

Adapting Adoption to the Modern World

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Webinar: Post-adoption contact

- ACA s26 & s51- current practice
- Research findings
- Recommendations

Post-placement contact

- Once a placement for adoption order has been made, all previous orders or arrangements for a child and his or her natural family to have contact with each other come to an end (section 26 of the Adoption and Children Act 2002)
- When making a placement order, the court has the power to make a further order under s26 (2) (b) *“requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the person named in the order and the child otherwise to have contact with each other”*. Unless such an order has been made, there is no legal requirement for the local authority to arrange any contact with the child’s natural family.
- An application for an order under this section may be made by—
 - (a) *the child or the agency,*
 - (b) *any parent, guardian or relative,*
 - (c) *any person in whose favour there was provision which ceased to have effect by virtue of subsection [(1)(a) or an order which ceased to have effect by virtue of subsection (1)(b)],*
 - (d) *if a child arrangements order was in force immediately before the adoption agency was authorised to place the child for adoption or (as the case may be) placed the child for adoption at a time when he was less than six weeks old, any person named in the order as a person with whom the child was to live,*
 - (e) *if a person had care of the child immediately before that time by virtue of an order made in the exercise of the High Court’s inherent jurisdiction with respect to children, that person,*
 - (f) *any person who has obtained the court’s leave to make the application.*
- (4) *When making a placement order, the court may on its own initiative make an order under this section.*

Post-adoption contact

Section 51 ACA 2002

(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.

(4) An application for an order under this section may be made by—

(a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made,

(b) the child, or

(c) any person who has obtained the court's leave to make the application.

(6) When making an adoption order, the court may on its own initiative make an order of the type mentioned in subsection (2)(b).

Current Practice

- It remains unusual for the care plan for children who are going to be placed for adoption to propose more than indirect or letterbox contact.
- The normal arrangement, after a short interim period in which existing contact arrangements are reduced and cease with a 'wish you well' or 'farewell' visit, is for 'letterbox contact' to be established. Parents can write once or twice yearly and can sometimes send photos or small gifts. The care plan may specify that prospective adopters can be asked if they are open to direct contact.
- *In Re B (A Child) (Post adoption Contact)* [2019] 2 FLR 117, the Judge and the President both referred to recent and ongoing research about open adoption and emphasised that this should be applied by social workers and experts to the welfare issues in each particular case. However, "*the law remains ... that it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement[s] to which the adopters do not agree*" [para 59].
- It usually becomes clear when a Social Worker is giving oral evidence that the analysis of why letterbox meets the needs of a child has not extended further than reliance on the long held view that direct contact with birth parents risks unsettling a placement. In spite of recent research which shows that letterbox contact can have the opposite effect and lead to placement breakdown, particularly for adopted children in their teens, the narrative persists.
- JY experience from LA perspective

Research findings

- Adoption UK's Adoption Barometer: Almost three quarters of adopted adults taking part in the Barometer survey agreed that maintaining a relationship with a birth family member had helped them to understand their identity and life history more fully, as did 78% of adoptive parents. The majority of adopted adults agreed that direct contact in childhood should be standard if deemed safe.
- Among newly placed adopters, 37% already had an agreement for direct contact with one or more of their children's birth relatives in 2021, and 64% were willing to consider establishing it in the future (including some who already had direct contact and were willing to consider additional arrangements).
- In 2019, an Adoption UK survey found that a quarter of adopted teenagers had had some form of unmediated contact with their birth family in the previous year (BBC News 2021).
- A range of research has found most letterbox arrangements were inactive even by middle childhood, and many had either stopped working early on, or had never even begun. For many reasons – including literacy challenges and emotional stress, and the system's lack of flexibility and inability to effectively adapt to people's changing feelings and circumstances – it can be hard to start the letterbox process and to sustain positive exchanges over time
- Research by Professor Anna Gupta suggests that many adopted children will want to know about their birth parents at some point in their lives (BBC News 2021)—and if formal processes for contact are not in place, or are not working, social media enables adoptees and birth families to take contact into their own hands.

Letterbox contact - fit for the modern world?

University of East Anglia "Contact after Adoption" study (1996-2013) - key findings

- Overall contact had continued to diminish over time, and one third of young people were no longer in contact with any birth relatives. But in some cases contact had increased in late adolescence, usually at the young person's instigation. Direct contact arrangements were more enduring over time than indirect contact arrangements.
- The use of social networking for birth families and adoptive families to find out about or communicate with each other had emerged. This was sometimes positive, but in others cases could be unhelpful. Where adoptive parents maintained an open communication about adoption and social networking, young people were better prepared to deal with any contact via social media.
- For contact to work, it was important that adoptive parents and birth relatives respected each other's roles and family boundaries, focused on the needs of the adopted young person. Successful contact is a relational process rather than a series of meetings or letters.
- Views of contact varied from person to person, but where contact had been stable and reliable, satisfaction was usually high. This stability and predictability of contact seem more important than the amount or type of contact.
- The main benefits of contact identified by young people were: getting information about their birth family; building relationships with birth relatives; being able to talk openly with their adoptive parents about their background and birth family. The main challenges were dealing with emotional strain; managing feelings of loss; not getting full or accurate information about their birth family.

Letterbox contact - fit for the modern world?

House of Lords report - **Children and Families Act 2014: an example of inadequate implementation (6 December 2022)** concluded that the current system of letterbox contact was outdated and warned that the failure to modernise contact threatened to undermine the adoption system.

- Key recommendation - Developing a safe and modern digital contact system for post adoption contact. The Committee urge the Government to support adoption agencies in developing and rolling-out a safe and appropriate national digital system for contact as a priority.
- Digital communication has the potential to make contact more fluid and flexible. Preferences (such as whether cards can be sent, for example) could be changed more easily and communication between different family members—such as siblings and grandparents—could be accommodated by providing separate logins.

<https://publications.parliament.uk/pa/ld5803/ldselect/ldchifam/100/100.pdf>

Letterbox contact - fit for the modern world?

Nuffield Report: Modernising post-adoption contact: findings from a recent consultation (August 2021)

- As well as consulting with birth families, adoptive families, young people, local authorities, and regional and voluntary adoption agencies, the adoption connections project explored what digital letterbox contact might look like.
- Some of the learnings from the digital pilot:
 - *Any digital contact tool needs to accommodate the diverse needs and user experience of parents and children, and to provide different formats in a safe and manageable way.*
 - *Before building a new system, or adapting existing tools, it is important to allow enough time and resource for user testing. It is also equally important to consider longterm development, evaluation and maintenance. Taking an iterative, user-centred approach will help ensure the tool meets real-life needs in an effective way.*
 - *It is also important for digital systems to build on best practice, and not to replicate the existing weaknesses of the letterbox system. For example, postadoption contact does not have to be automatically regarded as high risk, or to be set as such as the default on a digital platform, and there should be flexibility around whether moderation is required and how it is managed.*
 - *A set of guiding principles, open standards and metadata for national and international digital contact systems may be of practical benefit to local agencies and is something for national organisations to consider supporting.*

https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/08/nfjo_report_adoption_connections_20210913v2.pdf

Letterbox contact - fit for the modern world?

President's Public Law Working Group, Adoption Sub-Group (interim report September 2023) – Recommendations:

- Should be a tailor-made approach to the issue of contact for each adopted child which includes and promotes face-to-face contact with important individuals in that child's life if it can be safely achieved. The issue of contact needs to be actively considered throughout the child's minority, not only before the adoption order is made.
- The full range of contact options (including digital options) should be actively considered by professionals and the court during care and placement proceedings rather than being dealt with by an assumption that contact will be via letterbox only.
- They do not suggest that contact orders should routinely be made in the face of opposition from adoptive parents, whether at the time of the adoption itself or later, but it is believed that opposition is much less likely where adoptive parents are given a thorough understanding of the child's needs right at the start and are given the right support.
- Consideration should be given in every case to a meeting between the adopters and members of the birth family.

<https://www.judiciary.uk/wp-content/uploads/2023/09/11-Sep-23-Report-v3.pdf>

Maintaining children's birth family relationships in adoption? A theory of change - Elsbeth Neil

Family Law Journal May 2024 v54 575-582

This article summarises the research already referred to, and notes:

- that adopted children often have less contact with birth families and important people than their siblings, in eg. SG/long-term foster care placements;
- the practical and emotional difficulties inherent in letterbox contact, are often the reason it does not continue;
- that there can also be similar issues with direct contact, if this takes place formally and only once or twice per year;
- suggests that attention be paid to building relationships between the adults, for example.

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- Draws upon the UEA research, which consistent with the other studies notes the real impact on adopted persons:

'knowing who you are and your roots are vital, and family ties can confirm this. I have never met my brothers as we were adopted separately, and we only found out about each other in our late 50s . . . Always thinking about how life might have been if we had known each other . . . It's a raw wound that never heals'

- Also notes that the many and 'ambiguous' losses suffered are overlooked if adopted children are told they are 'lucky' or 'special'.

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- Again, sets out the benefits (predominantly to children, as this is of course what the court must consider):

For the adopted child keeping links with the birth family may help answer questions, build their understanding of their life story and hence build their identity. Children may avoid the unnecessary loss of valued relationships, particularly with brothers and sisters. The fact that adoptive parents support contact with the birth family can build trust between the adoptive parent and child, demonstrating that questions and feelings around adoption and the birth family are valid and welcomed. For adoptive parents, contact provides access to information and opportunities for conversations with the child. It can help adoptive parents deal with their own fears and anxieties about the birth family, and openness with the child can create a closeness in family relationships. For the birth family, staying in touch can help mitigate feelings of loss and allow birth family members to make a contribution to the child's life.

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- Suggestions as to how the relationships between the adults could be managed ('Contact is not just a letter or a meeting; we need to focus on the relationships that underpin these processes'):

people may need help with building relationships, understanding their different roles and family boundaries, managing complex feelings, negotiating and managing risk, and (particularly for birth relatives) practical help such as finance to travel to meetings. Some families needed a lot of help to maintain relationships, but in other cases the strengths of adoptive parents and birth families meant that arrangements could be mostly or wholly self-managed.

Interesting overlap with the issue of post-adoption support for birth families.

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'Legal professionals can ensure the quality of contact planning, and courts have the power to 'set the tone' for what happens after adoption through questioning plans'

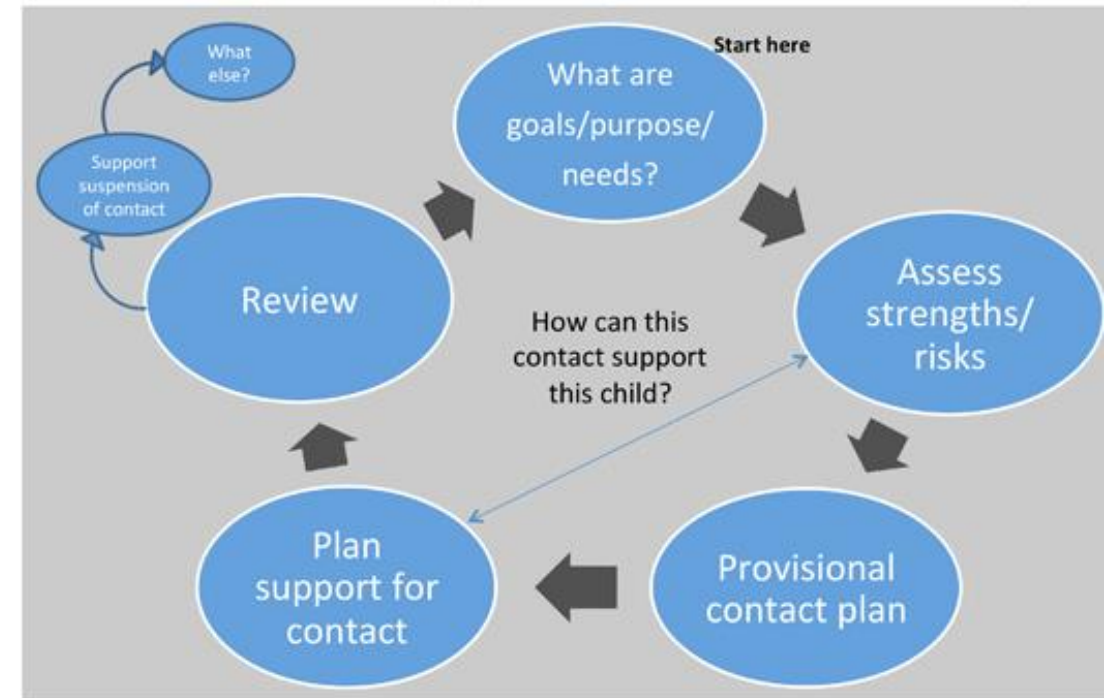
How can we adapt current practice to reflect current research

- Debate has already moved on from 'whether' there is a need for a new approach to post adoption contact, to 'how', what will be a wholesale change of culture.
- Professionals to be as informed a possible about research evidence on contact and children's needs from a developmental perspective.
- Reviewing LA contact proposals in care plans prior to the final hearing and flagging need for further analysis of all contact options, looking at siblings and wider family in addition to parents.
- Seeking assurances from LA with regards to a review of contact in 2 years.

Centre for Research on Children and Families – University of East Anglia

- The aim of this model is to guide practitioners through the process of making contact plans for adopted children. The principles underpinning the model are that contact should be purposeful (how contact can benefit the child is the central question); individualised (taking account of the particular needs of the child, and of the particular qualities of children, adoptive parent and birth relatives that can have a bearing on contact), and that contact is a relationship-and based process that is dynamic across time.

<https://www.uea.ac.uk/groups-and-centres/centre-for-research-on-children-and-families/contact-after-adoption>



Adapting Adoption to the Modern World: Part Two (17 May 2024)

President of the Family Division, The Right Honourable Sir Andrew McFarlane

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

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

Adapting Adoption to the Modern World: Part Two (17 May 2024) - Recommendations

- The House of Lords decision in *Re C (Adoption Order: Conditions)*, made over 35 years ago in 1988, continues to dictate that, other than in the most exceptional case, the court should not impose contact upon an unwilling adopter. If there is to be a culture change with regard to future family contact, then, as part of that culture change, it is likely that the almost absolute autonomy currently afforded by the courts to the adopters in matters of contact will have to be reviewed.
- Firstly, and I would suggest most importantly, the likely template for contact arrangements post adoption should be set at the placement order stage. This is not a change in the current approach. A court making a s 26 contact order, in keeping with the duty under s 1 and its lifelong focus, should have regard not only to the short-term contact arrangements required in the pre-adoption stage, but also in setting the course for the maintenance of family relations over the longer term if that is in the child's best interests. Also, there is nothing wrong, and I would suggest it should be good practice, for a s 26 contact order to contain a recital as to the court's view on contact arrangements post-adoption.
- Where social work evidence is lacking on this important area of a case, the court will ask for an appraisal of the options set against the background of the modern approach, and, if necessary, adjourn the case to obtain one.

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Recommendations:

- Between September 2023 and May 2025 the team from the UEA with Adoption England, are facilitating a programme of online webinars for professionals to provide knowledge and practical examples around how to maintain relationships, and champions are being supported to instigate change through online community of practice workshops.
- There are a range of contact planning tools available to assist with weighing up the strengths and challenges within the child's system such as a planning tool developed by Research in Practice in collaboration with the UEA, and the 'Safe and Meaningful contact guidelines' developed by Psychological Minds.
- Digital options for contact can be considered as set out in a consultation by the Nuffield Family Justice Observatory.¹³ My colleagues and I have recently evaluated the first pilot of a digital platform called 'Letter Swap'. This is designed to facilitate mediated exchanges of information such as letters, short messages, voice notes and videos through an online platform. The platform, developed by Link Maker, has been piloted in five RAAs.

Questions