



PUMP COURT

CHAMBERS

Placement Orders: Contact

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- Sections 26 & 27 Adoption and Children Act ('ACA') 2002
- Section 51A ACA 2002
- Public Law Working Group: Adoption Sub-Group Recommendations for Best Practice in respect of Adoption, November 2024
- ***Re S (Adoption: Contact) [2025] EWCA Civ 823***

Section 26(1)

- On making of placement order (or placement of a child who is less than 6 weeks old)
 - any contact provision in a s.8 child arrangements order ceases to have effect
 - any order under s.34 CA 1989 ceases to have effect
 - any activity direction is discharged

Section 26(2)

- While placement order is in force or a child is placed for adoption
 - no application may be made for a contact order under s.8 or s.34
 - the court may make a contact order under this section

Order under s.26(2):

- an order requiring the person with whom the child lives, or is to live
- to allow the child to visit or stay with the person named in the order
- or for the person named in the order and the child otherwise to have contact with each other

Section 26 – who may apply

Section 26(3):

- the child
- the adoption agency
- parent
- guardian
- any relative (grandparent, brother, sister, uncle, aunt, whether of full blood or half-blood, or marriage or civil partnership – s.144)

...

Section 26 – who may apply

s.26(3) continued:

- any person in whose favour there was an order for contact under s.8 or s.34 CA 1989
- any person in whose favour there was a ‘live with’ order
- any person who had care of the child pursuant to an order made under the inherent jurisdiction
- any person who has the leave of the court

Section 26 - applications

- Procedure for applications set out in Part 14 FPR 2010

ALSO

s.26(4):

- When making a placement order, the court may on its own initiative make an order under s.26

Section 27(1)

- Order under s.26 –
 - has effect while the adoption agency is authorised to place the child for adoption, or the child is placed for adoption
 - may be varied or revoked by the court on an application by the child, the agency or a person named in the order

Section 27(2)

- Adoption agency may refuse to allow contact that would otherwise be required by virtue of a s.26 order if –
 - a) it is satisfied that it is necessary to do so to safeguard or promote the child's welfare, and
 - b) the refusal is decided upon as a matter of urgency and does not last for more than 7 days

Section 27(3)

- Regulations may make provision as to
 - a) steps to be taken by an agency which has exercised its power under subsection (2)
 - b) the circumstances in which, and conditions on which, the terms of a s.26 order may be departed from by agreement
 - c) Notification by an agency of any variation or suspension of arrangements made for contact (otherwise than under an order)

(Adoption Agencies Regulations 2005 (SI 2005/389), para 47)

Section 27(4)

- Before making a placement order the court must –
 - a) consider the arrangements which the adoption agency has made, or proposes to make, for contact
 - b) invite the parties to the proceedings to comment

Section 27(5)

- An order under s.26 may provide for contact on any conditions the court considers appropriate

Scope of s.26

- An order under s.26 covers only the period from the making of the placement order to the making of an adoption order
- When the court is making or has made an adoption order, s.51A ACA 2002 applies
- Unlike s.26, an application for a contact order under s.51A may only be made without permission by the (prospective) adopters or the child
- Everyone else needs permission of the court
- The only order the court can make on its own initiative is one prohibiting contact (s.51A(6))

Public Law Working Group

- Chapter 1: Adoption and contact
- Main recommendation [42]:

[...] there should be a tailormade approach to the issue of contact for each adopted child which includes and promotes face-to-face contact with important individuals in that child's life if it can be safely achieved and is in the child's best interests."

- Issue of contact needs to be actively considered throughout the child's minority (and beyond)

Public Law Working Group

- Lectures given by Sir Andrew McFarlane in 2017, 2019, 2023 & 2024
- Research by Prof Elsbeth Neil and others at the University of East Anglia about contact with birth families following adoption
- History of adoption from relinquishing young babies until the 1970s to older children being placed for adoption as a route out of the care system from the 1970s onwards

Public Law Working Group

- Message from McFarlane P lectures that orders for contact made under s.26 can set the template for contact going forward and this will be an important ‘known known’ about the child to be taken on board by any potential adopters
- The need for contact with the birth family ought not to be seen in a separate category from other needs of the child

“It is therefore important that judges and magistrates give priority to the determination of contact arrangements when making a placement order.” [57]

Public Law Working Group

- Issues influential in PLWG's thinking [65]:
 - i. Considerable evidence that transparency and openness around the circumstances and experiences of the adoptee's birth family is beneficial to an adopted child
 - ii. Purpose of contact post-adoption for the adoptee is to help them understand their experiences and develop a sense of identity – existing relationships with birth parents must change to take into account their different role
 - iii. Separating siblings can lead to an enduring sense of loss

Public Law Working Group

- Issues influential in PLWG's thinking [65]:
 - iv. Strong indicators that face-to-face contact helps adoptees to develop a sense of identity, accept the reasons why they were adopted and move forward with their lives
 - v. However, ensuring that contact is safe for the child is pivotal to positive outcomes
 - vi. Communication with and understanding from the parties involved in contact is an important component in its success

Public Law Working Group

- Issues influential in PLWG's thinking [65]:
 - vii. Despite research indicating the benefits of face-to-face contact, the overwhelming majority of cases continue to recommend letterbox only contact – where there is direct contact, it often happens without a formal agreement in place
 - viii. Letterbox contact can prove problematic – a high number of arrangements stall as a result of one or both parties failing to maintain the arrangement
 - ix. A shift in mindset by professionals and strong guidance from the judiciary can bring about a change in approach

Public Law Working Group

- Position of birth families needs to be addressed:
 - Birth parents may find it hard to engage in conversations about post-adoption contact when contesting proceedings and seeking child's return
 - support, counselling and guidance for birth parents needs to be carefully thought out and needs to be available not just before and during proceedings but after the decision is made and once they have had time to process
- The views of birth parents and adopters may change over time

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- Change in emphasis by social work practitioners, guardians and judges required
- Role of adoption social worker key
- Change of approach needs to be coordinated
- Digital innovations in respect of post-adoption contact – digital platforms for letterbox contact

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- General recommendations
 - Need for a sea change in the approach to face-to-face contact
 - Consistent training for prospective adopters
 - Ongoing training for social work practitioners and lawyers as to benefits of open adoption
 - Signpost birth parents to independent support to enable them to understand how they can continue to be involved through contact – from the moment adoption is identified as a possible outcome

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- More detailed recommendations –
 - Pre-proceedings, including need for a genogram highlighting important relationships
 - During proceedings, including the need to consider the full range of contact options, not just letterbox
- Appendix B to Chapter 1 contains example contact agreements

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- Additional recommendations, including
 - settling in letters
 - adopters and birth family meeting
 - later life letters from birth family
 - life story books
 - post adoption agreements
 - continued line of communication between adoption social worker and birth parents
 - balanced approach in documents shared with prospective adopters
 - periodic reviews of contact plan post adoption
 - direct contact to continue in early permanence placements
 - named social worker to approach for letterbox contact
 - separated siblings to be given information

Re S (Adoption: Contact) [2025] EWCA Civ 823

- Hearing 27 March 2025
- Judgment 1 July 2025
- Given by McFarlane P
- Association of Lawyers for Children ('ALC') and CoramBAAF intervening

Re S - Facts

- Two boys: R (8) & S (2)
- S, then a few months old, suffered head injuries and rib fracture
- Findings of fact:
 - injuries caused by F
 - F beat R
 - F impatient and forceful in handling both boys
 - M aware of F's behaviour and failed to protect

Re S – Facts

- After findings, parents said they separated
- Court ordered examination of phones
- Phones set back to factory settings before examination
- R and S in separate placements throughout
- At final hearing, M sought to care for both boys

Re S at First Instance

- Findings at welfare stage:
 - extensive contact between M & F after ‘separation’
 - M & F sought to conceal this by returning phones to factory settings
 - M & F gave a wholly dishonest account
- Care orders for R & S
- Placement order for S

Re S at First Instance

- Plan for R long-term foster care with ongoing direct contact with M & F
- Evidence that S suffered mild developmental delay
- Long-term effects of head injury unknown
- CPR for S recommended
 - annual letterbox contact with M and F
 - indirect contact between S and R with consideration of direct contact up to twice a year

Re S at First Instance

- Family finder evidence that primary focus would be on finding adopters willing to take on a child with challenging disabilities and an uncertain prognosis
- Thought that such adopters may be more open to direct sibling contact
- But prospective adopters often put off by contact with a sibling who was to remain in contact with the parents

Re S at First Instance

- M & F invited the court to make an order under s.26 ACA 2002 for direct sibling contact twice a year
- LA & CG not in favour of s.26 order
- CG did not consider that making order better than no order
- HHJ Hayes KC declined to make s.26 order on the basis that doing so would limit the pool of prospective adopters

Re S - Law

- Section 1 ACA 2002 applies in full to any decision re contact under ss.26 & 27
- This includes consideration of the child's welfare throughout his life
- Adopting comprehensive review of legal background in Baker LJ's judgment in *Re R (Children)* [2024] EWCA Civ 1302, including 'changing nature of adoption', statutory provisions, case law and other 'recent developments'
- Recommendations of Public Law Working Group

- 3 key authorities on contact at the placement order stage:
 - *Re P (Placement Orders: Parental Consent)* [2008]
EWCA Civ 535
 - *Re R (Children)* [2024] EWCA Civ 1302
 - *Re D-S (A Child: Adoption or Fostering)* [2024]
EWCA Civ 948

Re S - Law

- Section 26 order made in *Re P* and left in place on appeal against the placement order
- No section 26 order made in *Re D-S*, where placement order made on appeal, judge at first instance having refused to do so
- In *Re R*, CoA made placement order and order under section 26 for direct sibling contact 6 times per year and included a recital that sibling contact at this level should continue after adoption

- Distinction to be drawn between:
 - cases where continuing direct sibling contact is considered necessary for the child's future welfare; and
 - cases where the achievement of an adoptive home is the overarching goal with future sibling contact being desirable, as opposed to a prerequisite [32]
- Each case will fall to be determined on its own facts [33]



Re S – Law

- Clear shift over recent years in the direction of travel in understanding the approach to be taken to postadoption contact
- How this shift should be reflected, if at all, by the court in making orders under s.26 is a difficult question
- Difficulty in part arises from binary nature of order or no order where factors are subtle and, in respect of attitude of specific potential adopters, a known-unknown



Re S - Law

- Court should consider whether, in the particular case before it, would-be adopters are likely to be deterred if an order is made
- CoA concerned to be told that information on online family-finding network simply records requirement for 'ongoing contact' and does not distinguish between parental contact and sibling contact
- Would be wrong for the risk of deterring potential adopters to be the determining factor in every case



Re S - Law

- Responsibility of the court to make orders for contact if they are required to meet the child's welfare needs, as determined under s.1 ACA 2002
- Position of potential adopters should not obviate the court's responsibility to set the template for contact at the placement order stage
- Duty under s.27(4) to consider proposed contact arrangements is important and applies in every case, whether or not a formal contact application has been made



Re S - Law

- Section 26 decision must look to the place contact in the crucial transitional phase of placement for adoption will play in the child's life-long welfare requirements
- May be helpful for professional evidence to be set out in a way that offers a 'road map' for contact going forward, through the initial placement stage and on to the long-term future

- May be helpful to divide the period to be covered by any s.26 order into –
 - phase 1: up to the point where a placement has been identified; and
 - phase 2: thereafter



- Order might expressly provide that at the end of phase 1 an application may be made to vary or revoke the order

OR

- Phase 2 might simply identify the court's endorsement of the principle that some level of direct contact should continue, or set a bare minimum, without being unduly prescriptive



Re S – Law

- Need for a bespoke analysis of the future contact arrangements in each case for each child cannot be too firmly stressed
- An order which recognises the importance of continuing contact but allows for a significant degree of flexibility might be the most appropriate means of meeting the child's needs in some cases
- In such cases, the court might record its views, and its endorsement of future contact plans, in a recital to the placement order

Grounds of appeal

1. Decision contrary to evidence that sibling contact would be the best outcome after adoption
2. Judge failed to properly weigh benefits of continuing contact against the reluctance of prospective adopters
3. Judge wrong to hold that leaving the contact decision to professionals and adopters would not disadvantage the children, as evidence that contact arrangements were rarely achieved in this way

Grounds of appeal

4. Judge failed to take account of the ability to vary or discharge the order
5. Judge gave too little weight to the need to reduce the impact on family life to that which is necessary and that the s.26 order was necessary to make the interference with family life proportionate
6. Judge erred by juxtaposing contact as a welfare aspiration against adoption as an imperative necessity

Decision

- Valid criticism that the judge focussed solely on the detrimental impact that a s.26 order was likely to have on the prospect of finding a family for S
- Reference to s.1(4)(c) & (f)(i) ACA 2002 would have brought focus on weighing the importance of S's relationship with R in the overall welfare balance
- Reference to the benefit to S of continued contact with R only in the final paragraph

Re S - Appeal

- HOWEVER:
- Danger for an appellate court to be drawn too closely into forensic dissection of a judgment
- Appeal is against the order made, not the judgment [82]
- Where judgment discloses a fundamental error of law or fact, resulting order likely to be vulnerable on appeal
- BUT in the present case, the judge was exercising judicial discretion on a finely balanced welfare issue

Re S - Appeal

- Total agreement before the court as to planned contact arrangements until placement and goal for contact after
- Only question whether to make an order
- Therefore, not necessary for the judge to determine any issue concerning the benefit, or otherwise, of continuing contact between R and S

Re S - Appeal

- In that context, an overall review of the principle of contact was not required and the judge's focus on the detriment from making an order appropriate
- Secondly, judge expressed full confidence in the social work team's commitment to contact and its ability to work with potential adopters without an order

Re S - Appeal

- Thirdly, because of S's uncertain neurological prognosis, evidence that it would be harder to find adopters
- In that context, potential for an order to have some chilling effect relevant factor to which the judge was entitled to attach weight

Re S - Appeal

- Finally, as sole live issue whether agreed arrangement should be embodied in an order, s.1(6) ACA 2002 prevented the judge from making an order unless making the order would be better for the child than no order
- Judge was fully immersed in the detail of the case and delivered two thorough judgments
- In the circumstances, simply not possible to hold that the judge was wrong
- Appeal dismissed

Takeaways

- Court and professionals must focus on contact arrangements proposed once placement order is made
- Consider each case on its own facts and each child individually
- Argument that a contact order reduces the pool of potential adopters is not universally determinative
- Evidence from social worker and guardian should address the 'road map' for contact during placement search (phase 1) and beyond (phase 2), applying the ACA 2002 welfare checklist and the child's welfare throughout his life
- Direct sibling contact likely to be much more common than direct contact with birth parents

- Public Law Working Group report and appendices
<https://www.judiciary.uk/guidance-and-resources/wholesale-reform-to-adoption-process-is-needed-says-public-law-working-group/>
- Coram BAAF summary: <https://corambaaf.org.uk/updates/public-law-working-group-report-chapter-summaries-and-analyses>
- Sir Andrew McFarlane P lectures:
 - Part 1: <https://www.judiciary.uk/speech-by-sir-andrew-mcfarlane-adapting-adoption-to-the-modern-world/>
 - Part 2: <https://www.judiciary.uk/speech-by-the-president-of-the-family-division-adapting-adoption-to-the-modern-world-part-two/>
- Contact after Adoption Study: <https://www.uea.ac.uk/groups-and-centres/centre-for-research-on-children-and-families/contact-after-adoption>