

Submission to Journal of Social Welfare and Family Law.

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Word count: 8429.

June 2015.

**Contact, welfare and children in care: Revisiting the significance of harm after finding significant harm.**

**Abstract.**

The focus of this paper is the issue of harm and continuing birth family involvement in the child's life once the child is living in care. The paper examines the issue of harm in the welfare check-list when considering long-term decision making and applications for care orders under the Children Act 1989. It highlights that the child in care's experience of harm in parental care is likely to be reflected in, and affected by, contact with their birth family once they are taken into care. The paper addresses the purpose of harm in the welfare checklist in the Children Act 1989, in particular how useful it is in helping the court and social workers to decide about contact for the child in care. It presents an argument to emphasise the child's ongoing experience of harm and relationship difficulties to be considered in decisions about the child's contact into young adulthood.

**Key words:** Care orders. Harm, Welfare Checklist, Contact, Social work, Psycho-social. (6)

## **Introduction**

This paper draws on the findings from empirical research undertaken with fourteen young adults in England and Wales (Richardson 2014). The young people in this psycho-social study were all subject to care orders and they had come into care as a result of parental ill-treatment and neglect. Drawing on a humanistic approach to legal criticism (West, 1997), the study examines the harmful consequence for children in care, arising from the cessation of contact with the birth family (Richardson, 2015a and b). This paper highlights the effect of parental harm on the relationship and contact between siblings for children in care.

The majority of children and young people who come into care do so as a result of parental abuse and neglect (Masson *et al*, 2008; Munro, 2011; Brown and Ward, 2012; Jutte *et al*, 2014). Contrary to the intention of the Children Act 1989, the number of care cases has continued to rise with the likelihood of more children living away from their birth family (Department for Education and Skills, Department for Constitutional Affairs, Welsh Assembly Government, 2006; National Society for the Prevention of Cruelty to Children, 2012; Child and Family Court Advisory and Support Service, 2015). These vulnerable mothers typically have complicated problems that are likely to worsen when a child has to be taken in to care (Cleaver *et al*, 1999; Schofield, 2011; Broadhurst and Mason, 2013; Harwin *et al*, 2013). Despite or because of their family's difficulties, the great majority of children do wish to return home in young adulthood (National Society for the Prevention of Cruelty to Children, 2012; Department for Education, 2015). Children in care give compelling accounts of the distress they experience when contact with their parents, especially with mothers, and contact with siblings are gradually reduced (sometimes stopped) by the childcare agencies, without explanation (Harris, 2008; Biehal *et al*,

2010; The Care Inquiry, 2013). Missing their mothers and worrying about parental and sibling welfare are typical examples of these children's debilitating concerns (Fahlberg, 1994; Sinclair *et al*, 2007). Care leavers' accounts of new relationship difficulties arising from wanting to be reconciled with their mothers and siblings are also documented (Boylan, 2005; Holland *et al*, 2010). Our focus in this article is the relation of welfare to harm and in particular the role of harm in the welfare checklist in assisting the court to arrive at its decision about contact with the birth family and the child's care plan. Drawing on the case of a young woman who has lived in care, this paper highlights how the child's experience of relationship difficulties with their birth family is likely to last into young adulthood. This paper argues, however, that there are more opportunities for the court and social workers to mitigate this harm in its decisions about the child's contact with their birth family. This is particularly through regard to the child's relationship with their mother and siblings and as part of the local authority's plans for the child leaving care in young adulthood. This paper highlights especially that the likelihood of harm for the child in care includes the child's relationship with their siblings, from whom the child often becomes separated. This is a complicated harm, however, because the sibling relationships are additionally affected by each sibling's own experiences and relationships. Mitigating this complicated harm may need to include more robust provisions for sibling contact and the bearing of each child's changing experience of parental harm, into young adulthood, in the care plan.

This paper will first point to the legal discourses that already indicate that the question of the child's care plan and contact with their birth family is a difficult welfare question. It will then introduce the psycho-social methodology in the case study that has highlighted the significance of contact and relationship difficulties for the child in care, followed by the extracts from the case of Frances. Overall this paper will present an argument for a renewed orientation towards

the consideration of harm in the welfare checklist in decisions about contact in care proceedings, including the harmful likelihood of the child (in this case, Frances) having relationship difficulties with their birth family, into young adulthood.

Frances (not her real name), a 19 year old woman, was interviewed twice in the course of this study. In brief her circumstances were that she was taken into care with her sister, Mary, at about the age of 9. Frances was the youngest of five siblings. There was a question over the mother's abuse of the sisters because both the mother and Frances' stepfather were prosecuted for sexual abuse and neglect. Frances was insistent that her mother was found not guilty and she made no mention of her mother's sexual abuse. On being taken into care Frances gradually became separated from her birth family. Unlike her sister Mary, Frances wanted to stay with the foster carers whom she 'adored' and called 'like my mum and dad now'. Frances said:

I think being taken into care has been the best thing that has ever happened to me and I always tell people that because it has really. I think if I was still living at home I would probably have three kids by now because that is the type of person my mum would be I think. And I would never have gone to college...now I have got big aspirations...I do not mind telling people about my experiences because I want to show it is positive going into care and that everyone thinks it is shameful. It is the best thing that has happened to me. That is what I want to tell people.

At the time of the interviews, Mary had returned to their foster placement and Frances was unexpectedly reunited with her eldest sister, Stacey. Frances said 'I was really excited. It was really nice to see her'. In the second interview, especially, Frances described how she had found

contact with her mother and sisters increasingly difficult, because of the step-father's abuse and Frances' need to settle in care. She changed her name 'because people were asking questions if we [Frances and her foster family] would go on holiday. Not because my last name was a bad name but just because I feel part of the [foster] family more'. In ways such as these, Frances' account was of having to lose her eldest sister, because of the abuse and then lose her mother and both her sisters because of being taken into care. It was also about her feeling of guilt in young adulthood, believing she had placed her own need to be close to her mother and then to her foster carers, above her sisters' welfare, causing her siblings more harm. She was also angry with her mother for staying with the step-father and, unlike with her siblings, there was no reunification between Frances and her mother, in sight. This paper returns to consider Frances' case in more detail later.

### **The Welfare Principle.**

The welfare principle in the Children Act 1989 has been debated, critiqued and defended (Bainham, 1998; Herring, 2005 and 2014). A comparable principle was introduced in the Adoption and Children Act 2002, in part to align adoption law and proceedings with other aspects of child law. Most recently and for the first time since its introduction the welfare principle has been amended by the Children and Families Act 2014. It is supported by a checklist as recommended by the Law Commission (1988). The value of a welfare checklist was clearly enunciated by the Law Commission endorsing the view that:

...it would help to ensure that the same basic factors were being used to implement the welfare criterion by the wide range of professionals involved ...could assist both parents

and children in understanding how judicial decisions are made... (and)...enable the parties to prepare and give relevant evidence at the outset (1988, para 3.18).

The non-exhaustive range of factors for consideration in the checklist is intended to give some clarification and direction as to the matters, which a court should consider when applying the welfare principle. The Law Commission envisaged the checklist providing greater consistency and clarity and promoting a more systematic approach to decision-making. This point was tested in *Re G (A Child) (Care Proceedings: Welfare Evaluation)* [2013] EWCA Civ. 965, a case in which the welfare checklist was not expressly referred to in decision making. In applications for care orders the checklist guides the decision making of the court once the criteria of significant harm in the Children Act 1989 section 31 have been met. The determination of significant harm to satisfy the threshold for intervention in applications for care orders is of course a different stage in the court process to applying the welfare principle and checklist in deciding what order, if any, is in the child's best interests. The fact that some children return to live with parents under the auspices of a care order is, however, a clear indication of this layered process in operation. At first sight then factor 1 (3) (e) in the welfare checklist which invites the court to consider 'any harm which he [the child] has suffered or is at risk of suffering' may therefore seem repetitious. The impact of the harm that prompted the intervention must be considered again by the court when considering plans for the child. This paper suggests that this factor of harm may be applied to fuller effect. The welfare test presents an opportunity for the court to take into consideration 'any' harm, including ongoing harm which a child may suffer by being separated from a parent (and siblings) and the long term impact on the parent and child relationship. In 1988 the Law Commission recognised the significance of relationships recommending the checklist should include 'the effect upon the child of any change in circumstances, having regard to their duration



and to his separation from any person with whom he has been living' (para.3.20). The Children and Families Act 2014 amendment highlights the importance of parental involvement and creates a distinction between the application of the principle in private and public law cases (Bainham, 2013). It says:

(2A) A court ...is as respects each parent within subsection (6) (a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B) ..."involvement" means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

The section includes parents as long as they can be included in the child's life in a way that does not put the child at risk of suffering harm. There needs to be evidence before the court to suggest that involvement would put the child at risk. The same presumption in favour of involvement was not introduced into the welfare principle and court's care plan for public law cases.

The court's care plan for the child was originally a creature of secondary legislation, contained in guidance to local authorities issued under the Local Authority Social Services Act 1970. The terms of the care plan are governed by the welfare test and checklist. In *Re J (Minors) (Care Plan)* 1994 1 FLR 253 the court explained how the proposed care order will be implemented in order to achieve specific outcomes for a child. Thereafter it became custom and practice for the court to be presented with a plan by the local authority, that included terms about the proposed arrangements for the child's placement and contact with significant others, that the court would adjudicate on (Department of Health,1999; Brammer, 2015). In 2002 such was the importance

of the courts' input into the care plan that it became a statutory requirement for the local authority to provide a plan that satisfied the court, before the court had power to make a care order. Under the Children and Families Act 2014, driven by welfare concerns about the court causing delay, the remit of the court's consideration of care planning matters was narrowed considerably (Family Justice Review, 2011). When a court is deciding whether to make a care order it is required to consider only the 'permanence provisions' of the local authority section 31 A care plan. This focuses the court's attention on whether the child should live with parents, other family or friends, or be adopted or placed in other long term care provision (Ministry of Justice, 2014).

Contact for children in long term care, subject to care orders, is governed by section 34 of the Children Act 1989. Section 34 of the 1989 Act places a duty on the local authority to allow the child, who is living in care, reasonable contact with their parents. The court has a duty to consider the local authority's proposals for the contact arrangements between the child and their siblings under section 34(11) before it makes a care order. The welfare test and checklist, including the issue of harm at section 1(3) of the Children Act 1989 applies, meaning that the court's decisions about contact must always centre on the welfare benefits for the child. In case law the starting point for the court and the local authority is that a child will benefit from continued contact with their birth parents unless the welfare of the child indicates otherwise (Re KD (a Minor) (Access: Principles) 1988 2 FLR 139, Re B (Minors) (Care: Contact: Local Authority's Plans) 1993 1 FLR 543 at page 551). In exceptional cases and where the risk to the child is so severe, orders may be made under section 34(4) giving the local authority permission to refuse contact to a family member (A and M and Walsall MBC 1993 2 FLR 244, Re H (Children) (Termination of Contact) [2005] EWCA Civ. 318, Re M (Children) (Contact) [2013

EWCA Civ. 132). Parents may be prevented from making fresh applications for contact without the leave of the court (Children Act 1989, section 91)

In addition to the primary legislation about contact, in statutory guidance issued under section 7 of the Local Authority Social Services Act 1970, consideration of sibling contact is an essential element of the local authority's care planning process. There is a specific requirement for the local authority to set out arrangements for the child to maintain contact with siblings who are also looked after by the responsible authority but with whom it is not possible for the child to be placed. This is as far as is consistent with the child's welfare (Department for Education, 2010 and 2014). Importantly the contact arrangements must be reviewed by the Independent Reviewing Officer once the child is in care, as part of the statutory Independent Reviewing Officer's independent oversight of a looked after child's welfare. The purpose of these reviews, (which may be attended by family, professionals, carers involved in the child's life and the child depending on their wishes, age and understanding) is to monitor the progress of the local authority in achieving the welfare outcomes set out in the care plan. The review meeting makes recommendations to amend the care plan for the child, including contact as necessary, in light of changed information and circumstances bearing on the local authority's duty to safeguard and promote the child's welfare (Children Act 1989, section 22).

### **The Study: Researching care leavers' perceptions of harm.**

This psycho-social study (Richardson, 2014; 2015a and b) focuses on the child's welfare including care leavers' perceptions of harm and the legal test of harm in care proceedings. The participants were eight women and six men aged between 18 and 30 in various regions of

England and Wales. They had lived long-term with foster carers and/or in residential care. Only two of the participants (including Frances whose case appears in this paper) were still living as a member of their foster care family. The particular issue of harm, throughout the participants' accounts, is loss of their birth family causing relationship difficulties for young adults who have lived in care. The study illuminates the complex nature of this, what the study terms, relational harm that endures into young adulthood. Relational harm is harm in parental care which appears and re-appears in the child's relationships with others, over time (Richardson, 2014). Typically, as in the case of Frances, relational harm includes the child in care's fractured relationship with their birth mother into young adulthood (Holland *et al*, 2010; Holland and Crowley, 2013). It also includes the impact of harm arising from fractured sibling relationships for children who have to be taken into care (Sanders, 2004).

The psycho-social methodology in this study used free association narrative interviews meaning that there were no direct questions about harm (Holloway and Jefferson, 2103). The interviews began with an open question such as 'Can you think back to your earliest memory and tell me your life story?' They lasted for approximately one hour ending when the participant drew the meeting to a close. In seven cases, including Frances, there were second interviews. The participants gave consent for the use of quotations. The lack of directional questioning was designed to enable the participant to reveal, or conceal, the matters of importance to them. The free association narrative interviews are 'based on the premise that the meanings underlying interviewees' elicited narratives are best accessed via links based on spontaneous association, rather than whatever consistency can be found in the narrative' (Hollway and Jefferson, 2013, p. 140). In this way, the analysis of each interview seeks to attend to the 'inner world issues' (the psycho) and to the 'situational contingencies' (the social), appearing in each of the participant's account (Gadd and Jefferson, 2007,

p.82). This approach, sometimes called the whole or Gestalt, has been used to investigate highly sensitive (sometimes unspeakable) issues such as Holocaust survival and suffering and the perspectives of those who commit domestic violence and race hatred (Bar-on, 2004; Gadd, 2004; Clarke and Hoggett, 2009; Gadd and Dixon, 2011). The usual caveat in psycho-social studies is that the analysis is highly interpretive and it takes time to build up a body of claims (Clarke and Hoggett, 2009; Frosh, 2010). The particular strength of this study, however, is the new data arising from the undirected interviews about the causes of harm for young adults who have lived in care. In addition, the psycho-social study is in the manner of a humanistic approach to legal criticism (West, 1997) which seeks to privilege (in the criticism of the law) the accounts of those whom the law has set out to protect. The methodological standpoint is that if ‘the primary instrumental function of the law is to deter harms or compensate for them through legal means then surely we need to know what harm is, and how much’ (West, 1997, page 94). As West put it, ‘...(T)he goal is completion of the story, and the story in turn is not a story of or about emerging legal doctrine’ (1997, p.206).

In this paper, there is now an examination of Frances’ story of harm which is the arrival of the abusive step-father in her birth family and consequently gradually losing contact with her mother and siblings. For Frances, the harmful relationship consequences of the step-father’s abuse and ‘think(ing) the social workers were the bad people and just believe (ing) what your mum says’, then being taken into care because her mother stayed with the abuser, were of very significant concern to her. The paper concludes by returning to the law in order to highlight the component of harm in the welfare test that may be defined and deployed more broadly in order to take account of this relational harm. This is in welfare decisions about contact and the care plan, in order to safeguard and promote children’s long-term wellbeing better.

## **Frances.**

Frances' account of contact and her welfare in care share many features with the other participants. These features include confused and partial memories of the abuse in parental care; questioning the severity or existence of this abuse which caused the court and social workers to take her into care; having to help her mother hide the abuse from the authorities; a vivid memory of being taken into care when life changed suddenly and forever, and the gradual loss of her birth family including the gradual perception of her mother's abandonment of her children, especially once Frances was taken into care. Frances' case differed and was more positive in some respects. First, she had stayed with the same foster carers whose family she also 'adored' and Frances had a good relationship with the (only) two social workers who she regarded as friends. She had enjoyed school, and with the help of her foster mother, Frances was set to have a number of qualifications and a good career. She had felt loved by both her families.

It was perhaps because she had felt loved by both families that Frances explained the harm in young adulthood arising from the gradual estrangement from her sisters and her mother. It was after being taken into care that Frances began to experience her mother as selfish and uncaring which was unlike Frances' account of being 'close' to her mother and 'the favourite in the family' before she was removed. She said, 'I was driving along the road yesterday and I saw her and he [the step-father] was with her...And he was looking at me and smiling as if he knew who I was but she [her mother]did not lift her head to look'. Frances' considerable contempt towards her mother, about her mother's choice to stay with the abuser and her mother's lifestyle (Frances said, 'I do not think either of them have jobs') contradicted fond memories of her childhood before being taken into care.

At different points Frances seemed to blame her mother, her sisters, her foster mother and herself. She blamed her eldest sister, Stacey, for disclosing the abuse and she blamed her sister, Mary, for disrupting their foster placement. She blamed her foster parents for being too protective. Frances said 'I am used to being told what to do when they [Frances' foster parents] tell me stuff. I will just do it and it is always going to be like that'. Frances blamed herself for scapegoating her siblings in order to stay close to her mother and then become close to her foster parents (Sanders, 2004). The discussion in this study, of this scope of relationship difficulties for Frances, highlights the scope of harm arising from the parental abuse that may appear and reappear in the child's relationships over time. It is because of relationship problems such as these that attachment theorists point to the importance of the therapeutic know-how amongst child care practitioners, parents and foster carers to recognise children's distress arising from their harmful experiences (Bowlby, 1988; Fahlberg, 1991; Rutter, 2000; Howe, 2005). Benjamin (1998) said it is important to 'understand the way that threatening experiences necessarily reappear' (1998, p. 106; Stern, 1985, p.209-210).

Underlying Frances' account of these harmful experiences, within her two families, the appearance of Frances' own threatening experience of the sexual abuse may be important (Klein, 1981; Scott, 1996; Howe, 2005; Marks, 2011). Frances gave an account of abuse by the step-father and no account of her mother trying to protect her. Frances said:

I thought everything was alright; like I was oblivious to everything but obviously it was not because my mum's partner had abused my elder sister [Stacey]. And that is why I got taken away... But at the time my mum was just saying it was all lies. It is all lies and

obviously I believed her.

In addition, the abuse ('it') and having to be taken into foster care may have felt especially 'shameful' to Frances because it was a case of the discovery of sexual abuse in her family (Jones, 1991). Frances' account of a daughter's anger with their mother for standing by the abuser is not unusual (Thompson-Cooper, 2001; Mudaly and Goddard, 2006). Frances said:

My mum married him about a week before. And I just thought that was really selfish of her to choose him over us. But I am glad she did. But I do not remember anything. I know my mum was up in court for it as well like neglect and sexual abuse but she was not found guilty. And I think he got eleven years. But he only had to do half of it and he has not even done half and he has already been let out.

Once Frances was in care, her mother's 'selfishness' appears to have been a process of gradual realisation. She said 'now I have grown a lot closer to like my mum now [Frances' foster mother] and she has taught me really about how things were, like opened my eyes'. Frances' mother had suffered from domestic violence by the children's birth father. The step-father (whom Frances only referred to as he or him) was a family friend who had helped the family move from a refuge. Her mother let him move in even though she knew there were allegations he had sexually abused his daughters, Frances said 'She just used to leave us in the house while she went out to bingo I think she used to go'. Stacey looked after the younger sisters. Frances' mother made Stacey leave the family home, however, after Stacey disclosed abuse by the step-father. Her mother made the children hide from the authorities when the step-father visited. Frances said, 'He [the step-father] used to like give us everything we wanted. But that was all part of the



grooming process I am told'. When the children were in care, contact was arranged but her mother continued to put their relationship in jeopardy by talking about the step-father and sending him photographs of the children. This continued when she (Frances' mother) had been told by the social workers not to, so contact had to be supervised. As this paper now explains contact became a difficult welfare question.

*A relational harm approach in decisions about contact and the welfare test of harm.*

This paper now goes on to highlight the difficult welfare question of contact with their birth family after children are taken into care (Sinclair *et al*, 2007; Biehal *et al*, 2010). Frances said, 'I was close to my real mum and like always the favourite and she [Frances' foster mother] took over that straightaway. We do everything together'. In order to hold onto this new relationship Frances had to stop seeing her birth family, 'not interrupt my life now'. Frances' case highlights that despite excellent foster carers and attentive and caring social work she felt under emotional pressure from both her mothers (Winnicott, 1965; Howe, 2005; Batmanghelidjh, 2006). In this interpretation of Frances' account of her two families, this study draws on attachment theory, particularly the theory of attunement and 'defensive exclusion' and 'numbing' (Bowlby, 1988, p. 39 and p.69). This focuses on how each of these, at once nurturing and harmful care experiences with her mothers, interacted and spilled into the relationships with her siblings before and after Frances had to be taken into care (Ernst, 1997; Benjamin, 1998; Hollway and Featherstone, 1997; Hollway, 2006).

Once she was in care, the social workers arranged contact with her sister, Stacey, but Frances lost contact with Stacey, again. Frances said:

She [Stacey] told me why I was in care. And I did not believe her. And I regret that really. Like she told me what he had done and I just did not believe her because he [the step-father] was always nice to me. So I just thought she was lying. I do not know where she [Stacey] is at all. After that I did not see her very much and then it just died out really. I asked last week to see if they [the leaving care team] knew where she [Stacey] lived or anything just to make sure she was all right not because I want to see her or anything because that just interrupts my life now but just to see if she is all right or still alive at least... Last thing I heard she just left and no-one knew where she was.

Frances lost her contact with her mother and she was separated from her sister, Mary.

I wanted to stop it [contact with her mother] because I was getting on with my life and then every couple of months I would go and see her. It just interferes with your own life. You are getting on with it and then you go to see your mum and it will bring your past back again. And then you will just get over it and start getting on again. When you stop thinking then it is time for having another contact. You always wonder what they are going to be doing, if they are going to say anything to you about anything. It is confusing. It messes with your head a lot. And then my mum and dad now will ask how it went so you have to tell them. And then my birth mum will ask what I have been doing. I will talk about my mum and dad and be going "Oh yes, I have got this, this and this". And you do not want them to know you are enjoying yourself too much with them because it might put them off a bit. I like to keep everyone else happy. That is what I like. Sometimes I wish I would just think about myself a little but I like keeping other people happy.

Frances and her sister Mary fought in contact with their mother and they fought in the foster placement. At first they planned to run away from the foster carers but eventually Mary had to move out of the placement after only Frances (with her foster mother's help) petitioned the authorities to stay. She said 'It was only meant to be –short term...so it went onto a panel [Fostering Panel] for [approval for] long-term'. Frances pointed out that Mary was not happy where she went and with Frances' recent help she had returned to live with her. It was this reunion which led to Frances being reunited with Stacey.

Between the two interviews for this study the unexpected reunion with Stacey took place. In the course of this reunion Frances met her father and other family members. Frances said:

I was shocked that Mary had known [where Stacey was] all the time. She never told me. ..And she [Stacey] was the one who got abused. I said [to Stacey] I felt guilty. I said sorry for that. And that I believed her. I did not think that I would want a proper relationship with them [Frances' birth family], but I think I do now after meeting them a couple of times and...now I have got nieces and nephews and all that... So that is over now.

Me and Mary are there now if she [Stacey] ever wanted help. So I will say that. Because when she [Stacey] first met me she says oh she was not trying to break up the family. She was just trying to protect us and I think it is just about time she did something for herself now for her own sake.

In conclusion, the psycho-social method in this study (Richardson 2014) enables the following of an emotional logic (Holloway and Jefferson, 2013) such as Frances' experience of feeling loved

in her birth family enabling her to feel loved by her foster family. But it may have been more complicated than that. Frances said:

I think they [her foster carers] have looked on me like a daughter because they lost their two daughters... which is why I think I am so close to them... They [the foster carers' daughters] were eight or nine [when they died] and I moved there when I was eight turning nine.

In addition, Frances went from being her mother's close companion to her foster mother's close companion and as this study now concludes Frances may have feared herself to be a persecutor of others including her foster carers' own daughters who had sadly died (McMahon, 1992; Sanders, 2004). The mutually treasured relationship between Frances and her foster carers grew out of the unique opportunity for Frances to be special to her foster carers, like the 'favourite in the family' she was used to being before she was taken into care. In attachment theory this may be called attunement (Winnicott, 1965), a mutually emotionally happy relationship. Both Frances and her foster carers had suffered the inconsolable loss of those they loved. A relationship may become harmful to one party, however, where he or she has to adapt to the other person's needs at the expense of their own. In more extreme cases, like Winnicott's theory of the 'false self', children have to adapt to their parent's needs (including parental abuse) in order to survive but this is in a way that significantly impairs the child's own emotionally healthy development (Winnicott, 1965; Howe, 2005, p.49; Hollway, 2006). Minsky described this harm:

Our determination to survive and maintain a good relationship with those more powerful than ourselves is one of the major characteristics of childhood. As children we all learn to

make concessions but, if we have to make too many, this denial of our own potential for development may leave a residue of severe loss of self... (1998, p,57).

This may help to explain why Frances felt under pressure from her two families when she wished to integrate her two families. Frances said ‘She [her foster mother] controls me a bit, quite a lot actually...the only downside I think’.

### **Discussion.**

Children who have lived in care tend to seek reunification with their birth family, in young adulthood. The case of Frances and other studies tell us, however, that the reconciliation, especially with the mother, is often problematic, because of unresolved relationship difficulties (Holland et al, 2010; National Society for the Prevention of Cruelty to Children, 2012). Howe (2005) said that ‘Carers [birth parents and foster carers] whose own histories are blighted by loss and trauma, rejection and hurt are not always able to deal optimally with their child’s distress and attachment needs’ (2005, p. 49). This problem in the eyes of the law is not new. In 1985, the government’s review of child care law which led to the Children Act 1989 said:

It seems very apparent that the deep emotional problems generated by the separation / care experience receive insufficient attention (parents feel ignored and direct work with children is minimal). It is not clear whether the pain and grief goes unrecognised or whether it is recognised but social workers shut their eyes to it because, lacking support themselves, they cannot tolerate the pain of getting involved and working with feelings (Department of Health and Social Security, 1985).

There is a duty in the Children Act 1989 to place siblings in care together, wherever it is possible and in the interests of the child's welfare to do so (Section 22C, Children Act 1989). Even if this happens, siblings, particularly those who have experienced abusive experiences together, often go on to have relationship difficulties between themselves, such as the well documented sibling rivalry, which causes the childcare agencies to separate them (Sanders, 2004). It is likely that this is what happened between Frances and Mary, in the contact with their mother and in the foster placement. Frances said, 'We used to fight all the time because we did not know how long we would be staying there [in the foster placement]...And then once my sister moved I was long-term and she was long-term in her other placement'. Almost invariably, however, children and care leavers tell us that siblings in care want to stay together. Yet often and sometimes because of resource issues, siblings become separated and they gradually lose contact (Thomas *et al* 1999; Lowe *et al*, 2002; Sanders, 2004; Harris, 2008; Biehal *et al*, 2010; Brown and Ward, 2012). This raises the question as to whether and how the relationship between siblings should be revisited by the social workers and Independent Reviewing Officer as part of the discussion about harm and welfare in the child's care plan.

Attachment theory and care leavers' experiences tell us that harm may not be capable of being identified, nor resolved completely, in the legal tests of harm and in the child's care plan. The importance of consideration of ongoing relationships is, however, supported by the welfare principle and checklist in the Adoption and Children Act 2002. This principle applies to decisions about adoption but not fostering. In adoption cases the court is directed to take account of the child's relationships with relatives including the likelihood of such relationships continuing and the value to the child in so doing, and to make a decision which reflects the

welfare of the child throughout the child's lifetime. This paper highlights the predicament of children in long-term care and that the child's siblings' and carers' own relationship needs are important too. Despite or because of Frances' wellbeing in care, we can see the wide-ranging complexity of how the harm in parental care may be reflected in and affect the child's relationships with their mother, siblings and foster carers, into young adulthood (Stern, 1985; Quinton *et al*, 1997; Rutter, 2000; Howe, 2005; Sinclair *et al* 2007; Tarren-Sweeney, 2010; Daniel and Bowes, 2011). In particular, the problem may be reflected in and affected by contact with their birth family. It may appear in young adulthood as a debilitating preoccupation about their (the child's) own responsibility for their siblings', parents' and carers' predicament. This paper also highlights that it is likely that harm may not be determined completely even in carefully welfare oriented decisions about whether to take a child into care and stopping or re-instating contact (British Agencies for Adoption and Fostering, 1999). Attention to the child's welfare in the care plan and the arrangements for contact should be ongoing and reflect this.

## **Conclusion**

This paper argues that the case of Frances raises interesting issues about what the understanding of harm in the welfare test and checklist should be. Similar issues of relationship difficulties and difficulties about contact appear throughout many other studies and are likely to be familiar to childcare practitioners. Through using a psycho-social methodology this study begins to highlight and illuminate the significance of harmful experiences which are likely to be reflected in and affected by contact between the child in care and their birth family. The impact of harm and consequent relationship difficulties for children in care are likely to be ongoing.

Returning to the law, these matters of harm could be dealt with more precisely. Section 1(3) of the Children Act 1989 (the welfare test and checklist) provides an opportunity for such consideration in decisions about contact and the care plan. This could be strengthened further with a similar provision in care proceedings as in the Adoption and Children Act 2002, section 1 (4) (c) about 'the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person'. There may be more attention to 'the likely effect on him of change of circumstances' (Children Act 1989, section 1(3) (c) in terms of defining and deploying this to include relationships. Alongside the narrowing of the court's jurisdiction in the Children and Families Act 2014 there has been renewed attention to the proper scrutiny of the local authority's plans for the permanent removal of children from their birth families (Re B (Care Proceedings: Appeal) 2013 2 FLR 1075 Re B (Care Proceedings: Appeal) 2013 2 FLR 1075. There is a pressure on social workers to complete thorough assessments and not identify permanency plans at too early stage, especially decision making with regard to permanent separation of the child from the birth family. Whether this separation is made manifest as adoption or fostering a clearer recognition and understanding of relational harm may result in improved longer term emotional wellbeing for the person both throughout childhood and into adulthood. Consideration of the issue of relational harm may improve the welfare orientation of decisions about contact and preparations for the child leaving care too.



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