

Welcome

Siblings, contact and the law: an overlooked relationship?

Stand Up
For Siblings



An introduction to the morning

The organisers:

- Who we are and why we're here

The presentation:

- Siblings, contact and the law

Over to you:

- Discussion and future ambitions

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Hosted and organised by:

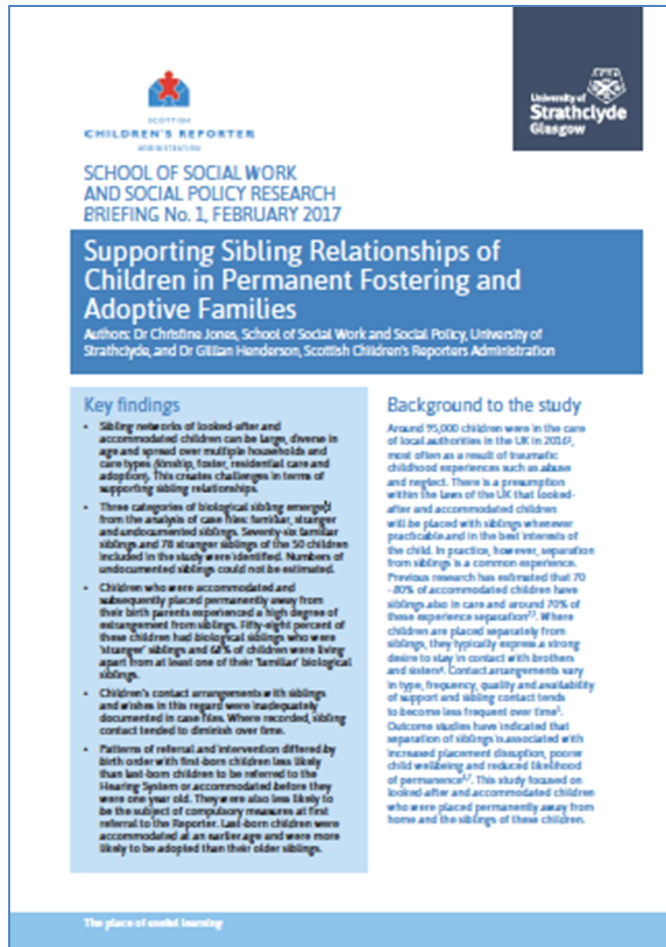
Stand Up For Siblings



Social work & social policy

Children, young people & families

What our research says:



- Sibling networks are large and diverse
- Sibling separation is common and cessation of direct contact as children move towards permanence is the norm.
- 7 in 10 sibling relationships become estranged
- This causes trauma and distress, particularly for older siblings who have had caring responsibilities.
- Sibling estrangement takes on a particular significance for younger children in adolescence.

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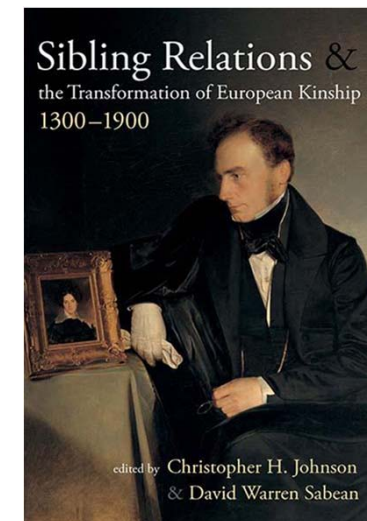
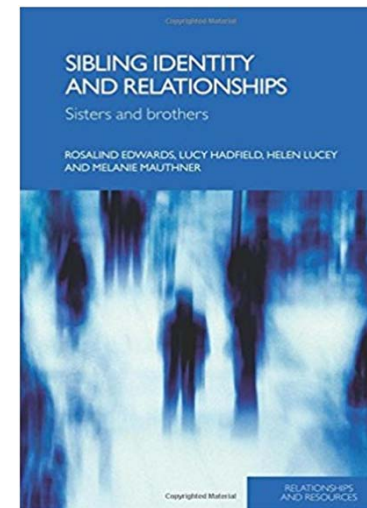
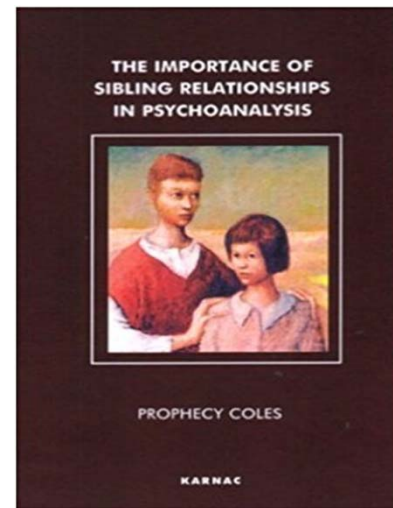
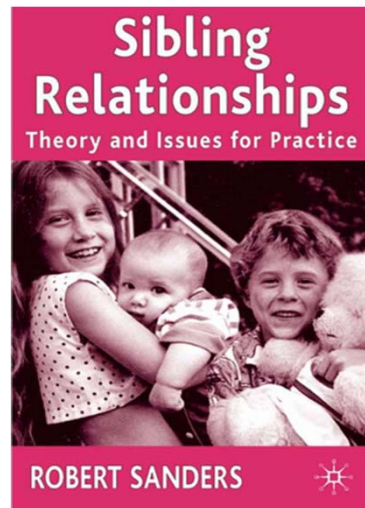
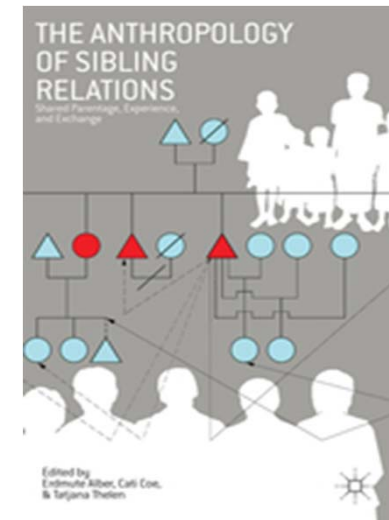
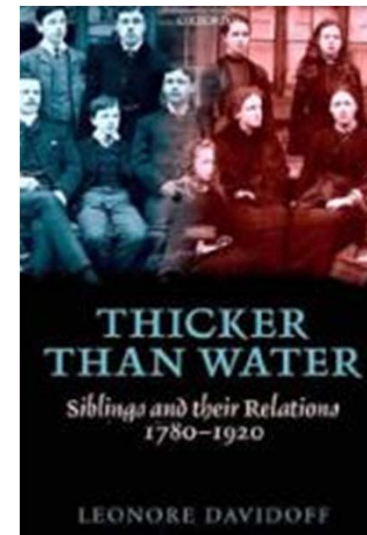
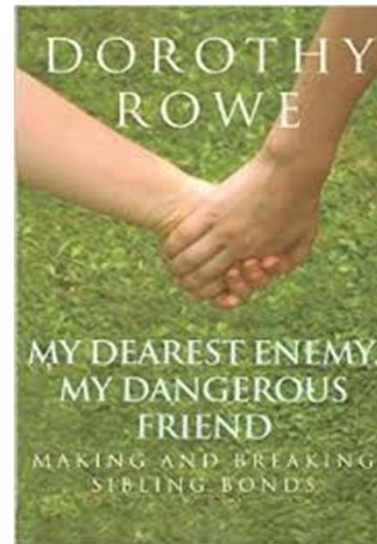
Siblings, contact and the law: an overlooked relationship?

Daniel Monk
Jan Macvarish



Siblings

Juliet Mitchell



WHAT WE DID

Mapping review of where siblings appear in **legislation**.

A review of **case law** from 1991 to April 2018.

Interviews and focus groups with 69 children's guardians, IROs, judges, barristers and solicitors (private practice and local authority).

Young People's Participation Group comprised of members of the Family Justice Young People's Board.



KEY QUESTIONS

INCREASED CONCERN: WHY?

LEGAL SIBLINGHOOD?

ASSESSING SIBLING RELATIONSHIPS

SEPARATION AND PLACEMENTS

CONTACT: COURT ORDERS?

ASSUMPTIONS

ADOPTION

SIBLINGS MATTER...

*Siblings with **existing bonds** should in principle not be **separated** by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable **siblings to maintain contact** with each other, unless this is against their wishes and feelings.*

United Nations General Assembly, Resolution: 64/142.
Guidelines for the Alternative Care of Children, 2010,
para 17

Judicial concern

all too often adoption orders are made with all the best intentions for continuing sibling contact which are then thwarted for no particularly good reason.

Re P-M (A Child) [2013] EWHC 1838, (at 35) **Ryder LJ**

When you think about it, the courts always try to keep the routine or not disturb the child's life and all that, try to keep it as normal as possible, but they're separating the siblings from each other.

How's that keeping it as normal as possible when in reality, in the most perfect home, you get to see your siblings?

(Research participant, aged 16, 2018)

*There have been very, very big changes...and siblings; you just didn't think about that relationship particularly in the past whereas now I think **it has come up into the consciousness more of judges**, as I've said, and for social workers as well...I think the presumption now is to maintain if possible and to have very good arguments for separating children. (Guardian 3)*

‘LEGAL SIBLINGHOOD’

- Law has **lots** to say about siblings
- ‘Siblings’ first used in the Children Act 1989
- ‘Brothers and sisters’
- ‘Blood’
- ‘(but for his adoption) would be related to him by blood (including half blood) or marriage’ (ACA 2002, s51A(3)a))
- Step-Siblings? (Equality Act 2004)
- Foster/sibling like?
- ‘any person with whom the child has lived for a period of at least one year’ (ACA 2002 s 51A(e))

Distinguishing sibling types

I think now people will count as their siblings their half siblings...because of societal changes...They will refer to them as their siblings. (Guardian 4)

And I think also you need to look at step-siblings, you need to look at kids that have been raised together. So a sibling relationship isn't necessarily just a sibling relationship. (Guardian 2)

BUT...

*It's really annoying and it makes you feel really upset and like angry inside because it doesn't really matter whether it's **half or full**, they're still your sisters at the end of the day.* Young People's Participation Group

***Step siblings...** I would still class them as siblings in my mind. Now, they probably wouldn't with regard to a legal test.* Judge

How else was the judge to proceed? She was confronted with the fact – the reality – that B’s only full sibling, H, a sibling close to her in age, had been adopted.

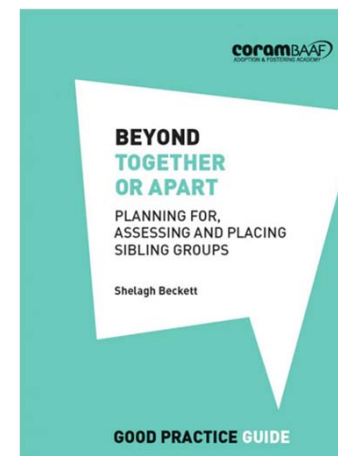
(Munby P, *Re B (A Child)* [2018] EWCA Civ 20, at para 24)

He does not, and he has been very frank and honest about this, offer a home for S as well but obviously wants her to keep up her very regular contact with her younger siblings should they move to him.

(*Kent County Council v R & M* [2016] WL 06639561 at para 25)

SIBLING ASSESSMENTS

*I mean when I first started doing my job as a social worker and as a guardian, ‘what is a Together and Apart assessment?’ Whereas now that’s a matter of course. **I don’t remember four years ago, as a guardian, reading a Together and Apart assessment.** (Guardian 2)*



What are assessments for?

If there's a care plan of separation...because that separation is not something that's taken lightly, it has to be explained and justified...which is where the Together and Apart assessment comes in.

(Guardian 2)

...at the end when they say 'oh crikey...we are now looking at permanence', 'we've got five children, we're never going to get those five adopted together'. And suddenly it's like 'ooh, right, we've got to do the assessment'...(Guardian 4)

‘Closeness’? Age

I think social workers often automatically look at the closest siblings in age as opposed to the closest relationship. (IRO North Focus Group)

‘Attachment’

*Oh, attachment is one of these words that’s bandied around quite a lot and I’m not sure that it’s always bandied around by people who know what they’re talking about either...I think it’s one of those sort of technical terms that’s escaped into the wild...**you will hear about it in connection with siblings as well as parents.*** Judge

Sibling attachment?

*...in the end we had to commission someone to do it...a psychologist, and **he was very dismissive of the notion of attachment on the basis** not that siblings don't have a strong and important relationship, but **that the concept of attachment wasn't applicable to a sibling relationship. He sort of demolished that argument entirely saying, you know, they had a relationship but actually all three children had needs of their own...**(Guardian 4)*

‘Parentification’

*I was 12 and from when she was about four months old I brought her up like a lot more than my mum did, so I like did everything, like bed, nappies...Like they kept saying to me like ‘oh you realise you’re not her parent’...they were on about like adoption and stuff. **It’s literally all about the baby.*** Young People’s Participation Group

Considering older siblings

Should D be placed for adoption if to do so would
cause emotional harm to his sister?

(Re K,D (Children: Care Proceedings: Separation of Siblings) [2014]
WL 4081297, Bellamy HHJ, para 175)

Culture?

I think in certain cultures...there may be an expectation that children assume more capability in terms of sharing parental chores. In an ordinary English situation, a culturally white English situation where children wouldn't be expected to do that...It's very middle class really. I mean I don't know. I'd have to look at how damaging it was for the individual children concerned. (Judge 2)

ALLOCATION AND GATEKEEPING

Anything which involved any complicated issues relating to siblings I would hope would not be before the lay justices...my recollection is that anything to do with siblings is not actually referred to anywhere in the guidance...maybe it should be. Judge

CONTACT ORDERS

Section 34 of the Children Act 1989: Contact order for children in local authority care (does not explicitly extend to siblings).

Section 26 of the Adoption and Children Act 2002: Contact order alongside a Placement Order.

Section 51A of the Adoption and Children Act 2002: Contact order alongside an Adoption Order (or at any time following).

(see also page 3 of our Summary Report for sibling-related legal requirements)

CHILDREN IN CARE

I think courts are much happier about...being directive in relation to looked after children...it's not the same sort of no-go area as adoption. Barrister

You wouldn't really have contact with your birth family any more if you got adopted. But then fostered is where you kind of like still have contact with your birth family. Young People's Participation Group

Section 20 and SGOs

Where a looked after child is accommodated under Section 20, intersibling contact is a matter for the parents, and tensions can arise where parents are reluctant to agree to contact taking place.

I had an SGO where the children were split and the kinship carer would only have that child with no contact because of the difficulties with the carer and the extended family, so they took the younger child and there would be no extended contact. (Judges Focus Group)

Section 34 orders

*I can't imagine that there aren't a lot of children in the care system who don't have gripes about the level of contact they have, but **should we necessarily be encouraging them to make applications** and actually, what avenues do they have to sort out their contact?*

Solicitor

Why not Section 34 orders?

You'd have to really mistrust the local authority to impose a contact order on them...I've never come across it, not with a care order. (Guardian 1)

I don't think it's done very often because usually you can work with families (IRO)

Actually a child that remains in care would probably be better off, because they would have professionals like an IRO and a social worker to speak to (Guardian 4)

Section 34: The leave requirement

if you were to apply, the court would undoubtedly think that there was merit in it...I don't think that necessarily the niceties of technical legal arguments about leave are what stop you...you don't know you can and even if you want to, you're not given the tools to make it easy for you (Barrister 1)

Adoption, placement and Re B-S

it doesn't have anything to say about siblings (Judge 1).

I don't think there's any correlation between saying well actually we won't go for adoption because we've got four siblings...what people will say is...If there is another option - particularly SGO - then we will go with that and indirectly that will then impact on contact because there's more chance that they'll have contact if you do. (Solicitor 3)

if you have decided that nothing else but adoption will do, how can you then approve long term foster care because you couldn't find an adoptive placement? Fair point. (Judge 4)

In the Matter of W-C (Children) [2017]

EWCA 250

‘...Guardian's view is that **sibling contact overrides the need for certainty and permanency**. It may be that in ten years' time the question will be answered differently. It is clear that even **over the last few years far more weight is given to sibling contact than it was a not very long time ago**. But it seems to me the weight of judicial thinking, as at the moment, is that **permanency and certainty outweigh the need for sibling contact**’...

Above described as: ‘a wholly inadequate judgment in terms of its analysis of the issue as between long-term fostering and adoption for D’ and that a ‘central fault’ in the judgment was ‘characterising the case as one of ‘permanency vs sibling contact’ (Macfarlane LJ)

...it's another avenue they can use...to legitimise opposing a plan for a placement order because they will say,...'I think sibling contact is so important that I'm not prepared to...'. Not that they've got an agenda necessarily, but that they're far more ...willing to stand by the importance of it, perhaps sort of driven by the fact they're not overly keen on adoption. (Barrister 5)

Contact, adoption and Section 26 orders

Re P (Children) (Adoption: Parental Consent) [2008] EWCA Civ 535

It is not, in our judgment, a **proper exercise of the judicial powers** given to the court under the 2002 Act **to leave contact between the children...to the discretion of the local authority and / or the prospective carers...It is the court which must make the necessary decisions** if contact between the siblings is in dispute, or if it is argued that it should cease for any reason. (Wall, LJ at paras, 147, 153)

But now...

I am confident that if the LA consider direct contact with J is appropriate and in E's best interests and if prospective adopters would promote such contact then it will be implemented. **I do not want to tie the LA's hands in any way...** I therefore make no order as to contact.

(Sheffield City Council v C, N, O, The Children by their Children's Guardian
[2015] WL 2190730)

You can't make a contact order at that point, can you? (Social worker South Focus Group)

I do accept that to make a Section 26 order is going to make it more difficult to find an adoptive placement for that child...Sometimes it's a price that has to be paid. That's where I part company with the local authority (Judge 4)

Section 26

*There isn't a great deal of appellate guidance on the exercise of our discretion on Section 26. **In fact I feel pretty ignorant about it**, whereas I've got a lot of guidance on other things...so **maybe I'd like some more guidance** as to how to implement Section 26 and how to look at it, more judicial awareness of it because **I think parliament intended us to be much more open** about looking at adoptive placements with the birth family having more access, which will of course include siblings.*

Judge

Post-adoption contact: Assumptions

Direct contact will deter potential adopters.

Contact should, and can, take place only with the agreement of adopters.

The security and stability of placements will be undermined by contact with siblings living with or in contact with birth relatives.

Section 51A

The idea of making an adoption order with a contact order, it just doesn't happen. It's pie in the sky. Judge

Social media

These siblings are going to find each other and that's brilliant, that's good I think in some ways...I mean with my adoption hat on I'm really worried about it, but I think in terms of siblings, I think it's got great possibility of keeping them together. (Solicitor 3)

Alternatives to contact orders

*One of the older siblings...wanted reassurance that there would be an order for her direct contact to continue...the judge wasn't that keen on the idea of that so we ended up...**it was recorded on the [care] order** so...you couldn't apply to court to enforce that...if there was to be any court proceedings in the future, you'd have to show good reason why you departed from what was an agreed position at that time. Solicitor*

Well the courts are involved in loads of different other parts of people's lives and that so it really doesn't make no changes in being part of like siblings' lives as well...they make orders for kids to see parents to make orders that sometimes for kids to see grandparents as well so why not just throw in siblings as well? (Young People's Participation Group)

Ending up in court, that would feel like a defeat really in terms of trying to do what's best for certainly the subject child but also the other siblings (Solicitor S2)

There's no jurisdiction over you...once a child's adopted you can't do anything. (Guardian 1)

SIBLINGS MATTER, BUT...

Seven steps to supporting siblings

1. A change in the law to put sibling contact of looked-after children on the same legal footing as birth parent contact.
2. A national recruitment strategy to attract foster carers and adopters of sibling groups and tailored training and support for recruits.
3. Full recording of children's sibling relationships in social work and SCRA recording systems in line with The Looked After Children (Scotland) Regulations 2009.
4. A nationally adopted 'lifelong sibling relationships' assessment to replace the 'together or apart' assessment that is commonly used.
5. A set of quality indicators to ensure that any direct contact that involves siblings is child-focused.
6. Consistent recording of children's views regarding sibling placements, direct contact and information exchange as part of the Children's Panels process and that these views being considered in decision making.
7. Universal access to lifestory work for children permanently separated from birth siblings throughout childhood and early adulthood to promote emotional and relational wellbeing.

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