

Commentary

Understanding the Behaviour of Children in Care before and after Parental Contact

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It is not uncommon to hear foster carers and child protection case workers comment about a child's behaviour both before and after parental contact. Frequently these comments are negative, the view being expressed that contact should be reduced because the children get upset at seeing their parents for a limited time, and then at having to separate from them. The child's resultant distress seems too difficult to manage for foster carers. Some foster parents even go so far as to suggest that parental contact should completely cease. This article sets out the rationale for parent-child contact after a Children's Court has ruled that there is "no realistic possibility of restoration" of a child to parental care. In doing so, the article revisits many of the old arguments put forward for reducing parent contact. However, alternative ways of approaching children's difficult behaviours both pre- and post-contact are also proposed to suggest different ways of managing these behaviours. The legislation and child protection practice in New South Wales provides the frame of reference for this article.

■ **Keywords:** parental contact, children's behaviour, foster carers, adoptive parents

Introduction

Knowing about your origins and who your parents are is a fundamental right of every child (United Nations, 1989). This knowledge provides the basis for personal identity and self-esteem. It establishes family identity which is important throughout all life stages from childhood to adulthood. This is so regardless of how dysfunctional a family of origin may have been. Family cannot be replaced by foster carers or adoptive parents, although such people may play an invaluable role in a young person's growth to healthy adulthood. Although life story books used with children in foster care are a vehicle for confirming family identity (Schofield & Beek, 2006), family identity cannot be established with life story books alone.

Contact as the Child's Right

Article 9(3) of the Convention on the Rights of the Child, adopted by the UN General Assembly in November 1989, states that:

State parties shall respect the rights 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.

Unfortunately, the reliance on the "best interests" final exemption clause in this article is not always helpful because 'although well intentioned the "best interests of the child" concept is at best elusive and at worst indeterminable' (Dunn, Flory, & Berg-Weger, 2004, p. 60). This view is shared by the authors of this article, who believe that the concept has no meaning in law or science since it is not clearly defined (Hansen & Ainsworth, 2009).

In 2014, the Director of Legal Services for the New South Wales (NSW) Department of Family and Community Services (FaCS) circulated a paper entitled 'Planning for contact changes' (FaCS, 2014), which discussed contact issues following amendments to the NSW Children and Young

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Persons (Care and Protection) Act, 1998 (CYP(CP) Act 1998). The Paper asserted that contact:

Is the right of the child and not the parent. This means that the child should not be forced into having contact against the child's wishes.

Although the notion that a parent has no right to contact with their child is contentious, it is with reference to the principle of the child's rights that decisions about child-parent contact in child protection situations are made.

The Legal Context of Contact – Children's Court Orders

A contact order can be made in the NSW Children's Court under section 86 of the CYP(CP) Act, 1998. This section of the Act states that:

- (1) An order may be made by the Children's Court doing any one or more of the following:
 - (a) stipulating minimum requirements concerning the frequency and duration of contact between a child or young person and his or her parents, relatives or other persons of significance to the child or young person,
 - (b) requiring contact with a specific person to be supervised,
 - (c) denying contact with a specific person if contact with that person is not in the best interests of the child or young person.

The maximum period that may be specified in a contact order made under subsection (1A) is shown at clause (1F) 6 of the Act as 12 months. This limitation was introduced into the Act through an amendment in 2014. Contact disputes may now be addressed through a new mediation and dispute resolution mechanism managed by NSW Legal Aid (2015). Care Plans filed at the Children's Court by FaCS, which seek an order for the Minister to have parental responsibility for the child until the child is 18 years of age, generally offer limited child-parent contact.

The usual practice is to rely on the Care Plan recommendations rather than on contact orders. In fact, contact orders are now rare. The frequency of contact generally applied by FaCS in NSW is a minimum of 4–6 times per year, for a duration of 2 hours on each occasion. The authors' direct experience indicates that the minimum (4) is invariably used as the maximum number of allowable contact opportunities. This approach belies the fact that each legal case should be decided according to individual circumstances. Moreover, there is no empirical support for this contact pattern (Atwool, 2013; Bullen, Taplin, Kertesz, Humphreys, & McArthur, 2015). Given that parents often consider this frequency of contact with their child to be inadequate, the new NSW Legal Aid dispute mechanism (NSWLA, 2015) may well be used fairly frequently. Other states and territories may have similar legislative and practice arrangements for parent-child contact.

The Social Context for Positive Contact

Both the setting for child-parent contact and supervision of contact by a departmental caseworker or a private contractor are also sources of much aggravation for parents. Parents are often aggravated by contact visits being held in departmental offices that are less than child-friendly. These are not venues in which parents and a child can relax, particularly so when their interaction is under observation and may become the subject of a written report to be used at a later date in the Children's Court. In discussion, more than one parent commented to the authors of this article that it feels like they are being "spied on" during contact of this sort. Some older children have also objected to the supervisor listening to what they regard as private conversations with their parents. Contact reports sometimes include comments from children, who object to having strangers watching them when they are with their parents. Of course, there are, in addition, some children who fear their parents and who either do not wish to see them or want to have their contact fully supervised (Cox, Moggach, & Smith, 2007).

Contact visits held in playgrounds, parks or fast food outlets are often experienced by parents as more pleasant settings where they are more able to act naturally. Above all, it is important to remember that the parental behaviours observed in all these contexts are "strange behaviour in strange situations" (Bronfenbrenner, 1979) and rarely provide useful, accurate or reliable information that is sound enough to be relied upon in Court.

Foster Carer's Comments about Contact

Recently, a report from the Parliament of South Australia (2015) gave voice to foster parents and their views about the effects of birth family access or contact. In this instance foster carers told the parliamentary committee:

that they were in the best position to judge whether birth family access is damaging or helpful for a child, with one carer questioning whether visits were ever in the best interests of the child.

(SASCSCP; Parliament of South Australia, 2015, p. 70).

These views are in line with those of many foster carers, and not just those in South Australia (see Pathways of Care report; FaCS, 2015). They suggest an underlying hostility rather than positive attitude towards a child's natural parents that can hardly be in the best interests of a child in foster care. Such a view also runs counter to the spirit of the United Nations Convention on the Rights of the Child.

Getting Upset is Normal Behaviour

In an earlier article titled 'Understanding difficult parental behaviours during a child protection investigation', the present authors offered some thoughts on and explanations for difficult parental behaviours. We now offer

similar thoughts and explanations about difficult children's behaviour associated with parent-child contact while the child is in foster care. It is not uncommon for carers to report that a foster child's behaviour deteriorates in the time leading up to a contact visit, and also to report difficult and distressing behaviour when the child returns to the foster care placement afterwards. Chapter 7 of the recent NSW Pathways of Care report provides quantified data that shows this (FaCS, 2015). Some foster carers go so far as to suggest that contact with birth parents should not occur at all because, in their view, it is not in the child's "best interests", and they may go so far as to blame the parents for causing the child's distress (Parliament of South Australia, 2015).

What may not be fully appreciated is the anxiety a child may feel before contact and the distress that can arise from having to be separated from parents at the end of the visit, both of which are normal behaviours in these circumstances. These responses can be understood as "pain based behaviour" (Ainsworth & Hansen, 2014; Anglin, 2002; Fulcher & Moran, 2013). As such, these behaviours are a manifestation of the internal chaos that the trauma of removal from parental care has created for the child, which may be ongoing for a substantial period of time. Clinically, what would be more concerning would be no signs of anxiety or distress since this would indicate the child's absence of any attachment to parents, which would bode ill for the child's capacity to attach to alternative caregivers.

Can foster carers learn to help a young person manage anxiety before contact and support the foster child after separation from the natural parents? Stopping parental contact, unless that contact is unsafe, does not help the child with these emotions. What may help is recognising the turmoil contact can cause through firm but empathic discussions about these emotions in preparation for parental contact, and a similar, sympathetic response after the event. Using this approach, the child may be better able to manage the mixed emotions they have about their parents.

The alternative, stopping contact altogether, would return us to a situation where maintaining parental contact was viewed as unimportant. This simply results in young people aging out of care with a poorly formed sense of identity, low self-esteem and with no active links to family, community and culture, and these experiences, in the past, have caused young people immense harm (Stein, 2015).

There is also a Canadian study that explores the perception of child protection workers, foster carers and children who are state wards in regard to access, the Canadian term for contact (Morrison, Mishna, Cook, & Aitken, 2011). Although this study did not include a sample of birth parents, the authors nonetheless reported that access is at its best when the foster carers and birth parents are known to each other and have a positive relationship with each other. Unfortunately, in too many child protection jurisdictions such relationships are discouraged.

Adoption as Well as Fostering?

There is also the question as to whether the same children's behavioural issues will emerge in relation to "open" adoption, which is now being promoted in NSW and promises continuing contact with birth parents (Ainsworth & Hansen, 2016). Disruption associated with parental contact is certainly not unheard of in adoption cases (Child Welfare Information Gateway, 2012; Neil, Beek, & Ward, 2015; Selwyn, Wijedasa, & Meakings, 2014), but these disruptions are not necessarily an outcome of parent-child contact as such. The question remains, though: are we likely to hear observations about adopted children's behaviour, similar to those of foster parents, from adoptive parents at some point in the future? Will adoptive parents, just like some foster carers, perceive birth parents as the cause of the child's distressing behaviours? We must wait and see. Research from England about contact with birth parents post-adoption indicates that this is a complex process that has received limited attention to date (Neil et al., 2015).

There is also the fraught issue of extended family contact in the contexts of foster care and open adoption. Both forms of care affect an entire family, not just the mother and father of the child. Two sets of grandparents may fear the loss of a grandchild and are often distressed at their inability to see their grandchildren regularly (Rigby, Gair, & Thorpe, 2016). Older brothers and sisters, aunts and uncles, nieces and nephews all face their own potential loss of contact, which might otherwise be of immense importance, particularly once the child turns 18 and is expected to manage independently outside the child welfare system.

Note

Dr. Patricia Hansen is a solicitor who practices in the NSW Children's Court. Dr. Frank Ainsworth is a Guardian ad Litem who regularly appears in Children's Courts and the NSW Civil and Administrative Tribunal, Administrative and Equal Opportunity Division.

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