
How do you control - and overcome - the difficulties with post-adoption contact between siblings, other family members and friends?

1. “Hello, I think you’re my sister” was the message shown to Al Coates on his adopted daughter’s phone screen. Coates is a former social worker, and host of the Adoption and Fostering podcast. He has spoken about the challenges faced by closed adoption in a modern, online world and, on this occasion was experiencing them for himself. His views on how this contact, out of the blue, affected the adoption provides useful insight into how those challenges should be managed.
2. Social care often champions the idea of evidence-based practice; however this one area seems to remain steadfastly stuck in a conservative paradigm where risks almost always outweigh benefits.
3. While still the legal default, closed adoption is more difficult to manage than it ever has been, given the access that adopted children and birth family members have to each other’s lives at the touch of a button. The solution to these difficulties may lie in embracing that contact rather than trying to prevent it.
4. There are challenges and contact is sometimes not in the best interests of children in relation to their safety or wellbeing.
5. Unexpected or uninvited contact through social media can be distressing, confusing and destabilising for families. This issue is not going away and to think or act otherwise is to sit like King Canute demanding that the sea turns back.
6. This is consistent with the Nuffield Family Justice Observatory’s (“NFJO”) evidence review in July 2020, entitled ‘Contact following placement in care, adoption, or special guardianship: implications for children and young people’s well-being’¹, which concluded that:

“The key question is not whether or how much contact has a positive impact on children and young people’s well-being, but how best to facilitate positive experiences and the meaningful involvement of the people who matter to the child.”
7. In exploring this point of view, I will set out:
 - A. The current legal framework surrounding post-adoption contact;
 - B. The specific difficulties facing this approach; and
 - C. A suggested way forward.

¹ <https://www.nuffieldfjo.org.uk/resource/contact-well-being>

Legal Framework

Evolution of approach

8. When a child is placed for adoption by an adoption agency, the traditional position, as expressed by Lord Ackner in the House of Lords in *Re C (A Minor) (Adoption Order: Conditions)* [1989] AC 1 (at [18]), was that “*in normal circumstances it is desirable that there should be a complete break*” between the adopted child and their birth family; “*the court will not, except in the most exceptional case, impose terms or conditions as to access to members of the child’s natural family to which the adopting parents do not agree*” .
9. However, the court now has the power to make orders for contact in the following circumstances:
 - i. Upon the Court authorising placement for adoption, under section 26 of the Adoption and Children Act 2002 (“ACA 2002”);
 - ii. Before the making of an adoption order, under section 46(6) ACA 2002; and
 - iii. Following placement by an adoption agency, under ss 51A and 51B ACA 2002.
10. The **introduction of ss 51A and 51B ACA 2002**, by the **Children and Families Act 2014**, gave the court significantly more power to determine contact post adoption. An order under ACA 51A may provide for an adopted child to have contact with, or prohibit contact with, any of the following:
 - any person who, but for the adoption, would be related to the child by blood (including half blood), marriage or civil partnership;
 - any former guardian of the child;
 - any person who had parental responsibility for the child immediately prior to the making of the adoption order;
 - any person who was entitled to make an application for contact when the child was placed for adoption, under ACA 2002, s 26(3)(c), (d) or (e);
 - any person with whom the child has lived for at least one year
11. Sir Andrew MacFarlane, **President of the Family Division**, summarised this power as follows, in his keynote address to the NALGRO Annual Conference in March 2018²:

“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.”
12. Despite this apparent movement in the law, the Court of Appeal confirmed, in ***Re B (A Child) (Post-Adoption Contact)*** [2019] EWCA Civ, **that nothing in s51A indicated a variation in the approach to be taken to the imposition of contact upon adopters who were unwilling to accept it**. As Sir Andrew Macfarlane commented, in the

² <https://childprotectionresource.online/much-much-more-of-this-please-the-bridget-lindley-obe-memorial-lecture-2017/>

aforementioned keynote address, there has been no sea change since the introduction of the ACA 2002.

Difficulty with the Current Approach

13. The crucial difficulty with the current approach to ‘closed’ adoption is just how easy it is for adopted children and their birth families to re-open it. Individuals can be found and a huge amount of information can be discerned about them at the touch of a screen online, making contact significantly more difficult to control.

14. Sir Andrew Macfarlane highlighted this problem in another prominent speech, the Bridget Lindley OBE Memorial Lecture 2017³:

“There has been, however, a radical change in a number of the fundamental elements of our model of adoption in recent years:

- *The characteristics of the young people who are now seen as candidates for adoption,*
- *The degree of support, or lack of it, that is afforded to them and their adopters once a placement has been achieved,*
- *The erosion in the hitherto impermeable seal around the adoptive placement created by social media.*

These changes are, in my view, sufficient to raise the question of whether our model of adoption continues to be as valuable to each of the individuals concerned as we have hitherto held that it is.”

15. This sentiment was echoed in a report in siblings, contact and the law, by Daniel Monk and Jan Macvarish, of Birkbeck University of London, in November 2018. From interviews and focus groups, they found that “the biggest challenge to the status quo was not the law but the impact of social media”⁴.

16. A 2014 study into contact after adoption by Beth Neil, Mary Beek and Emma Ward, of the University of East Anglia⁵, found that social media was used for three purposes following adoption:

1. To gain information about another party;
2. To communicate; and
3. To seek a reunion with another party.

The study found that, where social media was used to **supplement existing contact** arrangements and the young person 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.

17. To the extent that contact is facilitated within the current system, this is largely through letterbox contact. Such antiquated forms of connection may not engage young people

³ <https://childprotectionresource.online/much-much-more-of-this-please-the-bridget-lindley-obe-memorial-lecture-2017/>

⁴ <https://www.nuffieldfoundation.org/project/siblings-contact-and-the-law-an-overlooked-relationship>

⁵ CONTACT AFTER ADOPTION- A longitudinal study of adopted young people and their adoptive parents and birth relatives. UAE. Neil, Beek and Ward 2014

and push them towards unregulated contact online. **Beverley Barnett-Jones, the Associate Director at of NFJO**, highlighted this issue in her keynote address at Adoption UK's Annual Conference⁶:

“While the introduction of letterbox contact over 20 years ago signalled a more ‘open’ approach to adoption (opposed to the ‘closed’ system of the past, where adopted children and their birth families wouldn’t have any contact with each other after adoption), its primary purpose is the exchange of information, rather than the creation of meaningful connections. The system is riddled with problems and issues, and is considered a notoriously difficult way to enable rewarding and lasting contact.”

18. She went on to highlight both the dangers this poses:

*“And, in today’s world, **if the letterbox system isn’t working** for adopted people, birth families or adoptive parents, they can **potentially turn to social media** to take contact into their own hands, **without the necessary support and preparation** being in place. The Barometer data shows that 23% of 13-18-year-olds who had informal (planned or unplanned) direct contact in 2021 were approached directly by a birth relative, mostly via social media.”*

To ignore these changes would mean that for the most dramatic and far-reaching of decisions ie adoption, the risk is that the law becomes toothless, ineffective and in the minds of some, an irrelevance

Suggested Way Forward

19. Given the ever-increasing and pervasive nature of social media and an individual’s online presence, it does not seem possible to devise a watertight method of controlling contact online. The solution may, therefore, be rather more radical. The closed model of adoption may no longer be viable.

20. **Facilitating contact for adopted children** was advocated for by the **NFJO in their July 2020 review** (cited above). They made four key recommendations for doing this:

1. *Adopt a child-centred approach and take account of children’s perspectives;*
 - a. *Individual plans tailored to that child*
 - b. *Regularly reviewed – vs formulaic and fixed*

2. *Conceptualise contact as ‘safe and meaningful involvement’ of birth family relatives, so that **arrangements and expectations are flexible and responsive to the child’s situation;***
 - a. *Not an ‘us and them’ – rather both essential elements in future welfare*
 - b. *re-entry points for both birth and adoptive parents where contact has lapsed*

3. *Provide active management and support for everyone involved in contact*
 - a. *key point emphasised by birth parents and adopters (emotional/practical)*

⁶ <https://www.adoptionuk.org/blog/modernising-post-adoption-contact>

- b. *Limited resources/professional support over time limits the extent that their changing perspectives can be discussed, managed and supported*
- c. *Timing of support – see Featherstone below*
- d. *Emphasise for ‘everyone’ involved*

- 4. *Apply a broad and dynamic understanding of family.*
 - a. *Parents, grandparents, siblings and others...*

21. The pandemic has demonstrated that, while not without its challenges, it is possible to utilise digital contact, rather than try and prevent it at all costs. An NFJO briefing paper on research into contact between children and their birth families, in September 2020⁷, emphasised the impact of the move to online contact:

*“The impact of lockdown as a result of COVID-19 during 2020, and the sudden switch from face-to-face to digital contact, has highlighted the opportunities for flexibility in relation to the timing and duration of contact, and has provided positive examples of supporting parents and carers with suggestions of how to enliven contact. It is also clear from this experience that digital contact is **not** suitable for all children or parents, and is particularly problematic for **infants, younger children and some disabled children**. There are clearly opportunities for mixing face-to face and digital contact to increase flexibility, but the research indicates that even where digital contact has worked well, it should be used to **enhance rather than replace face-to face** contact in most cases”*

22. An Enquiry into the role of the social worker in adoption, by **Professor Brid Featherstone, Professor Anna Gupta and Sue Mills, in 2018**⁸, recommended the consideration of a more open approach, but drew attention to the resourcing issues this may present:

“A vital point, we consider, is the question of resourcing an expansion of direct contact. This might pose tensions in relation to how resources are distributed more generally and the balance that needs to be struck, for example, between support for birth families pre-proceedings and support post adoption. These are very important questions from an ethical and human rights point of view.”

23. Digital Solutions (vs threats)

- Digital pathways – familiarity for children
- Can be more flexible, individualised and rewarding
 - i. Different channels for different family members
 - ii. More frequent granular contact vs all at once every 6-12 months
 - iii. Clearer record of contact
 - iv. Adaptive over time
 - v. Storage and management of contact – accessible later

⁷ <https://www.nuffieldfjo.org.uk/resource/contact-six-key-messages>

⁸ <https://www.basw.co.uk/resources/role-social-worker-adoption-ethics-and-human-rights-enquiry>

- vi. Less resources required of agencies/profs
- Easier to create structured timetable for contact inc eg prompts
- May or may not be a gateway to face-to-face contact

Drawbacks

- Not have to replace physical letters/pictures – often valued and treasured
- Sense of intrusion
- Adherence to timetables may be harder to enforce
- Response times expectation
- Privacy / sensitive data
- Monitoring content

24. Digital inequalities were also addressed in the NFJO’s rapid evidence review into the effects of digital contact on children’s wellbeing, in May 2020⁹. They urged policy makers to acknowledge that “*unequal access to technology, good quality internet connections and digital skills may mean that digital contact is not possible or reliable for all looked-after children and young people and their birth families*”.

25. Al Coates:

“The connection made with my daughter and her sister was a new start point when in reality the connection should have never been severed. The decision was made for us and we, as nervous new parents, lacked the knowledge or insight to ask the right questions, or consider the risks and weigh them against the benefits.

When we adopted again, we brokered relationships with birth family members who were safe and consistent and every day we see the fruit of that sometimes difficult path.

The alternatives – heads in the sand or trying to disconnect from the reality of modern life and connectivity – are unrealistic and naive. Adopters need to walk with their adopted children, make sense for them, be open and honest about anxieties and insecurities and accept this new reality or risk undermining the relationship they’ve often worked hard to build with them.”

26. Addressing these issues, and facilitating contact generally, does present additional challenges for the already stretched court system. Indeed, Neil, Beek and Ward recommended reviewing contact arrangements at regular intervals, particularly as children reach adolescence. This additional burden on court resources risks contributing to the ever increasing court backlog. However, the research into the potential benefits of contact post adoption is clear and the attempts to restrict it appear ever more futile. Much consideration has traditionally been given to the views of adopters, who are vital for the functioning of the adoption system and may understandably wish for their adopted child to have a clean break. That should remain the case, but perhaps it is time to reconsider the potential positives, for both adopters and their children, of a more open adoption, and the potential negative consequences of continuing to turn a blind eye to the reality of social media. The impermeable seal around closed adoption has been eroded, and there is more to be gained by embracing that change, than by trying in vain to repair it.

⁹ <https://www.nuffieldfjo.org.uk/resource/digital-contact-childrens-wellbeing>

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