to publish a family and friends care policy to maximise the identification of and support for family and friends carers*** and place a ***new duty on local authorities to***

⁶ This is in accordance with the sufficiency duty (s.22G CA 1989) as amended

⁷ Selwyn et al, (2013) The Poor Relations? Children and informal kinship carers speak out (University of Bristol)

establish and commission family and friends care support services, including bereavement counselling, life story work and help managing contact. The Government should also introduce the right to a period of *paid employment leave and protection, akin to paid adoption leave*, to kinship carers, including sibling carers, who are permanently raising children who cannot live with their parents, so they are not forced to give up work or college to raise their younger siblings.

6. The Government should adequately fund *free specialist independent legal advice and information services to family and friends* who are considering, or have taken on a child, including sibling carers, not least so they can navigate a field of complex child welfare law and variable local policy and practice, in order to make an informed decision.

7. *Local authorities should review their approach to sibling carers*. This should include ensuring that they are complying with the law as to who is a looked after child/foster carer and that the procedures used to assess the suitability of older siblings as potential carers for their younger brothers and sisters are such as to allow the potential sibling carer the full opportunity to explain the strengths that they will bring to the task of raising their young siblings. Policy makers, practitioners and services should be aware of and respectful of sibling carers and the children they are raising and be responsive to their particular needs, for example, for counselling or accommodation difficulties, regardless of the child's legal status

2. STUDY

What is known about the placement and outcomes of siblings in FOSTER CARE? An International literature review Sarah Meakings, Judy Sebba and Nikki Luke [Research in fostering and education University of Oxford Department of Education] – February 2017

This research examined factors associated with the decision to place children together with or apart from siblings and considers the evidence on a range of outcomes for joint or separate foster placements.

It also focussed on sibling groups in foster care as opposed to kinship care and only those children in foster care as a result of care proceedings.

It examined 18 studies, 15 from USA; 2 from Australia and 1 from Canada.

One uncertainty about the research concerned the definition of “sibling” and what this actually meant and also the reasons for placing siblings apart were not always known by the social worker.

Subject to its limitations, the findings of this research and review support the legislation that requires local authorities to place siblings in care together where possible, subject to welfare considerations of the children.

3. STUDY

The Influence of Adoption on Sibling Relationships: Experiences and Support Needs of Newly Formed Adoptive Families

Sarah Meakings, Amanda Coffey and

Katherine H. Shelton*

Cardiff University, Cardiff, UK - July 2017

This paper explores the ways in which sibling relationships, in their various forms, are affected by adoption.

The case-file records of 374 children recently placed for adoption in Wales were reviewed. Questionnaires were completed by ninety-six adoptive parents, with whom a sample of these children were placed, and a sub-sample of forty adoptive parents were interviewed.

Most children placed for adoption together with a sibling carried a shared history of maltreatment. Many had complex, often conflictual relationships. Nevertheless, birth siblings in the adoptive home also provided support and comfort for children.

Some children placed apart from birth siblings had plans for contact that had not yet materialised. Whilst adoptive parents were often determined to help strengthen sibling bonds created and affected by adoption, this commitment was not always championed through social work intervention.

The implications for social work practice in adoption are considered and a family systems framework is proposed as a way of helping to understand sibling dynamics in adoptive families.

The findings from this study speak to the need for fresh and innovative thinking in social work practice, not least by the way in which the fundamental significance of the sibling relationship might be better recognised and translated into meaningful support for adopted children and their families. The decision to keep together, separate or create sibling relationships through adoption should be viewed as the start of a process of family formation, reformation or consolidation, and one which requires on-going support for all siblings and the adopted family.

Whilst the significance of the carer–child relationship is widely acknowledged and reflected in contemporary social work practice in the UK, to date, the importance of the sibling relationship has garnered substantially less interest.

Several reviews have considered the evidence for the placement of siblings in adoptive and/or foster-care (see e.g. Hegar, 2005; McCormick, 2010; Jones, 2016). The general consensus supports the view that, unless there is a good reason for separation, most children will benefit from continuing to live with siblings.

Hegar (2005) observed that children tend to fare at least as well, or better, when placed with siblings. Jones (2016) concluded that the evidence supports the call for policy makers and practitioners to continue developing and maintaining sibling placements, when it is in the best interest of children.

However, the findings of this review highlight the need for more research to identify and understand what works in supporting adopted children to forge quality relationships with

resident and non-resident siblings, as well as the need to better recognise the significance of such bonds for psychological well-being. This would help to ensure that adoption has further potential to change lives for the better.

4. CAFCASS

“We are family:” considering the importance of sibling relationships in family proceedings: (May 2017)

Endorses the Family Justice Young People’s Board advice:

1. The most important thing is to listen to each child individually. They may be related but that doesn’t mean they share the same opinions so don’t consider them as a package.
 2. Make your decision based on what you think would be best for each child
 3. Professionals need to see sibling relationships as being just as important as parent or grandparent relationships whether it be full sibling or half sibling
 4. Remember that as we are individuals, we may want to express our views in different ways. Give us the option to speak to you separately or together, or maybe even both
 5. It is important to keep siblings together or to maintain a good level of contact during family breakdown
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CASE LAW:

One court's approach when considering the LA care plan for adoption following care proceedings and which resulted in an extension of the 26 week time limit to enable what the Judge considered necessary information to be made available to the court before approving the LA final care plan and includes consideration of the separation of siblings:

Re K and D (Children: Care Proceedings: Separation of Siblings) [2014] EWFC B104

(14 August 2014)

HHJ Clifford Bellamy [Leicester Family Court]

173. If persuaded that a care order should be made in respect of D, in evaluating the local authority's plan for adoption it is necessary to go on to consider the somewhat different welfare checklist which appears at s.1(4) of the Adoption and Children Act 2002. It is unnecessary for me to consider each of the factors set out in that list though it is appropriate to consider s.1(4)(f). This requires the court to take into consideration

'the relationship which the child has with relatives...including

(i) the likelihood of any such relationship continuing and the value to the child of its doing so...'

174. The relationship between siblings is the longest lasting relationship most people have.

[The judge is actually stating something we come across frequently in care proceedings and appears to have originated from **Professor Cicerelli, an American Professor in Psychology in 1995**].

It is longer than that of the parent/carer/child or husband/wife/partner relationship. [**Judy Dunn British Psychologist and academic specialising in social developmental psychology 2007**]

The decision to separate siblings is not a decision that should be taken lightly. In a case such as this, that decision is excruciatingly difficult. Should D be placed for adoption if to do so would cause until emotional harm to his sister? Or to put that the other way around, should D be denied the opportunity to be planted into a new family in which he can put down deep roots in order to avoid the risk that separation from his sister may cause her harm? Before answering those questions I must turn to the decision of the Court of Appeal in **Re B-S (Children)**.

Criticises social worker's assessment

175. SW's assessment was considered by the Judge not to be compliant with the requirements of **Re B-S (Children)**.

“Whilst the social worker has made a valiant attempt to undertake a compliant evaluation of the alternatives, her analysis falls at the first hurdle since she rules out the parents before she even considers the placement options. Not only does she rule them out, she does not even attempt to identify and balance the positive factors in favour of these parents. She also fails to

consider the possibility of special guardianship (because she is not sure she knows the foster carer's position on special guardianship). That could be an important option in this case.”

Criticises guardian's assessment

176. As for the guardian, in a section of his final report headed 'placement analysis' he begins by ruling out the possibility of rehabilitation to the care of one or other of the parents, identifying the negatives yet making no reference to the positives. That alone is sufficient to undermine his conclusions.

THERE IS THEN A VERY CAREFUL ANALYSIS BY THE JUDGE WHO BALANCES THE FORS AND AGAINST OF ALL AVAILABLE OPTIONS AND WHO HIGHLIGHTS THE INFORMATION WHICH HE SAYS IS MISSING FROM THE VARIOUS COURT REPORTS SO FAR PRESENTED TO THE COURT. IN EACH OF THE OPTIONS HE ANALYSES HE CONSIDERS HOW EACH OPTION IMPACTS ON SEPARATING OR KEEPING THE SIBLINGS TOGETHER.

The adoption option

185. The final alternative, for D, is that he should be placed for adoption. Adoption would provide him with a 'for ever family'. It would create relationships that would endure beyond his eighteenth birthday. Although the older he gets the more difficult it is likely to become to find a suitable adoptive placement, the local authority and the guardian are confident it will be possible to find a placement for him. Research evidence suggests that the risk of placement disruption for a child of D's age is low.

186. The downside of adoption is that it will mean that direct contact between D and his parents would end. All that will be left is annual letter-box contact. That would be distressing for the parents though perhaps less so for D if placed with capable, sensitive adopters. *The greater problem is the consequences of separation from his sister*⁸. Whilst the local authority appears to accept the need to try to find an adoptive placement that would be open to on-going direct inter-sibling contact the care plan does not commit to searching for such a placement. The recently received e-mail from the local authority indicates that the local authority is now exploring this issue. The best that can be said is that it is a work in progress. The court cannot take for granted that it will be possible to find an adoptive placement with carers who are open to on-going contact. In this case, the lack of evidence from the local authority's adoption team is highly regrettable.

187. There is, though, a more profound concern about the plan for adoption. Even if on-going direct contact can take place, that is not the same as being brought up alongside one's sibling. Direct contact may not fill the void left by separating these siblings. On this issue there is at present no professional evidence to assist the court.

188. That analysis drives me to the conclusion that before I can make a holistic evaluation of what is in these children's best welfare interests I need further evidence. But that will cause delay, delay which **s.1(2) of the 1989 Act and s.1(3) of the 2002 Act** suggest is in principle likely to prejudice the children's welfare.

⁸ Author's emphasis

26 weeks and the problem of delay

189. As a result of amendments to **s.32 of the Children Act 1989** which came into effect on 22nd April 2014, it is now a statutory requirement that applications for care and supervision orders be heard ‘without delay’ and ‘in any event within twenty-six weeks beginning with the day on which the application was issued’ (s.32(1)(a)). These care proceedings were issued on 28th February. Twenty-six weeks expires on 29th August.

190. There is a residual power to extend the twenty-six week period, though the court ‘may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly.’ (s.32(5)). Such extensions ‘are not to be granted routinely and are to be seen as requiring specific justification’ (s.32(7)).

191. In making a decision which may give rise to the need to revise the timetable (for example, a decision relating to expert evidence) and/or in deciding whether to grant an extension to the timetable the court must have regard to the impact which any ensuing timetable revision would have on the welfare of the child and on the duration and conduct of the proceedings (s.32(4) and (6)).

192. It is clear that some cases will require more than 26 weeks in order to achieve an outcome that is both just and fair. In **Re S (A Child) [2014] EWCC B44 (Fam)** Sir James Munby P. has given guidance on this issue:

‘33. There will, as it seems to me, be three different forensic contexts in which an extension of the 26 week time limit in accordance with section 32(5) may be "necessary":

i) The first is where the case can be identified from the outset, or at least very early on, as one which it may not be possible to resolve justly within 26 weeks...

ii) The second is where, despite appropriately robust and vigorous judicial case management, something unexpectedly emerges to change the nature of the proceedings too late in the day to enable the case to be concluded justly within 26 weeks...

iii) The third is where litigation failure on the part of one or more of the parties makes it impossible to complete the case justly within 26 weeks...’

193. It is deeply regrettable that this local authority delayed by almost nine months before issuing these proceedings. That delay when coupled with the failures of preparation – no cognitive assessment of the mother, no holistic assessment of the mother taking into account the positives from previous assessments, no consideration of whether the mother could care for her children with appropriate support, no assessment of what support might be needed and whether it can reasonably be provided, no clear evidence of what the current foster carers are willing to offer, no evidence from the local authority’s adoption team – all of this compounds the unnecessary delay which followed D’s admission to hospital in June 2013.

194. In my judgment all of this amounts to what the President describes as litigation failure. I am not in a position to make final orders today. Further evidence is needed. Some of that evidence will require an application to be made under Part 25 Family Procedure Rules 2010. Some will need to be provided by the local authority and the local authority will need time to

consider what is needed and the timescales within which it can be provided. I shall therefore list the case for a further case management hearing on 21st August.

CONCLUSION

1. Whilst research suggests that both in relation to fostering and adoption siblings being placed together have better outcomes, more research is required and this needs to be more precise in identifying the type of sibling placement being reviewed the current research/studies and reviews having identified various weaknesses and inadequacies in the information obtained
2. Children should be involved in placement decisions and that includes sibling group placements [Ofstead 2016]
3. Professionals involved in placement recommendations and decisions need to fully and properly assess and understand why they are recommending siblings are either placed together or apart and this means they need to understand the positives and benefits of doing so and the varying outcomes
4. Any recommendations with regard to sibling placement should carefully identify the balancing exercise which has been performed in assessing the for and against

June Venters QC

08.11.17

