

CASE ANALYSIS

Post adoption contact—where are we now? (Re S (Placement Order Contact))



Produced in partnership with Gemma Adams,
associate solicitor at Dawson Cornwell LLP.



Post adoption contact – where are we now? - *Re S (Placement Order Contact)*

The Court of Appeal judgment in *Re S (Placement Order Contact)* carefully considers the court's approach to contact between siblings at the placement for adoption stage. There has been a shift in recent years with a great deal of research as to the potential advantages to adopted children of maintaining some sort of direct contact with their birth family. That being said, on the ground it remains unusual for orders to be made under s 26 of the Adoption and Children Act 2002 [ACA 2002] for direct contact, with proposals in final care plans often being for indirect or letterbox contact. The Court of Appeal makes clear that in each case where placement orders are made, there needs to be a bespoke analysis of the future contact arrangements, in order to meet the complex and life-long needs of children who are to be placed for adoption.

Written by Gemma Adams, Associate Solicitor at Dawson Cornwell LLP

Re S (Placement Order Contact) [2025] EWCA Civ 823

In the judgment, the President of the Family Division sets out the following guidance that should be followed when the court is making an order for the placement of a child for adoption:

1. The court shall undertake a bespoke analysis of the future contact arrangements in each case for each child - this includes the frequency, duration, and nature of contact;
2. The court may consider making an order under s 26 ACA 2002 in two phases: 'phase one' and 'phase two':

- I. Phase one - running up to the point where a placement for adoption has been identified - whereby contact may be more frequent; and
 - II. Phase two - running thereafter, where contact may be more flexible, and could be endorsed by way of a recital in the order, setting out that some level of direct contact should continue, or set a bare minimum without being unduly restrictive; and
3. There is a need for flexibility when making orders under s 26 ACA 2002 – An express order with finite contact arrangements may not be appropriate in some cases and a more flexible road map for future contact may be better suited. Courts should be encouraged to use recitals in orders as to future contact.

The care proceedings case subject to appeal involved two brothers, 'R' and 'S', aged 8 and 2 years. In January 2023, the local authority issued proceedings following S presenting at hospital with head injuries and a healing rib fracture. In November 2023, following a contested hearing and a full judgment, HHJ Hayes made serious findings against both parents, including that the father had caused S's injuries and had beaten R and the mother had been aware of the father's behaviour and failed to protect the children.

R was initially placed with paternal grandparents and then moved to foster care. S remained with different foster carers throughout proceedings. At the final hearing, the parents claimed to be separated, with minimal contact limited to practical matters. However, after examining their phones and hearing expert and oral evidence, the judge found they had maintained extensive contact, which they tried to hide by wiping their phones and giving dishonest evidence.

Proceedings concluded with care orders made for both children, and a placement for adoption order made for S. The judge considered whether an order under s 26 ACA 2002 in respect of sibling contact should be made - all professionals supported the position that there should be some continuation of sibling contact, but the local authority and guardian opposed this being prescribed in an order. The guardian, in particular, did not consider that making such an order would be better for S than not doing so.

The judge declined to make a s 26 order for direct contact between the siblings on the basis that doing so would limit the pool of prospective adopters, particularly as R would still be having direct contact with his parents and there was a risk that if sibling contact is to take place, R's contact with the parents may establish some form of indirect link between the parents and S.

The judge drew particular attention to the "no order" provision of s 1(6) ACA 2002 that the court must not make an order (which includes a s 26 contact order) unless making the order would be better for the child than not doing so. The judge was clear of the importance of seeking to maintain a relationship between the siblings through contact, but whilst contact was desirable, it was not essential and should not be sought or maintained at the expense of finding an adoptive placement.

The Court of Appeal dismissed the appeal, acknowledging that whilst the judge focused primarily on the potential deterrent effect an order under s 26 might have on prospective adopters, he was entitled to do so, given the agreed contact arrangements, the professional view that an order was not necessary, and the specific difficulties in finding adopters for S due to his health needs. The Court of Appeal held that the judge acted within his discretion under s 1(6) ACA 2002. The trial judge's focus on the risk that an order under s 26 ACA 2002 might deter prospective adopters was legitimate and justified based on the facts.

It is hoped that this guidance will prompt renewed consideration of how the court's powers under s26 ACA 2002 are exercised. Despite growing recognition of the benefits of post-adoption sibling contact, applications for such orders continue to face resistance. There is a call for the review of the current 'Statutory Guidance on Adoption for local authorities, voluntary adoption agencies and adoption support services' which was last issued in July 2013 - to ensure that the full framework of the ACA 2002 is properly deployed. Whether this case marks a turning point remains to be seen.

Case details

- Court: In the High Court of Justice, Family Division
- Judges: Sir Andrew McFarlane – President of the Family Division, Lady Justice King and Lord Justice Singh
- Date of judgment: 01/7/2025