Call for Views: Review of Contact Arrangements for Children in Care

Call for Views Response Form

Closing date: 31 August 2012

Your comments must reach us by that date

Please send responses to: adoption.reform@education.gsi.gov.uk
Information provided in response to this call for views, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential. [ ]

Reason for confidentiality:

Name: Madeleine Tearse
Organisation (if applicable): The Fostering Network
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London SE1 8HA

If you have an enquiry related to this call for views please e-mail: adoption.reform@education.gsi.gov.uk. Please be aware we can only respond to enquiries relating to the call for views exercise from this mailbox account.

For all other enquiries please contact the Department via the ‘Contact Us’ page on the DfE website: www.education.gov.uk
Please mark the category which best describes you as a respondent

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<tr>
<th>Category</th>
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<tr>
<td>Child/ Young person</td>
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<td>Adopted child</td>
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<td>Birth relative (please specify below)</td>
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<td>Prospective adopter</td>
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**Additional note**

Please note that this is an organisational response, not an individual response, from the Fostering Network. Our response focuses mainly on questions related to children in foster care. Our response also takes account of information from Fosterline which is funded by the Department for Education and run in association with the Fostering Network.
CONTACT ARRANGEMENTS FOR CHILDREN IN CARE

1. We want to ensure that all professionals involved in making contact arrangements give careful and critical consideration to the length and frequency of contact, particularly for infants.

**Should we strengthen regulations and guidance so that contact arrangements are purposeful and reflect the needs of the child?**

Yes x

Please comment further, including any suggestions for alternative proposals:

a) We consider that the consultation document does not demonstrate evidence that there is a problem which would demand a change of legislation. There may, however, be scope for strengthened regulations and improved guidance.

In our view the Children Act 1989 is robust. The paramountcy of the welfare of the child enshrined in the Children Act 1989 and the shift this legislation encapsulated from parental rights to parental responsibilities should underpin all decisions made about a child who comes into care, including contact arrangements.

b) We certainly agree that all contact arrangements should be purposeful and should reflect the needs of the child. We are clear that the needs of each child must be individually determined, and that a “tick box” approach will not serve children well. Contact should be seen as dynamic, and the question ‘Is this in the best interests of the child?’ should be clearly applied to contact by the court, by the responsible local authority and CAFCASS Children’s Guardian just as consistently as it is to all other aspects of care proceedings.

c) We are concerned that when decisions are made about contact while children are subject to care proceedings, often the views of the foster carers who are looking after the child are not sought, or taken into account and that as a consequence arrangements which are not in the best interests of the child are set up. The impracticality of the arrangements and their impact on the daily lives of the child and foster carers are not sufficiently considered when the arrangements are agreed between the parties or by the court.

d) Contact is a major issue and concern for foster carers, fostering services, birth parents and relatives and children. Much more attention needs to be placed on the quality of decision making and more time needs to be allowed for this, as demanded by the complexity and importance of most contact arrangements. We believe that, as with other aspects of poor social work practice, improved social work training and supervision would bring about improvements. Also, good understanding of the law is essential, and regulations and guidance can be helpful in this respect.

e) We would be pleased to see strengthened guidance to the courts, local authority social workers, IROs and CAFCASS emphasising the importance of being specific about the purpose of contact arrangements and the needs of the child. Guidance should remind them that contact needs to be revisited at every LAC review and before
each court hearing. Impact and risk assessments also need to be carried out by social workers. It should be a requirement that the views of the child should be sought, in keeping with the child’s age and understanding. Foster carers are often required to facilitate contact with birth parents, and should be fully involved as part of the team around the child in the proposal for, and assessment of, contact arrangements. Transport, venue, payment of costs and similar issues should be clarified in writing and reviewed periodically.

It would be useful for guidance to ensure that foster carers are consulted on the frequency, days and length of contact before arrangements are settled. This means that children’s social workers should consult them before presenting recommendations to court. It is essential that the needs of the foster carer’s family and any other looked after children are taken into account, especially as to what constitutes “reasonable” arrangements. Fosterline hears from foster carers who have raised concerns (for instance about the impact of contact on children, about arrangements which are not practical but could be managed with some small changes, about meetings timed to conflict with other activities that the child would like to do) and who have tried to represent children’s wishes and feelings to their social worker/responsible local authority. Too often, the response to a request for contact to be reviewed, for arrangements to be more flexible, or to be reduced, is that the contact arrangement 'can't be changed - because the court has ordered it'.

e) Although it is sometimes argued that the parents’ needs, rather than the child’s welfare, predominate in some contact arrangements, this should never be the case, and this would not be supported under the present law. Although the Human Rights Act 1998 has demanded some adjustment to the overriding emphasis on the child’s welfare contained in the Children Act 1989, this has mainly affected procedural issues concerning parental representation, rather than determinations.

f) A specific concern we have is contact being renegotiated and increased in advance of court hearings, an issue reported to Fosterline. This may be stressful and confusing for the child, and seems illogical particularly in cases where the likely decision is that a child will not return to their parent/s. We would like local authorities to be confident about presenting a plan for contact to the court, that is genuinely child-centred, rather than one aimed at mitigating parents' (and their solicitors') objections.

On the other hand, we would welcome clear guidance that would support children's social workers and independent reviewing officers to change contact arrangements when this would be in the child's best interests.

We hope this will be addressed through training, supervision and guidance.
2. We want to ensure that arrangements are appropriate to their age and stage of the child and specifically infants, ensuring they are not, for example, subject to long journeys. Each case will need to be decided on an individual basis, however we should like to propose that a starting point might be that children under two are rarely exposed to contact more than two or three times a week and for sessions of no more than two hours.

**Should we strengthen statutory guidance to ensure more consideration is given to the purpose of contact for infants?**

Yes x

**Please comment further, including any suggestions for alternative proposals:**

a) We recognise that there are particular issues affecting infants, who need consistency of care to develop attachment functions. We share concerns about very frequent and intensive contact arrangements for babies and very young children; Fosterline hears of some cases where this is required 5-6 times per week, and one recent caller even provided 7 day contact per week. Contact arrangements should recognise the primacy of the foster carer’s relationship with the child at this early stage. At the same time, we are unclear as to the basis for the proposed prescription concerning frequency and length of contact – this should be examined further before any such guidance is issued. Above all the quality of contact should be given prominence alongside quantity. Contact needs to be properly organised and supported – this should apply to children of all ages including infants.

b) Capacity to deliver contact is also a factor. In law, contact has to be “reasonable”. The concept of “reasonable” contact should be comprehensible to trained professionals.

c) We agree that distance is a factor affecting reasonable contact arrangements. Principally we would like the Department to emphasise the need to provide sufficient local placements, particularly for children in cases where court proceedings have not yet reached a final determination, or where the care plan involves the child returning to parental care, or recognises the child’s need for contact with the parents.

3. To ensure the role of Independent Reviewing Officer in scrutinising contact arrangements, as part of the care planning process for the child, is sufficiently emphasised,

**Should we look again at guidance for Independent Reviewing Officers?**

Yes x
4. We think that the duties on local authorities to allow children in care reasonable contact with their birth parents and to promote contact for looked after children, may encourage a focus on the existence and frequency of contact arrangements, rather than on whether they safeguard and promote the best interests of the child. Removing these duties would remove the perceived presumption of contact in all cases and help local authorities to take a case-by-case decision about the best contact arrangements for the individual child.

**Should we remove the duties on local authorities in primary legislation to allow children in care reasonable contact with their birth parents and to promote contact for looked after children?**

No x

**Please comment further:**

a) We strongly disagree with the proposal that these duties should be removed. Removing the duties could equally be said to introduce a presumption against contact, and this would be wrong.

b) Furthermore, we do not agree that there should be any change in the law without far more depth of analysis than is contained in these consultation proposals; this would have to take account of contact with relatives other than parents, contact with siblings, contact with friends, former carers etc.

c) We agree that local authorities need to take a case-by-case decision; however this is implicit in the present legislation. It is part of the responsibility of social work professionals and the courts to determine the child’s welfare in relation to contact.

The Children Act 1989 clearly states that contact may be inappropriate in some cases: **S.34 (4) On an application made by the authority or the child, the court may make an**
order authorising the authority to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) and named in the order.

d) Restriction of contact is governed by the principle of the welfare of the child and by that of “reasonable” contact, both contained within the Children Act 1989.

Prohibiting contact is far more draconian than restricting it, and must not be a convenient or default option. Prohibition demands a far higher threshold of justification in terms of the welfare of the child (Children Act 1989) and in relation to proportionality under the European Convention on Human Rights. This is how it should be.

e) The Children Act 1989 applies to all children in care, many of whom will be returned to the care of their birth parents in due course. A still greater number will maintain contact with their birth parents in a way that is compatible with their welfare, and will wish to do so. Most children in care will be able to express a view about contact with their birth parents, which should be taken into account. For such children, it is essential that reasonable contact is promoted.

5. Alternatively, we could look to ensure that arrangements are made in the child’s best interests, taking account of views and wishes of all concerned, and aligned with the longer term plans for the child.

Should we replace the duties on local authorities in primary legislation to allow children in care reasonable contact with their birth parents and to promote contact for looked after children, with a new requirement that local authorities consider contact arrangements that have a clear purpose documented in the child’s care plan?

No x

Please comment further:

The present duties most definitely should not be replaced. Promoting reasonable contact is not incompatible with a requirement to document the purpose of contact in the care plan, so this requirement could be added in guidance; it is not a question of either/or. The care plan is all the more important because it is necessary to take account of the impact of contact decisions on the child not just in the present but also on the child in the future. The nature and effect of contact is also likely to change as the child advances in age.

Recording the purpose of contact in the care plan will also help to ensure that children in care and their parents do not assume that because contact takes place there is also a prospect of a return to parental care where this is not intended.

There already exists a requirement to ensure that contact arrangements are made for the child’s welfare and best interests:
a) Under present legislation there is a clear duty to secure the welfare of the child (Children Act 1989 s.1. “The child’s welfare shall be the court’s paramount consideration”).

b) A duty to secure the child’s best interests is demanded under the UN Convention on the Rights of the Child to which the UK is a party. Article 3 states “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Article 9(3) of the UNCRC is clear: “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests”. The right of the child to express his/her views and to have them taken into account is also clear (article 12).
CONTACT ARRANGEMENTS ONCE ADOPTION IS THE PLAN

6. We want to ensure that contact arrangements change as a child's circumstances change and that they are consistent with plans for the child's future. There are three key points at which contact arrangements need to be considered and reassessed:

   (a) when the local authority makes a decision that a child should be placed for adoption, but no placement order has been made;
   (b) at placement order; and
   (c) when the child is placed with prospective adopters.

Should we look at existing guidance and regulations and consider where and how these can be strengthened to ensure a formal review and a clear decision making process about contact takes place at each of the three points?

Yes

Please comment further:

As a matter of principle, contact arrangements should continue to be based on the welfare of the child, not the convenience or needs of the prospective adopters, foster carers or parents.

Foster carers need to be much more fully informed as to how court proceedings are going. When the interim care plans are for permanency/adoption then foster carers play a key part in managing contact and the expectations of the child. Generally speaking, whilst the court has a duty to ‘consider’ interim care plans and contact arrangements, the courts cannot micro manage these, especially if the hearing is not contested, which is frequently the case during the interim stages.

One issue we want to raise is contact with foster carers. Many foster carers express the view that they could have a genuine and useful role to play in ensuring a smooth transition and supporting children (and adopters) after the children have moved on, but find that contact quickly ceases at the point the adoption placement is made. This can be traumatic for children; a sudden and abrupt ending of a close relationship and can lead to children being confused about the reasons, and feeling they have been rejected or that it is their fault. Preparatory groups for prospective adopters always include their attitudes to contact, though usually this focuses on the birth family. It would be useful for guidance to include something on adopters being prepared to maintain relationships with previous foster carers for as long as the children need it, and to ensure that endings are thought through.

In general we consider that reasonable contact arrangements with the parents should be maintained unless these are contrary to the welfare of the child.
7. We want to minimise the risks of harm for the child as a result of badly planned and inappropriate contact arrangements.

Should we introduce a presumption of 'no contact' unless the local authority is satisfied that contact would be in the best interests of the child?

No x

Please comment further

We have addressed this question under 5.

8. We want birth parents to gain the court's permission to apply for contact, rather than being able to make a direct application. The court

Should we introduce a 'permission' filter for birth parents, requiring them to get permission from the court to apply for contact with a child?

No x
Please comment further, including any suggestions for alternative proposals:

We do not have information that suggests this is a current significant difficulty and therefore see no need to change the current law.

9. We want potential adopters views to be taken into account at an early point when making contact arrangements.

Should we introduce a provision to explicitly seek the views of the potential adopters at an early point in relation to contact at the point of the placement order?

Please comment further:
10. We want to give adoptive parents recourse where informal contact arrangements were causing difficulties.

Should we provide that the court can, on application for an adoption order, make an order for no contact?

Please comment further, including any suggestions for an alternative proposals:

11. In addition to introducing a “no contact” order, we could raise the bar for any birth parent to make an application for a contact order. Criteria for granting permission already exists therefore we will explore how this might be strengthened.

Should we amend legislation to create a new more demanding ‘permission filter’?
12. What additional support do social workers and family justice professionals need to ensure their own practice and recommendations are informed by evidence about the positive and negative effects of contact for children who are adopted?

Please comment further:

13. In what ways should we strengthen the training about contact for prospective adopters as part of the new adopter assessment process?
14. What additional post adoption support could be offered, to help adoptive parents support their child to understand how to make or stop contact with their birth family?

Please comment further:

15. How can unsolicited contact, either from a birth parent or from an adoptive child to their birth family, be better managed?

Please provide any examples of good practice, particularly managing the use of social media.
Please comment further:

16 Please use this space for any other comments you would like to make on the review of contact arrangements for children.
Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Completed questionnaires should be sent to the address shown below by 31 August 2012

Send by e-mail to: adoption.reform@education.gsi.gov.uk

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