| Case | Summary of facts | Outcome |
|---|---|---|
| *Re JP (Adoption Order: Conditions)*<br><br>[1973] 2 WLR 782<br><br>Family Division, Rees J | Parents separated, F continued to have contact. M and new husband sought to adopt the child. F oppose it and sought contact. Adoption order made, court had wide powers to impose terms and conditions. | Rees J:<br><br>"*The conclusion which I draw from the terms of the statute and from the authority cited above is that the general rule which forbids contact between an adopted child and his natural parent may be disregarded in an exceptional case where a court is satisfied that by so doing the welfare of the child may be best promoted. I have no doubt that the instant case is an exceptional one and also that there are very strong grounds existing at present to support the view that at the right time and in the right manner contact between J and his father is likely to be for J's real and lasting benefit*" |
| *Re S (A Minor)*<br><br>[1975] 2 WLR 250<br><br>Court of Appeal | The mother later remarried and she and her new husband sought to adopt the child. Adoption order made, the father appealed seeking to set it aside or make it conditional on his continued rights of access. The parties eventually agreed, subject to the approval of the court, to the adoption order being made on conditions, inter alia, that the court welfare officer should act as an intermediary for giving to the father such information as the court welfare officer might think fit concerning S's health, education and welfare and for the arrangement of any resumption or continuance of access by the father to which the adopters might agree. | Held:<br><br>Although the tenor of the *Adoption Act 1958*, emphasised by section 13 (1), was that from the time of the adoption the adoptive parents took over the role of parents of the child completely, the court had jurisdiction to impose a condition relating to access under section 7 (3) of the Act if special circumstances made it desirable to do so and an undertaking, clearly drafted, was entered into by the parties. |
| *Re F (Adoption: Parental Agreement)* | The LA decided there was no prospect of restoring the child to the mother and that his best interests would be met by | Held |

| | | |
|---|---|---|
| (1982) 3 FLR 101<br><br>Court of Appeal. | adoption. The mother refused her consent. Court held that the mother's agreement to adoption was not being withheld unreasonably because the mother genuinely thought it would be beneficial to the child to have some contact with her in the future. Therefore he dismissed the adoption application and committed the child to the care and control of the local authority with a direction that he continue to reside with Mr and Mrs S, the proposed adopters, and ordered that the mother should have access to the child not less than three times a year. The proposed adopters appealed. Appeal allowed | **I**t was not sufficient to justify withholding agreement that the parent genuinely thought it would be beneficial to the child to have some contact with the parent in the future, for that was to apply a subjective test, and in the circumstances of this case no reasonable parent, with the child's interests in mind, would withhold agreement; consequently the consent of the mother would be dispensed with as she was withholding it unreasonably, an adoption order would be made.<br><br>Dunn LJ " *The most important thing for C is for him to feel thoroughly secure and settled in the S's home, and for them to have no feeling of threat from the mother. In her present frame of mind it is inevitable that if the mother were allowed contact with C she would pose just such a threat to the security of both C and the S's as would be likely to have very adverse effects on him…It follows from this review of the evidence that it was effectively all one way, namely that it would not be in C's interests to have contact with his mother until he asked to do so, and that in any event to preserve the security in the home any contact should be controlled by the S's".* |
| *Re H (A Minor) (Adoption)*[1985] FLR 519<br><br>Court of Appeal | The children were placed with short-term foster parents. The father and paternal grandmother kept in close touch with the children The foster parents launched an application for an adoption order. The father opposed the application and refused to give his consent.The judge had been satisfied that it would be in the interests of the children to remain with the foster parents and to continue their close relationship with their father. The judge had also considered whether it was possible to make an adoption order with the condition of access attached to it but decided that it would be contrary to s. 13 of the 1958 Act to make such an order since there had been no agreement as to access between the parties and the father had been unwilling to give his consent if access was to be at | Held<br><br>The court could only make an adoption order with a condition of access attached if there had been an agreement on access between the parties concerned since it would be contrary to the intention of the adoption legislation which required that on adoption, all rights, duties and obligations should be vested in the prospective adopters as if they were the natural parents to the children. |

| | | |
|---|---|---|
| | the whim of the foster parents. The judge refused to make the adoption order and held that the father had not been unreasonable in withholding his consent.The foster parents appealed. Appeal dismissed | |
| *Re M (A Minor) (Adoption Order: Access)* [1986] 1 FLR 51<br><br>Court of Appeal | Plan- adoption by the child's foster carers. The mother had been seeing the child regularly and the child knew the mother. The mother was a caring mother who got on well with the foster parents and who was able to accept that she could not in the foreseeable future have the full-time care of C; and that she was a mother by inference who was not likely to create insecurity in the child in the future by making demands for her return; and further that it was desirable that access to the mother should continue. That was something on which both the mother and the local authority and the foster parents were in agreement.<br><br>Judge refused to make an adoption order with a condition of access. He concluded that an order for contact would present problems in respect of enforcement and confusion for the child. As a result, the order was not in the child's best interests. He concluded that an adoption order was not in the child's best interests and, in any event, that the mother was not withholding her agreement unreasonably. He therefore refused to make an adoption order.<br><br>The prospective adopters appealed. | Held:<br><br>(1) As a general rule it was highly undesirable that after an adoption order was made there should be any contact between the child and his natural parents. This was not an absolute rule and there was clearly jurisdiction to make an adoption order with a condition as to access. But each case had to be considered on its own facts. An adoption order was an order vesting the parental rights and duties relating to the child in the adopters. It would be a great interference with the rights of the adopters to compel them to grant access, and that was the reason why an order for adoption with a condition of access should only be granted in very exceptional cases. That caution applied even where the proposed adopters expressed their willingness for such a condition at the time of the application. If the adopters changed their minds and stopped access, the parent would have to become involved in complicated litigation to attempt to enforce the order. That could undermine the security of the child and the security of the adopters in their care of the child.<br><br>(2) In this case the judge had expressed the opinion that although the adopters were currently willing that there should be access, the situation might change if an adopption order was made. He had referred to the difficulties of enforcement and to the confusion caused to the child if an adoption order with a condition of access |

| | | |
|---|---|---|
| | Appeal dismissed | was made. He had come to the conclusion that adoption was not in the child's best interests and that in any event the mother was not withholding her consent unreasonably. The judge had exercised his discretion by declining to make what would have been an exceptional order in any event. The way in which he exercised his discretion and his reasoning could not be faulted.<br><br>Bush LJ:<br><br>"*An adoption order is an order vesting the parental rights and duties relating to a child in the adopters made on their application by an authorized court (s. 8(1) of the Children Act 1975). It would be difficult to imagine a greater interference with the rights of the adopters if an adoption order were made than to make them subject to wardship or other proceedings to compel them, should they not wish it, to grant access to someone who, by reason of the adoption order, had become in law a stranger. That is the reason why an order for adoption with a condition of access should only be granted in very exceptional cases. This caution applies even though it is the proposed adopters who at the time of the application are expressing their willingness for such a conditi*on".<br><br>Kerr LJ:<br><br>"*It is only in unusual and perhaps exceptional circumstances that an order combining adoption with access has been made. Indeed, it may well be that such a combined order has never been made unless the position was that both the natural parent and the adopters were agreed, both on the adoption and on the inclusion of an order for access. That is not the position in the present case. The judge declined to make what would have been an exceptional order on the authorities".* |
| *V (A Minor) (Adoption: Consent Re* [1987] 2 FLR 89<br><br>Court of Appeal | The judge made an adoption order dispensing with the mother's agreement which had a term or condition under s. 8(7) of the Children Act 1975 giving the child's natural mother | Oliver LJ:<br><br>"*the stability and security of the child is of course a very important consideration, but, speaking for myself, I confess to a degree of unease about* |

| | | |
|---|---|---|
| | and his maternal grandparents liberty to apply for directions as to access. The mother appealed, appeal allowed | *the desirability of seeking to secure stability by an adoption order in a case where the whole process is being approached on the footing that an opposing natural parent is to be accorded immediate and continuing access, not simply for the purpose of keeping her memory alive and investing the child with a sense of his own identity, but on a regular and frequent basis and where it is found as a fact that, to put it no higher, there exists a serious doubt whether she is capable of concealing her desire to have the child re-established as a member of her family. An adoption order would no doubt frustrate the realization of that desire, but it cannot be thought realistically to eliminate it. This is the dilemma. I can readily see that the existence of the doubt which the President entertained and the possible disturbance arising if that doubt proved well-founded, might be a very good reason for making an adoption order on the footing that there should be no, or only a very restricted, access. Once it is found, however, that regular and frequent access, inevitably maintaining and strengthening the family ties between the child and his mother and her other children, is so conducive to the welfare of the child that provision has to be made for it in the adoption order as the underlying basis on which the order is made at all, I find it difficult to reconcile that with the avowed purpose of the adoption of extinguishing any parental rights or duties in the natural parent. I entertain considerable reservations about whether, on the basis of continuing, regular and frequent access by a natural parent who has not shown himself or herself unfit in any way to care for his or her own child, it can be right to impose an irrevocable change of status with a view simply to discouraging him or her from the hope of persuading a court in the future to alter the status quo as regards care and control".* |
| *Re C (A Minor) (Adoption Order: Conditions)* [1989] A.C. 1<br><br>House of Lords | A girl aged 13 was taken into care 15m after her birth and apart from two brief periods with her mother lived in children's homes. In 1983 she was placed with the appellants with a view to adoption. Conceded by them that her relationship with her older brother was important to her and that no impediment would be placed by the appellants on its continuance. | Held: The judge failed to have regard to his power under section 8(7) of the Act of 1975 to make an adoption order which contained a term or condition as to access between C. and her older brother. He accordingly failed to appreciate that this was an appropriate case for such a term or condition. The Court of Appeal not only concluded that the judge was never invited to |

| | | |
|---|---|---|
| | Suggested that court make an adoption order with a condition of contact between C and her brother. Court held it was not in C' interests to make an adoption order.<br><br>Court of Appeal dismissed the appeal.<br><br>House of Lords allowed the appeal | impose such a term or condition, but wrongly doubted whether there was power to impose such a term or condition.<br><br>Lord Ackner:<br><br>"*It seems to me essential that, in order to safeguard and promote the welfare of the child throughout his childhood, the court should retain the maximum flexibility given to it by the Act and that unnecessary fetters should not be placed upon the exercise of the discretion entrusted to it by Parliament. The cases to which I have referred illustrate circumstances in which it was clearly in the best interests of the child to allow access to a member of the child's natural family. The cases rightly stress that in normal circumstances it is desirable that there should be a complete break, but that each case has to be considered on its own particular facts. No doubt the court will not, except in the most exceptional case, impose terms or conditions as to access to members of the child's natural family to which the adopting parents do not agree. To do so would be to create a potentially frictional situation which would be hardly likely to safeguard or promote the welfare of the child. Where no agreement is forthcoming the court will, with very rare exceptions, have to choose between making an adoption order without terms or conditions as to access, or to refuse to make such an order and seek to safeguard access through some other machinery, such as wardship. To do otherwise would be merely inviting future and almost immediate litigation*". |
| *Re E (Minors) (Adoption: Parental Agreement)*[1990] 2 FLR 397<br><br>Court of Appeal | Care orders were made. Shortly afterwards, there was a change of policy by the local authority: it decided that the children should be placed with long-term foster-parents with a view to adoption. Parental access was terminated and the children were placed with prospective adopters. Judge concluded that the mother's decision to withhold her agreement to free the | |

| | | |
|---|---|---|
| | children for adoption came within the broad band of decisions which could be regarded as reasonable notwithstanding that the effect of that decision would be to prevent the adoption of the children. Furthermore, the fact that the prospective adopters had stated that they would not abandon the children if they could not adopt had been a factor affecting the reasonableness of the mother's refusal. Accordingly, he refused the 'freeing' application. The local authority appealed. Dismissing the appeal. | |
| *Re C (Minors) (Adoption) [1992] 1 FLR 115*<br><br>*Court of Appeal* | *Mother consented to the children being freed for adoption; the father did not and exercised contact with them.The local authority decided to place the children for adoption, to make an application to free them for this purpose and to reduce access immediately. Subsequently, he was notified by letter of the decision to place the children for adoption; nothing was then said about access. The social worker then wrote to the father, informing him that the children were being introduced to prospective adopters and that his final access should take place on a certain date. The local authority issued freeing applications, and applied to dispense with the father's agreement on the grounds that he was withholding it unreasonably. Access was terminated. The father then applied for access. The judge held that the children should be freed for adoption. The father appealed . Allowing the appeal* | *Held*<br><br>*Where a parent had made an application for access, and had consistently shown a keen interest in continuing access to his children in care and placed with prospective adopters, and where, despite that indication, the local authority had made an opposed application to free the children for adoption, a freeing order could not be made in the long-term and best interests of the children without first taking direct evidence from the prospective adopters as to their attitude to access by the parent. In the absence of such direct evidence, crucial to the issue of access by the parent, the court was deprived of material vital to a proper decision. On the facts, the prospective adopters should have been joined as parties to the proceedings.*<br><br>*Where children were in care and enjoying beneficial access by their parents, it was premature for the local authority to issue an application to free the children for adoption until the issue of access had been resolved, and it was wholly inappropriate to assert in the application that a parent who was seeking to continue such access at the date of the application was unreasonably withholding his agreement.* |

| | | |
|---|---|---|
| | | |
| *Re C (A Minor) (Adoption: Parental Agreement: Contact)* [1993] 2 FLR 260<br><br>Court of Appeal | Court granted the local authority's applications for leave to refuse contact between the parents and child and for an order freeing her for adoption on the grounds, inter alia, that the mother was unreasonably withholding her agreement. Appeal dismissed. | Held<br><br>On the facts, the judge, having found that the child's welfare would be promoted if she were to be freed for adoption and that contact with her parents had not been of any positive benefit, was entitled, in the exercise of his discretion, to come to the conclusion that the child's paramount welfare required the discontinuance of parental contact and that was a conclusion with which the appellate court could not interfere. He had adopted the correct approach in asking himself whether, in all the circumstances of the case, it was within the band of responses open to the hypothetical reasonable parent to reach the conclusion that, even if the child were not to live with her natural parents, her welfare could still require contact to be maintained. His decision was therefore one to which he, with all the advantages he had of seeing and hearing the witnesses, was entitled to come. He was entitled to take the view that the natural parents' inability to accept that the child would not return to them would be likely to upset the stability of any placement, and that the hypothetical reasonable parent, having proper regard to the child's welfare, would come to the same conclusion. |
| *Re C (A Minor) (Adopted Child: Contact),* [1993] 2 FLR 431<br><br>Family Division: Thorpe J | The judge dispensed with the mother's agreement and made the adoption order. The mother applied for leave to issue a contact and specific issue order application. | Held: applying the principles of current law and practice whereby adoption orders were intended to be permanent, and final and fundamental questions such as contact should not be reopened in the absence of some fundamental change of circumstances, the court would dismiss the application. |

| | | |
|---|---|---|
| | | Thorpe J:<br><br>*"It may be that in this society changes are in progress in our understanding of what best should be done for children whose parenting is through the route of adoption, but such changes can only be expressed through statutory reform. Principles that determine this application must be drawn from current law and practice. It seems to me that the Official Solicitor is right to emphasise that adoption orders are intended to be permanent and final. A fundamental question such as contact, even if confined to the indirect, should not be subsequently reopened unless there is some fundamental change in circumstances. There is no evidence of any such change in the present application".* |
| *Re A (A Minor) (Adoption: Contact Order)*[1993] 2 FLR 645<br><br>Court of Appeal | Application to free child for adoption, and terminate contact. Parents applied for contact with view to rehabilitation of child to their care. Judge made freeing order, terminated the contact for the father and ordered contact for the mother unti the adoption. LA could not find adopters who would agree to open adoption and wished to apply to reduce contact. The mother appealed against the freeing order. Dismissing the appeal | Held<br><br>The finding by the judge that A's welfare required him to be adopted was not challenged. It could be inferred from the judge's reasoning that adoption would still be in A's best interests even if the adopters could not tolerate any contact with the mother. Such a placement would not tip the balance against adoption on the welfare test.<br><br>The authorities *Re E (A Minors) (Adoption: Parental Agreement)* and *Re C (Minors) (Adoption)* were no longer applicable after the implementation of the Children Act 1989. A judge now had the opportunity to free a child for adoption and preserve the contact between the child and the natural family pending adoption. A s 8 application, including a contact application, could be made in any family proceedings which included those under the Adoption Act 1976. A contact order could not survive the adoption order, but a contact order could be imposed upon the adopters after the making of the adoption order with conditions. The mother |

| | | |
|---|---|---|
| | | retained the opportunity to take part in the decision on her future relationship with the child after the adoption order was made.<br><br>In exceptional cases there was provision for the former parent, with leave, to be made a party to the adoption proceedings. However, one possibility was for the prospective adopters to give evidence in the contact application as to their approach to future contact with the natural parent after adoption. The prospective adopters would then be confident that so long as their application was prima facie viable, it would not be at risk from the mother's refusal to consent and the mother retained her right to be heard on the only outstanding issue. |
| *Re T (Adoption: Contact)* [1995] 2 FLR 251<br><br>Court of Appeal | The child (aged 10) was made the subject of a care order and placed with prospective adopters. The mother agreed to the child's adoption, but sought contact. The LA and G supported contact but were opposed to a contact order being made. The adopters agreed that the child should see her mother once a year. The mother wished to see the child two or three times a year. The judge ordered that there should be contact not less than once a year, and he attached an order to this effect to the adoption order. The adopters appealed against the need for an order.<br><br>Allowing the appeal | Held: – the welfare of the child was the primary consideration in whether to make an order or not . The degree of security sought by the mother had to be found in the trust that she must have in the adopters. No order would allow the adopters flexibility, but if there was an order the adopters would have to return to court if they wished to stop contact, which was an unjust burden on the adoptive family. The mother's remedy lay in an application to the court for leave to apply for contact if it were stopped. The finality of adoption and the importance of letting the new family find its own feet ought not to be threatened by an order.The right course was to include in the order a recital that the adopting parents had stated their intention to permit the child to have contact with the mother not less than once a year and continue with the statement that the court did not find it necessary to make an order.<br><br>Butler-Sloss LJ:<br><br>"*But in my judgment the prevalence and finality of adoption and the importance of letting the new family find its own feet ought not to be threatened* |

| | | |
|---|---|---|
| | | *in any way by an order in this case. It is not necessary to make an order, so the quite simple short point is, 'Why make an order where there is no good reason to make it? Unless it is better to make it, you should not make it'. But there are actual reasons not to make the order in my judgment, because it is for the benefit of the child that the adoptive parents should have the feeling that they are not under constraint in doing what they have already said they would do and everybody trusts them to do, but secondly, that if the circumstances change, they should have the flexibility to change with the circumstances and not to be tied to an order.It is perhaps of some significance that the combined experience of Mr Karsten and Mr Singleton in the Family Division, and I must say my own experience has not thrown up any case where there has been an order imposed upon adopters with which they had not been in agreement – in this particular case the contents of the order were agreed, but the order was not – and I would hesitate to make an order imposing upon adopters that which they are prepared to do in any event, in particular since up to now we do not know of any case where adopters have been ordered to do what they have not wished to do by way of an order".* |
| *Re T (Minors) (Adopted Children: Contact)* [1995] 2 FLR 792<br><br>Court of Appeal | The prospective adopters applied for adoption orders. The children's half-sister applied for a contact order. She withdrew the application and the adoption order was made. There was an informal agreement that the adoptive parents would provide annual reports on the children for distribution to the applicant and others. In the event no report was The applicant sought leave to apply for a contact order, making it clear that the applicant was seeking only reports in accordance with the informal agreement. The judge dismissed the application. Appeal allowed. | Balcombe LJ:<br><br>"*It is of the highest importance that adoption proceedings should be conducted in a spirit of co-operation between the adopters and the natural family, whenever that is possible. It is equally important that if there are irreconcilable differences then those should be resolved at the time of the adoption, and not put off until some future occasion. If adopters do not feel able to cope even with indirect contact they should say so at the time. It is not acceptable, and would lead to the undesirable consequences … if having agreed to some form of indirect contact, they could resile from that agreement without proffering any explanation. I am not saying that it should never be open to adopters to change their minds and resile from an informal agreement made at the time of the adoption. But if they do so they should, as Butler-Sloss L.J. said in In re T. (A Minor) (Contact After Adoption) [1995] 2 F.C.R. 537, 543 give their* |

| | | |
|---|---|---|
| | | *reasons clearly so that the other party to the arrangement, and if necessary the court, may have the opportunity to consider the adequacy of those reasons. Nor need adopters fear that their reasons, when given, will be subjected to critical legal analysis. The judges who hear family cases are well aware of the stresses and strains to which adopters in the position of Mr. and Mrs. H. are subject and a simple explanation of their reasons in non-legal terms would usually be all that is necessary. In my judgment where adopters in the position of Mr. and Mrs. H. simply refuse to provide an explanation for their change of heart, especially where, as here, the contact envisaged - the provision of a report - is of a nature which is most unlikely to be disruptive of the children's lives, it is not appropriate for the court to accept that position without more".*<br><br>Peter Gibson LJ<br><br>*"… Adopters who enter into arrangements allowing contact in some form know or ought to know that those subsequently denied contact might be aggrieved and might seek an order under section 8 of the Children Act 1989. Butler-Sloss L.J. in In re T. (A Minor) (Contact After Adoption) [1995] 2 F.C.R. 537, 543 has already made public her view that adopters should give reasons when they stop contact to which they have previously agreed. In a case such as the present, where the informal arrangements helped to induce an applicant for contact to withdraw her application, it seems to me only reasonable that the adopters should give the applicant some explanation for their volte face, and without knowing their reasons the court faced with a contact application is in real difficulty in dealing with the application adequately. I find it hard to believe that to require an explanation in the present case would have any general adverse consequences on open adoption. Indeed, like Balcombe L.J., I am impressed by Mr. Rogers's point that to allow adopters to go back on their undertaking without explanation to the applicant or the court could lead to more contested adoptions and applications for contact orders".* |

| | | |
|---|---|---|
| *Re G (Adoption: Contact)*[2003] 1 FLR 270<br><br>Court of Appeal | It had been established that three of the children had suffered injury at the hands of one of the parents. The eldest child had been placed with the maternal grandmother. The twins had been placed with experienced foster parents who sought to adopt all four children. The judge dismissed the local authority application to free the children for adoption, on the basis that the foster parents would be making their own application for adoption, but went on to consider the local authority application for permission to terminate contact with both parents. He concluded that the elder child should have contact with her half-siblings and that it was in the interests of all the children to have some limited contact with the mother. The father appealed. Appeal allowed. | Held<br><br>Current research was in favour of some contact with the natural parents in adoption, the benefit being in the children simply knowing who the natural parental figures were. The judge had not analysed why the minimal benefit of keeping the link with the natural parents alive did not operate as much for the father as for the mother. He had not looked into the long term and analysed whether there was some benefit to the children in knowing that the father had kept in touch with them despite the adoption.<br><br>In the light of the dismissal of the application for a freeing order, the contact decision was almost meaningless, and ought not to have been made, as the right time to consider what kind of contact natural parents are to have with children being adopted was on the occasion adoption was under consideration. |
| | | |
| *Re R (Adoption: Contact)* [2006] 1 FLR 373<br><br>Court of Appeal | While in foster care the child had weekly contact with the half-sister. The local authority's care plan was for adoption outside the natural family. The half-sister supported such a placement, but formally requested that the local authority find prospective adoptive parents who were willing to allow contact, while the adoption panel recommended direct sibling contact three times a year. The child was then placed with prospective adoptive parents who, with the local authority, accepted that level of contact. The half-sister considered that this was insufficient and tried to persuade the local authority to increase the amount. Instead, because of the impact which contact with the half-sister seemed to be having on the child, the local authority and the prospective parents proposed an even more restricted level of contact. The half-sister sought leave to apply | Held: When considering an application for a contact order within adoption proceedings, designed to continue after the adoption order had been made, the court was bound to have regard to the fact that contact orders in adoption proceedings were unusual and that both the practice of the court, and the courts in approaching them, had regarded such orders as unusual. Although contact following adoption had become more common, the jurisprudence remained clear: the imposition on prospective adopters of orders for contact with which they were not in agreement was, and would remain, extremely unusual. Had the prospective adopters resiled completely from their previous agreement in relation to contact, and had the judge in those |

| | | |
|---|---|---|
| | for a contact order on the basis of direct contact three times a year. The prospective adopters were concerned about the child's level of security, and about the risk that, because the half-sister retained links with the mother, direct contact would compromise the confidentiality of the placement. The judge, dealing with the matter summarily, refused the half-sister leave to apply for the contact order. The half-sister appealed. Appeal dismissed | circumstances refused permission, the appeal would have been allowed and the application been allowed to proceed.<br><br>Wall LJ:<br><br>" I*t is, of course, the case that matters have moved on very substantially since Re C. When Re C was decided, the Children Act 1989 was not in force and adoption proceedings were not designated as family proceedings. Accordingly, if there was to be post-adoption contact between siblings or other members of the adopted child's family, the only way that could be enforced was by conditions being written into the adoption order under s8 of the Children Act 1989. Equally, back in those days it was much more common, as Lord Ackner himself points out, for there to be no contact between family members and the adopted child after an adoption order had been made; although, of course, he recognises that there were exceptions to that rule. We were shown s 1 of the new Adoption and Children Act 2002 which is due in force later this year, which demonstrates the clear change of thinking there has been since 1976, when the Adoption Act was initially enacted, and which demonstrates that the court now will need to take into account and consider the relationship the child had with members of the natural family, and the likelihood of that relationship continuing and the value of the relationship to the child.So contact is more common, but nonetheless the jurisprudence I think is clear. The imposition on prospective adopters of orders for contact with which they are not in agreement is extremely, and remains extremely, unusual".* |
| *Down Lisburn Health and Social Services Trust v H* [2007] 1 FLR 121<br><br>House of Lords | The court which made the full care order approved the care plan for adoption of the child, with post-adoption contact as proposed. The parents withheld their agreement to adoption of the child, and the Down Lisburn Health and Social Services Trust (the Trust) sought a freeing order which, although no longer available in England and Wales, continued to be available in Northern Ireland. At the freeing order hearing, the expert continued to support post-adoption contact as being in the child's best interests, although he did accept that if it | Held<br><br>When considering post-adoption contact, courts must exercise care in assessing the effect which contact was likely to have on the particular child in the particular circumstances of the case, bearing in mind the paramountcy of the welfare of the child,<br><br>Baroness Hale (dissenting) |

| | | |
|---|---|---|
| | proved impossible to find adopters who would agree to contact, adoption remained the best option. The parents opposed the freeing order, arguing that the Trust should have tried to identify prospective adopters, and that reasonable hypothetical parents would be justified in withholding agreement until they could be assured that any prospective adoptive parents chosen would agree to post-adoption contact. The court made the freeing order, without any provision for interim contact to the parents. Appeal dismissed. Appealed to ECHR [2011] 2 FLR 1236. No breach of art 8. | *".. In many cases, particularly those where the child has a significant history, it is not enough for the court to decide in a vacuum whether 'adoption' is in the best interests of the child. It must decide what sort of adoption will best serve her interests. If the court takes the view that some form of open adoption will be best, then it will have to take that into account in deciding whether it will accord with its most important consideration, the welfare of the child, to make an order freeing the child for adoption before there is any evidence available of the efforts made to secure the right sort of adoptive placement and to prepare both families for it. The court may, of course, take the view that the need to free the child for adoption is so pressing that this should be done even if it is not yet known whether an open adoption will be possible. But the need to free the child for adoption is different from the need for the child to be adopted. It may be premature to free a child for adoption even though it would not be premature to make an adoption order".*<br><br>Lord Carswell<br><br>*"There have been some differences of opinion in the published literature about the desirability of contact, which is propounded by some as universally beneficial, while others are more cautious and urge a degree of flexibility of approach and avoidance of doctrinaire policies. They point out that in the wrong case contact can lead to disturbance of the children and impose a significant burden on the adopting parents. There is, however, general agreement that in appropriate cases contact can contribute to reassurance and security and a feeling of identity for adopted children and help to dispel feelings of rejection…."* |
| *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625<br><br>Court of Appeal | Care orders were made in respect of all four children, aged 5, 4, 3 and 2, with a care plan for adoption. The youngest two children were adopted together, ultimately a dual plan of adoption and fostering was recommended for the elder two children. The judge made placement orders, dispensing with parental consent however, on the basis that contact between the two eldest children was key, he also ordered under s 26 of | As regards contact, held<br><br>The 2002 Act envisaged the court exercising its powers to make contact orders post adoption where such orders were in the interests of the child concerned. The judge had plainly been right to make a contact order under s 26 because of the fundamental importance of preserving the children's relationship with each |

| | | |
|---|---|---|
| | the 2002 Act that they should have contact with each other at least 7 times a year. The mother appealed, arguing that adoption would jeopardise her future contact with both children and their contact with each other. Appeal dismissed. | other; the question of contact between the children, and between the children and the birth parents, should henceforth be a matter for the court, not for the local authority or for the authority in agreement with prospective adopters. It would be for the court, before making an adoption order, to decide, in accordance with s 46(6) of the 2002 Act, what ongoing contact the children should have with each other; it was not for prospective adopters to do so.<br><br>As matters currently stood, the existence of the placement orders should not be an inhibition on the mother's ability to apply to the court to determine questions of contact; it was highly likely that the placement of the children with adopters or foster carers unwilling to facilitate contact between the children would provide a proper basis for leave to be granted to the mother to make an application to apply for an order to revoke the placement order under s 24(2) or to apply to oppose the making of the adoption order under s 47(5).<br><br>"*the making of placement orders in the instant case requires additional safeguards for the two children over and above the fact that the court has made contact orders under s 26 of the 2002 Act. We accordingly direct that all further applications in the case, including any application for either child to be adopted, should be listed before the same judge, and that all further applications in the case be reserved to him. Whilst we cannot, of course, fetter the future exercise of his discretion, which he must exercise as he thinks fit on the facts of the case, we are satisfied that he must retain control of the case, and that no final step should be taken in relation to either child without his imprimatur. We repeat that our reason for taking this view is that the judge's judgment is predicated on the proposition that the relationship between the two children is of fundamental importance, and that the relationship must be maintained, even if the children are placed in separate adoptive placements, or if one is adopted and the other fostered. In these circumstances 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 themselves, or between the children and their natural parents to the discretion of the local authority and/or the prospective carers of D and S, be they adoptive parents or foster 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.We do not know if our views on contact on the facts of this particular case presage a more general sea change in post adoption contact overall. It seems to us, however, that the stakes in the present case are sufficiently high to make it appropriate for the court to retain control over the question of the children's welfare throughout their respective lives under ss 1, 26, 27 and 46(6) of the 2002 Act; and, if necessary, to make orders for contact post adoption in accordance with s 26 of the 2002 Act, under s 8 of the 1989 Act. This is what Parliament has enacted. In s 46(6) of the 2002 Act Parliament has specifically directed the court to consider post adoption contact, and in s 26(5) Parliament has specifically envisaged an application for contact being heard at the same time as an adoption order is applied for. All this leads us to the view that the 2002 Act envisages the court exercising its powers to make contact orders post adoption, where such orders are in the interests of the child concerned*". |
| *X and Y v A Local Authority (Adoption: Procedure)* [2009] 2 FLR 984<br><br>Family Division, McFarlane J | The four children were each made the subject of care and placement for adoption orders. The mother had already stopped attending contact sessions with the children; the father was having direct contact, but only in the form of prison visits. A social worker visiting the father left him with the clear impression that some direct contact post-adoption was envisaged, and that indirect contact would be maintained post-adoption, including written reports to him from the adopters. A placement that could accommodate all four children was found, and in due course the prospective adopters issued an application to adopt. The family proceedings court failed to serve notice of the adoption application on either parent. The father then sought, and obtained, leave to apply for contact. At | Held<br><br>The recital in the order to the effect that the father 'may well issue a further application for leave to apply for direct contact' was also unhelpful and bad practice; it could have been read as permitting the father to seek direct contact at some stage in the not too distant future. Adoption orders and any accompanying contact arrangements were intended to be permanent and final, with the result that fundamental issues such as contact should not be reopened post-adoption, in the absence of some fundamental change of circumstances. It was unsatisfactory to both parent and adopter to leave a known issue concerning post-adoption contact unresolved at the date of the adoption order. The court should |

| | | |
|---|---|---|
| | a directions hearing at which only the father and the authority were represented, the father indicated that he would not pursue his application any further provided indirect contact twice a year was ordered, although he 'may well issue a further application for leave to apply for direct contact with the children at some stage after the adoption orders have been made'. The local authority then persuaded the justices to treat the directions hearing as the final adoption hearing; the adopters, who were not present, agreed to this because the authority informed them that the father had withdrawn his application for contact, however, the adopters were not told that this was on condition that indirect contact was ordered. The justices went on to grant adoption orders in respect of all four children, with an order providing for indirect contact between the father and the children. The adopters appealed against the contact element of the order. Appeal allowed. | have grappled with and determined the issue of any future direct contact prior to the making of the adoption order, on the basis that all parties would then move forward knowing that whatever arrangement was made could only be reopened by an application for leave for a contact order in the event of some fundamental change of circumstances<br><br>In relation to the adopters: the family proceedings court had totally failed to meet the mandatory requirement under s 46(6) of the 2002 Act for the court to consider the wishes and feelings of the adopters on the issue of contact before making any adoption order: for the court properly to consider the issue of contact, the children and the prospective adopters should have had their views represented in court; further, the court should have directed the authority to serve the social worker's statement about contact on the adopters, as the applicants in the adoption proceedings. |
| *In re J (A Child) (Adopted Child: Contact*) [2010] 3 WLR 1746<br><br>Court of Appeal | A child was made the subject of an adoption order when she was a little over two years old. The child's natural parents applied for contact with her by way of annual receipt of a photograph of her. The adoptive parents and the local authority objected that provision of photographs would aid the natural parents in tracing the child's whereabouts. He granted the application. LA appealed. Appeal allowed. | Held<br><br>The essential question for the court, pursuant to its obligation under section 1 of the Children Act 1989 to assess what was in the child's best interests as the paramount consideration, was whether the adoptive parents' fears as to the risk of contact had no basis and were therefore unreasonable; that, since it was extremely unusual for a court to make an order for contact with which the adoptive parents were not in agreement, the mere fact that the court took a different view of such risk than that feared by the adoptive parents was no answer to their objection; that, in the circumstances, the welfare of the child in the early stages of her adoption depended upon the stability and security of her new adoptive parents, and undermining such stability by fuelling or failing to heed their fears that the natural parents might seek to |

| | | |
|---|---|---|
| | | trace her was to damage her welfare; that, therefore, having found that the adoptive parents' fears were genuine and understandable, and, furthermore, that there was a risk that the natural parents might seek to trace the child, there was no feature in the facts of the case capable of outweighing the effect on the adoptive parents' sense of security and their consequential wish not to hand over photographs of the child, so that the conclusion should have been reached that the natural parents should not be provided with photographs; and that, since the adoptive parents alone had parental responsibility for the child and were her parents, and the natural parents were not, there was no proper basis for the court to usurp their responsibility and to take the extremely unusual step of imposing on the adoptive parents an obligation which they were unwilling voluntarily to assume.<br><br>Lord Neuberger:<br><br>"*Of course, as a matter of law the adoptive parents' wishes cannot be determinative or dispositive, but the fact that it is "extremely unusual" to make an order with which the adoptive parents are not in agreement is simply not to be found stated or acknowledged anywhere in the judgment"*<br><br>" *It is a strong thing to impose on adoptive parents, it is "extremely unusual" to impose on adoptive parents, some obligation which they are unwilling voluntarily to assume, certainly where as here the adoption order has already been made. Was there a proper basis for taking that extremely unusual step? In our judgment there was not. The judge found that the adoptive parents were genuine when they expressed their concerns, so what was the justification for imposing on them something they conscientiously and reasonably objected to, particularly when as we have seen they say that they have not ruled out the possibility of letting the natural parents have photographs in the future? As we have said, they are not to be saddled with an order merely because a judge takes a different view. The adoptive parents are J's parents; the natural* |

| | | |
|---|---|---|
| | | *parents are not. The adoptive parents are the only people with parental responsibility for J. Why, unless the circumstances are unusual, indeed extremely unusual—and here, in our judgment, they are neither—should that responsibility be usurped by the court? We can see no good reason either on the facts or in law. On the contrary, there is much force in the point they make, that they wish their status as J's parents to be respected and seen to be inviolable—not for themselves but in order, as they see it, to give J the very best chance for the adoption to be successful* |
| *Re T (Adoption: Contact)* [2011] 1 FLR 1805<br><br>Court of Appeal | When the child was one, care and placement orders were made on the basis of a care plan for adoption outside the family, with direct contact twice a year with the grandmother, provided she met certain conditions. Adoptive parents were identified who were prepared in principle to consider direct contact between the child and grandmother at some stage, although somewhat cautious about the prospect. A few days before the child's placement with the adopters the local authority arranged a meeting between the adopters and the grandmother. Following the meeting, which proved to be difficult, the adopters expressed substantially more concern about direct contact post-adoption. After some discussion, the local authority agreed with the adopters that the authority would conduct a review about a year after the placement to consider whether direct contact was in the child's best interests, and that there would be no direct contact until this assessment had taken place. A few months after the adoption order was made, the grandmother obtained leave to apply for an order for contact with the child. After hearing full argument and the guardian's oral evidence, with cross-examination, which indicated that the proceedings were making the adopters very anxious and that they had said they would not have gone ahead with the adoption had they been told that there would | Held<br><br>The general approach to a contested claim for contact post-adoption by a member of the biological family remained that set out in *Re R (Adoption: Contact)* that is that it would be extremely unusual to impose on prospective adopters orders for contact with which they were not in agreement. In this case there was no measurable chance that, were the application for direct contact to have continued, the result would have been the imposition upon unwilling adopters of any actual order for contact. |

| | | |
|---|---|---|
| | definitely be direct contact, the judge dismissed the grandmother's application. The grandmother appealed, dismissing the appeal. | |
| *Re N (A Child) (Adoption Order)*[2014] EWFC 1491<br><br>Family Division: Moor J | Application for an adoption order (5yo). Agreement that the child should have contact with father, and the PGM in the long term; adopters envisaged contact four times per annum as long as it meet's the child's best interests. They opposed a formal contact order. F opposed adoption order (said SGO) and asked for a contact order for once pcm.<br><br>Adoption order made, no contact order made.<br><br>. | Moor J<br><br>"*I am giving the Applicants sole parental responsibility for N by the adoption order. They become her parents and are to be trusted to do what is right for her as any parent would do for their child. Applying section 1(6) of the 2002 Act, I am quite satisfied that it is not better for N to make such an order. Apart from anything else, there must be finality to this litigation. The ability to apply to vary a contact order would be very deleterious to N's welfare….I remind myself that there is still the ability of the court to grant the Father permission to make an application for contact. In this particular case, if the contact was to stop, I have no doubt that a judge would, at the very least, want an explanation from the Applicants. The safety valve of being able to make that application is fatal to Mr Macdonald's submission that there needs to be a contact order".* |
| *Re A (children) (adoption/long-term foster care*) [2015] EWCA Civ 1021<br><br>Court of Appeal | The eldest three were aged 10 to 13 and the youngest aged 3 to 6. The children were removed from the parents by the local authority. The children were all placed in foster care, initially together, but subsequently the youngest three were placed together with alternative carers. Unsupervised contact continued with the parents. The parents did not contest the making of care orders in respect of the three elder children. However, they sought the return of the three younger children to their care, alternatively, for them to be cared for by the paternal grandfather. By the time of the hearing, the authority's | McCombe LJ:<br><br>"…*Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (s 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under s 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it* |

| | | |
|---|---|---|
| | proposals comprised long term foster placements for the three elder children and care and placement orders for the youngest children, with care plans that provided for a six month exclusive search for adoptive placement, to include contact with the elder siblings three times per year, but with placement being given priority over contact, after which time it would search for a foster placement. Contact with the parents was proposed to be indirect.<br><br>The judge refused the applications for placement orders in respect of the younger children. She further rejected the parents' case for their return or for placement with the grandfather. The judge raised concerns regarding the clarity of the authority's plans for adoption and the provision for contact between the two sibling groups who, the authority had recognised, were close.<br><br>Appeal dismissed. | *would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact".* |
| *Prospective Adopters v FB & Others* [2015] EWHC 297 (Fam)<br><br>Family Division: Moor J | Application for an adoption order, opposed by the mother. If application fails, mother sought direct contact on a shared care basis. The father also sought direct contact. Adoption order made and no order for post adoption direct contacy | *Consideration of section 46(6) and s 51A*<br><br>*As to half siblings : "I do not find that she only missed her brother a "little bit". I find that it is regrettable that it said this. It is also right to note that the report of the Guardian, MM, does not specifically deal with the position of CB and DB. This was wrong, particularly given section 1(4)(f) of the Adoption and Children Act 2002 which requires the court to consider the relationship which the child has with relatives and in particular "the wishes and feelings of any of the child's relatives…regarding the child". It is, however, right to note that the Guardian did require the Local Authority to amend its care plan to include letterbox contact. Indeed, life story book work to include photographs and details of E's birth family is referred to in her report. … I take the view that there should have been greater consideration of this issue* |

| | | |
|---|---|---|
| | | *before Judge Edwards. The fact that there was not does not, however, invalidate her order. A very similar issue arose before me in the case of The Prospective Adopters v IA and Another [2014] EWHC 331 where it was alleged that the placement order was fundamentally flawed. I was able to cure the alleged defect by granting permission to oppose the adoption. This allowed the matter to be fully considered at the adoption hearing. This is exactly what has happened here. Moreover, I also granted CB party status. I am quite clear that the views and position of both CB and DB have been fully canvassed before me. I am quite satisfied that the defect has therefore been cured prior to an adoption order being made.*<br><br>*"There are certain circumstances in which it is appropriate for there to be an open adoption but I am clear that this is not one. Again, it is for all the reasons I have given but by far and away the most important is that the Mother does not accept the adoptive placement. This of itself would be fatal to anything other than identity contact as it would run the real risk of jeopardising the stability of the adoptive placement. It therefore follows that, if there was to be contact, it would be for identity purposes only. Indeed, it is clear that this is the position in the vast majority of cases where there is post-adoption contact. I was referred to research by the University of East Anglia as to outcomes for children following adoption. Of the cases studied, there was no contact in 11%. There was letterbox contact in 80%. There was face to face contact with adult birth relatives in 17% but only 9% was with a birth parent and then it was usually once or twice per annum, often for brief periods. A high level of contact is extremely unusual. There are significant challenges to introducing contact when the child has no memory of a birth parent. It requires a high level of management. It can be very distressing and confusing for the child. The applicants would, in general, be expected to make the arrangements. This can cause difficulties in managing the emotions of the birth family so as to protect the boundaries of the adoptive family. In a serial number adoption, such as here, this would almost certainly lead to a lifting of the veil of anonymity. I have concluded that this would all be impossible in this case where there has been such a high degree of conflict. Mr Jones for the applicants* |

| | | |
|---|---|---|
| | | *submitted to me that it was asking far too much of the adopters. I agree….The fact that the applicants are reasonable people and have said that they would listen to the advice of professionals does not lead to a finding that it would be right to impose an order upon them against their wishes. After all, the professionals involved (both Guardian and Social Worker) have been against such contact".* |
| *Seddon v Oldham Metropolitan Borough Council (Adoption: Human Rights)*<br><br>[2015] EWHC 2609 (Fam)<br><br>Peter Jackson J | Placement order made, plan for post-adoption contact to consist of an exchange of letters twice a year. This was subsequently reduced to once a year in the light of M's sustained opposition to the adoption. Adoption order made in May 2010, no order for contact. In July 2010, M issued an application under s.10 Children Act 1989 for permission to apply for a contact order, application refused. Appeals dismissed. In July 2014, M made an application pursuant to the HRA | Held:<br><br>(1) Do rights under Article 8 of the European Convention on Human Rights and Fundamental Freedoms 1950 (ECHR) survive the making of an adoption order?<br><br>The making of an adoption order always brings pre-existing Art. 8 rights as between a birth parent and an adopted child to an end. Those rights arose from and co-existed with the parent-child relationship, which was extinguished by adoption.<br><br>(2) Did the coming into force in April 2014 of s. 51A Adoption and Children Act 2002 (ACA 2002), which allows the court to make a post-adoption contact order, create or maintain an Art. 8 right as between a birth parent and an adopted child?<br><br>s. 51A ACA 2002 does not create or maintain an Art. 8 right as between a birth parent and an adopted child. |

| | | |
|---|---|---|
| | | (3) Is s. 51A(4) ACA 2002, which requires a former parent to obtain the permission of the court before applying for contact with an adopted child, incompatible with the ECHR?<br><br>s. 52A(4) ACA 2002 is not incompatible with the ECHR.<br><br>(4) Does a post-adoption letterbox service run by a public body give rise to Art. 8 rights as between a birth parent and an adopted child?<br><br>A public body running a post-adoption letterbox service is obliged under Art. 8 to respect correspondence between a birth parent and an adopted child and adopters, the obligation arising from the nature of the correspondence and not from the former parent-child relationship.<br><br>Consideration of s46(6) ACA 2002 and s51A<br><br>*" I also have regard to whether the court is likely to grant a post-adoption contact order if an application was allowed to proceed. There is a longstanding recognition, before and since the ACA 2002, that such orders are extremely unusual: Re C (A Minor) (Adoption Order: Conditions) [1989] AC 1; Re T (Adoption: Contact) [1995] 2 FLR 251; In Re R (Adoption: Contact); Oxfordshire County Council v X, Y & J (above). In my view there is no prospect whatever of any contact application by Ms Seddon succeeding to the smallest extent. An application would cause still further stress and expense to no purpose. It would cause further harm. It would meet nobody's needs but Ms Seddon's. A degree of sympathy may be felt for her, but that sympathy must have limits. The legal process should not be allowed to indulge the adult at the child's expense. The adopters are A's parents and A's welfare* |

| | | |
|---|---|---|
| | | *depends upon them. The court should do what it can to protect them from further incessant litigation and tendentious campaigning".* |
| *Re W (a child) (adoption: contact)*<br><br>[ 2016] EWHC 3118 (Fam)<br><br>Cobb J | Cross-applications for an application by the adopters for an adoption order and an application by A's paternal grandparents, for a Special Guardianship Order. These applications were first considered by Bodey J in April/May 2016; his judgment is published as Re W. At the conclusion of a contested hearing, Bodey J made a Special Guardianship Order in favour of the paternal grandparents. The prospective adopters successfully appealed Bodey J's order to the Court of Appeal (Jackson, McFarlane and Lindblom LJJ.<br><br>Adoption order made. | <u>Held:</u><br><br>As to contact, recitals on the face of the order<br><br>i) of the open position of the Xs that they regard contact as in A's best interests;<br><br>ii) that they are agreeable to direct contact initially at a frequency of at least twice per year, interspersed with indirect contact;<br><br>iii) that the paternal grandparents have indicated their preparedness to accept the outcome of this litigation, and do nothing to undermine the security of A's placement with the Xs;<br><br>and<br><br>iv) that the Xs and the paternal grandparents welcome the involvement of Dr. Young in the facilitation of that contact initially, to be initiated by a meeting between the adults within the next few weeks.<br><br>Cobb J |

| | | |
|---|---|---|
| | | "*On the basis of such a recording, I cannot conclude that it would be better for A that I make an order. Indeed, it would be better for A to know that her adoptive parents were able to agree wholeheartedly with the proposal for contact without the need for court intervention. I am further concerned that a court order may prove to be inflexible – however it be worded – to meet the demands of a rather uncertain arrangement. I have regard to what was said by Dame Elizabeth Butler Sloss P in Re T (Adoption: Contact) "[first] it is for the benefit of the child that the adoptive parents should have the feeling that they are not under constraint in doing what they have already said they would do and everybody trusts them to do, but secondly, that if the circumstances change, they should have the flexibility to change with the circumstances and not to be tied to an order".*<br><br>" *The obligation on me to consider "whether there should be arrangements for allowing any person contact with the child" (section 46(6) of ACA 2002) is accentuated in this case by the real prospect (accepted by the prospective adopters, as in A's interests) of direct contact between A and her birth family post-adoption. This indeed adds a new and important dimension to this difficult case. The proposal to introduce a relationship between an adopted child and her birth family after adoption by way of direct contact is in my own experience unique. I was not at all surprised to hear from the adoption team manager that it was unprecedented in this authority's experience, and in the experience of Barnardo's (with their wealth of adoption knowledge) whom they consulted on the issue. This proposal reflects the resourcefulness of all those involved – coupled with the creativity of the professionals, and the selflessness of the proposed adopters – to divine an outcome for A which best meets her needs. As I have indicated above, if contact were to happen in the way proposed, it would be likely to play a highly material part in neutralising A's possible sense of rejection by her birth family, while remaining in the Xs care, at the stage of her development when she is considering more maturely the difficult issues around her identity. The viability of direct contact depends additionally and crucially on the ability of the paternal grandparents, and any member of the paternal family with whom A is to have contact, to accept the* |

| | | |
|---|---|---|
| | | *decision I make, and to support without reservation the outcome for A to reside with Mr. and Mrs. X…."* |
| *Re P-M* [2014] 1 FLR 195<br><br>Family Division: Ryder J | Application for an adoption order, MGM sought a contact order, unsupervised, once per month. The adopter did not want a contact order but was favourable to the idea of continuing contact between P-M and his MGM. Agreement that previous carers (an aunt and uncle) have direct contact with the child once or twice a year (no contact order needed). The MGM cares for the child's half brother, her own son (the child's uncle) and the child's sister. The LA proposal was fpr unsupervised contact for the MGM. The MGM's evidence was said to be "Ms F's evidence was at its most impressive in her analysis of adoption"<br><br>Adoption order made<br><br>Contact order made to MGM : Contact every six or seven weeks i.e. eight contact visits, each of which has a different character .. *It should be noted that only three of those visits are full day contact visits with both Ms F and his sister, only the Christmas holiday visit includes the boys living with Ms F and at least two contact visits are for P-M and his sister on their respective birthdays.* | Ryder J:<br><br>"*It is necessary that such contact be maintained and in respect of his sibling contact, I go further and am of the view that the success of adoption long term (and hence its necessity) depends upon and is conditional on the integration of a measure of contact with his new family life.*<br><br>*" Contact: section 46(5) of the 2002 Act imposes a duty on the court before making an adoption order to consider whether there should be arrangements for allowing any person to have contact with the child. Section 26(5) envisages situations like this case where a section 8 Children Act 1989 application is made for contact which is heard at the same time as the application for an adoption order. Contact is a matter for the court and I have regard to the court's approach to contact since the 2002 Act which is described in Re P (Placement Orders: Parental Consent)at paragraphs [146] to [151] and Re R (Adoption: Contact, [2006] 1 FLR 373 as reiterated by the Court of Appeal after the 2002 Act came into force in Oxfordshire CC v X, Y and L I have come to the conclusion that that P-M's welfare throughout his life requires the maintenance of a relationship with his maternal grandmother and sister through whom there will be a relationship with his extended birth family. Those relationships are important but must take second place to the primary relationship of parent and child which is the relationship between Ms D and P-M. The contact should contribute to the reassurance and stability of P-M i.e. his feeling of identity without creating a risk of disruption. I accept the principle that there should be regular direct contact for P-M with his maternal grandmother and sister and the agreement come to between the* |

| | | |
|---|---|---|
| | | *parties that P-M would benefit from maintaining a relationship with his paternal grandparents.*<br><br>….<br><br>*I have concluded that there should be continuing contact between P-M and his maternal grandmother and sister. I am of the view that absent a situation of crisis where I would expect Ms F to be open and honest with Ms D and the local authority, that contact need not be supervised. Ms F is quite capable or organising activities and providing a warm and nurturing environment. If she needs help she must ask for it. She must also include Ms D in some of the contact arrangements so that these two important women learn to work with each other. Ms F will remain a psychological and actual grandmother without parental responsibility or legal rights and Ms D will become a parent with exclusive parental responsibility.*<br><br>…<br><br>*" I have considered long and hard the divergent views about whether a contact order should be made and if so, on what basis. On the one hand an order could expose P-M to instability and split loyalties arising out of the reasonable anxieties that Ms D would harbour with the risk that she would not be able to cope with what she says she can commit herself to voluntarily. A contact order could tend to be antagonistic to the rationale for the adoption order that I intend to make and everyone agrees that nothing must be allowed to put at risk the placement that P-M has with Ms D. On the other hand, Ms D must understand that it is my firm view that provided circumstances do not change for the worse, the contact that I have set out is in P-M's best interests and I expect him to be afforded the benefit of it. In particular, the contact between P-M and his sister is necessary for his welfare to be safeguarded throughout his life i.e. in the long term. As the parties know only too well, I* |

| | | |
|---|---|---|
| | | *have changed my mind more than once. For what I believe to be good legal and evaluative reasons I intend to hold to the view with which I concluded the proceedings in January. I have decided to make a limited contact order alongside an adoption order. For me, they are inextricably linked on the facts of this case: both orders are necessary and the success of the adoption order is in part dependent upon a minimum level of contact with P-M's birth family particularly his sister and maternal grandmother. The balance of contact though desirable should not form part of an order as in my judgment that would go too far and be potentially antagonistic to the exercise of Ms D's parental responsibility.*<br><br>*Although this is not a part of the reasoning of the court, it has to be remarked that 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. Too often the lack of post adoption support or any pro-active communication causes parties to drift so quickly that the absence of contact over time becomes a barrier with the very understandable fear on the part of adopters that its recommencement will be so unsettling that it may damage a placement: a fear that may well be justified. Perhaps more often than hitherto, courts faced with agreed contact post adoption might consider whether an order can give reassurance to the child by keeping an enduring relationship that is important and for some children critical to their welfare throughout their lives".* |
| *A Local Authority v Mother and another*[2017] All ER (D) 81 (Sep)<br><br>HHJ Wildblood QC | Placement orders sought under plan for letterbox contact | No order for contact:<br><br>"*Although there are circumstances in which post adoption contact is in the interests of a child, this is not such a case for the reasons given by the guardian. I cannot imagine that this mother would ever be able to hold her emotions in check if post adoption contact were to be ordered and she attended any such contact. The experience would be miserable for the mother, the child and for* |

| | | |
|---|---|---|
| | | *the adopters; it would be plainly contrary to G's welfare for that sort of contact to occur".* |
| *Re W (A Child) (Adoption: Delay)*<br><br>[2017] 2 FLR 1628<br><br>Sir James Munby, P | Child in fostercare 3 weeks after her birth. LA made an application for a care order in respect of her and her siblings. The siblings remained in the father's care, while an ICO was made re the younger child. At final hearing the three siblings were made subject of a SO, remaining with their father, while care and placement order made re the youngest child. The chid was placed with prospective adopters who application for an adoption order. The father was granted leave to oppose the adoption order and his appeal from the care and placement order was allowed by the CoA. At the re hearing the judge favoured reunification of the child with her father. The adopters appealed successfully. The adopters applied for an adoption order. Extensive expert evidence was provided at the hearing and it was clear that the child was securely attached to the adopters and that the father was successfully parenting the three older siblings. Adoption order made, no order for contact.<br><br>NB. F sought a stay to the adoption order having discovered the at the adoptive parents were due to move the the USA to live, the order had been sealed so the father applied for it to be set aside, and for a contact order. Application dismissed, no order for contact *Re W (A Child) (No 4*)<br><br>[2017] EWHC 1760 (Fam) | "*There was a clear consensus among all the experts that, if W is to remain with Mr and Mrs A, it is in her best interests that there should be increased contact leading to direct contact with her birth family as soon as is practical. There was general agreement that W's long-term psychological wellbeing – her ability to understand her status as an adopted person and to put her particular 'narrative' in context – would be best safeguarded if contact with her birth family took place sooner rather than later. I agree with that. I also agree that there should be no order for contact, something which no expert recommended. If Mr and Mrs A are to be W's adoptive parents, and this is the hypothesis on which the question arises, it must be for them to decide when, how and in what circumstances contact should begin and develop. And, quite apart from that, it is quite impossible at this point to spell out any of these matters with the kind of precision which would be required in an order. All that said, I agree with Dr Blincow's view, expressed in answer to questions from Mr Bennett, that Mr and Mrs A need to 'commit themselves' to making such contact work and that 'it is very, very important … that [they] adopt that course of action wholeheartedly'.* |

| | | |
|---|---|---|
| *Prospective adopters for BT and another v County of Herefordshire District Council and others*<br><br>[2018] EWFC 76<br><br>Family Division: Keehan J | Case concerned twins and an application by a couple to adopt one child, and a single care to adopt the other. Children initially in a foster placement together but one child was moved to a separate placement . Care orders and placement orders made on care plans for the children to be placed together with a search being made for nine months for an adoptive placement and if the search was unsuccessful the following three months would be devoted to seeking a long-term foster placement for them together. There was no question of the local authority proposing, still less the court approving, a plan for the twins to be separated and placed separately whether in adoptive placements or long-term foster care. However a team manger made the decision to place the twins separately for adoption, endorsed by the LAC review. Chuldre matched with separate adopters. Claims for HRA breaches were made, issue of quant dealt with. Schedule of failings set out in judgment. Consideration of SGOs. Expert evidence on attachment. Adoption orders made. Contact orders made. | Keehan J<br><br>"*The high importance, indeed the imperative need, for regular direct and frequent indirect contact to take place is such that I will make a contact order in the terms sought. I do not make a contact order because I entertain the slightest doubt about the dedication of these prospective adopters to ensure this contact takes place, indeed, I am satisfied that the prospective adopters are committed to this contact and recognise that it is in the welfare best interests of BT and GT. I make a contact order (i) to mark for the twins the importance this court places on their ongoing relationship notwithstanding they are adopted separately and (ii) to fortify the adopters in the event that one or other twin is reluctant to the attend contact in the future".* |
| *Re A and others (children) (care orders: care plans)* [2017] All ER (D) 41 (Sep)<br><br>HHJ Bellamy | Court considering care plans in respect of 5 children. LA plan for 3 middle children to be adopted together and oldest and youngest to be placed separately, with the oldest, 'A', to be placed in long-term foster care. Court refused to approve any of the care plans and directed evidence from child psychologist to give evidence on separation and contact. | "*Cases involving large sibling groups present significant challenges to local authorities in terms of care planning. They also present a significant challenge to the court. The fact that a sibling group involves more than one father, that there is a relatively wide age gap between the oldest and the younger four half-siblings, that the children are all of dual-heritage adds to the complexity.In this case I am satisfied that I am not able to approve any of the final care plans for these children at this moment in time. Before I can do so it is important for the court to know whether these foster carers are willing to offer a long-term home either for the four children who are with them now or just for Child A. I am also satisfied that before the court can properly evaluate the local authority's plans to separate the oldest four children there needs to be an expert assessment of the children by an appropriately experienced child psychologist. The areas for assessment are, with respect to each of the oldest* |

| | | |
|---|---|---|
| | | *four children, the likely impact on their emotional wellbeing of separation from their siblings and of contact between Child A and his siblings being restricted to annual letterbox contact. For the purpose of s 13(6) of the Children and Families Act 2014, I am satisfied that the proposed expert evidence 'is necessary to assist the court to resolve the proceedings justly'.*<br><br>*Re A and others (Children: Placement Orders: Separating Siblings)*<br><br>[2018] Lexis Citation 20<br><br>At the resumed hearing the care plan for Child A was for long term fostercare with direct contact with his mother and MGM, and direct sibling contact until such point as adoptive placements have been identified for them. A joint adoptive placement for Child B and C. The plan for Child D was a time-limited search for a joint placement for Child D and Child E .<br><br>"*The most recently amended final care plans for the four younger children acknowledge that ideally these four children should continue to have direct contact with each other after they have been placed for adoption. It is now agreed by all parties, including the local authority, that direct post-placement inter-sibling contact between the four younger children should be underpinned by contact orders under s.26 of the Adoption and Children Act 2002. I shall make those orders".* |

| | | |
|---|---|---|
| *Re B (A Child) (Post-Adoption Contact)* [2019] 2 FLR 117<br><br>Court of Appeal | Child was placed with foster carers who were also approved as prospective adopters. Care and placement for adoption orders were made. The LA concluded that direct ongoing contact with the parents would not be appropriate and the judge agreed. Contact with the parents wound down over the following months. An adoption order was applied for and the birth parents neither consented to nor opposed the application, but they sought and were granted leave to apply for direct contact, which was refused. Parents appealed, appeal dismissed. | <u>Held:</u><br><br>The starting point was the previously settled position in law reached in *Re R (Adoption: Contact* that 'the imposition on prospective adopters of orders for contact with which they [were] not in agreement [was] extremely, and remain[ed] extremely, unusual'. There was nothing to be found in the wording of s 51A or of s 51B which indicated any variation in the previously settled approach to be taken to the imposition of an order for contact upon adopters who were unwilling to accept it. The wording of ss 51A and 51B rather indicated that Parliament's intention in enacting s 51A was aimed at enhancing the position of adopters rather than the contrary . Any development or change from previous practice and expectations as to post-adoption contact that may arise from these current initiatives will be a matter that may be reflected in welfare decisions that are made by adopters or by a court on a case-by-case basis. These are matters of welfare and not of *law* .It was a given that any social worker, children's guardian or expert who was required to advise the court on the issue of contact, should ensure that they are fully aware of any current research and its potential impact upon the welfare issues in each particular case. Equally, it was already a requirement that courts should give adequate and clear reasons for any orders that were made following contested proceedings At the placement order stage courts should be careful to stress that, if there was any future issue as to contact, the law, as stated in *Re R*, would apply and, save for there being extremely unusual circumstances, no order would be made to compel adopters to accept contact arrangements with which they did not agree.<br><br>In submissions the guardian advanced the following matters as good practice : |

| | | |
|---|---|---|
| | | '(a) *adoption agencies to ensure that all prospective adopters and all adoption social workers fully understand the developing research when undergoing training and approval;*<br><br>*(b) in every case where post adoptive contact is a realistic option, the local authority should file, during the placement proceedings, the best information available as to the pool of "open" adopters nationally and to ensure this is as specific to the subject children as possible;*<br><br>*(c) the social work and children's guardian to consider the significance of the research studies in every case;*<br><br>*(d) the court to provide full reasons on any s 26 contact application;*<br><br>*(e) sibling contact to be considered as an entirely separate exercise from parental contact;*<br><br>*(f) an open and frank dialogue between social workers, prospective adopters and birth parents and, if sufficiently mature, siblings about the child's needs, possibly with a face-to-face meeting as in this case.'*<br><br>The court stated "*Although, for my part, I would not challenge the soundness of each of the suggested requirements that Mr Goodwin has helpfully set out in his skeleton argument, and which are listed at para [50] above, these are very largely matters of social work practice, rather than law; I do not consider that it is appropriate for this court to raise any of the listed matters to the status of being something which the Court of Appeal has stated should now be required in every case. That said, it must be a given that any social worker, children's guardian or expert who is required to advise the court on the issue of contact, will ensure that they are fully aware of any current research and its potential impact upon the welfare issues in each particular* |

| | | |
|---|---|---|
| | | *case. Equally, it is already a requirement that courts should give adequate and clear reasons for any orders that are made following contested proceedings."*<br><br>The President further stated:<br><br>"*ACA 2002, s51A has been brought into force at a time when there is research and debate amongst social work and adoption professionals which may be moving towards the concept of greater 'openness' in terms of post-adoption contact arrangements, both between an adopted child and natural parents and, more particularly, between siblings. For the reasons that I have given, the juxtaposition in timing between the new provisions and the wider debate does not indicate that the two are linked. The impact of new research and the debate is likely to be reflected in evidence adduced in court in particular cases. It may also surface in terms of advice and counselling to prospective adopters and birth families when considering what arrangements for contact may be the best in any particular case. But any development or change from previous practice and expectations as to post-adoption contact that may arise from these current initiatives will be a matter that may be reflected in welfare decisions that are made by adopters, or by a court, on a case-by-case basis. These are matters of 'welfare' and not of 'law'. The law remains, as I have stated it, namely that it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement to which the adopters do not agree.*<br><br>*…Post-adoption contact is an important issue which should be given full consideration in every case (the ACA s46(6))). Whilst there may not have been a change in the law insofar as the imposition of a contact regime against the wishes of prospective adopters is concerned, there is now a joined-up regime contained within the ACA 2002 for the consideration of contact both at the placement for adoption stage and later at the hearing of an adoption application. Further, and in contrast to the situation prior to 2014 where the issue of contact on adoption was determined under s 8 by applying the CA* |

| | | |
|---|---|---|
| | | *1989, s1 welfare provisions, issues under both s26 and s51A of the ACA 2002 will be determined by applying the bespoke adoption welfare provisions in ACA 2002, s1, where the focus is not just upon the welfare of the subject of the application during childhood but throughout their life.*<br><br>*[62] A placement for adoption hearing has the potential for having an important influence upon the development of any subsequent long-term contact arrangements. As required by ACA 2002, s27(4), the court must consider the issue of contact and any plans for contact before making a placement for adoption order. The court's order may well, therefore, set the tone for future contact, but the court must be plain that, as the law stands, whilst there may be justification in considering some form of direct contact, the ultimate decision as to what contact is to take place is for the adopters and that the court will be 'extremely unusual' for the court to impose a contrary arrangement against the wishes of adopters. Although Recorder Norton was plainly most careful in his choice of words when speaking of contact at the time of the placement order in the present case, and I would not criticise him for anything that he said on that occasion, it is of note that his words were interpreted by the adopters as, in some way, flagging up that direct contact would be ordered at the final adoption hearing and that, as a result, the final adoption process has been delayed for a year and the adopters have felt less than fully settled in taking up the care of B as a result. At the placement order stage courts should therefore be careful to stress that, if there is any future issue as to contact, the law, as stated in Re R, will apply and, save for there being extremely unusual circumstances, no order will be made to compel adopters to accept contact arrangements with which they do not agree."* |
| *Re G* [2020] EWFC 94<br><br>Family Division: Judd J | This is an application by the LA for care and placement order. M assessed as having a high need for support and has carers on hand 24 hours a day. Contact said to have gone well. No contact order made. | Judd J<br><br>*"It will be clear from the analysis above that I consider that G's welfare requires adoption, even if this was to mean a cessation of direct contact with her parents. There are grounds to believe, however, that direct contact may be* |

| | | |
|---|---|---|
| | | *in G's best interests if those who adopt her are open to it. In her evidence, Jane Andrews stated that an open adoption could assist G in terms of her identity and emotional development. It could also demystify her background and situation. Ms Andrews said that in order for such contact to be beneficial the parent(s) would have to be able to accept the decision of the court, support and not undermine the placement, and also accept their new and very much limited role in G's life. This is something that cannot be assessed in the midst of proceedings where the parents are understandably opposing the application, but it is something that could be looked at after the decision has been made. As I have said earlier, this is a case where the parents have never harmed G, and the difficulties they have are not of their own making. They love her and I am sure they always will. This does have some relevance for contact, for it is likely to affect the way that G thinks about her birth family once she is old enough to do so. In the days of social media, there is a more than reasonable chance that there will be some sort of contact between them once G is in her middle to late teens, at a time when issues of her own identity and family will be coming to the fore. These are not easy times for any young person, and rather than meet them for the first time in person then, it could be better if she already knew them, albeit only distantly. There is no suggestion that any order or conditions should be imposed on those who take on G's care, for save in very unusual circumstances adoptive parents must be free to make their own decisions as to what is in the best interests of their child. If the assessment of either or both of the parents is positive, however, I hope that prospective adopters would be able to see the advantages that some limited direct contact (in the region of once or twice a year) could bring to her. Much will depend on how the mother and the father respond to this judgment. I hope that they will be able to accept this very difficult decision, although I know they will need time to process it. I am hopeful that they might, for the father knows that he cannot care for G, and I think the mother realised the same thing at the mother and baby foster placement all those months ago. I note how she spoke positively about the current foster carer. The local authority plan to carry out the work with the parents is set out in the statement of the team manager. I agree with her that the work with the parents should start after Christmas* |

| | | |
|---|---|---|
| | | *but concur with the Guardian that Jane Andrews rather than the family finder or new social worker would be the best individual to carry it out. She has a good relationship with the parents, is able to communicate with them, knows the case well, and understands the dynamics of the parents' relationship. I would like to encourage the local authority to use her to carry out the work because I think it is likely to be done in a timely way with the confidence of all involved. In saying that I recognise that the court can only encourage, and not order the local authority to engage her. I hope that pending the completion of the assessment of the parents the local authority will agree to prioritise consideration of potential adopters who would be willing to consider direct contact. If the assessment is favourable with respect to either or both parents, it would be a significant matching consideration, albeit by no means the only one. It would be helpful if the local authority was willing to consider a form of words in the care plan which would reflect this. The priority above everything is to find a suitable, loving home for G within the next six months whilst she is still young enough to form strong attachments that will benefit her in the long term".* |
| *Re T & R (Refusal of Placement Order)* [2021] 2 FLR 942<br><br>Court of Appeal | The mother and father, who were from the traveller community, had six children. LA proposed the four older children be placed in long-term foster care and the youngest two children be placed for adoption. The psychologists stressed the importance of the siblings maintaining contact and the potential harm that could result from losing those relationships. The judge approved the care plans for the older children and made full care orders but declined to endorse the plans for adoption of the youngest children and refused to make placement orders. He invited the local authority to reconsider those plans with a view to seeking long-term foster placements. The local authority appealed the refusal to grant placement orders. Appeal dismissed. | Held:<br><br>The judge's conclusion as to the difficulty in guaranteeing that post-adoption contact would take place was one he was entitled to reach in the circumstances of the case. There was plainly a risk that sibling contact would not take place after adoption. Given the fundamental importance attached to such contact by the professional witnesses, the judge was entitled to conclude in the interests of T and R that the risk was one which should not be taken. The judge also attached importance to continuing contact between T and R and their parents, in part, because of his conclusion that contact represented the best prospect of maintaining and nurturing the children's understanding of their cultural history and of their place in the world. His findings that |

| | | |
|---|---|---|
| | | T and R had a strong and real sense of belonging to this family and as to the central importance of their cultural heritage to all of the children, including the younger two, were plainly open to him on the evidence. He reached the view that it would be difficult for the children to retain sufficient awareness of their heritage in an adoptive placement, in part (but not only) because of the strong opposition to adoption within the traveller community. |