

Briefing Note - Contact Issues

Where a child is in the care of the Local Authority then the Local Authority must allow the child reasonable contact with:

- (a) His parents
- (b) Any Guardian or Special Guardian
- ba) Any person who has parental responsibility
- (c) Any person with a Residence Order (or CAO re. residence)
- (d) Where a person had care of the child via a High Court Order [s34(1) Children Act 1989].

The contact on offer must be 'reasonable' which has been interpreted to mean that if it is not agreed between parents and Children's Services then it needs to be *objectively* reasonable [Re. P (Minors) (Contact with children in care) (1993) 2FLR156].

Objectively reasonable means that:

- A Social Work professional faced with the same set of facts would make the same decisions in the circumstances.

If a person does not fall under categories a – d but wants contact i.e. a relative, friend or other connected person then Children's Services should try and promote contact: '*unless it is not reasonably practicable or consistent with the child's welfare*' [Sch 2 Para 15 Children Act 1989]. A decision to allow or not allow contact with persons falling under these categories should only be made on completion of an assessment of the child's contact needs taking into account, as a priority, the child's wishes and feelings.

Question 1 – What do we do if we need to stop contact temporarily because the Mother/Father has done something at contact that is objectionable and/or abusive?

Examples:

- Parent has said something to the child that is inappropriate
- Parent is whispering to the child and the supervisor cannot hear what is being said.
- Parent has shouted at the child/called the child names.
- Parent has been abusive to another parent or the contact supervisor.
- Parent has attended for contact under the influence of drink or drugs.

Answer –

Contact between a child in care and a parent can be stopped for up to seven days [s34(6) Children Act 1989] without a Court Order.

This is intended to be a reactionary mechanism to address some urgent issue that unexpectedly arose that relates specifically to safeguarding/welfare.

Seven days is the maximum duration that contact can be stopped without parental agreement or a Court Order.

In proceedings the Solicitor with conduct of the case and the Guardian should be informed without delay of the decision to stop contact for up to seven days and why it is being stopped. The Solicitor with conduct will communicate the information to the other Solicitors.

If contact is stopped for up to seven days then the law states clearly that Children's Services **must** give written notification (send a letter) to the following persons [*Reg 8: The Care Planning, Placement and Case Review (England) Regulations 2010*]:

- (a) The Child, unless it would not be appropriate to do so having regard to the Child's age and understanding,
- (b) Parents
- (c) Where, immediately before the care order was made, a person had care of the Child by virtue of an order made in exercise of the High Court's inherent jurisdiction with respect to children, that person,
- (d) Any other person whose wishes and feelings the responsible authority consider to be relevant, and
- (e) The IRO

The written notification must set out:

- (a) The decision
- (b) The date of the decision
- (c) The reasons for the decision
- (d) The duration of the decision (if applicable) and
- (e) Remedies available in case of dissatisfaction.

Be very clear about the reasons you are stopping contact as these reasons will be relied upon for any subsequent application under s34(4) for permission to refuse contact.

It is unreasonable to stop contact if there are logistical issues that do not relate directly to safeguarding/welfare i.e. there is no supervisor or the child is on holiday; in these scenarios parents should be offered alternative dates or make-up contacts for any missed contacts.

During a formal cessation of contact for up to up to seven days some/all of the following could take place:

- A meeting with the parent to discuss behaviour
- A Strategy Meeting to determine risk
- A new Working Agreement in relation to contact
- An additional supervisor or new venue

- New arrangements for contact that are safer/more beneficial for the child

Working Agreements:

- Should be cleared by Legal before being shared with the parent.
- In proceedings the Working Agreement should be shared with the parent's Solicitor by Legal.
- The Guardian/IRO should have input.

A decision to stop contact for longer than seven days should be a key decision recorded in writing. Legal should be immediately informed as contact cannot be stopped for longer than seven days without parental agreement or a Court Order.

Question 2 – What do we do if a parent has failed to attend contact on multiple occasions without good reasons or without informing Children's Services they cannot attend?

Answer –

In proceedings the Solicitor with conduct and the Guardian should be kept informed and their views obtained. Outside of proceedings the IRO should be kept updated.

If the case is in the Court arena then the Solicitor with conduct of the case will advise you.

If the case is not in Court then at first instance a warning letter should be sent to the parent stating:

- It is unreasonable to transport children for contact if the parent is not going to attend.
- The children are being disappointed (depending on their ages) by their parents' non-attendance.
- If there is a problem preventing the parent from attending contact then they must inform the Social Worker and hopefully a solution can be found.
- If further contacts are missed then consideration will be given to reducing the frequency of contact; a letter will be sent if this course of action is to be taken.
- The contact will be kept under review.

If more contacts are missed a second letter should be sent stating:

- As more contacts have been missed without good cause; contact is being reduced to the following [set out new arrangements]. *The parent should be given at least seven days notice of the reduction taking place.*
 - If you object to the new arrangements then please contact Children's Services to arrange a meeting.
 - A Solicitor can explain your options if you object to the changes.
-

Question 3 – what do we do if we want to reduce contact because we don't believe it is quality contact for the child?

Answer –

Contact should not be reduced on grounds of quality unless positive steps have been taken to improve the quality of contact such as:

- A new Working Agreement
- Feedback post contact on what was good/bad
- A parenting course
- A FSW or a Social Worker attending contact to help the parent engage with the child/help contact be better quality.

In proceedings the Solicitor with conduct and the Guardian should be kept informed and their views obtained before any steps are taken. Outside of proceedings the IRO should be kept updated.

The child's wishes and feelings should be given due weight and recorded in writing

Outside of proceedings a letter should be sent to the parent stating:

- The following has been done to try and improve the quality of your contact with 'x'.
- Unfortunately despite the assistance that has been put in place the quality of the contact is still poor because of 'x'.
- Contact is being reduced to the following [set out new arrangements] from 'x' date [notice should be given as to when the change will take place].
- The Children's Team believe that the contact offered is reasonable because of what has happened at previous contacts.
- The contact will be kept under review.

- If you object to these changes to your contact then you are advised to seek legal advice.
-

Question 4 – What do we do if a parent has failed to attend contact at all?

Answer –

The Solicitor with conduct and the Guardian/IRO should be kept informed and their views obtained.

A letter should be sent to the parent stating:

- Contact was offered but you have chosen not to attend. Further contact will not be arranged unless you contact Children's Services to arrange a meeting.
-

Question 5 – What do we do if something has happened that means that it is not safe for the child for contact to take place at all?

Answer –

Immediately inform the parent in writing that you are stopping contact for seven days under s34(6) whilst decisions are made about contact. Be very clear about the reasons you are stopping contact as these reasons will be relied upon for any subsequent application under s34(4) for permission to refuse contact.

It could be that indirect contact could be safely continued and this should be considered at first instance. It should be clear how long the indirect contact will continue for and a timescale should be set for re-starting direct contact. If no such timescale can be given then a Court Order should be given due consideration.

IF the parent is satisfied that indirect contact is sufficient then it may be the case that a Court Order is not necessary.

If the parent asks for direct contact and it cannot be safely facilitated then a Court Order will be necessary; this is the case whether the child is the subject of proceedings or subject to a final Care Order.

Immediately inform the Solicitor with conduct of the case/Legal and the Guardian/IRO if it is the case that contact has to be stopped.

Contact between a child and a parent cannot be stopped for longer than seven days without:

- a) Agreement with the relevant parent;
- or
- b) A Court Order under s34(4) Children Act 1989 for permission to refuse contact

A decision that all contact should be stopped should be a key decision made by the Operations Manager for the team and recorded in writing.

Legal will advise you as to whether an application to Court under s34(4) is the appropriate action. If an application is appropriate then a short statement will be necessary setting out in detail a) why contact is unsafe and b) why no measures that could be put in place would make it safe.

If the risk to the child can be alleviated by safeguards such as extra supervision, change of venue, change of supervisor etc. then a s34(4) Application may not be appropriate.

There need to be very strong grounds for supporting an Application under s34(4).

'It is an even more drastic thing to deny contact altogether and something which lies at the very extremities of the court's powers. Extraordinarily compelling reasons must be shown to justify an order under section 34(4) ...' The President of the Family Division Munby LJ **[Re K [2008] EWHC 540 (Fam)]**

S34(4) is a permissive Order i.e. it gives the Local Authority permission to refuse contact. Contact can be re-started at any time by Children's Services.

S34(6A) of the Children Act 1989 (as inserted by the Children & Families Act 2014) states that if a s34(4) Order has been granted then the Local Authority does not have to endeavour to promote contact between the child and that person for the duration of the Order.

Question 6 - What if the child is refusing to attend contact with a parent?

Answer -

The Guardian/IRO should be informed.

The Social Worker should meet with the child to establish why he/she is refusing to attend contact (a clear record should be kept of this meeting or any meetings, in writing, as they may need to be relied upon later should a Court application be made).

If there is a specific reason that the child is refusing to attend then attempts should be made to address issues to encourage the child to attend. A refusal could be linked to venue, other activities clashing with contact, who is attending or conduct of the parent amongst other reasons.

The parent should be kept informed in writing of the fact that the child is refusing direct contact and what the Local Authority is doing about it. The parent should be asked to write letters/send photos to the child by way of indirect contact. Copies should be kept of all correspondence as this may have to be relied upon should a Court application be made.

Mediation could be offered between an older child and a parent.

Consideration should be given as to whether the child would benefit from an Independent Advocate.

The child should be encouraged to use other methods of communication such as telephone calls, letters, photo exchanges and electronic forms of communication (only if this can be safely monitored).

The parent needs to be assured that Children's Services are doing everything possible to re-start direct contact. Indirect contact should be facilitated without delay if direct contact cannot take place.

Legal should be informed and advice will be given as to whether an application to the Court under s34(4) for permission to refuse contact is necessary considering all the circumstances.

The parent could make an application to the Court under s34(3) for contact with a child in care. In this scenario Children's Services would have to demonstrate that they had done and were continuing to do everything possible to encourage direct contact and had facilitated indirect contact in the interim.

All records of meetings with the child and correspondence with the parents would form part of the evidence before the Court hence why clear and comprehensive records should be kept.

As a child ages their ability to self-determine increases and this is the fundamental basis of 'Gillick' competency. In the words of Lord Scarman in the case of: Gillick v. West Norfolk (1985):

"parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision."

In the case of Court applications concerning contact the following applies:

- The Court would not accept the Local Authority stopping contact without just cause.
- The Court would expect the Local Authority to do everything possible to promote contact between an unwilling child and a parent.
- The Court would expect indirect contact to be actively facilitated if a child was refusing direct contact.

Notably the Court will give due weight to the wishes and feelings of children in relation to contact.

The Court will not force an unwilling child to attend direct contact against their will.

The Court will want assurances that the Local Authority will continue to encourage and offer contact and would facilitate it if the child wanted it to re-start.

Question 7 – What if a child doesn't want their parent to know:

- a) **That they are refusing contact.**
- b) **Why they are refusing to attend contact.**

Answer -

This is not a straightforward situation. It would have to be sensitively managed.

A child may state that they do not want their parent to know that he/she is refusing contact. The child may want to say that it is the Local Authority that is saying 'no' to contact. This stance conflicts with the Local Authority's responsibility to facilitate reasonable contact. The child must be told that the Social Worker cannot lie on their behalf and the parent will have to be told that the child is unwilling to attend rather than the Local Authority saying 'no'. It can be discussed with the child how best to explain to their parent what their views are.

If the child is refusing to attend contact but is too young to clearly articulate why they don't want to attend or have no explanation as to why they don't want to attend; then the Social Worker will have to be creative about trying different things to encourage the child to attend. The child should be asked to feedback on what was good and what was not good about any contacts they did attend. The Social Worker, foster carer, a sibling or another relative could be asked to attend some/all the contact to help the child.

If a child is refusing to attend contact because their parent is, for example, too clingy then how can the parent address the issue if they don't know what the issue is? Steps will have to be taken to sensitively discuss with the child that their parent needs to know what the issue is otherwise it cannot be addressed.

It would be reasonable in the above scenario to explain to the child that if x, y, z are put in place then it would hopefully solve the problem and get the child's agreement to attend contact on a trial to see if it better with x, y, z in place. It would be necessary to explain to the child that the parent would need to know why x, y, z was in place otherwise they would not understand why it was being put in place.

Imagine if a parent you were told:

SW – Ben doesn't want to see you.

Parent – Why?

SW – I can't tell you.

The above is unreasonable for the parent for obvious reasons.

Careful consideration would have to be given to a Gillick competent older child who is adamant that they don't want their parent knowing why they won't attend contact.

In this situation respect for the child's wishes needs to be weighed up against the parents' need to understand why their child is refusing to see them.

If given no explanation parents could not unreasonably surmise that contact is being frustrated by the Local Authority even if this is not the case. This is the kind of situation that would lead parents to an application for contact with a child in care.

There needs to be some negotiation with the child about the parent being told a *reason* for the lack of contact.

SFC

14/06/16