

**FOURTEEN**

In the context of Care Orders,  
how do you balance the  
competing rights of siblings,  
which may mean splitting  
them up?

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# The sibling relationship

At least 80% of the UK population have at least one birth brother or sister (82-87% of LAC have a sibling)

Said to be the most enduring relationship

“Sibling” is not defined by the Children Act 1989, so could include biological and psychological siblings

Usually, but not always, have lived together in the family home as children

Up to half of looked after children are placed separately from at least some of their siblings



As at April 2018, at least 5,000 children in care (2,500 sibling groups) had been separated from their siblings, according to a Freedom of Information Act request to English and Welsh councils

In 30 of the 50 councils, more than 50% of sibling groups had been split

- Islington: 73% of groups split up
- Oxfordshire: 68% of groups split up
- Cheshire West and Cheshire: 60% split up
- Bridgend: 58% split up



# Family Rights Group

Cathy Ashley, chief executive:

- When siblings who had experienced the same things supported each other, were split up, “that sense of loss and bereavement alongside the other trauma can be overwhelming”
- “Practically, local authorities struggle to find carers who will take on a sibling group...It’s a lack of importance perhaps being placed on that sibling relationship, but the price of that is being paid by those individual children”
- “The norm should be that the priority is given to brothers and sisters being able to live together”



# CAFCASS

*“We are family”*: considering the importance of sibling relationships in family proceedings, Anthony Douglas

Endorsed advice from the Family Justice Young People’s Board:

- 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
- Make your decision based on what you think would be best for each child



- Professionals need to see sibling relationships as being just as important as parent or grandparent relationships, whether it be full sibling or half sibling
- 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
- It is important to keep siblings together or to maintain a good level of contact during family breakdown



# The statutory duties of local authorities

Section 22 Children Act 1989 applies to children who are in the care of a local authority

Section 22A: a child in the care of the local authority must be provided with accommodation

Section 22C(8)(c): the local authority must ensure that the placement is such that, if the child has a sibling for whom the local authority is also providing accommodation, it enables the child and the sibling to live together

However, this is not unqualified:

- S.22C(8)(c) does not apply if the LA is considering adoption, or is satisfied that the child should be placed for adoption but is not authorised to do so: see s.22C(9A) and (9B)
- Such a placement does not meet the assessed needs of the child, or his or her sibling(s)
- Resources are such that it is not possible to accommodate large sibling groups together
- Siblings are accommodated at different times
- There are different long-term care plans for the siblings, e.g. Placement Order granted in respect of the youngest child(ren)

# The regulatory considerations

## The Care Planning, Placement and Case Review (England) Regulations 2010:

- The care plan must consider the child's family relationships: Reg 5(b)(v)
- If the children are not placed together, the arrangements made to promote contact, so far as this is consistent with the child's welfare, should be considered in the care plan: Schedule 1, Paragraph 3

# Government consultation

*Adoption: Getting it Right, Making it Work, May 2014*

- The Government considers there should be no presumption about whether to separate or place siblings together
- Decisions should depend on the individual needs of each child and local authorities should have in place a robust decision-making process
- Statutory adoption guidance will be amended to make clear that decisions about whether to separate siblings or place them together should depend on the welfare of the individual child and the views of children should be taken into account



# Pre- and during proceedings

## Children in need assessments

### Removal applications:

- Why can some children remain at home whilst others are removed?
- Why can the risk of harm be managed in relation to some children but not others?
  - Age?
  - Vulnerabilities/self-sufficiency?
  - Availability of other protective factors?
  - Parenting deficiencies more pertinent for some children?
  - Availability of family placements?



# Assessing sibling groups

*Framework for the Assessment of Children in Need and their Families* (DOH 2000) recognises the quality of relationships between siblings may also be of major significance to a child's welfare

Factors to take into consideration:

- Age
- Ethnicity
- Health/physical needs
- Contact needs
- Emotional and behavioural needs



# BAAF guidelines

Who are the siblings?

Who are the key individuals to be involved in the assessment process?

If the children are already separated, they should be given the opportunity to spend time together as a group to assess their relationships

Full assessment of each child in the sibling group is essential. The relationship (s)he has with the other children in the group is just one part of the assessment



What does each child understand and feel about what has happened so far and what are their wishes for the future?

What is the context in which the relationship between the siblings has developed?

Assess the child's attachment to and relationship with each sibling

What are the dynamics within the sibling group?

What work could be done to improve the relationships between the siblings?



# Factors that might indicate separation

- Age gap, meaning different permanency options
- Size of, and age range within, the sibling group
- Abusive behaviour between siblings, including sexualised behaviour
- Whether a joint placement might inhibit the child(ren) from building secure attachments with their long-term carers
- Intense rivalry and jealousy
- Chronic scapegoating of one child / unhelpful alliances within the sibling group/birth family
- Triggering trauma in one other



# Factors that might contradict separation

- Placement could be rendered more stable if siblings are placed together, especially if moving or placed within an established family
- Promotion of emotional stability in the child/ren
- Promotion of a shared sense of identity
- Provide emotional support to one another during and after care proceedings

# The Court's role

- The Court is required to consider the permanence provisions, but not the remainder, of the care plan: s.31(3A) Children Act 1989
- Subject to s.34(11): must consider the arrangements the authority has made, or proposes to make, for affording any person contact with a child to whom this section applies, and invite the parties to the proceedings to comment on those arrangements
- 'Permanence provisions' include living arrangements (with a parent, other family member or friend of the family): s.31(3B)(a)(i)

- Adoption and Children Act 2002 checklist:
  - S.1(2): the paramount consideration of the court or adoption agency must be the child's welfare throughout his life
  - S.1(4)(c): the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person
  - S.1(4)(f): the relationship which the child has with relatives...
  - S.1(4)(f)(i): the likelihood of any such relationship continuing and the value to then child of its doing so
  - S.1(4)(f)(iii): the wishes and feelings of the child's relatives, or of any such person, regarding the child
  - S.1(8)(a): references to relationships are not confined to legal relationships

# Final care plans

Permanency options will vary depending on the age of the child(ren)

No “starred care plans”

- What if a local authority changes its care plan during the course of the Care Order?
- What are the remedies?
  - LAC Review process? IRO’s role is crucial
  - Application for contact under s.34 Children Act 1989?
  - Application to discharge the Care Order?
  - Judicial review?



# Judicial guidance?

Re S-C (Children) [2012] EWCA Civ 1800, Baron J

Sibling group of seven children (3-15 years of age).  
Care Orders made in respect of all of them;  
Placement Orders made in respect of the two  
youngest on the basis of joint placement if possible  
(separate if not)

- Each case is unique and different on its facts
- The Court will always be required to provide bespoke solutions targeted on the needs of each particular child
- General guidance in this field would not be in point

*Northamptonshire County Council v AB and CD*  
[2017] EWHC 3695 (Fam), per Keehan J

- Sibling group of four children (18m-7 years of age). Proceedings issued; the children were separated into two placements. Only prospects of keeping the children together was to rehabilitate them to M's care.
- Court had to balance the risk of harm arising from the parents' 'separation' and consequent risk to the children against the harm of separation
- Held that the children should be rehabilitated to their mother's care, notwithstanding the risks

A, B, C, D and E (Children: Placement Orders: Separating Siblings) [2018] EWFC B11

Sibling group of five children (1-11 years of age).  
Youngest child placed separately, all in foster care.

- The Court refused to endorse the LA's care plans
- It was accepted that finding an adoptive placement for all four younger children was unrealistic
- It was accepted that finding an adoptive placement for all four younger children was unlikely
- Consultant child and adolescent psychologist had recommended that the priority is to identify high-quality placements with carers who are able to meet the children's individual needs

- Psychologist also identified that inter-sibling contact would be particularly important if the children were separated from one another
- Referring to Re S-C, whilst understandable that the Court might be reluctant to give general guidance, the Court has the power to provide a bespoke solution to a sibling group
- The prospect of the five children in this case being in five separate placements, “absent compelling justification, should not be countenanced”
- Options to the Court: either make the Placement Orders and place trust in the LA; or refuse the application, and require the LA to return once placements have been found

- Adoption was the right care plan for the children. Not appropriate to make Care Orders and for the youngest children to remain in long-term foster care
- On balance, the Court made Placement Orders
- Still anxious that the LA may change the care plans, the Court placed trust in the IRO to refer the matter to CAFCASS if appropriate

## Re B (A Child) (Care Proceedings) [2018] EWCA Civ 20

- Older sibling was adopted. When the baby girl was born, care proceedings were instituted. Long-term placement options were to place with the father's cousin or to place with the older sibling's adoptive carers
- Court made Care and Placement Orders
- On appeal, the decision to place with the adopted sibling was upheld
  - Judge correctly recognised that a kinship placement was viable and realistic
  - Entitled to find that the balance tipped in favour of placement with the adopted sibling, on the totality of the evidence, bearing in mind the s.1(4) ACA 2002 checklist

# Inter-sibling contact

If not placed together, post-placement inter-sibling contact is key

Section 1(f), Adoption and Children Act 2002: courts and adoption agencies must consider the relationship the child has with relatives, including the likelihood of any such relationship continuing and the value to the child of its doing so, and the wishes and feelings of any of the child's relatives regarding the child

Adoption Agencies Regulations 2005: child's permanence report must include information on the relationship with any brothers or sisters



# Considerations regarding contact

- What is the purpose of the contact?
  - Assess each child's individual development
  - What is the nature of the sibling relationship currently?
- What are the logistics for contact?
  - Who is to be involved in the contact?
  - How to safeguard 'safety' of placement?
- How does contact impact on permanency options?
  - Does contact limit the pool of possible long-term carers?



# Birkbeck, UOL Research

- Research, published 1 November 2018, indicates that other factors routinely outweigh the importance of inter-sibling contact
  - Focus is on blood relatives rather than, for instance, step-siblings or foster siblings, despite the importance to children of these relationships
  - Assumption that, if a child is placed for adoption, contact with birth relatives (including siblings) will be almost impossible to sustain
  - Reluctance to use existing legal measures to order contact between separated siblings – usually left to adopters and local authorities to determine



# Orders for inter-sibling contact

Re A (Children) [2013] EWCA Civ 1611

Appeal against Placement Orders made in respect of the two youngest children of a sibling group, where the Judge had made openness to promoting inter-sibling contact between the adopted children and their older siblings a pre-requisite for approving prospective adopters

- Appeal allowed: should not have dispensed with parental consent to make the Placement Orders as the children's welfare did not require this
- S.26 ACA order for contact would have survived had the Placement Orders not been overturned on appeal



## A, B, C, D and E

- Should the 11-year-old child have contact with his birth mother and grandmother – and/or siblings who were placed for adoption?
- The Court prioritised contact between the oldest child and his mother and grandmother - however, if this were to break down, then LA should consider restoring contact between the siblings, with the assistance of the IRO keeping this under review
- Post-adoption inter-sibling contact between the adopted children should be underpinned by an Order under s.26 ACA 2002 – by agreement

# Conclusions

- Is enough being done to assess sibling relationships?
- Courts will require compelling evidence for separating siblings, especially the more fragmented the sibling group is to become
- Great emphasis on keeping children together, but, in reality, is the Court placing sufficient weight?
- Insufficient consideration of wider sibling relationships – beyond biological links
- The quandary over post-placement contact

