

## **ADAPTING ADOPTION TO THE MODERN WORLD: PART TWO**

**Keynote Address by Sir Andrew McFarlane**

### **POTATO CONFERENCE 2024**

It is both a pleasure and an honour to be invited to give a keynote address to the POTATO Group Conference 2024. As this lecture will be published I should explain that POTATO stands for 'Parents of Traumatized Adopted Teens Organisation'. It is a group of parents who have adopted children from the care system in England and Wales over the past 20 years or so and have experienced challenges, often very significant challenges, during their children's teen years as a result of the effects of previous trauma being played out.

Dr Pangloss would no doubt regard adoption from the care system as providing a child with 'all that is best' in 'this best of all possible worlds', with a child moving on to some sunny adoptive upland and living happily ever after in their forever family. In such a world, the POTATO Group would not exist as there would be no need for it. But, sadly, in the real world POTATO does exist as its services are very much needed by a significant number of adoptive parents whose child, despite all of the love, care and worry that they have devoted to them, has gone off the rails in one way or another during adolescence. POTATO Facebook group has 640 members. There are 150 attending this conference today and 125 tomorrow. As these figures suggest, the need for POTATO's services and support is a real one.

The situations facing POTATO parents will, of course, vary from family to family, but, at the extreme, but by no means rare, end of the spectrum, the adoption will have broken down and the young person may have returned into local authority care, or 'walked with their feet' and returned to their natural family.

It is beyond both the scope of this address, and my role as a judge, to offer any analysis to explain why some adoptions fail in this way, despite the great care taken in selection, training and placement, that is the hallmark of

adoption work in the UK. What I can do is to focus on just one element of the adoption equation. It is an element that is, at least to a degree, in the control of the Family Court, and it is, in my view, one that could be used to a far greater extent to support adopters and their children in the post-adoption years than is currently the case.

That element is, of course, contact with the child's natural family. Rather than a degree of real contact unsettling an adopted child, research (as I will explain) suggests that it might have the opposite effect and be beneficial to the overall sense of stability and wellbeing for the child as they move through the choppy adolescent waters.

In addressing this topic I am returning to themes that I began to develop in the Mayflower Lecture, that I delivered to the Plymouth Law Society in October 2023<sup>1</sup>. That lecture was entitled 'Adapting Adoption to the Modern World' and I see this POTATO address as being 'Part Two' by giving greater focus to the issue of contact after adoption and offering some thoughts on how the court might alter its practice and approach to better meet the needs of adopted children in this regard.

In the Mayflower Lecture I offered an overview of the model of 'forced adoption' that had existed, and had continued until the 1970's, under which the children of single, unmarried, mothers were 'relinquished' for adoption, often as a result of irresistible pressure from professionals. I went on to suggest that, whilst the model of forced adoption may have gone, it had left a legacy in the approach that professionals, and the courts, had taken to the issue of post-adoption contact in the decades following the 1970's.

I said:

Until the 1970s adoption largely involved the relinquishing of young babies by a parent or parents with no expectation of any future contact. Children placed under this arrangement were usually very young and had no attachment or

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<sup>1</sup> <https://www.judiciary.uk/speech-by-sir-andrew-mcfarlane-adapting-adoption-to-the-modern-world/>; and see wider discussion of the future of adoption in '*Is the wind of change about to blow through adoption?*' [Andrew Bainham] [2024] Fam Law 176.

memory of their birth family. The stigma attached to illegitimacy and infertility meant that the decision not to promote contact was considered to be a protective factor for the adopter, the adopted child and the birth family. There was thus little call for post-adoption contact.

I identified the issue of post-adoption contact as being the element that needed to be developed in order to adapt adoption more suitably to the modern age.

In order to get our collective eyes focussed in on the legal structure, I will repeat the description of it that I offered in Plymouth:

Once a placement for adoption order has been made, all previous orders or arrangements for a child and his or her natural family to have contact with each other come to an end. When making a placement order, the court has the power to make a further order under ACA 2002, s 26 requiring the person with whom the child lives, or is to live, to allow him to visit or stay with the person named in the order, or for them otherwise to have contact with each other. Unless such an order has been made, there is no legal requirement for the local authority to arrange any contact with the child's natural family.

... The normal arrangement, after a short interim period in which existing contact arrangements are run down and cease with a 'farewell' visit, is for a minimal link to be established via what is called 'letterbox contact'. The details will vary from case to case, but normally involve each side of the divide, namely the adopters and the natural parents, communicating with each other by a short letter or report once each year. These communications might, or might not, contain photographs and would give a brief update.

The report in 2013 of a House of Lords Committee on Adoption Legislation quoted<sup>2</sup> from two authoritative sources on the relevance and importance of

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<sup>2</sup> <https://publications.parliament.uk/pa/ld201213/ldselect/ldadopt/127/12704.htm#a1> at paras 257-258.

contact post-adoption for the children who were now being adopted in saying that

‘It was important to remember that contact should be for the benefit of the child, not for the parents or other relatives. The reasons why a child might benefit from contact were spelled out in evidence from *After Adoption*: “it is not about maintenance of the relationships as they were with the birth family . . . what [children] like is to have some continuity that enables them to integrate the past with the present, and obviously then the future. I think contact can play a very useful role for the child in helping them understand their world and their life history.”

Helen Oakwater described the role that facilitated contact could play in assisting a child to “integrate their past, allowing them to form a coherent narrative and more robust sense of self.”

In terms of the ‘modern world’, as the context in which post-adoption contact is to be seen, I described the explosion of digital communication in the past two decades and the possibility of an adopted child, quietly, alone in their bedroom, without the knowledge of their adopted parents, tracing and finding their family. I said:

‘The temptation to do so, and then to make contact with [the birth family], must be almost irresistible. But the dangers of doing so, and the potential for significant emotional harm to result, are easy to contemplate. Unlike the babies taken at birth of yesteryear, today’s adoptees have normally been removed from their family because they have experienced, or were likely to experience, significant harm there; harm of a nature and degree that justified permanent life-long placement as part of another family.’

Members of the POTATO Group do not need me to spell this out; it will be their own personal, painful, experience.

Finally, in terms of summarising what I said ‘previously’ (as they say on TV) in ‘part one’, I referred to a report by the President’s Public Law Working Group, Adoption Sub-Group with Mrs Justice Frances Judd as its chair. The report, which was published for consultation in September 2023 (with the final report due later this year), noted how adoption had adapted and changed down the years, but was clear that it needed to continue to do so saying:

‘First and foremost, we recommend that there needs to be a greater focus on the issue of contact with the birth family as long as it is safe and for adopted adults to have more straightforward access to their records.’

In terms of contact, the report went on to say:

‘Whilst there has been a great deal of research in recent years as to the potential advantages to adopted children of maintaining some sort of face-to-face contact with the birth family, it remains unusual for the care plan for children who are going to be placed for adoption to propose more than indirect or letterbox contact. *The House of Lords Children and Families Act 2014 Committee*, which reported in December 2022<sup>3</sup>, concluded that the current system of letterbox contact was outdated and warned that the failure to modernise contact threatened to undermine the adoption system.’

The group suggested a change in social work practice and training for all involved in the process (including prospective adopters) to give more focus to contact and the benefits that it can bring for many (although not all) adopted children. They said:

‘Our main recommendation is that there should be a tailormade approach to the issue of contact for each adopted child which includes and promotes face-to-face contact with important individuals in that child’s life if it can be safely achieved. The issue of contact needs to be actively considered throughout the

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<sup>3</sup> <https://committees.parliament.uk/committee/581/children-and-families-act-2014-committee/news/174947/children-and-families-act-2014-an-example-of-inadequate-implementation/>

child's minority, not only before the adoption order is made. The other recommendations are intended to support this overarching aim.'

The PLWG report goes on to quote from the December 2022 House of Lords report:

“Contact, where safe, appropriate and properly managed, can be valuable for an adoptive child, their new family and their birth family, including siblings and other relatives. However, contact orders and support can vary, and the current system of letterbox contact is outdated. **The failure to modernise contact threatens to undermine the adoption system.**”

Since speaking in Plymouth last October, I have had the benefit of reading further research on adoption and, in particular, contact. What follows is neither the result of a methodical trawl of all sources nor an authoritative summary of all the available research; to a degree that more in-depth exercise has been conducted by the House of Lords Committee and the PLWG Adoption Group. The overall direction of travel of the research is already recorded. My intention here is to provide examples of the detail that underlies the broad conclusion that a different approach to contact is now required.

One very recent article is of particular note. It is *'How do adopted adults see the significance of adoption and being a parent in their life stories? A narrative analysis of 40 life story interviews with male and female adoptees'* by Professor Beth Neil, Julia Rimmer and Irina Sirbu<sup>4</sup>. As the title suggests, the researchers interviewed 40 (now adult) adoptees who had gone on to become parents themselves. It is a fascinating read. The researchers categorise the individuals' narratives into four broad typologies:

**'Continuously stable'**: largely happy childhood.

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<sup>4</sup> Children and Youth Services Review 155 (2023) 107267

**‘Pulling through’:** those with a redemptive arc, having overcome significant adversity.

**‘Still struggling’:** those with a predominantly pessimistic tone with adoption largely seen negatively with ongoing feelings of loss.

**‘Robbed of parenthood’:** past and ongoing difficulties resulting in the unfair loss of their parenting role.

In words that I am confident that POTATO would endorse, the article recommends intervening early to help adoptees cope with the impact of adverse experiences:

‘The high levels of difficulties that many adopted adults in our study experienced, and which potentially threatened their parenting, point to the importance of trauma-informed support for adoptive families particularly early interventions (ie during childhood, preventing escalation in adolescence or adulthood) and help specifically at the parenting stage.’

Under the heading ‘promoting openness in adoption’ the report states:

‘Adoptive parents being “communicatively open” and supporting birth family contact where appropriate was valued by adopted people across all four narrative types. Openness, particularly with adoptive parents, seemed *vital* in strengthening adoptee’s trust in their adoptive parents and building an adoption narrative, and promoting both these types of openness needs to be a *priority* when placing children and preparing, assessing and supporting adoptive parents. The need for post-adoption support in making sense of and managing birth family relationships extends into adulthood and may be particularly needed at the parenting life stage where birth family relationships often come under review.’ [emphasis added]

In a chapter written by Beth Neil and Mary Beek for the *‘Routledge Handbook of Adoption’* (1<sup>st</sup> edition 2020), the writers record that plans for contact in most adoptions are limited to letterbox contact, although (relying on 2018 research

by Beth Neil) 'more than half of these arrangements are not sustained'. Any face to face visits are likely to be with siblings or grandparents, rather than birth parents. They report that the picture in England and Wales has been 'static' over the past 20 years. This is in contrast to New South Wales, Australia, where the default position in law is for there to be ongoing contact with birth parents.

Neil and Beek write:

'Where children are able to stay in touch with birth parents, meetings can elicit a range of positive and negative feelings, allowing adoptive parents and (sometimes) birth parents the chance to understand and manage their child's adoption-related emotion (Neil, Beek, and Ward, 2015). Adoptive parents have reported the ways they felt maintaining a relationship had been helpful to their child (Neil, Cossar, Jones, Lorgelly, and Young, 2011). Some parents felt their child would not have been able to commit to adoption without this: "[it] would be ripping her away from the family she loved ... and she would never allow herself to love us if that was the case." Others felt that contact helped children feel less worried about family members: "She needed the reassurance that her mum was okay," or that maintaining relationships gave their child important lessons for adult life: "[it's] better for his relationships when he grows up. If he sees it is not losing all the time, then it is good for him" (Neil, Cossar, Jones, Lorgelly, and Young, 2011, p. 160).'

And

'Where adopted children have had positive relationships with parents, grandparents, or siblings before adoption, feelings of sadness, loss, and anxiety can be strong when relationships are cut off. Children generally find staying in touch with siblings or grandparents less emotionally complex than contact with parents, and contact with these birth family members is often lasting and rewarding (Neil, Beek, and Ward, 2015; Neil, Cossar, Jones, Lorgelly, and Young, 2011).'



A 2019 article, signed by a dozen international experts, led by Jesus Palacios. entitled '*Adoption in the Service of Child Protection: An International Interdisciplinary Perspective*'<sup>5</sup> looked at the place of adoption in the child protection system. Whilst adoption is taken up to significantly varying degrees in different countries, a common trend has been away from relinquished babies given up by unmarried mothers (following developments 50 years ago in contraception and abortion) towards greater emphasis on family preservation and reunification. There has been a corresponding drop internationally in the number of adopted children. One particular trend that has been observed is

'the development of open adoption (with some form of contact between the child and members of the birth family) in an increasing number of countries. As an example, the increase in domestic adoption numbers in Australia is accounted for by one State (New South Wales) where adoption is only available if open, thus facilitating the adoption of children in long-term foster care by their existing foster carers (del Pozo de Bolger, Dunstan, Kaltner, 2017).'

The writers stress the fundamental importance of achieving permanence and stability for an adopted child. They then go on to say:

'It is also important to emphasize that children and young people can retain varying degrees of relational permanence to people they have lived with previously, including their parents, extended family, siblings, former foster parents, and foster siblings (Cushing, Samuels, & Kerman, 2014). Child welfare policy and practices have not sufficiently recognized the importance of maintaining established, psychologically permanent relationships when children are placed into care, or move from one care placement to the next, or exit care to guardianship or adoption (Stott & Gustavsson, 2010). This is especially critical for children who enter care at older ages with very established family

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<sup>5</sup> Psychology, Public Policy and Law (2019) 25 p 57 (American Psychological Association)

relationships, as well as for children who are moved from foster parents to adoption by another family.’

This audience will not be surprised, but will, I hope, be reassured, that the article is clear in recording the adverse impact on adoptees socio-emotional and mental well-being of early adverse experiences.

In those cases where the adoption was open, and the contact had worked well, satisfaction with the contact, rather than any one or other model of contact, predicted less ‘externalising’ behaviour during adolescence and beyond.

Finally, this eminent group of international experts recognised that some adoptions break down and understood that not all breakdowns will be recorded, in the same way that few near breakdowns will also be below the radar. The causes of breakdown are recognised as many and complex, but greater pre-adoption adversity and an older age at adoption are plainly two. The group concluded, importantly for the purposes of this address:

‘Taken together, these diverse outcomes demonstrate that adoption needs to be thought of as a lifelong experience, both in terms of benefits and potential difficulties. Three findings stand out: adoption introduces a major positive change in [an] adopted persons life trajectory. However, there is convincing evidence that preadoption adversity (abuse and neglect, malnutrition, multiple separations) may have substantial short and long-term negative consequences for adopted childrens development. Furthermore, the adopted population is quite heterogeneous, and mediating and moderating effects play important roles in predicting adult outcomes.’

In this regard they stress the importance of sharing detailed and accurate information about the child and their past experiences with the adopters, and as appropriate with the child through life story work, and they expressly endorse the role that contact may play:

‘Evidence suggests that, when in a child’s best interests, contact with birth relatives and with previous caregivers can be helpful; agencies need to develop

plans to facilitate and support this contact. The concept of adoption has moved from being thought of as closed and secret to one that recognizes the need for greater openness and transparency and acknowledges the child's history.'

I have taken time to quote at some length from this paper because of the eminence and number of its authors, and because of the international experience and research upon which it is based. It demonstrates, to my mind, a detailed understanding, not only of the profound challenges that previously abused children will face even in the most loving and stable adoptive home, but also of the 'mediating and moderating' steps that can be taken to reduce the impact of those challenges for the child - and the article clearly identifies the potential role for ongoing contact as one of these mediating and moderating interventions.

In 2016-2017 Beth Neil and her team at UEA undertook research<sup>6</sup> into the views and experiences of adoptive parents, over 300 of whom had filled in an online survey for the researchers. Around 80% felt that their adoption was going 'really well' or that they were 'managing'. 17% were struggling to manage and 3% had broken down or were likely to do so.

So far as contact is concerned, most had had some form of contact but where this was letterbox contact the responses were either mixed or negative as to its value. 25% of those children with siblings living elsewhere had some face to face contact with them, which was largely seen as positive, whereas a striking 59% of those with absent siblings had no contact with them at all.

Adoptive parents differed considerably according to how important they felt birth relative contact was for their child, with just under half (45%) of parents feeling it was very important.

The report's recommendation about contact is:

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<sup>6</sup> *A Survey of Adoptive Families: Following up children adopted in Yorkshire and Humberside Region* [UEA Centre for Research on Children and Families]

**‘Birth family contact.** Contact emerges as an often unsatisfactory experience for a range of reasons, and a more proactive approach to establishing rewarding and sustained contact plans should be considered. Adoptive parents and the wider birth family (including carers of siblings) may need help understanding the value of contact for adopted children. Contact ideally needs to be reviewed periodically. There could be more consideration of other adult birth relatives – not just parents – being involved.’

In addition to the sources from which I have quoted, the 2021 Nuffield Family Justice Observatory report ‘Modernising post-adoption contact: findings from a recent consultation’<sup>7</sup> is of note in stressing the importance of contact and suggesting ways in which the letterbox model might be improved by the use of digital options.

I hope that the references that I have made in this address and in the earlier Mayflower Lecture demonstrate a consistent authoritative message that a new approach to post-adoption contact is now needed. In that regard it is clear that progress is being made. One of the four strategic priorities for Adoption England is that of ‘Maintaining relationships’; this priority is focused on modernising contact for adopted people so that they can maintain relationships with the people who were important to them before they were adopted<sup>8</sup>. The team at UEA, led by Beth Neil, have been commissioned by Adoption England to develop a theory of change to guide work around maintaining relationships and I am grateful to Professor Neil for giving me sight of a draft article which is soon to appear in the Family Law journal describing this work. This article will be a ‘must read’ for all who are interested in this topic and I am not going to spoil its impact by quoting from it today. What it is possible for me to say, however, is that the work that is currently being undertaken by UEA, and that underpins the article, demonstrates that the debate has already moved on from ‘whether’ there is a need for a new

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<sup>7</sup> [https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/08/nfjo\\_report\\_adoption\\_connections\\_20210913v2.pdf](https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/08/nfjo_report_adoption_connections_20210913v2.pdf)

<sup>8</sup> <https://adoptionengland.co.uk/>

approach to post adoption contact, to 'how', what will be a wholesale change of culture, it is to be accomplished in practice.

The ambitious target of this work is to establish the default position for future adopters so that the clear expectation will be that of maintaining birth family relationships as the starting point for every child, only to be ruled out where it is unsafe or unhelpful, as opposed to the current default with contact only being ruled in in exceptional circumstances.

How will this cultural shift towards greater openness impact upon the work of the Family Court and how may the court support the looked-for change in the default setting so that maintaining relationships with a child's birth family is the starting point, rather than the exception?

The court and the Family judiciary have an important part to play. Orders for contact made under ACA 2002, s 26 when making a placement for adoption order set the template for contact going forward. Where continuing contact in some form is ordered at that stage, this will be an important 'known known' about the child to be taken on board by any potential adopters with whom placement may be considered.

This address is neither a court judgment, Practice Direction nor other guidance from the President of the Family Division. These words are simply my thoughts as to the way forward for the courts. How we actually proceed will be down to decisions made, case by case, by individual judges and magistrates, on the evidence before the court and guided, no doubt, by decisions of the higher courts that may be handed down in time to come.

With that very clear caveat, I hope, understood, I would like to offer some preliminary thoughts on how that court may best support the changed approach which seems set to be coming.

A, if not the, central impediment to change, in terms of the law is the approach that has hitherto been taken to views of the child's adopters on issues of future contact. The House of Lords decision in *Re C (Adoption Order:*

*Conditions*)<sup>9</sup>, made over 35 years ago in 1988, continues to dictate that, other than in the most exceptional case, the court should not impose contact upon an unwilling adopter<sup>10</sup>. As the leading opinion of Lord Ackner stressed, their Lordships determined the issue on the basis that the case-law at that time ‘rightly stress[ed] that in normal circumstances it is desirable that there should be a complete break’ with the child’s natural family.

I have always worried that the respect afforded to an adopter’s autonomy on issues of contact has set the bar too high. If the reality is that the court will not make a contact order against the wishes of an adopter, and, on the other hand, will not make a contact order if the adopter is in agreement with what is proposed, one is entitled to ask why Parliament has given any power to the court to make post-adoption contact orders at all.

Whilst, legally, it is of course right that the adopters become the legal parents of their child fully and in every respect on adoption, and it is right that the State should not impose its views on how a parent should care for their child unless there is a proportionate need to do so, for example through care proceedings, surely the fact that the State has already intervened to a significant degree in the life of a child who leaves care to move to adoption is a relevant factor here. Where the State intervention, in the form of an order for contact, has taken place even before any prospective adopter has been identified for the child, the argument that this may conflict with the autonomy of a future adoptive parent is surely questionable. Phrases involving chickens and eggs, and tails and dogs, come to mind here.

Why should the possibility that some, as yet unknown, prospective adopter may not accept contact with a child’s birth family, be a trump card preventing the social workers and the court from insisting that such contact will be of benefit to the child? By the time that a child reaches the stage of being a candidate for a placement for adoption order a great deal will be known about their future welfare needs. Where those needs have been evaluated through

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<sup>9</sup> [1988] 2 FLR 159

<sup>10</sup> *Re R (Adoption: Contact)* [2005] EWCA Civ 1128 ; and *Re B (Post-Adoption Contact)* [2019] EWCA Civ 29.

the prism of the modern approach to post-adoption contact and the court concludes that it will be in the interests of that child to maintain a relationship with a member, or members, of their birth family, surely, in accordance with its duty under ACA 2002, s 1 to afford paramount consideration to the child's welfare throughout his or her life, the court has a duty to say so in its order.

The needs of every child who is put up for adoption will be unique to that child. During the matching process prospective adopters will take on board each aspect of the child's needs when deciding whether or not they feel able to offer them a home, for life, in their family. A child's racial or cultural needs will be important, as will those relating to health or any disability. More basically, a child's gender or physical presentation may be important in the adopter's decision to commit or not. Be that as it may, each of these individual factors about a child will be largely immutable and not open to change. If an adoption takes place then they are to be accepted by the adopter as part of their child. While a need for future contact is plainly not immutable and could be re-evaluated, where a court has determined that this child does need to maintain a relationship with their family, why is that to be seen as being in a totally different category of need to, say, a specific health requirement for an asthmatic child, or support with reading for one who is dyslexic?

Separately, and with genuine respect for all those who adopt children from care, I would question the ability of most adopters to make an informed decision about future contact either at the time that matching takes place or, even, at the later stage of the adoption itself. No matter how thorough the briefing that they may have had from social services about their child may be, and no matter how good their training may have been, are they really in a better position, at that point, to determine issues of contact than the social workers or the judge?

The ability to understand, as the messages from research now understand, how later disruption in adoption may be ameliorated or avoided by increased support for maintaining family relationships at an earlier stage, may not readily come to adopters in the early stages of their journey. Surely, when it

is in the child's interests to do so, it is right for the court to insist, through its orders, that contact should take place?

Drawing this strand together, if there is to be a culture change with regard to future family contact, then, as part of that culture change, it is likely that the almost absolute autonomy currently afforded by the courts to the adopters in matters of contact will have to be reviewed.

Moving on, and finally in terms of this address, how should the court use its power to make orders to influence the future development of contact?

Firstly, and I would suggest most importantly, the likely template for contact arrangements post adoption should be set at the placement order stage. This is not a change in the current approach. A court making a s 26 contact order, in keeping with the duty under s 1 and its lifelong focus, should have regard not only to the short-term contact arrangements required in the pre-adoption stage, but also in setting the course for the maintenance of family relations over the longer term if that is in the child's best interests. Also, there is nothing wrong, and I would suggest it should be good practice, for a s 26 contact order to contain a recital as to the court's view on contact arrangements post-adoption.

I am confident that it is already the case that judges and magistrates give priority to the determination of contact arrangements when making a placement order. Given the growing move towards greater family contact, it is to be expected that, where social work evidence is lacking on this important area of a case, the court will ask for an appraisal of the options set against the background of the modern approach, and, if necessary, adjourn the case to obtain one.

As the only family members who are likely to be before the court will be the child's parents, it is natural that the prospect of future contact with them will be considered. Courts should, however, look more widely in every case. This is particularly so when a child has siblings who are not likely to move with



them to their adoptive home. I have described as striking the fact that some 59% of siblings did not have contact with them. All things being equal, siblings (and cousins) are likely to be alive for a greater proportion of a person's life than any other family relation; this suggests that maintenance of such relationships should be a priority.

Looking beyond siblings, there may well be other relations, for example grandparents, uncles or aunts who may safely meet with a child, even where it is unsafe for parents to do so. In this regard I would mention the work the 'Lifelong Links'<sup>11</sup> project which has been developed by the Family Rights Group to foster links between children in the care system and those from their family or earlier life who are important to them. The work of Lifelong Links, which has been the subject of a three year follow up study, is seen to make a marked contribution to the confidence, sense of identity and well-being of the children it has worked with. In a welcome development, Adoption England have provided funding to the Family Rights Group to consider whether Lifelong Links could be developed and adapted to support children and young people who have been adopted, who want to get in touch with members of their birth family and where their adoptive parents are supportive of this. Once a working model has been developed, Lifelong Links will be offered to a small group of adopted children.

When we move on to look at the court's role at a final adoption hearing, where there is power to make orders for contact under ACA 2002, s 51A, I would like to stimulate discussion about quite a radical change.

Currently, the court's order at this final stage is something of a 'one-stop shop' with a regime of contact being set on the basis that this is what will apply for the remainder of the child's childhood. I would question the wisdom of this continuing to be the case. The stage of making a final adoption order may, indeed, be precisely the wrong moment to fix the contact arrangements for all time. A parent may still, at that stage, be opposed to adoption. The child and

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<sup>11</sup> <https://frg.org.uk/lifelong-links/>

the adopters may only be just beginning to settle into their new relationship. The need to support the adopters' confidence in their role may be at its highest and their knowledge of their child's needs in terms of contact may be at its least informed stage.

Rather than fix the contact arrangements, once and for all, on the making of the adoption order, isn't there real value in there being a formal review of contact with the birth family some two or more years later? By that time parents or other family members may have come to accept the situation and be more available, in emotional terms, to support the child in their adoptive home. The adopters will know their child well and may themselves feel more confident and secure in their role, and therefore more able to contemplate a greater degree of contact. The child will also be that bit older and may express clear views on the topic.

Whether it is legally permissible for the court, under the current law, to use its powers under s 51A to direct, at the time of making the adoption order, that the case should come back some years hence for a review of contact is not for me to pontificate upon in this lecture, but s 51A(2) does expressly provide that the court has jurisdiction to make a contact order 'when making the adoption order or at any time thereafter'. It may, in any event, be a matter of good social work practice that contact will be kept under more active review after adoption than currently seems to be the case.

I do, however, put the idea out there. I suspect that many POTATO parents may agree, with the cruel benefit of hindsight, that giving greater thought to organised and supported contact might have seen off, or significantly lessened, their child's interest in achieving such contact in a clandestine, unregulated and unsafe manner themselves.

In conclusion, I hope that what I have said has been of interest and may stimulate further thought and debate. As I have described, it seems clear that letterbox contact can no longer be seen as the appropriate regime for most cases, and should certainly not be the norm (as it has been for many years).

Any contact arrangement will only be justified if it is for the benefit of the child, but that benefit is not to be confined to the short term. On the contrary the potential for some familial relationships to continue and be nurtured through contact may be of real benefit during the teen years and beyond into adulthood. Given the 'life-long' focus of s 1, adoption agencies and the court each has a duty to consider these matters more fully than may have been the case in the past. The question of contact should never be seen as an 'add on' issue, either at the placement order stage or at a final adoption. Rather, it should be centre stage and seen as an integral part of the child's support package as they move on towards adoption, adolescence and adulthood in the years to come.

Sir Andrew McFarlane

President of the Family Division

17 May 2024