

# Rethinking adoption and birth family contact: is there a role for the law?

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contact.

The question of whether current practices in relation to contact between adopted children and their birth relatives need rethinking was raised by Lord Justice McFarlane (as he then was) in his 2017 lecture ‘Holding the risk: the balance between child protection and the right to family life’ published in June [2017] Fam Law 610. He argued that neither the Adoption and Children Act 2002 (ACA 2002) (which introduced a duty to consider contact arrangements before making an adoption) nor the Children and Families Act 2014 (which inserted provisions for bespoke contact orders either at the time of adoption or afterwards – ss 51A and 51B) have led to changes in practice around birth family contact, letterbox contact remaining the typical plan.

A year later in a keynote address to a Nagalro’s annual conference, ‘Contact: a point of view’ published in June [2018] Fam Law 687, he reflected that the impact of his previous words had been ‘unnoticeable’ and he expressed agreement with the authors of a recent report that a more open approach to contact in adoption should be considered (Professor Brid Featherstone and others, ‘The role of the social worker in adoption – ethics and human rights: an enquiry’ (BASW, 2018). This current article draws on

research evidence and provides practice guidance for legal and social work professionals involved in planning contact for adopted children.

## The research studies

This article is informed by three research studies, led by the author, carried out over the last 20 years:

- (1) The ‘Contact after adoption’ study (1996 – 2014) – an 18-year longitudinal study following adopted children, and their birth relatives and adoptive parents. Findings are reported in *Contact after adoption: a longitudinal study of postadoption contact arrangements* by Elsbeth Neil, Mary Beek, and Emma Ward, (Corambaaf, 2015).
- (2) The ‘Supporting direct contact’ study E Neil and others, ‘Supporting direct contact after adoption’ (BAAF, 2011). This project focused on face-to-face contact and how this can be supported. Data were collected from social workers, adopters and birth relatives.
- (3) The ‘Yorkshire and Humber’ adoptive parent survey (2016–18). This was a cross-sectional in-depth survey completed by 319 adoptive parents (their children being mean age 7). The report by Elsbeth Neil, Julie Young and Louise Hartley (2018) and a research briefing are available here: <https://www.uea.ac.uk/centre-research-child-family/child-placement/current-projects/the-yorkshire-humberside-regional-adoption-project-research>.

## What plans are made for adopted children to stay in touch with birth family members?

Most adopted children have a plan for some form of birth family contact, usually

letterbox contact. The 'Contact after adoption' survey carried out in 1997–8 (n=168) found that for 81% of children letterbox was planned – in 75% of cases with the mother, 30% with the father and 19% with grandparents (these categories were not mutually exclusive). In the 'Yorkshire and Humber' research (20 years later) 66% of adopters had letterbox with a birth parent, 26% with a sibling and 25% with a grandparent.

Although letterbox has remained the typical plan over the last 20 years, it is complex and results in a satisfactory and sustained exchange of information only in a minority of cases. The 'Contact after adoption' study found the majority of letterbox arrangements were inactive even by middle childhood. Many arrangements had stopped working early on, or had never got off the ground and children were not always made aware that letter contact was happening. Contact could be stopped by either birth relatives, adopters, or at the request of the child (when this happened it was mostly in the teenage years). Whilst some arrangements had *become* 'one-way' because either the adopters or the birth parents had stopped sending letters, several arrangements were *planned* to be one way with adopters providing updates to birth parents; this cannot realistically be considered a form of contact for the child. In the Yorkshire and Humber survey 38% of adopters had never received a reply from birth parents to their letters, suggesting problems with letterbox have not improved much over the years.

Only a small proportion of adopted children have face-to-face contact with their birth relatives, this mostly being with siblings. In the 'Contact after adoption' study 17% of children (n=168) had a plan for face-to-face contact with a parent and/or grandparent (9% with a parent) and about one third with a sibling (predominantly siblings who were also in care or adopted). In the Yorkshire and Humber survey, just 3% specified face-to-face contact with a parent, 3% with an extended family member and 25% with a sibling; this suggests practice could be moving even further away from considering direct contact.

In the last 10 years contact between adopted young people and their birth relatives via social media platforms such as Facebook has emerged. In the longitudinal study adopters, young people and birth relatives had used social media for three purposes: (1) to find out information about another person (2) as an additional way to communicate with someone they were already in touch with and (3) to achieve some form of 'reunion' between the young person and their birth family (initiated on either side). 'Reunions' via social media could be successful or quite damaging, the involvement and support of adoptive parents being a crucial factor. Searches for 'lost' relatives via social media generally happened in the context of ongoing contact being absent. The existence of these means for adoptees and birth relatives to take contact into their own hands means that it is vital for adoptive parents to keep an open dialogue with their child about the birth family.

### **What are the benefits and challenges of contact for children, adoptive parents and birth relatives?**

Common themes have emerged about the potential benefits and challenges of contact for all three parties relating to: (1) information and understanding; (2) making sense of birth and adoptive family connections, loyalties and roles; and (3) building relationships.

**Adopted young people** benefited from gaining information about their birth family, having an open atmosphere about discussing birth family and adoption with their adoptive parents – which in turn could reduce the sense of divided loyalties, and enjoying relationships with birth family members (this mostly being associated with face-to-face contact with siblings or grandparents). When birth relatives stayed in touch this helped young people feel cared about and helped avoid a sense of rejection. The challenges included managing the emotional strain of contact (for example mixed feelings about a birth parent; sadness at being parted from a sibling), being left with unanswered questions or unrealistic information, and being unhappy about gaps

in contact (key complaints being a lack of replies from birth parents to letters, little or no contact with fathers, and not being able to stay in touch with siblings). In terms of whether contact has a positive or negative effect on adopted children and young people's overall development or their relationship with their adoptive parents, these outcomes have been found to link much more strongly to *other* factors such as age at placement and pre-adoption adversity. In the longitudinal study evidence of the positive effect of sustaining face-to-face contact on adoptive identity development was found.

**Adoptive parents** valued contact in terms of finding out information about the birth family and being able to talk to their child about this, feeling less threatened by birth family members, and feeling more prepared for any future meetings. The challenges included managing practical issues, working out roles and boundaries, and dealing with the emotional strain including the reminder of the child having another family. Some adopters having letterbox contact struggled to know what to write, when and how to include the child, and how to explain to the child why birth parents did not reply to letters. In the Yorkshire and Humber survey, where birth siblings were living in other families, most adopters were keen for some type of contact with them (often the child was asking for this), and many expressed frustration at not being able to get this contact set up. When face-to-face sibling contact had taken place (n=53) 77% felt this was positive for their child, 17% mixed and only 6% negative.

**Birth relatives** benefited from contact in terms of getting information about the child's progress – this often easing feelings of loss, developing a relationship with the young person (in cases of face-to-face contact), and being able to play some limited ongoing role – especially reassuring the child that they were not forgotten. Birth relatives were also challenged by the emotions of contact, accepting their changed roles and staying within restrictive and sometimes unexplained rules, and managing further loss if contact stopped. Many birth

parents found letterbox a difficult way to communicate, particularly about sensitive matters like *why* the child was adopted and problems with literacy, lifestyle issues and painful feelings about the adoption could all get in the way. In the 'Supporting direct contact' study the challenges of trying to build or maintain a relationship between adoptive and birth families came into sharp focus, as reported in the article 'The benefits and challenges of direct post-adoption contact: perspectives from adoptive parents and birth relatives' (<http://www.revistaaloma.net/index.php/aloma/article/view/23/12>).

### **What are the important factors to consider when planning contact for adopted children?**

The headline message from this set of studies is that arrangements should be decided on a case by case basis. This is a basic and obvious message, yet the uniformity of current practice suggests this case sensitivity is not sufficiently embedded. Building on the research, a practice model for planning and supporting contact has been developed. This model is summarised on the project pages of the 'Contact after adoption study' (<https://www.uea.ac.uk/contact-after-adoption/resources>).

The starting point of the model is to consider the goals of the contact, these being informed by the current and likely future needs of the adopted child as well as the needs of adoptive parents and birth relatives (unless there is some reward for adoptive parents or birth relatives, contact is likely to falter).

A key consideration is whether the child will benefit from maintaining an important relationship, or building such a relationship. Where relationships are the goal, face-to-face contact should be considered as it is hard to achieve any meaningful sense of relationship from infrequent mediated letter exchanges (though indirect forms of contact could be a first step in working towards establishing a relationship in the future).

It is also important to consider the need to protect children from damaging relationships, particularly when the child is afraid of a parent or where parents might actively seek to undermine the adoption. In the 'Supporting direct contact' study, contact was significantly more likely to be rated as 'working well' when meetings did not include a birth relative who had been involved in the abuse or neglect of the child.

If the goals of contact are to meet the needs of the child (and others) for information and understanding, then either face-to-face or indirect contact could be considered. What is important is that meaningful exchanges of information can occur, these can be sustained over time, and they are accompanied by open and truthful conversations in the adoptive family.

Having clarified the goals, the next stage of the model is to consider the resources of all concerned to implement the contact plan. The 'adoption communication openness' of adopters is key: their commitment to keeping an open dialogue with their child about adoption, empathy for the child as an adopted person, and the ability to empathise with and work constructively with the birth family. It is important that prospective adopters are helped to understand the perspective of adoptees and birth family members, as well as having a safe space to explore their own feelings and anxieties. Adoption communication openness can also be bolstered through positive experiences of contact, for example the chance to meet birth parents.

The most important quality of birth relatives to consider is their ability to support the child's membership of the adoptive family, as well as reassuring them they are cared about and remembered in their birth family. Birth relatives who have many challenges in their daily life (such as mental health problems, addictions, learning disabilities) may need support to sustain contact. *Who* in the birth family is best placed to keep up positive contact should be considered. Where sibling contact is planned, the views and capacities of the parents or carers of the siblings also need to be considered.

Children who are younger at placement, who have had more benign experiences before adoption, and who have fewer developmental problems, are those who are most able to manage the inevitable emotional complexities of contact; perversely, children placed very young are least likely to be considered suitable for face-to-face contact. For older children who have established relationships, contact may be wanted and needed. However, some children might find visits hard to manage and the benefits might outweigh the drawbacks; these types of situations require ongoing support and review. This is especially so when meetings frighten children or lead to significantly disturbed emotions or behaviour (see also the study on *Safe contact* by Catherine Macaskill, 2002, Russell House Publishing).

When considering contact whilst court proceedings are in train, there is much uncertainty and high emotion for all parties, and this is often not the best time to make firm and lasting contact plans. Birth parents are often still fighting to keep their child and have not had time to process their loss, adoptive parents are in an insecure position and children are not yet settled. The capacity of adults to consider and enact contact plans may be much higher once the 'the dust has settled'. An expectation of the need for flexibility and to keep arrangements under review should be established from the start.

## Conclusions

Courts have an important role to play in scrutinising plans for contact and questioning how children's lifelong needs in relation to loss and identity will be met. Every child's situation is unique and it is right that we question why contact arrangements are not more individualised. Social workers and the courts should articulate clearly the goals of any contact arrangement, considering the impact on the child, the adoptive parents and the birth family. The capacity of all these parties to contribute to and manage contact needs to be thought about, as does the support that might need to be provided. Professionals could be directed to a range of research

informed practice resources for use in planning contact, available freely online (<https://contact.rip.org.uk/>)

The almost universal use of letterbox as a means for adopted children to stay in touch with their birth parents does need to be questioned. Where such contact is being proposed is important to negotiate the details of arrangements with the birth and adoptive family, to gauge commitment to sustaining the contact as long as it is in the child's best interests, and to consider what support will be needed in particular to get the contact off to a good start (ensuring that adopters, birth relatives and carers of siblings have the chance to meet at least once will be important here).

There is scope for considering face-to-face contact in a greater number of cases. Where there is a member of the birth family with something positive to offer a child in terms of meeting their information needs, reassuring them that they are remembered and cared about, and/or offering a positive relationship that will not threaten but complement their relationships in their adoptive family, then courts should ask questions if face-to-face contact is *not* being considered.

During care and adoption proceedings may not be an optimal time to fully agree contact plans, but it is an important time in which to establish a clear focus on the child's needs and strong expectations that adoptive

parents and birth relatives will commit to meeting these. It is also an important opportunity to check whether birth parents have been actively encouraged to use independent birth parent support services, as these services can help parents cope with their loss and stay in touch with their child (see a summary of the 'Helping birth families' study led by the author <http://adoptionresearchinitiative.org.uk/briefs/DCSF-RBX10-05.pdf>).

Courts have the power to make orders in relation to contact, a power that must be used carefully given that the foundations of successful contact are *trust* between the relevant parties and *flexibility* so that arrangements can be adjusted if and when children's needs change. If and how the law can be used to promote trust and flexibility is a difficult question, but this conversation needs to happen. Courts could consider how they can use s 26 of ACA 2002 to set the tone for contact after the adoption order by highlighting the child's needs to stay in touch with birth family members at the placement order stage. Such orders may influence the search for adopters and focus the minds of professionals, prospective adopters and birth relatives on establishing a working contact plan. This may be a useful tool where children are considered to have a compelling need for ongoing contact, helping to avoid these needs being side-lined in order to make him or her more 'adoptable', an outcome that is incompatible with the notion of adoption as a service for children.