# TRANSCRIPT

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Where we have had difficulty understanding words we have indicated this as [unclear] with the appropriate time stamp, or simply attempted to spell the word phonetically but followed it with [ph].

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**Family Justice Council**

Chair: Good evening everybody. Welcome to our debate. I'm delighted to be able to chair it. I see that I'm here for ten minutes; I'm not going to take ten minutes. I think we should get on with the subject of the evening, which is much more interesting. I'm under strict instructions not to say anything controversial this evening, as I understand it's being recorded, so I won't introduce any of the speakers. The structure of the debate is in the programme in your pack as are brief biographies of the speakers, should any of them be unknown to you. Each of our speakers is going to have approximately twenty minutes. I think I've got what the Royal Festival Hall calls a digital watch with an alarm, which will go beep after twenty minutes, and so that'll just be a gentle reminder to the speakers that perhaps they ought to stop.

After that, the debate will be thrown open to the floor for our discussion and any questions you want to throw at us. So, without further ado, although it's only three minutes past five, I hope Judith will forgive me if we start the main event of the evening promptly. Judith is going to kick off for us. As I say, the introductions are all in the pack and, anyway, I think that most of you will be familiar with the speakers. Judith is going to deal with the legal framework of contact of courts, contact arrangements during the interim care proceedings, so Judith; I'm going to hand over to you, if I may.

Masson: I thought I would actually start from first principles, at least in a general way, I'm certainly not going to talk section numbers to you because you haven't brought your statutes!

So what I'm going to be talking about is issues of rights and welfare, and the balance between rights and welfare, including rights under the Human Rights Convention. There is another element in that balance which will have increasing importance in the current climate, and that's the element of resources. If we look at the case law around baby contact, it's those issues of parent rights and local authorities' resources that are very much to the fore. That might be because the paramountcy of the welfare principle is assumed and we don't need to tell everybody about it, or it might be because actually welfare hasn't been focused on and something else – rights - have overcome or overridden issues of welfare.

So we know that the Children Act 1989 requires courts making decisions about children, to treat the child's welfare as their paramount consideration. We know also, that although the Children Act was written with the Convention in mind, we have to read the Children Act with the Convention, very much so, after the Human Rights Act. There is a debate, in academic circles at least, whether the courts should actually modify how they used to deal with cases. It has been suggested that paramountcy of welfare is no longer appropriate because there should be a balancing of rights and welfare to fit within the provisions of Article 8.2, the qualifications to the right to respect for family life.

Jane Fortin, who you'll know as probably the leading academic writing on human rights and children's rights, has expressed concern that too much emphasis is given to adults' rights sometimes. Particularly, the view that children are generally best brought up in their families gives double weight to parents' rights, to parents' interests. So the accepted view that children are best living with (or having contact with) their parents makes children's rights a parent-focussed issue; and parents' own claim makes the case a parent focused issue as well. This may also happen even though there are some negative consequences for children of living with (or having contact with) their parents. So that's the background - we've got to think about welfare, but we can't not think about rights.

When I begin to focus then on babies, the position on babies' contact, it's not possible to do this without reference to Mr Justice Munby's decision in the case of *Re M*. [2003] 2 FLR 171. So this is the decision in *Re M*, I think is the origin of the 'baby contact regime', or at least the origin of knowledge and wide scale use of the 'baby contact regime'. That is the expectation that local authorities will ensure that separated babies involved in care proceedings etc will have regular and frequent contact, perhaps daily, with their parents. I have some evidence for this because I did a study using data between 2000 and 2002 of emergency protection orders in six local authorities. This is published as J. Masson et al., *Protecting Powers* (2007). In that sample, there were sixteen babies removed at birth. Out of those sixteen babies, only eight had any formalised contact arrangement made with the EPO (or the ICO cases were followed to the end of legal proceedings). Of those eight, only three had a regime close to the regime in *Re M*. People have told me since, and of course, that's only anecdotal, that there's much more contact, daily contact, very frequent contact in cases decided now. Mr Justice Munby's decision in *Re M* included as 'concluding thoughts' that the court's expectations were, when babies were removed for their protection, frequent contact. 'Typically, this is what the parents want, one will be looking at contact most days of the week and for lengthy periods. Contact two or three times a week for a couple of hours is simply not enough, if the parents want more.' (para 44v)

So the focus in *Re M* doesn't seem to be on child welfare, and that's not surprising because *Re M*, as those of who have spent idle hours reading the Law Reports will know, is an application for leave for Judicial Review. It was an application for leave for Judicial Review by parents who were challenging the local authority's pre-birth care plan. From that we know that the child wasn't a party to the proceedings. We know child welfare wasn't the court's paramount consideration. And we know that the child wasn't represented. How could the child be represented? The child wasn't a [legal] person, they were not born.

So the ideas for the 'baby contact regime' promulgated in the case law are not welfare based, but rights based. They are not child rights based, they are parents' rights based. That is problematic when it comes to applying the regime in cases where the child's welfare must be the court's paramount consideration.

Moreover, these 'concluding thoughts' were not in a case about contact. Contact was an element in the care plan, but it wasn't the be all and end all. The court (or the local authority) couldn't know what contact would be appropriate because it couldn't know what the child would be like when he or she was born. Maybe the child would be in special care... So contact wasn't even the focus of litigation and yet, this case became the basis for a 'baby contact regime'. I think that that is actually a deeply troubling issue in relation to the development of the law, much wider than this debate. Not only do hard cases make bad law – but bad guidance is made when there is only a partial consideration of the issues.

There were lots of debates before the Children Act 1989 was enacted between practitioners, between local authorities, between social workers and psychologists and lawyers about children's circumstances and the delivery of services. There was an attempt by Parliament to balance all those issues and it's not clear to me that that balance is maintained when the courts can develop and redevelop rights, particularly when they do that without hearing a balanced argument, an argument that covers all the issues. Now, in setting out the guidance in *Re M*, Mr Justice Munby explained his reasoning in very clear terms. 'Nothing less will meet the imperative

demands of the European Convention' (paragraph 44.iv of the judgement). Article 8 as we know, provides a right to respect for private and family life, and this creates both positive and negative obligations on the State. The State has a positive obligation to promote family life and a negative obligation to refrain from interfering with it.

When it comes to issues of contact, parents' and children's interests can easily be seen to be intertwined. Parents have an interest in maintaining their relationship with their children, and children have an interest in maintaining their relationship with their parents. But Article 8 is also a qualified right. There can be interference to protect the rights and freedom of others, and this is generally accepted as meaning that parents' rights can be restricted in the interests of their children. The claim that 'only daily contact will satisfy' the State's obligations under Article 8 is somewhat problematic because the child may have other interests. This has come to the fore very clearly in a recent judgement in the Strasbourg Court in the case of *Neulinger and Shuruk v. Switzerland* (Application no. 41615/07). There is a quotation, which brings together the two elements of the child's interests under the Convention very well. Lots of case law talks about the children's interests, but sometimes it only talks about one element or the other element, and there are real problems with the European jurisprudence because of the way children's issues often come into the European Court of Human Rights. Children's issues are often used by parents to make parental claims rather than being developed by or for children. That is partly because the procedures of the European Court of Human Rights are not child friendly.

So what are the demands of the Convention and how might we understand the qualifications in Article 8? This is what the Strasbourg Court says in *Neulinger*, 'The child's interests comprise two limbs. On the one hand, it dictates the child's ties with his family must be maintained, except in cases where the family has proved particularly unfit. It follows that the family ties may only be severed in very exceptional circumstances, and that everything must be done to preserve personal relations, and if and when appropriate to rebuild the family. On the other hand, it is clearly also in the

child's interest to ensure its development in a sound environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development.' (para 135) So we have the two limbs in balance, with two sides of the balance that have to be considered.

It seems to me that as we learn more about child development from practice and from science, we need to see how those two pans on the scales shift. It seems to me that all those who consider issues about rights and interests have to understand the implications of rights and interests for children. We have here a panel who are able to talk to us about children's interests and the implications of daily contact, information that the court hasn't had in front of it.

In fact, the later case, *Kirklees v S* [2006] 1 FLR 333, it was obvious that daily contact regimes were becoming more common and Mr Justice Bodey said that case was the third one about baby contact that he'd had to deal with in a week. Bodey J's concern was the implication for the local authority's resources. He seemed to assume that daily contact or very frequent contact was in children's welfare and his concern was the implication on local authorities in terms of resources. I don't think it's just the financial resources we have to think about. We have to think about the resources of children's carers. Contact can be seen as promoting parents' rights and has implications for children's rights. It may also undermine the regime that carers can provide, which ultimately has implications for children's wellbeing. So it behoves the legal system to understand the implications for children when it does that weighing, the weighing of the two parts of Article 8, or applying the welfare principle. Decision makers must think about and know about the welfare implications for children of a 'baby contact regime', which was introduced and developed without reference to such knowledge.

Glaser: Good afternoon. Unaccustomed as I am to public speaking without PowerPoint I have my own private PowerPoint here. Thank you for inviting me. What I would like to do is to elaborate a little bit on the potentially harmful effects to which Judith was referring in mentioning the welfare of children in this debate. I think we need to first of all think about what the purpose of contact is and about who

the infants are. We then need to think about what the needs of these infants are, how these can be fulfilled and lastly, I'll just mention a study from Australia, but that's in Melbourne.

So we presume and we understand from Judith that the purposes of contact are, first of all, to maintain continuity in the parent/child relationship, in order to allow for later rehabilitation. Of course, until there's a final hearing, and sometimes beyond, one has to work on the assumption that this child may well return home, and therefore, whatever happens during the interim period needs to pave the way for that eventuality, however unlikely that is to be. I think that's probably the underlying reason for there being any contact.

Secondly, and related to this first overall overarching consideration, the adults who may become the long term and permanent caregivers of the child, namely the biological parent or parents, need to remain as familiar figures to the child. For a young child familiarity means that contact has to be moderately frequently. Then we can up this by one notch and say is this actually preparing the biological parent to become an attachment figure for the child because familiarity and an attachment figure are not the same things. All attachment figures are familiar, but clearly not all familiar figures are attachment figures, and at a young age, the hierarchy of intensity of attachments is related to the frequency of contact and the length of time that that child spends with their parents. This is an interesting consideration for working parents whose young children may spend most of the day with a nanny. The question then arises who is the primary attachment figure, or if two parents are sharing the care totally equally some people say it's the person who gets up to the baby at night who ultimately becomes the primary attachment figure. You can tell us who that is.

Then another reason for there being contact is from the parents' point of view because unless the child remains a familiar person to the parent, the parent will not be able to immediately resume care for this child. As well as satisfying the parents' needs for an affectionate relationship because they love the baby, contact enables the parent to continue an active care giving role. So these are the presumed purposes of contact.

Who are these infants? These are not ordinary infants because if there's already pre-birth concern then the chances are considerable that pregnancy itself would not have been free of stress. If early in life a decision is made for this child to be removed then either and/or the child will have suffered adversity during pregnancy particularly by way of drug or alcohol abuse by the mother, or in addition also, drug withdrawal following birth. So these may be children who are already irritable and in less than a perfect situation, or rather condition.

We know, for instance, that intrauterine cocaine, if the mother is taking cocaine impairs the baby's regulation of their emotional arousal so that children are more irritable and more difficult to soothe if they have experienced cocaine in pregnancy. Until a baby is soothed, their cortisol is raised, with potentially harmful consequences to their brain. If the baby begins to be cared for by the parent postnatally then the chances are that this care is going to be very sub-optimal in order to justify an early removal of the child. Thus, if the baby is not removed at birth then this baby will have already undergone sub-optimal care, very early on in their infancy and again, is likely to be already vulnerable due to that. So, we need to remember whatever else is going to happen to these babies subsequently they're not as resilient to the vagaries of contact as a 'normal' baby because they will have already been subject to stress and adversity.

Now what are infants' needs generically? First of all basic safe care, which goes without saying, warmth, shelter, food, but secondly, minimising stress is a very important need, which babies have because stress is harmful in greater quantities, and what is stressful to young babies is strangeness, unfamiliarity and disruption of their routine. There was a man called Truby King, who was a New Zealand paediatrician who I think opined in the 20s and 30s. He believed that a routine ought to be imposed on a baby, and there are more modern versions of this by way of ladies on television; I don't know how early they impose these routines on children. If a child, a young baby has a need to sleep and that baby is woken in the middle of a sleep that tends to be stressful for the child. When the baby is

fed because it suits the contact arrangements, but actually this baby isn't very hungry and then there's a stressful interaction because the baby needs to be fed by the mother, but actually isn't hungry. Sometimes the foster parent will actually not feed the baby so the baby is ready for a feed when they come to the mother to be fed. This is a very, very active interference in the natural process of the baby establishing their own routine, and is extremely stressful. Remember that these are already vulnerable children, vulnerable babies. The environment then creates stress and the baby may get upset and may have difficulty in calming themselves, and we know that early in life babies need to be calmed by their caregivers who essentially act as emotional 'scaffolds' for the baby's arousal and excitement and particularly distress. There are periods during the baby's development when this is very important, and in extreme cases, there is evidence that if the baby is not calmed and helped to be calmed by caregivers the baby may have difficulty then developing their own capacity to regulate themselves.

The other aspect of babies' needs is to be cared for by someone who either, I'm going to use two jargon words, and I apologise for both, is mentalising and mind minded. The meaning of both of these is that the baby needs to be cared for by someone who is able to understand the baby's cues, as babies are not very good at talking. There is a need to be aware of the meaning of whatever cue the baby gives in terms of happiness, unhappiness, cold, hunger, tiredness, boredom or distress, and then to respond sensitively in a way that will satisfy the baby's needs. Probably most crucially it is to distinguish between the baby's message and the adults' interpretation in the light of their own experiences. So that, for instance, a parent who has been very deprived and very rejected in their own childhood may misinterpret a baby's crying as being, 'You must feel rejected,' when in fact this baby isn't feeling rejected or deprived, but may be hungry. So, being able to understand the baby's cues and overriding one's own feelings is very important. That's the essence of mentalising, and then of course conveying to the baby one's understanding non-verbally, and verbally.

Now all of these lead potentially to the formation of secure attachments, which is what we're trying to help these babies develop, because we know that secure attachments are associated with good affect regulation, and social adaptation.

So, how can we meet these needs of the babies? Well firstly, with young children minimises intimate interaction, to a number of familiar people, and try as much as we can to follow the baby's rhythm and timetable and not impose too many external constraints at an early age. Of course, we need to provide the baby with sensitive care giving, as I've mentioned, and remember the crucial importance of early brain development.

Now, with all this in mind, I'm just going to briefly describe a study that was carried out in Melbourne by Cathy Humphries and Meredith Kiraly, who studied descriptively the experience of 40 infants under the age of one year, in their contact. These babies had very high frequency contact, between four and seven times a week. There was variable parent attendance, so the parents sometimes came and sometimes didn't. There was variable quality of care by the parents during contact.

Now, if the need for familiarity is going to be fulfilled the baby may be cared for several times a week by a parent who is not sensitive in the care giving attachment way, who may not understand the baby's cues, who may be very anxious, might be quite distressed, may be under the influence of drugs, may want to bath the baby and the baby is maybe asleep. They may want to feed the baby, they may want to jiggle the baby, they may want to wave lots of rattles at the baby and so on, and interact in a way that really isn't sensitive to the baby's needs. That certainly was one of the observations of the experiences of these babies. They had repeated disruptions to their sleeping and feeding routines. There wasn't any mention of the effect of all of this on the foster parents but I think that this will be mentioned later. They had long journeys. Now Melbourne is a good deal smaller, certainly than the metropolis of London. They had a succession of unfamiliar escorts and supervisors. There were unsuitable contact settings and most interestingly, reunification was not related to the frequency of contact. Now, I invite you to consider

how many of these observations might apply in this country to the contact experiences of children, of young children.

So the conclusions I think are that continued familiarity between the infant and the birth parents is important. In order for the birth parent to remain an attachment figure, the contact needs to be frequent. At that point we need to remember that security of attachment, which the child develops, is determined not by the child's genes, but by the quality of care giving. So if there is frequent contact with the parent who is less than sensitive then indeed this parent may become an attachment figure to a child who is busy developing an insecure or worse, disorganised attachment to that parent. On the other hand, if the frequency is less and the birth parent may not become a primary attachment figure that is a relationship, which that parent could later on develop, meanwhile allowing the child hopefully to form a secure attachment to the foster parent. The cost of frequency may be considerable for the infant because of these repeated disruptions and because of the insensitive care giving.

So there is really a need of a very careful balance. The other remark that I think we might make of course is from a child's point of view, is that current resource constraints might actually be in the children's interest. If frequent contact cannot be arranged due to lack of resources and the parent isn't really fulfilling the child's needs then maybe this is the one time where certainly the current trends may be doing something for children.

Kenrick: Today, I want to make use of my research into the impact of contact with birth parents on infants, to focus on the voice of the non-verbal infant. All the infants in my study were placed before the age of ten months, that is in the most vulnerable early period of the crucial and vulnerable first three years of an infant's development. Already, by being infants in care, they're a particularly vulnerable group. It's also a crucial period in which, from the start of life, the development and wellbeing of the infant are beginning to be formed in an interactive and interpersonal relationship with the mother, carer, parent and then on into an ever wider circle of relationships. I may use slightly different language than that used by Danya; I think it is

the interactive aspect of the earliest relationships that is so important.

I'm not going to talk very much about my research. I think you don't have a summary of the research in your packs, you've got a version of the paper itself. I'm not sure if it's the final version that was actually published in Adoption and Fostering, but you've got the references there, and also the reference to the Australian study, which Danya has referred to. What is interesting was that was carried out and then was published in 2009, exactly at the same time as my study; that we were looking at the same things, the impact of contact on infants, and came to remarkably similar conclusions I think.

You perhaps know about concurrent planning where my research was based, which was a scheme developed in the United Stated in the 1980s to promote continuity of care and prevent drift for the very young children in care. It also provides intensive support for birth parents in order that they may have a chance to make changes in their lifestyles, and to promote and nurture existing attachments between them and their babies; with extensive contact between birth parent and infant during the early periods of the placement in the hope of achieving rehabilitation. So, contact may be up to five times a week, sometimes less. Meanwhile the babies are placed with concurrency carers, who are dually approved, both as foster carers and as prospective adopters. So, should the babies be unable to be rehabilitated the foster carers, the concurrency carers may then apply to adopt, thus minimising moves for the infants. For the research, just briefly, I interviewed 26 concurrency carers, all of whom by then had adopted the infants that they had cared for. There were 27 babies Involved as one family had adopted two children. Also, it's important that it was a retrospective study involving a very open-ended questionnaire, so that it was not possible to observe contact as it happened. I was reliant on the views of the adoptive parents for the information.

So before I give you some results from my research I want to emphasise that although this was a study of infants in concurrent planning it's possible to extrapolate from these results to thinking

about the emotional experiences of and the planning needs for infants in the wider care population. Although I want to stay with the results that are centred on the infants, some will of course be relevant to thinking about contact issues for older children. Here there has been some research done, say by Neal and Howe, but I want to find the voice for the non-verbal infant, and to draw attention to how they do communicate emotions and needs to dedicated parents and carers. I'm very grateful to all the carers and to the birth parent whom I also interviewed for giving generously of their time and also at times going through an emotional experience while they revisited what the experiences of the babies had been. But that's in my second article and that's not what I want to focus on, today.

I think there is a dilemma for the legal profession engaged in helping to make the best long-term decisions for infants: whose rights do prevail? How can the non-verbal infant be accorded equal consideration to the more articulated and verbal expression of the adults concerned?

So let me come to the impact of contact on the infants. Firstly, infants who became distressed during contact. Paula, the concurrency carer of Joe, a boy placed at three and a half months, described how after two months of three times weekly contact, at approximately the age of five and a half months Joe began to become much more distressed during the contact visits. Paula could hear him getting more worked up and crying in quite a different way to any that she had ever heard, different in quality. Increasingly his distress could be seen to start as she left the room. She saw birth mother trying to comfort Joe by jiggling him, she thought much too vigorously, and being unsuccessful. It became the practice after ten minutes of inconsolable crying that she would return to the contact room and would comfort Joe until he was more relaxed, then she would leave the room again. When Joe again became more distressed she would have to return. She described her anguish while listening to him crying, wanting to be with him, to help him and knowing that she had to wait until it was time to go back.

Now this description is one amongst many from the study, which focuses on the particular difficulties of the child at five and a half, six months, in separating from a primary carer. This is something that is seen in most families as a normal, if difficult, developmental stage, usually between five and eight months, when there's tension in the child between dependence, separation and individuation. I think it's very important to think of all the issues around contact in relation to what we know about ordinary child development and developmental stages of infants and young children.

So to come to behaviour before and after contact, handovers and reunions: several of the carers noticed that the children were much more clingy after contact and might need a very quiet time for the next 24 hours to settle down. The carers complained that if contact was very frequent, three or five times a week, there wasn't time for recovery after contact because they had to be on the road again the next day. They felt, almost all of them, the babies needed to have more of the quiet time at home that most babies in ordinary families could expect to have.

Tony's concurrency carer, Vince, felt that Tony placed at four weeks after withdrawal from methadone took the five times weekly contact with his loving birth mother well; rather he suffered from the lack of interaction with his carers during the long car journeys, up to two hours each way. By the time they got home, it was bedtime and the only quiet times together were at weekends. He felt strongly that a child who has been withdrawn from drugs needed calm for his optimum development. Paula felt that after contact when he was reunited with her Joe was pleased to see her. During the return on public transport he often slept after visits, or cried on the journey, but his feeding and sleeping were never disrupted. Once home he became relaxed quite quickly. However, she had noticed subsequently that when he found himself in a new place or a new situation he became much more anxious than she would expect.

Many of the carers would arrange things so that when they went to collect the babies the babies couldn't be seen by the birth parents to turn too quickly to them, to choose them rather than the birth parents. They were very sensitive to the needs and the emotions of

the birth parents. One couple would sit next to the birth parents so when the child held out his arms it wasn't quite clear to whom he was holding his arms out.

Now I just want to reflect on the interaction between the carers and the child that is actually very central to the impact of the whole process on the child. Ruth, the carer of Joanna placed at six weeks, wondered if the way that Joanna often cried as they arrived at Coram was because of her own stress communicating to Joanna, or whether there was something particularly as time went by that Joanna really did not enjoy about the contact. She said that for herself it was difficult because she was handing Joanna over to a homeless, ill looking mother. During one contact at four and a half months, Joanna cried inconsolably for one and a half hours. Coram then phoned Ruth to come back and look after her, and she found Joanna almost on the edge of fitting and everyone was very worried about her. Birth mother significantly did not come to the next few contacts as it had had a huge impact on her.

Zeta, the carer of Millie, placed direct from hospital at four weeks following withdrawal from methadone, took Millie for her first contact with birth mother after a sleepless first night in her new home the very next day. She thought that during the early contacts Millie seemed to be searching around everywhere with her eyes and thought this was a sign of Millie's anxiety. After contact, she noticed that Millie seemed very restless, cried more and couldn't sleep that night. She did not feel that at the point of separation from her Millie showed much difficulty, again seen with other children. However, on reunion, she herself could see Millie's anxiety - sometimes Millie would just fall asleep when she returned to her not having slept at all during the contact session. Again, an interruption of routine as Danya was pointing out.

Richard seemed to show no emotion when handed to his mother and then seemed overjoyed when Lila his concurrency carer came to collect him. Lila was worried about the impact of this exchange on the birth mother. She also noticed that as he got a bit older Richard was quite difficult to manage in the taxi on the return journey and would throw himself around. From the age of about six months she

said he would not look at her at all on the way back in the taxi, or for at least an hour or sometimes longer after they returned home. He actually turned away from her.

Some of the carers did wonder about the experience of the children when they were having contact with the birth parents. One said that the birth mother changed the baby more often than was necessary. Another thought the birth mother didn't know how to feed the baby her bottle and that must have been why the baby was always so hungry and tearful after contact. Another concurrency carer reported that the birth mother, having heard that the child loved her bath, had given her one, but the child had screamed, and it must have been such a very different experience from the bath at home. This was a particular example commented on when I interviewed the contact supervisor, who is a crucial figure in all of the contact at Coram.

So, disruption of old attachments: this is where the first foster carers come across as terribly important, firstly because they had established routines with the babies when they came, very often straight from hospital and for these routines the concurrency carers were enormously grateful. Some of them were aware that at the point of separation and coming to them the infants were actually being separated from their existing primary carer.

Albert, for example, described how Charlie, when he was placed at six months, although apparently happy in the daytime became distressed at bedtime and couldn't sleep. Albert also felt that more time had been needed for Charlie to begin feel more settled with them before beginning regular contact with a mother, with whom he had had little previous contact while in foster care. This was the only case where that was so. These were older carers and they found it extremely difficult on the very next day taking this child by public transport, on a train, to contact. Charlie cried all the way. They felt very exposed as new parents, not knowing what to do.

When Jill, another child, cried all the way from the foster carers to the concurrency carer's home Una the carer said it would have been

strange if Jill hadn't minded the change in her life, all the smells and routines would have been different in her new home.

Tina placed at seven weeks with Bella didn't feed or sleep at all for the first 24 hours. She just stared at everything and everyone around her.

When newly placed Joe seemed to sleep both day and night, his concurrency carer became so anxious that she called her GP. She later realised that this was the child's response to separation from his attachment to his foster carer and she thought that sleep was his defence, his way of cutting off from the pain of his experience.

I think this leads on to a theme that emerged from many of the carers' narratives, which is how long should children and their new carers be given to get to know one another and settle following the move from foster carer or hospital before contact starts? I think that the moves one sees with older children often happen very quickly, because there's a fear that something will break down if it doesn't, or isn't immediately put in place. And we can see that happening with moves from foster carers to adoptive or prospective adoptive carers, that those changes take place incredibly quickly. Everybody is frightened the child is going to say no. So I think that that is a point really to have to think about because this is a major separation for all these children, and especially for infants. We can generalise here to thinking about the needs of young children in the care system at such moments.

For the concurrency children there's a significant accumulation of events just at the time of the beginning of contact. First of all, they're having to separate normally from their first carer who took them on as tiny babies from hospital. Secondly the move to a new concurrency carer, where everything is new, smells, home, everything and then thirdly the start of contact with journeys and again, the contact where everything is different.

I now want to go on to think about one numerically large group, which I think is important to think about - the children born to drug and/or alcohol misusing parents. Danya has pointed out how very difficult these children can be to look after. They can be irritable and

edgy. Out of my total of 27 children, 18 of these children had been born to drug misusing parents, and many had had to go through a detoxification in hospital at birth, and I think if you've ever heard one of these children crying you don't forget it. It's a very particular and horrific experience. One child spent three and a half months in hospital. When the infant was a long time in hospital, the carers often expressed great concern for what that experience might have meant to the child. One said, 'I hate to think of her being alone as she had to go through it.' Another, 'I wish I had known about her earlier so that I could have been with her.' And of course they're right. However dedicated the staff in the hospital the infant would have had many changes of carer and of having to fit into a routine that was not theirs, it was the hospital's.

Some of the carers still saw what they believed to be the sequelae of detoxification and possibly of prenatal exposure to drugs in jerkiness and in states of unexplained distress, slow weight gain, diarrhoea, recurrent infections, difficulty in feeding and so on. One child was described by her carer as seeming to long to be held, but she was unable physically to accept close physical touch for many months, and when she was bathed, cuddled, being dressed or undressed she would cry out the carer said, 'as if in pain, as if it really hurt her.'

So I wonder about what could be done to help these babies. If care decisions are going to be made either before the birth of a child, or very soon after, I think it would be very helpful if the foster carers, or even the concurrency carers, if that's going to be the way forward, could be identified early. This is so that they could actually visit the child while going through a detoxification and they could then follow through, so that there is continuity when the child leaves hospital. There's one scheme I know of where that is being tried out, but it's a very small one at this point.

So just to finish I want to look at some of the continuities and discontinuities. Where there is continuity as I think there is in concurrent planning, one wants to promote it, where it's not there one wants to find it and extend these possibilities because certainly it makes a difference to the infants. The first one I want to pick out is that with the concurrent planning babies the same dedicated carer

always took the infant to contact. The experience of infants in care, usually in foster care, is that they may sometimes be taken by their own foster carer, but very often, because the foster carer is looking after other children, they will have unknown escorts who will take them to this highly charged contact. They will bring them back without there being any sort of communication of what the infant might have experienced. There can even be contact at the foster carers home where there may be little supervision and where it can be highly charged and sometimes quite risky and unprotected.

A second continuity, which was very crucial, was that at Coram there was the same contact supervisor who supervised all the contacts, or whenever possible, for the babies. Now this again provided a huge protection for these infants. She was supported properly by the Coram social workers. She also had authority to intervene to help the baby, and the birth parents, for example if the baby became distressed, and particularly at times when the birth parent could not respond to gestures from the infant, then she would make suggestions. She would point out what was happening, 'the baby really was looking at you, your baby really wants you to help her,' but she was also available if the parent was unable to respond to actually pick up, hold and relieve the baby's distress.

I think we all know that in local authority supervised contacts, which take place at contact centres and so on, those contact supervisors normally have very little authority. They watch and they write a report afterwards, but seem to have the authority to intervene comparatively rarely and also rarely have very much support in observing what may be a very painful experience. There is a group in North London around a CAMH Service where contact supervisors attend a group and are actually undertaking baby observations to help them and support their work as contact supervisors. One would like much more of that but I think with cutbacks and resources and particularly to CAMHS it's going to be very difficult to extend just that kind of initiative.

Then the third continuity is that the babies themselves, the infants, the little babies, very quickly recognise who is their primary carer. This touches on a very confused area for the infants: how to make

sense of the different demands and different expectations that come about with contact, with birth parents on the one hand, who genuinely want to maintain and develop the attachment with their babies, and are being helped to make changes in their own lives, to help them to do so. Then the carers, the concurrency carers who are developing a new relationship with these babies, which extends from first carer to father, to siblings to extended family, as would happen in a normal family. These are attachments that develop slowly and at their own rate But how does the baby make sense of all these different sets of people around them?

So I think it leads to a more general question about how frequent does contact need to be to maintain the earliest attachments between infants and birth parents, while not interfering with the development of firm attachments with their carers who are becoming rapidly, after placement, the primary carers. Infants at a very young age do establish what one might call, and Danya actually called too, a hierarchy of attachments. I think that's how that builds up and one can observe that happening.

I also have given the reference to Humphreys and Kiraly study and I'm particularly struck by their finding that higher levels of contact do not necessarily lead to higher levels of reunification with birth parents, and I think that's very significant. That was not something that I could conclude from my work, but I think is worth bearing in mind for everybody concerned.

Then there are discontinuities, which may be greater for those children who are not in concurrent planning placements, but as a child psychotherapist I was interested to look at those. One needs to wonder how these can be minimised.

Firstly the journeys, which are particularly disruptive for establishing new routines when journeys are long, which with the concurrent planning could be up to two hours in the car because of all the blockages of central London. I think again, particularly difficult are these journeys for infants who have been through a detoxification, who particularly need the calm of not being jiggled and pushed in and out of their routines all of the time.

I've referred to the importance of the same escorts taking the concurrent planning babies to contact. I would also like to urge that the frequency of contact should be looked at terribly carefully - how necessary is it to have very intensive contact? Does less frequent contact actually maintain and nurture attachments adequately? The second point is, that these babies are not given very long to settle in their new homes before contact starts, before they're on the road, as one of the carers called it, sometimes the very next day, so that there is not time to establish new routines in their new families. There is also very little time for that sort of falling in love that happens, and that babies need to happen with the people who are looking after them. So I think I would urge looking again at the possibility of allowing longer between the placement of the baby and the start of the contact arrangements, and particularly for babies who have been through detoxification. Another issue is I think, that there are periods in the general life cycle and development of very young children, which are more difficult for babies. Here in the under one's it was the five to eight month period, with older children there will be other phases that need to be thought about, that need actually to be interpreted to the birth parents because they can become extremely upset when the baby seems to turn away from them. They need to be helped to see that this may be something that a baby of this age may be doing anyway.

Another one for me, which is very important, because I've done quite a lot of work as a child psychotherapist with children in transition, children in care, is a particular need to pay attention to the transitions, the move from one placement to the next, from foster care to permanency, from initial foster carer to concurrent planning carer. Also to think about that for older children as much as for the little ones, and I'm glad that there are quite a few studies taking place as part of Tavistock Doctoral work, which are actually looking at that process in great detail, to see what the emotional impact on the children is. So that I think, just to conclude, the infant under one, doesn't use words for communication but he needs a mother, a parent, a carer who is capable of receiving his emotional states and of reflecting and trying to make sense of them for him. Then he'll be protected for becoming overwhelmed by fears and

confusions and of falling into what one analyst has called a state of nameless dread, of pure terror. Infants negotiating the vagaries of contact are a very vulnerable group by definition. They need the assurance of dedicated and thoughtful caring with as much experience of continuity as is possible for their wellbeing and optimal development.

Munby: Those of you who have come here expecting some sort of gladiatorial display will be disappointed. You may be surprised to hear that I differ hardly at all from what Judith has been saying. Since it is perhaps important for you to know exactly what I did and did not say, and what David Bodey did and did not say, you will find at the back of your packs a piece of paper which sets out the key paragraph in my judgment in Re M. It has also the key paragraph from another judgment of mine in the Blackpool emergency protection order case and then, surprisingly and uncharacteristically perhaps, the rather lengthier passages of Mr Justice Bodey in the Kirklees case. Now, I am not here to justify what I said, and I certainly do not, in what I am about to say, want to try or be thought to be rewriting history.

Can I merely make these observations; I did not say, I was careful not to say, daily contact. I was not setting up a dichotomy, a contrast, or a balance, between the parent and the child. If you look at both judgments, you will see the balance I was striking, the dichotomy I was drawing attention to, was between what I described as, 'the needs of the family' on the one side and, on the other side, 'the resources of the local authority'. I did not say that contact two or three times a week for a couple of hours a time is simply not enough if parents want more. I carefully and deliberately qualified that with the word 'reasonably', which both reflects the statutory requirement and also reflects the fact that of course parents cannot simply demand it if it is contrary to the interests of the child.

Now with those, you may think self-serving, caveats and qualifications in mind, I can go on to say that I do not think there is anything that Mr Justice Bodey has said in Kirklees with which I would disagree. Where he put into my mouth, as it were, what he said I was clearly doing or what he thought I was saying, he was entirely accurate and I agree with it.

The reason I put in the Blackpool case, the X council and B, is partly because of what I said, and it is about two thirds of the way down the extract. Too often one hears cases where the contact offered is something of the order of two or three times a week, one and a half to two hours at a time. I hear it so often it seems to be a rule of thumb. Now, that may be not the only occasion when I made that observation in a reported judgment but, as the language I there used illustrates, it was something which by then was a frequent experience of mine, such that it became one of my hobbyhorses. The point, if I can make it, is this: I cannot recall a single occasion when one of these contact issues came before me in the context of care proceedings, where there was any attempt by anybody to explain or justify by professional opinion, let alone by reference to any research or expert evidence, why it was being said that two or three times a week, one and a half, two hours at a time was sufficient. The most one ever got was 'well that was my professional opinion' from the social workers. When one sought to scratch below the surface there came nothing at all. I have to remind you that judges have to work on the basis of evidence, and if the evidence is not there we are in difficulties.

Now, what is fascinating and important about the research we have heard about is that it does provide, and maybe for the first time, a solid evidential basis, a solid expert research basis, for the application to these cases of general principle. Now, it is perhaps an obvious point, but can I just make this point. There are some principles which even in family law are timeless. The concept of the child's welfare being paramount as a principle has been part of the law, if you believe the legal history which the House of Lords gave us somewhat inaccurately in 1970 in J v C, since at least 1850. It has certainly been part of the statute law since 1925, although I think I could confidently assert that no judge in the Family Division in 2010 would have the same concept of welfare or make the same decisions as a judge sitting in the Chancery Division in 1925. The importance of the point is this: the principles are timeless, but of course the application of the principles changes over time, reflecting in particular two different variables.

One is the general changes in society and in the view society has about various topics, changes in society in the shape of the family, so on and so forth. Now, these are matters which an experienced judge can grasp, understand and give effect to from his or her own experience of the world, experience at the Bar and experience on the Bench. The other thing of course, which vitally affects the application of the timeless principles, is the current body of scientific expert research, and that can change quite dramatically. If that changes then of course the application of the principles has to change with it. What we are seeing here, I suggest, is what may be in the light of this research, which I find absolutely fascinating and very compelling, a seismic change or a very significant change in the application of principles in the light of that expert evidence.

Now, can I make three points in concluding? The significance of what we are hearing perhaps operates in three different ways. First of all, it has a direct impact on the way in which in future I would hope contact cases of this sort are going to be argued and dealt with by judges in court. I choose my words carefully, as I hope you will appreciate reading my judgment, but when I said the way cases are argued, the other thing that struck me and strikes me is how very little time in court, in the typical care case, was ever devoted to the question of interim contact. One might have occasionally a hearing set up specifically to deal with the issue of contact, but very frequently what happened was there would be a dispute about the renewal of the ICO; there would then be interminable arguments about the directions, did we need two experts, did we need one expert, did we need five disciplines, did we need four disciplines. Right at the end of the hearing, almost as an afterthought, and sometimes it was an afterthought, the parents' counsel stands up and says, 'By the way, I have not been able to reach agreement with the local authority, will your lordship say something about the question of contact.' So in just the same way as in so many civil cases the question of costs, which is often more important than the substance of the litigation, is dealt with almost as an afterthought at the end of the hearing, too often in my experience, even in the heaviest care cases, issues of interim contact were dealt with in the

same way. So the significance of this at the first level is we need to rethink our approach to contact in the light of the expert evidence.

That leads onto the second point. It is astonishing, when you think how much very valuable research for example there has been published quarter after quarter after quarter in CFLQ, how very, very rarely it is that one ever has any of this deployed in court. One occasionally is taken to literature on shaken baby syndrome. I cannot myself ever recall having been taken to any literature on the kind of issue we are talking about here today. There is something deficient in our process. So that the second more general message is it would very much help the judges - this is only a personal view; I do not profess to speak on behalf of the judiciary or the family judiciary, that is the function of the President - for the sake of this judge there is a second lesson which comes out of this: it would enormously assist if much more frequently, and not just in relation to contact issues, we were told what the latest research was; if it was put to us in plain terms: look, XJ said this ten years ago, Munby J said this in 2003, it may have been right at the time but it is simply wrong and unsustainable in the light of the latest research.

There is a third issue which perhaps emerges from this. Lying behind all this is the general problem in the way in which we deal with care cases. There are two aspects to the problem, I only want to identify them before I sit down. The first is, they all take far too long, so the interim arrangements which you are talking about in relation to contact, which the architects of the Children Act thought would be a period of was it twelve weeks maximum, stretch out to 40, 50, 60, 70 weeks or more. The other thing is: we have never been prepared to grapple properly I suggest with the question of fast tracking those cases where one can sensibly and fairly identify at the outset that the prospect of rehabilitation is, as it so often is, vanishing small. I think I am right in saying that if you look to the law reports and the text books, the purpose of an interim care order, which after all is the foundation for the contact, this issue we are talking about, is still said to be (from a judge in the early to middle 1990s) to hold the ring without make pre-judgements about the outcome. I wonder whether we should not be, as some DFJs are in

some parts of the country, actually doing more to identify those cases where there are realistic prospects of rehabilitation, putting them on one track, cases where, being realistic, the outcome is distressing obvious, putting them on a different track, and in the context of that then thinking about how we can adjust the contact arrangements to suit those different types of case.

At present, because of the fiction that all we are doing is not pre-judging, all we are doing is holding the ring, there is not, as it were, an underlying conceptual framework. There is not an underlying practical framework which enables one in the context of contact to distinguish between the hopeless case where the mother never gets to be able to rehabilitate and the case where it is a much more realistic prospect. So this is very important research, it has very important implications, obviously and primarily of course in the context of contact, but I would like to suggest in the wider context. The message I go away with is that somebody, sooner rather than later, will stand up, in the right case and say, look what Danya's been saying, look at all this research, forget what Mr Justice Munby has said, we have moved on - but I fear it will be a long time coming.

Chair: Our speakers have kept magnificently to time so we've got the best part of an hour for discussion and comment. I don't know if anyone on the panel wants to comment on anyone else, I think they surely would but I'll go to the floor, first. If you can identify yourselves as my eyesight is particularly bad. Please identify yourself when you ask a question or make a comment. Yes please, go ahead, the lady in the green jumper.

**Question and Answer Session**

Wilkinson: Gina Wilkinson, President of the Association for Improvement in Maternity Services. I have great respect for the work of Judith Masson and Danya Glaser and Jenny Kenrick, much of which I have read, and I'm a former research officer, and particularly used to looking at both medical and social science and psychological research. I'm very glad that judges are interested in research

because as advocates for parents we see many family court documents including experts' reports. I must say, I am horrified with much of the stuff I read, which would never be accepted, they would never get away with in open court, and I sat on the General Medical Council Professional Conduct Committee for six years, judging doctors giving evidence.

I have worked in a childcare department and as a community worker, do a great deal of work observing and supporting mothers and fathers and grandparents with babies, and older children. I am a little worried that people think this particular piece of research may be generalisable and extended beyond the particular small sample and with the particular workers, which were involved. There was a very high percentage addicted to drugs in the womb. The foster carers were a) typical foster carers, as selected concurrently for potential adopters. The social workers in the study, the Coram workers, were not typical of local authority social workers. Those of you who may have read the report of the House of Commons Select Committee on training and so on of social workers, to which we gave oral and written evidence, will soon be able to pick out the difference. You'll note that the one parent who did get her child restored to her commented on the difference between the way she was treated by social workers and by the Coram workers.

Now, there are certain things that concern me. One is that the courts are ignoring the needs of the breastfed child, drug addicted women will not, of course, be advised to breastfeed and I would hope they wouldn't breastfeed, but we are getting a maximum of five contacts a week for mothers to breastfeed, which does not promote the benefits of breastfeeding.

Secondly, what we do not have here is a recognition of the importance of the parents' attachment to the baby. Incidentally, one of my children was adopted as a very young baby, and the attachment of the birth mother and the birth parents and the birth family is not considered. Now, we have dealt with hundreds of cases of women who have had babies removed or have been threatened with having babies removed. It undoubtedly affects attachment and one has most movingly described to us the difference in her feelings

towards a child with whom she was merely threatened with removal during the birth and after the birth, and a child subsequently born in which this did not happen.

When one talks about research randomised trials are as scarce as hens' teeth in social work, but there is a huge long-term follow up, big randomised trial from the United States involving thousands of families. This has shown that supportive social work to the family compared with the kind of approach we use, which is looking for risk factors for children has infinitely better long-term outcomes and children are just as safe. The other danger to babies, which is not looked at, is the proven, the scientifically proven, adverse effects on the child of threatening the mother during pregnancy with the possibility that her child might be removed. We deal with mothers and have dealt, our organisation is 50 years old, with parents who have suffered enormous trauma, we deal with widowers after a maternal death, and bereaved parents after stillbirths or when brain damaged babies are born. We know about stress. We know about women who have had multiple miscarriages. I have never seen the level of stress endured by women when some alleged risk is involved in their pregnancy. We know that is damaging babies and that it has long-term adverse effects on their behaviour. Why is the system not considering these risks? Thank you.

Chair: Would one of our panel, perhaps, like to respond to that? Danya, would you like to respond to that?

Glaser: I'm not sure that I'm going to do justice to that very long statement. I wasn't sure what the question was. I think there are many different points. I think this particular conversation tonight is about the dilemma that is faced when a baby is for right or wrong reasons removed from their parent, and I think that it may be an unreasonable decision to have been made but we really need to concentrate on the issue of contact. I'm not sure what point was being made about that. Certainly, the issue of breastfeeding is interesting and important. I don't know whether there was any evidence in the cases that Jenny saw, which, of course, was not a representative sample, in some ways. I don't think, however, it was as unrepresentative as is being suggested because drug and alcohol

abuse are one of the main reasons for babies being removed from parents, but you'll be able to say more about how representative the sample was. The issue of breastfeeding is important but I don't know how many of these mothers would actually be breastfeeding were the baby to remain with them. There are also unsatisfactory, but not useless, technologies about collecting breast milk and that can be a way in which a mother can sustain some sort of contribution, the most tangible contribution she might be able to sustain if there is limited contact. So I think breastfeeding is important. I would question how many of the mothers would be breastfeeding if they had the children, but I think maybe Judith should address the question of how representative, or how unrepresentative, this sample is because I'm not sure that necessarily is a fair criticism.

Masson: I think if we look at care proceedings something like between 30 and 50% of parents involved in care proceedings have a substance misuse problem. The younger the child is when they enter the care system the more likely it is that there is a parental substance misuse problem. Substance misuse, mental health difficulties or learning difficulties and domestic violence are the main factors that lead to young children entering the care system, and usually it's not just one of those factors, it's in combination.

If we look at children removed at birth or not necessarily at birth, from the time they leave the special care baby unit, a very high percentage of those children have come from families where a previous child has been removed. The reason why there is intervention, or there is a major failure of care, the reason why they're removed is because a previous child has been very seriously harmed, either by abuse or by profound neglect. I don't think, as a society, we can expect social workers and nursing staff and professionals generally to leave children in families where there has already been a very substantial harm to a previous child. The other major factor in children being removed is lack of parental cooperation, so some of these children might stay with parents if only the parents would co-operate with social workers. It takes of course two people to tango and some don't do it very well. It's

always very easy for the professionals to say the parent should be more co-operative and the parents to say if the professionals were better trained they would be able to work with parents in a better way and get their co-operation!

As an academic researching things from a step or two steps back, I can't tell the rights and wrongs of who ought to co-operate better. I have met some very stroppy social workers and some very stroppy parents. Realistically, the child protection process is a stressful process. It's stressful for the parents and it's stressful for the professionals and the majority of professionals are doing their best. The idea that within our current (financial) climate we can expect people to work at a much higher level is unfortunately unrealistic. Similarly, the idea that we can expect people to take much higher degrees of risk when there are societal expectations on professionals is also unrealistic and I think it behoves the legal system to work with the real world and not with the ideal world.

Chair: Would you like to comment Jenny?

Kenrick: Yes, I'd like to take up the fact that, of course, my sample was a very small sample, it was what I could manage and it was from the first period of the concurrent planning, yes it was concurrent planning and the standard of work is very high there. The standard of support given to everybody concerned in the process was very high and one would wish that was universal. I think it's very useful that it just is a bit of serendipity really that there was a similar study going on in Australia, much better resourced and financed and with more children, and coming to very much the same conclusions about what was difficult about contact for very young infants. So we've got two bits of research and hopefully there will be more. Biddy Yoeull is here from the Tavistock, where if they can get the resources there will be a further bit of research to look at contact, comparing concurrent planning group and in-care group, which I think would be extremely interesting.

Wilkinson: The Australian study isn't about concurrent planning.

Kenrick: No, it's not concurrent planning, no it's not.

Wilkinson: That study is going on, isn't it?

Kenrick: Well, they're hoping. They haven't got funding for the next stage.

Wilkinson: Right sorry, I thought I've spoken [unclear-01:29:17].

Kenrick: It's not concurrent planning. Well maybe they've got the funding since I ...

Wilkinson: I think they're continuing it, good, and they've got some more data that wasn't in the 2009 study.

Kenrick: Good, well that's excellent because that will just add to our information. Just the other thing about the birth parents, and I carefully didn't include birth parents in what I had to say today because I had twenty minutes and you can't get it all in and it was all about the babies. The birth mother, whom I did interview, was the one in that sample whom I interviewed whose baby was rehabilitated to her. Now she had been both alcohol and drug misusing, but had given up during the course of her pregnancy and so she had made changes well within the timescale of the infant, which others who sincerely tried to do so and went through rehab were unable to make those changes in time for the babies. What was very moving throughout my interviews was how compassionate the concurrency carers were for these birth parents. They really got to know them during the course of contact at Coram. They developed great respect for them in many cases. They had a lot of dialogue with them and actually felt in many cases that the best thing for the baby would have been to be reunited with birth parents, and they felt very compassionate for the birth parents when that could not be done. So I think new research will hopefully involve more contact with birth parents.

Chair: I saw a hand at the back but before we go to the hand at the back Danya do you want to make one more point?

Glaser: Yes, a very quick point. Another point about the unrepresentativeness of the sample, and I would totally agree with you in the sense that the quality of the supervision and the social

work and the support for the birth parents was far better than would be in the generality. Yet, we heard poignant descriptions of the distress of the infants in the best possible context, other than the frequency. So I agree with you they were atypical because the work was so much better than takes place sometimes elsewhere.

Chair: Shall we move on. There was a hand up on the left. Where's the microphone?

Ward: Hello, I'm Harriet Ward, I'm director of the Centre of Child and Family Research at Loughborough University. I'm also academic consultant to the Department for Health, Department for Education Research Initiative on safeguarding children. So from a research perspective is what I want to make a couple of comments. One is that in both the research that I've undertaken, which is now two studies of very young children, one of children was placed in the care system before their first birthdays who we followed until they were aged five or six. Another is a prospective study that we have just completed of very young children at risk of significant harm, identified as being at risk before their first birthday.

The results from those studies and also from a number of major studies in the Safeguarding Children research initiative, there were two big studies with large samples of children returning to birth families from the care system. They all point in the same direction and that is, first of all, that there is no evidence that children are being systematically being unnecessarily removed from home. There are the odd case where that happens, but as a general principle they are very, very rare and all the evidence is pointing in the other direction, that children are left with birth parents and maltreated by birth parents for lengthy periods before the very difficult decision is made, that the child will have to be removed. So there are issues there about continuing contact when that decision has been made. The study that we have just completed is a prospective longitudinal study of children identified as at risk of significant harm before their first birthday and we found in that study that first of all, these are children who about half of them came from families where an older child had previously been placed for adoption. These were children at the very sharp end in that they were at extensive risk before they

were identified. We found that you can identify early which parents are going to be able to turn their lives around and are going to be able to look after the child. So that fits in with Mr Justice Munby's point about whether you could have fast track family, whether you could fast track contact in that of the families who we identified of being at severe risk at the point at which they were referred to children's services. All but one, eventually, had the child removed, but often after a very lengthy period during which the child's development was quite clearly being compromised.

About a third of our parents were able to turn their lives around and they were able to provide a nurturing home for the child, but all those parents that were able to do so did so before the baby was six months old. That's another point about early decisions and reducing contact if it is not proved beneficial by the time the baby is six months old. We have a small sample too. It's virtually impossible to get a large sample of children in this sort of situation because of all the access issues. The other point that I'd like to make is that it is evident from all our research that the big problem is that delays in the process, delays in decision making, delays in finding permanent placements for these children is seriously compromising their long-term chances of satisfactory wellbeing. In fact, about a half of our children, of those we followed until they're three have now extensive developmental delays, speech problems, language problems and behavioural difficulties and we're hoping to follow them a bit further to see what happens when they start school. If you look at it from the child's point of view there are major issues here that I think the speakers have already raised, thank you.

Chair: Thank you very much. If we work our way around, there's a hand at the back. We'll work our way around the room.

Feehan: Good evening, my name's Frank Feehan, I'm a barrister at 42 Bedford Row Chambers. I can't match the eloquence of the previous two questioners who have great experience in research and I only ask from the point of view from a barrister doing this work often in court. I was going to say the sub-text, but really the text of the presentations we've had from the panel seems to be that the quality of contact trumps frequency of contact. Attachment seems to be the

key that quality of contact in maintaining or promoting positive attachments, either to a temporary carer or which are to be transferred to a more permanent carer is the important point. If we're arguing in front of judges and asking local authorities to do inexpensive things in the forthcoming round of difficulties that can promote quality of contact in these circumstances and promote the maintaining and therefore, if possible, transference of attachment what should we be asking them to do? Is it possible to tell us now or can you put it on the website somewhere?

Chair: Danya, do you want to answer that? No?

Kenrick: Well, in what is happening now and it's a question of attachment to whom really, and how to nurture that with the birth parent. I mean I think there is no doubt from my observations and discussions that where there is contact between birth parent and an infant the more support that is given actively during those supervised contacts the better. The contact supervisor that I did speak to as part of the research had a remarkable capacity to observe what was going on and to experience what the child was going through emotionally. She also had a remarkable capacity to speak to the birth parents in a very non-threatening way and to encourage them to find their own reciprocal gestures to the baby. She wouldn't do it unless the baby was left distressed. So I think a lot can be put into supporting contact supervisors.

It sounds very obvious but in many cases they don't have a particular role, they don't have particular training and put in a little bit more I think you get a lot back. I'm very interested in this scheme that probably Biddy could talk more about it in a CAMH service where contact supervisors are being focused on, in order to help them to promote contact between infants and their birth parents. Biddy you can tell them more about that I can I think.

Youell: I'm not sure I can Jenny but can I ... Biddy Youell, Tavistock Clinic. I wanted to make a slightly different point if that's okay leading on from that in a way. Just from an experience I had for many years and some years ago of working in a family assessment centre. It always astonished me as a child psychotherapist the way in which

the focus was on the behaviour of the adults. So when a foster carer brought a baby to the centre the focus was on how does the foster carer behave, what does she say? How does the parent respond? What happens next? It was very, very uphill work to get the focus onto the baby's experience of the interaction. I think Jenny just generously mentioned the research we're trying to get going at the moment, which is actually not to rely entirely on reports from concurrent carers or foster carers in local authorities, but to focus on the baby's experience of contact by observing precisely that.

Kenrick: As it happens.

Youell: As it happens, yes as it's happening.

Chair: At the back, towards there, yes.

Gardiner: I'll just shout, I'm Simon Gardiner, I used to work with Dr David Jones in Park Hospital. My question is for the panel, in particular Mr Justice Munby, I was in court a month ago with a mother and her three children removed. There were recent reports by a psychologist and a parenting assessment and the previous proceedings had only finished a fortnight before she gave birth. The local authority said we would like to have contact only three times a week, possibly even less than that, and the judge did exactly as Mr Justice Munby pointed out and said I cannot pre-judge this case, I would like it to be at least five times a week, and there was a compromise eventually on four. I just wonder whether that suggestion that we could fast track might need a change in the law, and that is my question.

Masson: I'm prepared to answer that actually. I might disagree, Lord Justice Munby might disagree with me but I think it probably would require a change in the law because everything has to be proved individually. We decide cases, as they all say, 'I decide the case by its facts.' Actually, researchers decide cases on ... we don't decide cases at all but we look at patterns and we would say that history tells us a lot about the present. That's a very difficult thing I think for lawyers, particularly in care cases. Every case tends to be looked at as if it was a new case, and I think probably, there would be more confidence in the judiciary and in the lawyers if it was very clear that a shift from deciding cases, taking second time around, third time

around, fourth time around I came across in research of cases actually was different. That there was perhaps some sort of reverse burden, parents having to establish that they'd changed, if a court order removing children has been made within the previous twelve months or whatever period. I think there would be much more confidence about moving towards that procedure as if it had been designed and debated before it was implemented. I can't believe, having read a lot of court of appeal decisions recently, that the Court of Appeal would stand behind a judge who took a different view of a second time case than they would of a first time case.

Munby: I do not agree a change in the law is required unless what Judith means, and I do not think she does mean this, is the Court of the Appeal taking a different tack or the Supreme Court reversing it. What is required is a change of attitude. For my own part, assuming the evidence is there, namely so long as the court actually gets at least a potted version of what has happened in the previous cases and not the bold statement, 'three children have been taken into care, therefore QED;' if there is evidence that there is no change in circumstance, I do not see any obstacle to a court saying, in an Article 6, Article 8 compliant way, on an individual case basis, that on all the material this case is a non-starter.

On the other hand, and as it happened it was the first care case I ever tried: I arrived in Birmingham on the Monday afternoon. David Bodey was in court giving judgment, making final care orders in relation to children seven, eight, nine and ten. The mother was heavily pregnant, she was due in about three weeks' time, picking up the point of the previous speaker, she was stressed and all that. She gave birth on the Tuesday, and on the Wednesday two days after David had dealt with children seven to ten the local authority was back in court in front of me, because I had taken over from David, seeking an ICO for child number eleven.

Now their presentation was simple, and this was all they said. Ten previous children had been taken into care, please make an order. I said, 'I am sorry, what is the evidence?' and it turned out, and they eventually lost the ICO because there had been a significant change in circumstances. Very skilful counsel was able to demonstrate that

what the mother was now facing was something she had never faced before, namely looking after one child rather than looking after four children. A relative who was a great source of strength had come back on the scene and the local authority was so complacent in its assumption that I would simply rubber stamp the ten previous orders that it had not even bothered to go and talk to the family member. And so the case collapsed. Now all I am saying is that one cannot assume either way, it has got to be based on the evidence. But assuming the local authority gives the judge the proper information about the previous cases beyond the mere assertion, the mere statement, that there have been all these previous orders, so long as there is proper evidence suggesting that there has been no change in circumstances, then I do not see why one should not go ahead, full steam ahead, very quickly. I do not myself believe that this requires a change in the law but it requires, I suspect, a change in attitude and also a change in local authority case preparation.

Chair: There were some more hands on the left. Yes, can we have the gentleman in the third row first.

Tapsfield: Robert Tapsfield from the Fostering Network. The presentations have been enormously interesting. I want to make one additional point. We hear from many foster carers who are not concurrent planners. It's not that they are interested in adopting the children, they are simply and solely there to care for the children until either they go home to their birth parents or they go to wherever, other adopters or members, a family or friend or kinship carer. I think what we've heard already is that actually their evidence they have of the distress to children caused by the arrangements that courts are making for contact does not get heard. That is actually not considered, so it's not just the research that you may be waiting for, but actually it does seem to me that guardians, legal representatives and judges when a contact arrangement is established should be asking themselves what the voice of the child is saying. These babies may not be able to speak, but they are making their views loud and clear, and it does seem to me that we need to find ways of hearing them, without in any way prejudicing that that means anything about the quality of the parents and the quality of what

they are offering in contact. Actually, some children will cope with a range of contact arrangements that other children will not cope with it is an individual arrangement and we must find ways of making those decisions without it in any way reflecting I think on the judgement of the court about the adequacy or not of the birth parent.

Chair: Thank you very much.

Lake: I'm Elaine Lake, I'm a justice clerk and I'm in Local Authority law at the moment. It is partly linked to the previous question about the change really since the PLO and the local authority having to file a lot of evidence on issue so there's a core assessment, there's a social worker statement, there's chronology, there's been pre-proceedings meetings, assessments and so on and so forth. I just wondered how that fitted in to the courts duty to case manage a set of strategy and in particular a timetable for the child of which these contact arrangements are part of because it seems to me in many cases there isn't actually a child centred timetable set.

Munby: Well the answer to your question is it's meant and theory behind it is that it should speed the process because if the local authority does the assessment and produces the documents the case should move swiftly thereafter. One of the real reasons for delay is that the local authority doesn't do the work and the result is the judge orders it done by someone else. That causes huge delay.

Masson: Well it's not that I don't agree with you, it's just that I've just completed a study (Pearce, Masson and Bader, *Just following Instructions?* University of Bristol (2011)) which will be published probably in February, an observation study of care proceedings in 4 court areas across the country, and in observing a 100 hearings we only heard the 'timetable of the child' mentioned on one occasion. The evidence from the Ministry of Justice is that since the introduction of the PLO (in 2008) the average length of care proceedings is now in excess of what we identified in our 2004 sample, Masson et al, *Care Profiling Study* (MoJ 2008). What we saw in that study was huge differences in the average length of time in different courts. So that in one of our courts, which I will call

court 80, the average length of time for the random sample of about 40 was under 40 weeks. In a court not a 100 miles away from that court, again similar sample, average length of time was 74 weeks. Actually when we calculated 74 weeks we had to take two cases out of the sample because two and a half years after issue there was still two cases that hadn't reached the final hearing, so it wasn't really 74 weeks, it was 74++ weeks whenever those cases got decided.

Local authorities criticise the courts, the courts criticise the local authorities. Everyone I have interviewed, my colleagues have interviewed on studies since the PLO and we've interviewed 60 lawyer, judges, local authority lawyers, parents' lawyers, children's lawyers, barristers and solicitors. Everyone has said that the idea that the local authority does the work beforehand and that cuts down what happens in the court simply doesn't work because no one will accept that the local authority's work is somehow good enough to satisfy the court, and that argument is repeatedly put by lawyers. It's repeatedly accepted and as a consequence we find now in a study we're doing into the pre-proceedings process that local authorities are not interested in doing specialist assessment pre-proceedings because they know they'll have to do it again when they are in proceedings. I think the idea in the PLO is a nice idea in theory, but so far, it hasn't worked. I mean Nick might say it works in his court, I don't know.

Crichton: Absolutely not.

Masson: Oh good! I find when I talk about research people either say, 'We know that already,' or 'it's not like that where we work.'

Chair: I think we want to get back to the issue of contact.

Crichton: Exactly that because we've gone off the point. Sorry, Nick Crichton district judge in a Family Proceedings Court. Can we get back to this research because it's too late if this issue of contact is going to be discussed in the courtroom. We've got to get this information out there for social workers, for guardians, for the lawyers to understand what are the issues. They've got to find a way in which to discuss with these poor, unfortunate parents, because most of them are poor, unfortunate souls, what the issues are so that they're not

taken by surprise when they arrive in the courtroom and are told they're only going to see their baby three times a week or whatever it is.

That's the challenge after tonight, and I don't know how many local authority connected people there are in this room, it might be helpful to have a show of hands. Not enough I would suggest, but somehow we've got to get this information out there, perhaps through family law and also hopefully through an authoritative judgement from on high because I don't think courts should be the people who should be trying to explain to parents the issues that we're talking about here tonight.

Gardiner: That was just an observation I'm sorry.

Day: Janet Day, Family Support Services Manager in Buckinghamshire. One of the projects I'm working on at the moment is developing a countywide dedicated supervisor contact service. What I'd like to ask the panel, rather than making my comments, I've found today very useful and I would say you can extrapolate from your research to other children, we have exactly the same experiences of children's travel time, of disruption to children's routines, of the interests of the parents sometimes being put before the interests of the child. Do you think it would be helpful if some sort of protocol was developed, which would advise solicitors, social workers, the courts on the levels of contact we should be recommending for a babe, for a toddler, for a group of junior aged children who have just been taken into care?

Chair: I think we should hear from ...

Munby: Well you could not do worse than the present lack of system. After all, being perfectly serious for the moment, judges in the Crown Court have sentencing guidelines, which is a huge bible, which tells them what to do. Judges in PI cases have rather a smaller bible, which tells them how much, or how little, each type of injury is worth. I do not see any reason in principle, and of course they are all merely indicative, why we should not have this approach.

Masson: But I thought James, you said earlier, that when the local authority came in and said as a matter of rule, what appeared like a rule of thumb, a principle that that was not acceptable, that all has to be evidence based. If you want all this evidence base somebody has got to stump up for the research.

Munby: That is right, I am talking about it because, as I think you know, the sentencing guidelines are not simply figures plucked out of the air.

Masson: They're not evidence based though. You send a murderer down for N years; he'll turn out to be reformed. You send him for half N years, he won't. They're not evidence based in the sort of way we expect child welfare decisions to be evidence based.

Munby: There is a desperate need to get research out there. I mean you can go into any legal bookshop and you can find helpful compendia of every leading case on the Children Act, helpful money cases, and so on. What we need, or one of the things we need, is a helpful compendium of current research covering the range of family law work. Headlines stuff, abstracts, with references to the underlying research, so if you want to know what the research is on contact there it is.

Chair: One more hand at the back, towards the back. The lady in the black jumper. I'm sorry my eyesight is terribly bad. If you can have a microphone, thank you.

J-Dent My name is Renuka Jeyarajah-Dent from Coram and I feel moved to talk from a practical point of view from an organisation trying to deliver solutions for children, coming at it from different angles. So at Coram we try and provide swift, permanent placements for children coming at it from providing PLO-worthy assessments in local authorities, adoption, SGO assessments and a whole range of assessments. The problem, it seems to me, is that there is a lot of evidence, child development evidence that has been with us actually since 1925. The process seems to be based on the unusual rather than the usual, and what we have in recent years is a process that has put so many safeguards in place for what is inefficiency. That has made the logical and the well evidenced so difficult to prove in court that actually, these so-called complex cases are very simple

cases in terms of decision making, but really complex cases in terms of safeguarding the welfare and the resilience of children.

What I want to say actually from this very learnered room is that those of us trying to practically deal with children need your help to strip away some of these complexities and to see the wood from the trees quickly. In the meantime we at Coram and the local authorities are having to close down services, to really think of contact in a way that has to be delivered very cheaply and so on whilst money is being spent in some sort of game sometimes it feels like, in court that doesn't in the end, it seems to be, benefit children or the birth parents who eventually, as research has shown and as Harriet has said, lose the child in any case. Once they've lost the child nobody works with them, till the next child is born and the child protection system gets involved. It's a plea really to really look at this, not from the unusual, but the usual, and help us to get these children through the system safer.

Chair: Right at the front here. I think we've got ...

Schofield: I think I've got the microphone so I'll say something. As one of the group who organised tonight, I'm going to claim the microphone for this point. A couple of things really. I don't think that we do need sentencing or contact guidelines in terms of age equals so much contact, but I think we do need to know what are the dimensions, what are the variables, what are the things we need to be looking at. I should say who I am; I'm Gillian Schofield, Professor of Social Work at the University of East Anglia. I think we do need to know what the courts should be hearing about in relation to individual babies' needs, individual parent's capacity to provide sensitive care, contact centres capacity to provide good supervision and to get feedback about that. So that's that point, but also to say as a result of the process that's lead up to tonight we have drafted a position statement that we think BAFF might like to publish, myself and John Symonds from BAFF and other memes of the group will be looking at that. We can take into account certainly all the discussions that's been had tonight, so I think really the goal of this enterprise that's lead to tonight is not that it stops here, but that in the New Year we will get together and think about what can be most useful to which

groups of professionals and how we can most usefully get it to them. So I'd like to hope people feel reassured that this debate doesn't stop this evening.

Chair: I think we've got time for two more.

Adcock: I'm Margaret Adcock, I have been the consultant to the four and a half concurrent planning projects that have been running in this country. I am also the voluntary coordinator for a child contact centre for children in divorce. I think it is very important to remind the audience that the concurrent planning project has actually worked out much of what has been advocated tonight. They had a system for identifying very high-risk families. They operated mainly on a fast track principle and they provided really good support and work with the birth parents. Three of those projects have closed and Corum in itself is in a fairly fragile state because it's been so difficult to get the referrals and to get the support of the courts and the lawyers. What keeps being said is a) we must give these parents every possible chance, regardless of what's happening to the child and b) the courts will never wear it. I think I would ask the legal profession really to take on board the fact that particularly in social work people are very heavily influenced by what they think the lawyers and the courts will say to them.

Chair: One last point and then we'll close.

Wilbourne: I'm Caroline Wilbourne and I'm a family law specialist barrister. I was very interested in what James was saying about fast tracking certain kinds of care cases, where rehabilitation is on the agenda, and I've also picked up on what Nick Crichton was saying about contact because these two ideas of course are linked. I did a case last week for the local authority, which I'm not proud of, where the children had been in foster care for a year, the mother had mental health problems. The issue was domestic violence. First of all, we had to wait for the fact-finding. The fact-finding said the mother was very much better, the father was a complete scoundrel and dishonest and I said, 'So there is no reason,' to my social workers, 'why these children should not now be rehabilitated to their mother, so the process should start.' The next date we can get is May. Were

those social workers willing to do anything until there have been assessments, vulnerability assessments, dependency assessments and the children's reaction. The problem with this very good idea of fast tracking is the reports take a very long time to come through. I was suggesting to my social workers that maybe they could start some overnight stay in contact with mother in the run-up to what is undoubtedly going to be rehabilitation. They're not willing to do it because there is no assessment of her and an assessment will take sixteen weeks. Those children are now one and three, so that bond is being broken by the very system that I think is trying to protect the children.

Chair: Each panel can have 30 seconds or a minute to respond generally.

Masson: Of course, the local authority is restricted arranging overnight contact with a mother if there's an interim care order. It has to be the Director's decision [to place a child subject to a care order with a parent]. Directors of Children's Services, particularly when they come from an Education background are unlikely to be willing to make such a decision without an assessment. So in a sense, Parliament has created a system that makes it harder for children to have normal lives when they are being protected by the State.

Glaser: I think that the question from the back is the one that's going to resonate for me, some practical guidance about contact, and we will take this forward in the New Year. Although we can't specify tariffs what we need to do is to be very clear about the questions that need to be asked about contact, namely who brings, who is there, who takes. Is there continuity between all those people? Is the foster parent, note I said foster parent because from the children's point of view they're parents, not carers, is the foster parent able to meet the birth parent and so on. There's some questions of principle, which are not beyond the wit of person kind, and we will try to work on that.

Kenrick: Just one point that came from a lady back there about how local authority social workers tend to wait until they hear from the courts, or are too reliant on legal views. I think I've been amazed, having done this bit of quite simple research by how much the courts and

the lawyers have listened to other points of view. The lady from Buckinghamshire or Berkshire, I can't remember, who said yes, we've seen all of this, I think the clue is many more people should be writing up this work and seeing that it gets published. If it's published it's there, it can be referred to. Lots of people have a lot of information. There are people doing research doctorates all the time. The information needs to be added and then it can be used.

Munby: I entirely agree with the last two observations with nothing useful to add!

Chair: Well I think this demonstrates the benefits of the Family Justice Council that we do have this sort of debate and we learn from it. I'm very grateful to everybody for coming. I'm very grateful to our four speakers and I'd like to thank our speakers in the normal way.

[End of Recording]