

# HOW FAR CAN YOU PUSH THE COURT ON CONTACT, INCLUDING POST PROCEEDINGS AND POST ADOPTION CONTACT BETWEEN SIBLINGS AND EVEN BETWEEN PARENTS AND CHILDREN?

GEMMA TAYLOR QC

42 BEDFORD ROW

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How did we get from;

SB v County Council and P [2008] [54] “We do not know if our views on contact on the facts of this particular case presage a more general sea change in post adoption contact”

to

Re B [2019]- extremely unusual to make orders against the wishes of adopters.

IE- apparently no change to climate of closed adoption

And how should we ensure that at every stage during and after proceedings, the issue of contact between a child and their parents or siblings or wider family members and significant others should be properly scrutinised and promoted

What use is being made of section 51A and 51B of the amended Adoption and Children Act 2002 which provide that the court can make an order for post adoption contact when making or after the making of an adoption order

Context-

Adoption= Gold Standard

Research tells us the benefits in the long term of adopted children knowing their birth families and the promotion of sibling contact.

Letterbox contact appears to be the default option, with some LAs maintaining a policy that never contemplates direct contact.

**RESEARCH-** essential reading

CONTACT AFTER ADOPTION- A longitudinal study of adopted young people and their adoptive parents and birth relatives. UAE. Neil, Beek and Ward 2014.

- Three stage study, carried out at preschool age, in middle childhood and in late adolescence. Birth family, children and adopters were interviewed.
- With respect to the issue of contact, the summary of findings and practice implications states “*Post adoption contact should be considered on a case-by-case basis and should be grounded in a realistic understanding of the potential benefits and challenges, rather than un-evidenced assumptions about benefit or harm*”.
- In late adolescence, the benefits of direct contact, identified by adoptive parents were; Enhanced adoptive family relationships (by creating an atmosphere of openness in the family); extra support to children and young people, who felt loved by their birth family and helped in their sense of wholeness or identity; and support to adoptive parents, including gaining a sense of relief that birth parents would not turn up out of the blue, gaining support from the birth relatives when the children were experiencing difficulties and finding out information about the birth family.
- The majority of indirect contact arrangements had been problematic over the years. Letterbox contact can be unidirectional and requires careful managing.
- There is no one formula for successful contact.
- Once a contact arrangement is set in place, it needs to be reviewed at regular intervals, particularly as children reach adolescence.
- Social media was used for three purposes: to gain information about another party, to communicate and to search for and seek a reunion with another party. Where social media was used to supplement existing contact arrangements and the YP had the support of their adoptive parents, experiences were generally positive. Where social media was used to fill in gaps in existing contact and where the adoptive parents were not involved, outcomes were more likely to be negative.

FACTORS AFFECTING ADOPTION IN WALES 2016

THE ROLE OF THE SOCIAL WORKER IN ADOPTION- ETHICS AND HUMAN RIGHTS- AN ENQUIRY (Professor Brid Featherstone, Professor Anna Gupta and Sue Mills. 2018)

- The promotion of adoption as “gold standard” and a public good by high profile politicians (DC) has led to a culture that has inhibited important debates about adoption and its merits compared to other permanence options.
- Letterbox contact is the usual model of contact with birth families, with direct contact rarely an option, even where birth relatives pose no risk.
- Letterbox contact is often poorly supported with resources and was considered too formulaic a response.
- The lack or cessation of direct contact can store up trouble for later. A key message from adopted young people was that adoptive parents

need to be prepared for the reality that many young people will want to search for their birth families when they reach 18.

- The loss of relationships with significant people from their birth families was of concern. There is rarely a 'clean break' or severance in real life; relationships endure in hearts and minds. The absence of physical presence may mean that they are more powerful.
- A strong message was the need to be open minded, flexible and not "prescriptive" about relationships and contact with birth and foster families once a child is placed for adoption
- If there is to be a shift to more direct contact, it was noted that the inadequate level of post adoption support for all parties needs reversing
- One of recommendations= The current model of adoption should be reviewed, and the potential for a more open approach considered. The UAE research provides a useful basis for taking these developments further. A vital point is the question of resourcing an expansion of direct contact.

### SIBLINGS CONTACT AND THE LAW: AN OVERLOOKED RELATIONSHIP?

Daniel Monk and Jan Macvarish. November 2018. Birkbeck/Nuffield.

Key messages;

- Strong recognition of the importance of sibling relationships, but they are routinely and easily outweighed by other considerations
- Lack of clarity and consistency in terminology about who is a sibling- step-siblings and foster siblings are rarely given weight in legal decision making.
- Lack of clarity in law and practice about when and how sibling relationships should be formally assessed
- Contact arrangements between separated siblings are heavily determined by placement type. Strong assumption that direct contact is appropriate for children in placements other than adoption.
- Closed adoption is the norm. Three powerful assumptions may outweigh the promotion of anything other than indirect contact: that expectations of direct contact will deter potential adopters; that post-adoption contact should and can only take place with the agreement of adopters; and that the security and stability of placements will be undermined by contact with siblings living with or in contact with birth relatives.
- Concern that insufficient weight is placed on the interests of older siblings, specially in adoption
- It is exceptionally rare for sibling contact orders to be made in care and adoption proceedings and there is a lack of understanding about the circumstances in which they should be used. There is a preference for alternatives to orders- ie "time-limited searches" or recitals and judicial recommendations, but their efficacy is subject to question
- Children's own views about their siblings may be overlooked as a result of the overarching focus on resolving issues of parental responsibility.

In the conclusion section, whilst recognising that the use of court orders can be a blunt tool, it is suggested that *“it may be timely to open up a conversation about the role that they might play in supporting the sustaining of sibling relationships”*

Policy recommendations include;

- To clarify the circumstances in which it is appropriate to make contact orders under sections 26 and 51A of the Adoption and Children Act 2002, they recommend the provision of judicial guidance
- To enhance rigour in the assessment of sibling relationships

President’s comments to NAGALRO conference March 2018 (reproduced at the end)

*“I would encourage all those involved in adoption planning and decision making to focus more on the issue of contact and to ask, in each case, whether the model of life-story work and letterbox contact is in fact the best for the individual child in the years that lie ahead for her, or whether a more flexible and open arrangement, developed with confidence and over time, may provide more beneficial support as the young person moves on towards adolescence and then adulthood.”*

## **BASICS**

The issue of contact arises at all stages in public law proceedings, although its focus changes as permanence away from the natural family becomes fixed. It starts with a presumption of reasonable contact in the context of possible rehabilitation in care proceedings. By the time you get to placement orders/adoption, the emphasis is on contact promoting the identity and psychological interests of a child and the relationship with its parents and siblings.

s.34 Children Act 1989- Parental contact etc with children in care. Presumption of reasonable contact. s.34(4). Contact orders can be made of the court’s own volition s34(5) and before making a final care order the court must consider contact arrangements s.34(11).

s.27(4) Adoption and Children Act 2002- court must consider arrangements for contact when making a placement order

s.26 Adoption and Children Act 2002- court may make a contact order on the application of certain entitled applicants or of its own initiative

s46(6) Adoption and Children Act 2002- before making an adoption order, the court must consider whether there should be any arrangements for allowing any person contact with the child

s51A Adoption and Children Act 2002 (inserted 2014)

### **51A Post-adoption contact**

(1) This section applies where—

(a) an adoption agency has placed or was authorised to place a child for adoption, and

(b) the court is making or has made an adoption order in respect of the child.

(2) When making the adoption order or at any time afterwards, the court may make an order under this section—

(a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other, or

(b) prohibiting the person named in the order under this section from having contact with the child.

The person who has applied for the adoption order, or in whose favour the order is made and the child may all apply as of right for a contact order. Anyone else may apply, with leave- s51A(4)

S51(5)- In considering whether to grant leave, the court must consider;

- (a) any risk that there might be of the proposed application disrupting the child's life to such an extent that he or she would be harmed by it (within the meaning of 1989 Act)
- (b) Connection with the child
- (c) Representations made by child or person who has applied for adoption order

The WCL set out at ACA 2002 s1 applies to applications for post-adoption contact

## CONTACT AND FINAL CARE ORDERS

- Presumption of contact – including between siblings
- Re G [2014] EWCA Civ 1175. [35] *“The conventional starting point for contact to a child in long term foster care is for existing relationships with family members to be maintained by a regime of fairly regular direct contact unless there are specific child focussed reasons for taking an alternative course. In the present case, for example, there may be specific reasons connected with the mother and her relationship with E which indicate that no direct contact should take place. The reason for the default position in favour of some direct contact is plain. A child is only in foster care under a care order until he or she achieves the age of 18. At that time and in the years to follow they will be free to re-join their family on whatever basis they may choose. Artificially terminating all contact during the intervening years is therefore likely to be entirely counterproductive and a step which will inhibit the young person's developing sense of their own identity within their family. Although not a submission made by Miss Scriven, I am struck by the apparent absence of consideration of the impact on E, once she reaches the end of her time in care, if she has not maintained any relationship with members of her family in this country during the intervening 7 or 8 years”.*

## CONTACT AND PLACEMENT ORDERS

- No requirement to allow contact unless stipulated in an order under s26 ACCA 2002.
- S.26 very underused. Limited jurisprudence. Re P [2008]
- *Counter presumption regarding contact between siblings where younger child adopted by older is not- usually problem attributed to older child's continuing contact with the birth family* (Siblings research)
- Really important to argue for an order, if only to highlight the need for the care plan to be appropriately tailored to the needs of the child, as opposed to being formulaic.
- Important to avoid the standard reduction in contact leading to a “goodbye” contact once a placement has been identified.
- Significance of contact order at the time of a placement order- made before adopters have been identified. Preserves the relationship between the child and parents/siblings, which the court considers important, notwithstanding the plan for adoption.
- Underlines the seriousness and importance which the court attaches to ongoing contact with the birth family and gives a clear message to prospective adopters that the court considers that “open adoption” is the way forward
- The presence of a s26 order strengthens the argument for post-adoption contact. The absence of a s26 order makes it more difficult to argue for direct contact post-adoption
- Child's permanence report, prepared in accordance with Adoption Agency Regulations 20015, reg 17. Source of information about the child

on which the prospective adopter will rely. Must include the view of the adoption agency about the child's needs for contact with his parent or guardian or other relative or with any other person the agency considers relevant and the arrangements that the agency proposes to make for allowing any person contact with the child.

- Regulation 31 provides that where the agency is considering placing a child for adoption with a particular prospective adopter, the agency must provide them with a copy of the CPR, meet them, ascertain their views about the proposed placement and the arrangements that the agency proposes to make for allowing a person to have contact with the child and provide a counseling service.
- A written placement report must be prepared for panel, once a potential match has been identified. This too should set out any arrangements for contact.

## **CONTACT AND ADOPTION**

- Culture against making contact orders in public law proceedings, even though the ACA 2002 requires that contact with birth families must be considered and proposed arrangements set out in the placement plan.
- Incredibly rare to have contact orders- either because opposed by adopters, and the well-established jurisprudence is against imposing contact orders. Or because there is a measure of agreement, in which case no order is necessary.
- Adopters have not been involved in the discussions about direct contact, which may have been ruled out before matching.
- S51A allows for contact to be applied for (with leave) after the Adoption order has been made.

## **CASE LAW**

Re C ( A Minor) ( Adoption Order: Conditions) [1998] 2FLR 159. HL

Judge at first instance had refused to make an adoption order, in the belief that he could not effectively preserve the girl's relationship with an older sibling if he did so. Question whether the court could impose a mandatory condition for allowing access and what the court's oversight of such an arrangement might

be. Lord Ackner; The court could impose a condition of access in an adoption order and should do so in this case- Mother's consent to adoption dispensed with and case remitted with a direction that the court should make an adoption order, subject to the term that there be reasonable access by M to C, as advised by the OS or determined by the court. The court would thereafter retain jurisdiction to continue, when appropriate, to supervise and regulate access, if necessary by committal proceedings. The cases rightly stress that in normal circumstances it is desirable that there should be a complete break, but that each case has to be considered on its own particular facts. No doubt the court will not, except in the most exceptional circumstances, impose terms or conditions as to access to the child's natural family to which adopting parents do not agree. *"Where no such agreement is forthcoming the court will, with very rare exceptions, have to choose between making an adoption order without terms or conditions as to access, or to refuse to make such an order and seek to safeguard access through some other machinery, such as wardship"*

Re R (Adoption: Contact) [2005] EWCA Civ 1128;

Wall LJ at [49]; The jurisprudence is clear. The imposition on prospective adopters of orders for contact with which they are not in agreement is extremely rare and remains extremely unusual. Case concerned application by 17 year old sister for leave to make application for contact order under old provision- s10 CA 1989. LA had suggested direct post-adoption contact 3x a year, plus indirect contact. They and Adopters then reduced the contact on offer to once a year direct, plus indirect. Guardian made enquiries and parties filed position statements. Judge then refused leave. This was appealed. At [50] LJ Wall considered the circumstances in which a contact order might be made. Court reluctant to make an order in the face of reasonable opposition- but contemplated scenario at [52] where, had adopters resiled completely from their previous agreement in relation to contact, leave to apply for a contact order would have been granted.

Re P (Placement orders: Parental consent) [2008] EWCA Civ 535.

Court approved order under s26 for inter-sibling contact and contact with parents. Previous case law relating to post-adoption contact needs to be revisited in the context of the court's jurisdiction to control contact under ACCA s26 [47]; issues of contact will be a matter for the court, rather than the local authority with or without the prospective adopters. Additional safeguard- that all future applications in the case should be listed before the same judge. Also indicated at [150] that the placement of the children with foster carers or adopters who are unwilling to facilitate contact between the children would provide a proper basis for leave to be granted to SB (mother) to revoke the PO or for leave to oppose the adoption under s47(5) ACA 2002.

Oxfordshire CC v X,Y and J [2010] EWCA Civ 581

Should the adoptive parents be required by order to provide birth parents with a photograph of J, or should the photograph be available for the birth parents to view. Judge at first instance erred in his approach, by not taking proper account of Re R- that it would be extremely unusual to make an order with which the adoptive parents do not agree. Re P does not affect the principle in Re R [25], where the adoption order has already been made. Distinction made between birth parents having Article 8 rights in placement order proceedings, which they do not have once an Adoption order is made. This point was not fully argued.

Re T [2010] EWCA Civ 1527

N adopted 2.2.10. Care plan provided that there might be direct contact twice a year, as report in care proceedings had recommended that contact with MGM should be maintained and it was vital that prospective adopters are prepared for this eventuality. Adopters had apparently never agreed to direct contact and were set against it, having met MGM. They were described as being adversely affected by the proceedings. MGM granted leave to apply for contact order under s10(1)(a)(ii) Children Act 1989. Application dismissed at early hearing. LJ Wilson found that even had the application continued, there was no measurable chance that the result would have been the imposition upon unwilling adopters of any actual order for contact. At [23]; *“The judge was not only entitled but correct not to be distracted by unanswered questions about statements made at various stages by the local authority to the appellant and to the adopters respectively and by them in response, including about the basis for the current stance taken by the adopters; but rather, to keep his eye trained on upon the paramount consideration”* = IE applicant must show that the adopters decision is sufficiently contrary to the best interests of the child or sufficiently unreasonable to warrant the court overriding the discretion concerning contact that is conferred on adopters by the making of an adoption order.

Re B (Adoption : Contact Order) [2011] EWCA Civ 509.

CA allowed appeal against refusal of leave to birth mother to apply for contact two years after adoption. Argument that adopted child and younger sibling placed with Mother should have contact- the fact this issue merited investigation should have been sufficient for a grant of leave.

Re A (Placement order: Imposition of conditions on adoption) [2013] EWCA Civ 1611

LA appealed against the making of placement order with conditions. M appealed against the making of PO. The LJ found that if the conditions for sibling contact could not be met, adoption was not in the best interests of the

children. At [30]-[31] confirms position that the court has no power to add conditions to a placement order. The court can only make, vary or revoke a PO and make orders for contact. But, as the judge had clearly contemplated that long term fostering would “do” for the children, because it allowed contact, it was not possible to hold that “nothing else would do” and that the welfare of the boys required adoption. Placement orders set aside.

MF v LB Brent and Others [2013] EWHC 1838.

Ryder LJ made an adoption order in favour of a foster carer who had the care of a 7 year old. His maternal grandmother had care of two of his siblings and her own son. She sought a contact order allowing unsupervised contact in her home. An order was necessary to ensure that the foster/adoptive carer understood that ongoing contact must happen

Re W (Adoption: Contact) [2016] EWHC 3118.

Cobb J heard rehearing of contest between prospective adopters and maternal grandparents. Child already placed with prospective adopters. GP sought SGO. Found for adopters. Direct Contact had been agreed in principle. Named professional to be involved in the facilitation of contact initially. As principle agreed, Cobb J declined to make an order. Also because of what Butler Sloss P said in Re T (Adoption: Contact) [1995] 2 FLR 251; *“It is for the benefit of the child that the adoptive parents should have the feeling that they are not under constraint in doing what they have already said they would do and everyone trusts them to do, but secondly, that if the circumstances change, they should have the flexibility to change with the circumstances and not be tied to an order”*

Re B (A child) (Post-Adoption Contact) [2019] EWCA Civ 29

First time CA considered when an order should be made following introduction of s51A in 2014. Foster to adopt placement. Adopters knew the birth parents, who have learning disabilities and were therefore going to find letterbox contact particularly difficult. The Adopters suggested that face to face meetings between the adults would allow for information to be shared and provide an opportunity for a relationship to develop between the adopters and the birth parents so that future meetings might include the child once a trusting relationship had been established. The birth parents sought an order for direct contact twice a year. The final care and placement orders had been made in 2017 and the final care plans did not envisage direct contact, but the Recorder giving judgment invited further discussion post-judgment as to whether there was some possibility of direct contact. An application for a post-adoption contact order was refused when the Adoption order was made in September

2018. The judgment contains a full summary of pre ACA 2002 authorities. It confirms that the introduction of s51A has not indicated that there should be any variation in the approach to be taken to the imposition of an order for contact upon adopters who are unwilling to accept it. The law as set out in Re R [2005] continues to apply. The President goes on to state;

57. *What I have said thus far is sufficient to determine this appeal, which must, as a consequence, be dismissed. It would, however, be wrong, or at least unhelpful, to leave matters there without offering some further guidance as we have been requested to do.*
58. *ACA 2002, s 51A has been brought into force at a time when there is research and debate amongst social work and adoption professionals which may be moving towards the concept of greater 'openness' in terms of post-adoption contact arrangements, both between an adopted child and natural parents and, more particularly, between siblings. For the reasons that I have given, the juxtaposition in timing between the new provisions and the wider debate does not indicate that the two are linked. The impact of new research and the debate is likely to be reflected in evidence adduced in court in particular cases. It may also surface in terms of advice and counselling to prospective adopters and birth families when considering what arrangements for contact may be the best in any particular case. But any development or change from previous practice and expectations as to post-adoption contact that may arise from these current initiatives will be a matter that may be reflected in welfare decisions that are made by adopters, or by a court, on a case by case basis. These are matters of 'welfare' and not of 'law'. The law remains, as I have stated it, namely that it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement to which the adopters do not agree.*
59. *Although, for my part, I would not challenge the soundness of each of the suggested requirements that Mr Goodwin has helpfully set out in his skeleton argument, and which are listed at paragraph 50 above, these are very largely matters of social work practice, rather than law; I do not consider that it is appropriate for this court to raise any of the listed matters to the status of being something which the Court of Appeal has stated should now be required in every case. That said, it must be a given that any social worker, children's guardian or expert who is required to advise the court on the issue of contact, will ensure that they are fully aware of any current research and its potential impact upon the welfare issues in each particular case. Equally, it is already a requirement that courts should give adequate and clear reasons for any orders that are made following contested proceedings.*
61. *Post-adoption contact is an important issue which should be given full consideration in every case [ACA 2002, s 46(6)]. Whilst there may not have been a change in the law insofar as the imposition of a contact regime against the wishes of prospective adopters is concerned, there is now a joined-up regime contained within the ACA 2002 for the consideration of contact both at the placement for adoption stage and later at the hearing of an adoption*

*application. Further, and in contrast to the situation prior to 2014 where the issue of contact on adoption was determined under s 8 by applying the CA 1989, s 1 welfare provisions, issues under both s 26 and s 51A of the ACA 2002 will be determined by applying the bespoke adoption welfare provisions in ACA 2002, s 1, where the focus is not just upon the welfare of the subject of the application during childhood but throughout their life.*

*62. A placement for adoption hearing has the potential for having an important influence upon the development of any subsequent long-term contact arrangements. As required by ACA 2002, s 27(4), the court must consider the issue of contact and any plans for contact before making a placement for adoption order. The court's order may well, therefore, set the tone for future contact, but the court must be plain that, as the law stands, whilst there may be justification in considering some form of direct contact, the ultimate decision as to what contact is to take place is for the adopters and that the court will be 'extremely unusual' for the court to impose a contrary arrangement against the wishes of adopters. Although Mr Recorder Norton was plainly most careful in his choice of words when speaking of contact at the time of the placement order in the present case, and I would not criticise him for anything that he said on that occasion, it is of note that his words were interpreted by the adopters as, in some way, flagging up that direct contact would be ordered at the final adoption hearing and that, as a result, the final adoption process has been delayed for a year and the adopters have felt less than fully settled in taking up the care of B as a result. At the placement order stage courts should therefore be careful to stress that, if there is any future issue as to contact, the law, as stated in Re R, will apply and, save for there being extremely unusual circumstances, no order will be made to compel adopters to accept contact arrangements with which they do not agree.*

## **DISCUSSION**

### **WHAT CAN BE DONE TO PROMOTE CONTACT?**

**And to ensure that there is open-minded, flexibility in the planning**

**How to move away from the fixed expectation that contact post-adoption will be limited to letterbox contact 1/2x a year.**

**Issues raised by social workers themselves= pressure of time- to complete proceedings/to get children matched with permanent placements. Corners cut in assessment of prospective adopters. Little time to work properly on issues such as contact and how it might best be promoted/managed. Significant lack of funding/resources for proper long term services to be available to adopters.**

**Placement orders are often made very soon after final care orders- very little time to explore potential for birth parents to support adoption**

**Conversely, there must be flexibility and time to build up trust/demonstrate commitment**

**If adopters have agreed to facilitate contact and then don't, this can be the basis of an application for post-adoption contact-**

**And the statute provides for applications to be made some time after the Adoption order has been made- see comments of the President;**

*"I wonder if, in this regard, the old case law based (reaffirmed in *Re T (Adoption: Contact)* [2010] EWCA Civ 1527, [2011] 1 FLR 1805) can stand. Is it right that the views of the adopters should hold such sway? In all other respects, those before the court who hold a contrary view on any topic are told that "what is best for the child" must prevail. Why, if face to face contact would benefit a child, not necessarily now but in some time after she has settled down, should the adopter have an effective veto? The new powers under [ACA 2002, s 51A](#) are wide. The court may make a contact order at the time of adoption or "at any time afterwards". In the right case, there may well be justification in this power being used for the issue of contact to be set down for review, may be in a year or more after adoption to see if, in some way, provision of contact may provide the adopted person, the soon to be adult, with some bridge back to her roots."*

...

### **How far can you push the court?**

Clear message from CA in *Re T (a child)* [2018 EWCA Civ 580-

Court and LA disagreed about the care plan for a child- Judge preferred placement with MGM, LA would not approve her as a foster carer. Judge at first instance felt bound to make a placement order. CA clear that the judge had underestimated her powers. The LA should have been called to account for their unconvincing response to the judge's assessment of risk and welfare. If LA will not amend their care plan to accommodate the judge's assessment, the remedy of judicial review is available.

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Extract from article by Sir Andrew McFarlane- Keynote address to the NALGRO Annual Conference March 2018

Includes part of the Bridget Lindley lecture that he delivered in 2017;

Post adoption contact

*My second short point relates to post-adoption contact. When the [Adoption and Children Act 2002](#) ([ACA 2002](#)) came into force there was some expectation that the previous approach to post-adoption contact, which heavily relied upon a "closed" adoption model with, at most, modest "letterbox" contact, might change. In *Re P (Placement Orders: Parental Consent)* [[2008](#)] [EWCA Civ 535](#), [[2008](#)] [2 FLR 625](#), relying upon the earlier priority placed on post-adoption contact by Baroness Hale in *Down Lisburn Health and Social Services Trust v H* [[2006](#)] [UKHL 36](#), [[2007](#)] [1 FLR 121](#), Wall LJ contemplated a possible sea change under [ACA 2002](#). Now, a decade later, the answer is that there has been no sea change. Even the introduction by the [Children and Families Act 2014](#) of bespoke provisions for contact in adoptions following a placement order ([ACA 2002, ss 51A](#) and [51B](#)) do not seem to have moved matters on.*

*Dr Elsbeth Neil and others at UEA have recently concluded a long term research project on the effects of post-adoption contact<sup>2</sup>; it should be required reading for us all. Recognising, whilst planning an adoptive placement for life, that the adopted individual will have other ongoing support needs, particularly in adolescence, is very important. Planning for, building on and supporting contact, possibly with relatives other than those in the immediate centre of the care proceedings, can be very helpful in the long term. It goes without saying, and here I do think that there has been a change, that the need for continuing contact between siblings should be prioritised.*

*I wonder if, in this regard, the old case law based (reaffirmed in *Re T (Adoption: Contact)* [[2010](#)] [EWCA Civ 1527](#), [[2011](#)] [1 FLR 1805](#)) can stand. Is it right that the views of the adopters should hold such sway? In all other respects, those before the court who hold a contrary view on any topic are told that "what is best for the child" must prevail. Why, if face to face contact would benefit a child, not necessarily now but in some time after she has settled down, should the adopter have an effective veto? The new powers under [ACA 2002, s 51A](#) are wide. The court may make a contact order at the time of adoption or "at any time afterwards". In the right case, there may well be justification in this power being used for the issue of contact to be set down for review, may be in a year or more after adoption to see if, in some way, provision of contact may provide the adopted person, the soon to be adult, with some bridge back to her roots.'*

I also made the point, as Dame Eleanor King had done before me in her Hershman/Levy Memorial Lecture in June 2013 (see "May I be your Facebook friend? Life stories and social media" [[2013](#)] [Fam Law 1399](#)) that, in a world where Facebook, Snapchat, email and Google are second nature to all youngsters, the ability of adopted families to prevent or even monitor any contact between their child and her natural family is very limited indeed. If my words on the topic of adoption and contact have had any impact on individual cases, that impact has, to my eyes, been unnoticeable. What has occurred, however, is the coincidental publication by the British Association of Social Workers (BASW) of a major

enquiry into adoption from a social work perspective undertaken by Professor Brid Featherstone, Professor Anna Gupta and a research assistant, Sue Mills. Their report *The Role of the Social Worker in Adoption – Ethics and Human Rights: An Enquiry*<sup>3</sup> is an important and interesting document.

I wish to draw attention to several of Featherstone and Gupta's conclusions which may have a particular resonance for our discussions today. A key message appears in the 'Introduction' to the report:

'It was considered that in England, in recent decades, policy makers had tended to promote adoption as risk free in a "happy ever after" narrative. The Enquiry heard from a range of respondents across the UK that this is unhelpful. It can lead to the silencing of adopted children and adults who may have to manage contradictory emotions such as grief and loss, joy and happiness. It can lead to birth families being unable to articulate their losses and feelings of shame and sadness. It can also leave adoptive families silenced and unable to access the help they need.'

The Enquiry considered the culture, promoted by high ranking politicians, that adoption is 'a public good' and the 'right decision' to be inhibiting important ethical debates about adoption and its merits when compared to other permanence options:

'A significant rethink of approaches to "contact" and connection between adopted children and their families is needed.'

Letterbox contact is seen as the norm, even where relatives may pose no risk to a child, yet the Enquiry heard that letterbox contact is poorly supported with resources so that it often breaks down.

'The lack or cessation of direct contact can "store up trouble" especially for birth families and adopted people. Seeking reunification in later life was considered to be widespread. Better resourcing of earlier periodic contact may be important to improve the benefit of the letterbox approach and to improve long term outcomes for all affected by adoption.'

The Enquiry concluded that:

'A rethink of contact arrangements between those adopted and their birth families was considered essential by many. They felt a need to move away from standardisation and formulas to individualised contact planning, pointing out children of different ages have different contact needs.

The current model of contact fails to adequately recognise multiple attachments and complex identities.

While the law is clear on children's legal status post adoption, the emotional realities are complex and centrally linked to identity issues. An overwhelming message from adopted people was that identity development is a life-long process and it is vital that identity issues and dual/multiple connections are recognised and discussed.

A key message from adopted young people was that adoptive parents need to be prepared for the reality that many young people will want to search for their birth families when they reach 18.'

Against that background, it is no surprise that one of the Enquiry's five recommendations was that 'the current model of adoption should be reviewed, and the potential for a more open approach considered'. The BASW Enquiry report is an important and rich resource on the topic of contact. Although being of an entirely separate origin, it is very much in line with the train of thought that I expressed on this topic last year.

40 years or more ago, the normal model for adoption was entirely closed, to the extent that, in some cases, the child may not even have been told that she was adopted. Two or more decades ago the concepts of 'life-story work' and 'letter box contact' replaced the wholly closed model and became the norm, but those concepts were developed in what can now be seen as a different age. The world has moved on, yet we, that is the courts and social work practice, still hold to life-story work and letter-box contact as setting the 'right' level of post-adoption contact in most cases. The BASW Enquiry, coupled with the range of anecdotal evidence that led me to say what I did last year, strongly suggests that a higher level of ongoing contact, or a level of direct contact that develops slowly during childhood once the dust from the adoption order being made has settled, may well be better for these young people in the longer term.

I would encourage all those involved in adoption planning and decision making to focus more on the issue of contact and to ask, in each case, whether the model of life-story work and letterbox contact is in fact the best for the individual child in the years that lie ahead for her, or whether a more flexible and open arrangement, developed with confidence and over time, may provide more beneficial support as the young person moves on towards adolescence and then adulthood.