

*Please note that paragraph references are one out, and you should subtract one from any reference in the oral presentation - a proofing issue.

Post Adoption Contact

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1. Thank you for inviting me to speak on this important subject. I'm going to begin by placing the topic in context, before turning to recent case law. There is too much to say about adoption and contact (or 'keeping in touch') to fit neatly into a 30 minute slot so I will, as ever, provide an abundance of useful resources and hyperlinks within the body of the handout and highlight some of them as I go along.
2. Before I begin, I invite you to consider your own thoughts about post adoption contact. How many cases have you been involved in where you advocated for contact post adoption? Have you ever successfully secured post adoption contact for a child? What risks do you immediately associate with post adoptive contact? What are the pros? Do they outweigh those risks. I invite all of us together to consider and challenge those beliefs as we progress through the materials I have gathered for consideration and discussion today.

Context: Post-Adoption Contact in Practice

3. Post-adoption contact sits at the intersection of two powerful legal and social imperatives: the finality and security of adoption orders, and the emotional, psychological and cultural benefits of maintaining safe, meaningful links between an adopted child and their birth family. Over the last two decades, practice in England and

Wales has evolved. The traditional model of closed adoption—where adoption brought a complete legal and practical severance from the birth family—has given way to a more nuanced framework in which contact should be considered case-by-case, guided by the child’s welfare as the paramount consideration.

4. The legislative structure introduced by the Adoption and Children Act 2002 reframed adoption as part of the continuum of public law intervention, embedding modern understandings of attachment, identity, and long-term stability. Within this context as I speak I think it’s true to say that:
 - Letterbox contact remains the most common form, usually managed by agencies. (Pausing there – when was the last time you wrote a letter?)
 - Direct contact is rare but recognised as potentially beneficial in specific circumstances. It is really this aspect of contact that we will explore today.
 - Section 51A ACA 2002 has recalibrated the legal landscape by explicitly empowering the court to order contact or no contact post-adoption, reflecting Parliament’s intention to broaden the court’s toolkit. However, again, have you used s51 yet or successfully? (I know some of the people who I’ve spoken to, to prepare this talk will be watching and I’ve included your cases below!)
 - Judicial attitudes have shifted, particularly in light of research on identity formation, trauma-informed practice, and long-term placement stability. Frankly led by our senior judiciary. This talk is essentially me quoting their eloquence.
5. At the same time, case law has continued to emphasise the exceptional nature of compulsory post-adoption contact, balancing respect for the adoptive family’s autonomy with recognition of the child’s need for safe, structured links to their origins. Courts have been increasingly sensitive to practical realities: the fragility of adoptive placements, the risks of undermining parental authority, and the emotional load on adopters and birth relatives. Not to mention the impact of social media.
6. This context frames the central question for practitioners today: **when, and in what form, can post-adoption contact promote a child’s welfare, and how should courts and agencies approach these decisions in practice?**
7. Clearly there has been recent detailed consideration of the issue of inter-sibling contact post placement order in **Re S (Placement Order Contact) [2015] EWCA Civ 823 [“Re S”]** and what I aim to do here is to place that in the context. I suggest the materials I’m about to refer to constitute essential reading. If you are time pressed, and who of us is not skip through this handout and begin your reading with Re S and ‘Re R’ **Re R and C (Adoption or Fostering)[2024] EWCA Civ 1302 [2025] 2 FLR 68.**

Key thinking:

8. There have been a number of very significant reports and speeches on these topics in recent years. Perhaps the most important and required reading include the following;
- (a) The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976
 - (b) The President’s Lectures summarised below;
 - (c) The report of the PLWG.

The legacy of forced adoption:

9. We have to recognise the cultural legacy of forced adoption. It is important to remember and make reference to The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976 a House of Lords and Commons joint report that can be read in full here: <https://committees.parliament.uk/publications/23076/documents/169043/default/>

10. Between 1949 and 1976, approximately 185,000 babies born to unmarried mothers in England and Wales were adopted under a system that prioritized secrecy and societal norms over family rights. The Joint Committee on Human Rights examined whether these practices violated what we now understand as the right to family life under Article 8 of the European Convention on Human Rights.

11. Key Findings

- a) Systemic Pressure and Lack of Choice
 - a. Unmarried mothers were often coerced or pressured into adoption by family, institutions, and professionals.
 - b. Adoption was presented as the only viable option due to stigma and lack of welfare support.
- b) Human Rights Breach
 - a. Practices denied mothers and children the opportunity to maintain family ties, violating the right to family life.
- c) Psychological and Social Harm
 - a. Lifelong trauma for mothers and adoptees, compounded by secrecy and shame.
 - b. Many women concealed these experiences for decades.
- d) Institutional Failures
 - a. Mother and baby homes and hospitals reinforced stigma and facilitated coercion.
- e) Recommendations
 - a. Formal government apology.
 - b. Improved support services for affected individuals.

- Recognition and redress for historic harm.
- Harriet Harman (Committee Chair):
“It is hard to think of a more important part of family life than the right of a mother to have her baby with her and the right of a baby and a child to be brought up by their mother.”
- Mother’s Testimony:
“I had to hand my baby over crying and pleading again for help and to be allowed to keep him. The pain was unbearable.”
- Committee Observation:
“Babies were taken away from mothers who didn’t want to let them go. It is time to correct the record.”
- Government Response:
“We are sorry to all those affected by historic adoption practices. We are sorry on behalf of society for what happened.”

12. The report frames historic adoption practices as a systemic violation of human rights, calling for acknowledgment, apology, and support for those affected.

13. **This report was referenced in the PFD’s Mayflower lecture which you can read in full here: <https://www.judiciary.uk/speech-by-sir-andrew-mcfarlane-adapting-adoption-to-the-modern-world/>**

14. I would invite you to read that rather than my selective quoting from it but in any event amongst the many observations made by the PFD (not precedent but still of value and significance to all family practitioners) he said:

“Adoption is not about erasing history; it is about creating stability while respecting origins.”

15. The purpose of this lecture was twofold:

“Firstly, to raise public awareness of the fact that the Family Court is regularly making orders which will have a profound impact throughout their lives on those who are adopted and their families. Secondly, to suggest that there is a pressing need for courts and those who advise them in these matters to modernise the approach that is taken to supporting a young, adopted person by enhancing the degree to which they may maintain some form of relationship with their birth family after adoption.”

16. One aspect of the modern context highlighted is the difficulty that adopted adults encounter in accessing information about their birth family, despite now being entitled to do so. The President traces back this lack of transparency and openness to the

shame and transgression felt and accorded to the unmarried women who were compelled to into adoption.

“My reason for referring to this, now historical, model of adoption is, in part to draw attention to what many will regard as a shocking practice, but also because, I believe, some elements of the culture surrounding it still remain in the modern approach to adoption, in particular with regard to the primary focus of this lecture, which is on the approach to what contact, if any, there should be between an adopted child and their birth family.”

17. This lecture included a concise guide to the adoption statutory framework and legal process, with the President drawing us back constantly from the statute to the modern day context:

“When a court or an adoption agency is coming to a decision relating to the adoption of a child, its paramount consideration must be the child’s welfare ‘throughout his life’ . This life-long lens is of a different order to that which applies in all other decisions a court may make concerning the upbringing of a child, where the paramount consideration is simply the child’s welfare. This distinction is important. It points up the essential difference between a decision focussed on ‘the upbringing of a child’ (to use the words of s 1 of the Children Act 1989) and one for adoption, which is a life-changing and permanent change of status. An adopted child is not only such during their minority, they are an adopted person throughout their adult life and forevermore.

Following the end of the days of ‘forced adoption’ or ‘relinquished babies’ reforming legislation in the 1970’s, adoption is now largely used for children who have been protected from child abuse by removing them from the care of their natural family. Such children are likely to require continued protection in the years to come, but, one may ask, how bad must the home circumstances be to justify not merely keeping the child safe during childhood, but legally removing her from her family forever and grafting her permanently into another family for the remainder of her life. The answer to that question, established by a decision of the UK Supreme Court , is that adoption will only be the proportionate remedy when it is necessary to meet the child’s welfare needs throughout their life and ‘nothing else’ (meaning no less intrusive arrangement) ‘will do’.”

18. With the focus of the lecture being on contact and how the exceptionality of post adoptive contact needed fresh scrutiny.

“The second and final element of the legal structure that I need to paint in relates to ‘contact’. As will become clear, it is this element that I consider needs to be developed in order to adapt adoption more suitably to the modern age. 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. When making a placement order, the court has the power to make a further order under ACA 2002, s 26 requiring the person with whom the child lives, or is to live, to allow him to visit or stay with the person named in the order, or for them 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."

.....

"The report in 2013 of a House of Lords Committee on Adoption Legislation quoted from two authoritative sources on the relevance and importance of contact post-adoption for the children who were now being adopted in saying that

'It was important to remember that contact should be for the benefit of the child, not for the parents or other relatives. The reasons why a child might benefit from contact were spelled out in evidence from After Adoption: "it is not about maintenance of the relationships as they were with the birth family . . . what [children] like is to have some continuity that enables them to integrate the past with the present, and obviously then the future. I think contact can play a very useful role for the child in helping them understand their world and their life history." Helen Oakwater described the role that facilitated contact could play in assisting a child to "integrate their past, allowing them to form a coherent narrative and more robust sense of self.'"

19. With the key section perhaps being:

"The central question from my perspective is to ask whether the law, and the manner in which it is currently applied by the courts, continues to be fit for purpose, or whether it requires adapting to meet the changing needs of adopted children in the modern world.

To focus on the question, it is necessary to look in more detail at why contact is so important an issue. What follows is my own understanding after some 40 years, but that understanding has been greatly enhanced by recent discussion (for which I am most grateful) with Dr John Simmonds of Coram BAAF, with whom I am in agreement on many of these issues.

The first point to make is that the term 'contact' is itself unhelpful in this context. To lawyers, and no doubt to birth parents, it is likely to mean direct communication, and/or meetings, with the child. Such a narrow, or functional, view is unhelpful as it can obscure one of the core features of adoption, namely the severing of the child's relationship with their birth parents and the establishment of a new set of relationships with the adopters. The consequences of the breaking and making of relationships is significant for all those involved including a profound sense of loss for the birth parents, a sense of confusion for the child/adolescent/adult and a

source of anxiety for the adoptive parents. Any attempt to re-build these relationships in a meaningful and safe way through contact must take into account the needs of the individuals in a more comprehensive way than that provided by annual 'letterbox' messages.

To give an indication of the degree of sophistication required in developing a bespoke plan for contact for an individual adopted child, it is likely that the following factors will be relevant in most cases:

- 1. Age of the child at removal from the parents.*
- 2. Age of the child at placement with approved adopters.*
- 3. The impact of genetic factors on the child's development.*
- 4. The impact of risks to the child in the womb – Foetal Alcohol Syndrome, or drug use by the mother.*
- 5. The lived experience of the child – domestic abuse, poor feeding and hygiene, comfort, sensitivity, playfulness and relationships*
- 6. Tracking the child's health – weight, growth, sight, hearing.*
- 7. A range of health factors which impact on the child such as a named developmental condition.*
- 8. Parental neglect when evidenced by a significant failure to exercise parental responsibility as set out in law.*
- 9. Significant risk and harm that fall within the experience of abuse – the direct actions of the parents that directly harm the child – physical violence and assaults, sexual abuse.*

All of these issues underpin the significance of avoiding any delay in agreeing the plan and solution for the child. We know that what every child needs throughout their life is a stable, loving family life that is or becomes their secure base. As a part of this, the child's curiosity about their past including their birth family and other people who were important to them such as foster carers must be acknowledged and accommodated. The experience of feeling connected and having a personal narrative that is meaningful to the child/adolescent/adult is a core part of the recovery from an early life that was traumatic.

I am not alone in considering letter-box contact to be outdated and no longer apt to meet the more sophisticated understanding that now exists of a young adopted person's needs. One particular deficit of letter-box communication is that it is typically only sent to the birth mother, and rarely to the father or, of great importance, to any siblings who may be separated from the adopted child. In addition, the model would seem to be based upon a fear of contact with the natural family destabilising the adoptive placement, when more modern thinking indicates that maintaining some continuing relationship with the natural family can assist the child.

Earlier, when looking at the historical context, I described the strong element of secrecy and lack of any contact which was a feature of forced adoption. Whilst that model has now been abandoned, it may be that its legacy continues to be played out in the approach to contact.

Drawing together these various strands, it is clear to me that a bespoke plan for future contact between a child and their birth family should be developed at an early stage and well before that child moves on to be placed for adoption.”

20. Key Messages from the Mayflower Lecture perhaps cemented within precedent which I deal with below:

- It highlights the life-changing nature of adoption orders and the need for a modern approach.
- Encourages rethinking contact arrangements to support children’s identity and emotional wellbeing.

21. Key Points

- Adoption is not a “clean break”: Children can benefit from maintaining safe, meaningful links with birth family.
- Letterbox contact is outdated: Annual letters are insufficient for most children’s needs. Please see the quotes from an experienced adopter reminding us that people seldom write letters now.
- Contact is integral, not optional: It should form part of the child’s welfare plan from the outset.

22. Recommendations (such as they were in the light of the ongoing work of the PLWG etc at the time of the first lecture)

- Early Planning: Discuss contact before placement, not after adoption orders.
- Bespoke Arrangements: Tailor contact to the child’s age, circumstances, and safety.
- Creative Methods: Consider digital contact and other safe options beyond letters.
- Support Services: Adoption support must include contact facilitation and guidance.
- Court Expectations: Judges should require analysis of contact needs and ensure adoption support plans include a contact strategy.

23. Underlying Principle

- Adoption decisions must balance:
 - Child protection and permanence
 - Rights to family life and identity (Article 8 ECHR)

- This is the duty of the court.

24. Implications for Practice (in my view)

- Lawyers: Ensure care plans and adoption applications address contact explicitly.
- Social Workers: Shift from “closed adoption” to open, supported contact.
- Courts: Scrutinise whether contact proposals are realistic and child-focused.¹

25. The second part of this lecture was delivered as, ‘Adapting Adoption to the Modern World: The POTATO Conference Part Two’² (The POTATO Group, ‘Parents of Traumatized Adopted Teens Organisation’ is a group of parents of teenagers who adopted children from the care system in England and Wales and they have encountered significant challenges as a result of previous trauma.)

26. Again, I suggest you read that rather than this (See link in the footnote below) however of note are the following passages:

“I hope that the references that I have made in this address and in the earlier Mayflower Lecture demonstrate a consistent authoritative message that a new approach to post-adoption contact is now needed. In that regard it is clear that progress is being made. One of the four strategic priorities for Adoption England is that of ‘Maintaining relationships’; this priority is focused on modernising contact for adopted people so that they can maintain relationships with the people who were important to them before they were adopted[8]. The team at UEA, led by Beth Neil, have been commissioned by Adoption England to develop a theory of change to guide work around maintaining relationships and I am grateful to Professor Neil for giving me sight of a draft article which is soon to appear in the Family Law journal describing this work. This article will be a ‘must read’ for all who are interested in this topic and I am not going to spoil its impact by quoting from it today. What it is possible for me to say, however, is that the work that is currently being undertaken by UEA, and that underpins the article, demonstrates that the 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, it is to be accomplished in practice.

The ambitious target of this work is to establish the default position for future adopters so that the clear expectation will be that of maintaining birth family relationships as the starting point for every child, only to be ruled out where it is unsafe or unhelpful, as opposed to the current default with contact only being ruled in in exceptional circumstances.

¹ [Speech by Sir Andrew McFarlane: Adapting Adoption to the Modern World - Courts and Tribunals Judiciary](#)

² [Speech by the President of the Family Division: Adapting Adoption to the Modern World, Part Two - Courts and Tribunals Judiciary](#)

How will this cultural shift towards greater openness impact upon the work of the Family Court and how may the court support the looked-for change in the default setting so that maintaining relationships with a child's birth family is the starting point, rather than the exception?

*The court and the Family judiciary have an important part to play. Orders for contact made under ACA 2002, s 26 when making a placement for adoption order set the template for contact going forward. Where continuing contact in some form is ordered at that stage, this will be an important **'known known'** about the child to be taken on board by any potential adopters with whom placement may be considered."*

27. Interesting aspects include the PFD's comments about the weight afforded by the court to the adopters' autonomy- The President emphasises the tension that Re C (A Minor) (Adoption Order: Conditions): HL 1988 creates. The case dictated that the court should not impose contact on an unwilling adopter as a complete break should occur with a child's family. The President comments "I have always worried that the respect afforded to an adopter's autonomy on issues of contact has set the bar too high. If the reality is that the court will not make a contact order against the wishes of an adopter, and, on the other hand, will not make a contact order if the adopter is in agreement with what is proposed, one is entitled to ask why Parliament has given any power to the court to make post-adoption contact orders at all." He suggests that adopters may not be better positioned than social workers or a judge to determine if contact should occur, **at the point of adoption**. The President suggests that the "almost absolute autonomy of adopters in matters of contact will need to be reviewed."
28. Finally, I refer you to A Survey of Adoptive Families: Following up children adopted in Yorkshire and Humberside Region (UEA Centre for Research on Children and Families)³
29. This was a survey of over 300 adoptive parents in Yorkshire and Humberside Region concluded that:
- The majority of adoptive parents' feedback was that letterbox contact was of mixed or negative value.⁴
 - Only 25% of adopted children had contact with siblings living elsewhere. Of those who had face-to-face contact the majority found it positive.⁵
 - 59% of adopted children had no contact at all with their biological family.⁶
 - The views of adopted parents differed considerably, only 45% agreed that sustained contact with their child's adoptive family was important.⁷

PLWG report 'Recommendations for best practice in respect of adoption.'

³ [YH_report_final_23_May_2018.pdf](#)

⁴ Ibid [5] at p.161

⁵ Ibid [5] at p.154

⁶ Ibid [5] at p.154

⁷ Ibid [5] at p.170

30. <https://www.judiciary.uk/wp-content/uploads/2024/11/Nov-24-final-report.pdf>

31. One development of huge importance that everyone watching will have already read is the report of the PLWG, led by Mrs Justice Francis Judd. It's a very powerful document, in my view and again I suggest you read that rather than this but key quotes are:

- "For many children who cannot be brought up within their birth families, adoption can provide the best chance of a secure future, but it is vital for the institution to evolve and adapt if it is to survive."
- "This report highlights the need for significant change so that adopted children have more opportunity to keep in touch with their birth families unless it is not safe, and better access to their records."
- "The current system ... whereby direct contact is the exception rather than the rule is outdated."
- "There is considerable evidence that transparency and openness around the circumstances and experiences of the adoptee's birth family is beneficial to an adopted child."
- "Many children who were adopted in the last two decades suffered significant trauma and abuse ... Without attention to their needs they will go on to suffer significant problems in adulthood."

Key recommendations:

32. I have summarised some aspects of this report here, but please read the report in full and in particular pages 41- 48 of the report which contain detailed recommendations as to how change might be made. It is required reading for all practitioners.

- The report calls for a "sea-change" in approach:
- "There needs to be a change in face to face contact between adopted children and birth families, with training and greater support and counselling for birth parents."
- "The current system ... whereby direct contact is the exception rather than the rule is outdated."
- Direct contact should be actively considered (if safe) rather than assumed letter-box only.
- Training for adoptive parents, social workers, lawyers on lifelong identity and birth family links.
- Birth parents should be sign-posted to independent support at the stage adoption is being contemplated.
- In every case, early identification of "important relationships" (eco-map / genogram) and contact planning, including digital/indirect options.
- Sibling contact and maintaining links with birth family members need particular attention.

33. The court must consider more options for adopted children to remain in touch with birth families unless it is not safe to do so.

Key recommendations include:

- Professionals and courts must actively consider the full range of contact options (including digital/contact-centre/direct contact), rather than assume letterbox only.

For Social Workers

1. Investigation & Identification of Key Relationships

- Investigate which birth family members (and foster carers) can contribute positively post-adoption.
- Explore:
 - Personal circumstances, wishes, resources of relatives.
 - Who can offer background information or ongoing news.
 - Who can reassure the child that they are cared about and remembered.
 - Who can support the child as a member of their adoptive family.
 - What help birth parents may need to manage loss, anger, shame so they can focus on the child.

2. Assessment & Written Analysis

- Assess the ability of identified individuals to maintain contact post-adoption, recorded in the final care/placement order statement.
- Include additional final statement paragraphs considering all possible forms of contact, weighing welfare benefits against safeguarding risks.
- Demonstrate consideration of the range of contact possibilities and reasons for suitability/unsuitability.
- If direct contact is not appropriate now, evaluate whether the case warrants future reconsideration, and build this into the Adoption Support Plan.

3. Practical Arrangements

- Where face-to-face contact is recommended, specify:
 - Duration, frequency, location,
 - Whether adopters should be present
 - Which birth relatives should attend.
- Ensure birth relatives understand expectations, the rationale, and possible consequences of non-compliance.

4. Letterbox & Digital Contact

- If recommending letterbox, explore digital options/platforms that may better support indirect contact.
- By the adoption order stage, formulate a clear, finalised plan, discussed and approved with adopters.

5. Final Care Plan – Emphasis on Contact

- Include a section identifying:
 - Important relationships,
 - Support needed for the child, adopters, and birth relatives,
 - How contact can be safe and meaningful.
- Requires early liaison between child's social worker and the adoption social worker.

6. Sibling Contact

- Undertake specific consideration of sibling contact.
- Conduct targeted work with siblings and their carers.
- Avoid gaps in contact when placements separate siblings.

7. Contact Support Plan

- Provide a draft Contact Support Plan before the placement order is made.
- Finalise it as part of the Adoption Support Plan before the adoption order.

8. Life Story Work

- Agree who completes the life story book and timetable for completion.
- Clarify this by the placement order stage.

For Children's Guardians

- Final analysis must address whether the investigation into post-adoption contact has been sufficiently broad.
- Assess welfare benefits of recommendations both at:
 - Placement order stage, and
 - Into the future.
- Suggested amendment of Cafcass/Cymru templates to include a specific section on post-adoption contact.

For Courts

1. Use of s.26 ACA 2002

- Courts should consider using s.26 to set out the child's assessed need for staying in touch with birth family beyond the placement order—even before adopters are identified.
- Although s.26 orders lapse on adoption, they:
 - Set the tone for expected contact,
 - Prevent long gaps,
 - Ensure active agency support pre-adoption,
 - Help avoid minimising contact needs to make a child “more adoptable”.

2. Use of s.51A ACA 2002

- Courts should consider s.51A (contact/no-contact) where:
 - A review of contact after the adoption order may be needed,
 - Direct contact is unsuitable now but may become appropriate later.
- Recognise limits from Re B; orders against adopters' wishes are exceptional.
- Decisions should involve adopters fully and remain child-focused.

Additional Recommendations (paras 83–96)

- 83. Adopters should routinely write a settling-in letter to the birth family.
- 84. Consider a meeting between adopters and birth relatives in every case.
- 85. Consider and timetable later-life letters from birth relatives (subject to the child's wishes when older).
- 86. Life story books should be available by the time of the adoption order and include all important relationships.
- 87. Develop nationally circulated examples of post-adoption contact agreements and future contact plans; provide agencies with flexible pro formas.
- 88. Keep ongoing communication between adoption social worker and birth parents to:
 - Reassess relatives' ability to maintain contact post-proceedings,
 - Ensure support is available where arrangements falter.
 - Use the draft contact support plan produced at placement order stage, cross-referenced with the final adoption support plan.
- 89. Information shared with adopters about the birth family must be balanced, showing strengths as well as concerns.
- 90. After adoption, adoption social worker should offer periodic informal reviews of contact arrangements.
- 91. Explore digital platforms for indirect contact where appropriate.
- 92. In early permanence placements (e.g., fostering for adoption), direct contact should continue where it has been working well; obstacles should be fully explored.

- 93. Social workers should actively manage and support direct contact, preparing, supervising, and debriefing all parties; adopters should attend where possible.
- 94. Adoptive and birth families should have a named worker for letterbox contact issues.
- 95. More judgments involving contact should be published in full.
- 96. All separated siblings should receive the information suggested in the “Charter for Siblings” (Beyond Together & Apart).

34. The key statutory sections for completeness:

Section 26 – Contact

Section 26 (as at 29 August 2025, latest version)

“(1) On an adoption agency being authorised to place a child for adoption, or placing a child for adoption who is less than six weeks old—

(a) any contact provision in a child arrangements order under section 8 of the Children Act 1989 ceases to have effect,

(b) any order under section 34 of that Act (parental etc. contact with children in care) ceases to have effect, and

(c) any activity direction made in proceedings for the making, variation or discharge of a child arrangements order with respect to the child, or made in other proceedings that relate to such an order, is discharged.

(2) While an adoption agency is so authorised or a child is placed for adoption—

(a) no application may be made for—

(i) a child arrangements order under section 8 of the 1989 Act containing contact provision, or

(ii) an order under section 34 of that Act, but

(b) the court may make an order under this section 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.

(3) 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.

(5A) In this section "contact provision" means provision which regulates arrangements relating to—

(a) with whom a child is to spend time or otherwise have contact, or

(b) when a child is to spend time or otherwise have contact with any person; but in paragraphs (a) and (b) a reference to spending time or otherwise having contact with a person is to doing that otherwise than as a result of living with the person.

Section 51A – Post-Adoption Contact

Section 51A (as at latest revision)

"(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) The court may make—

(a) an order under this section, or

(b) subject to subsection (3), an order prohibiting contact between the child and a person specified in the order.

(3) An order under subsection (2)(a) or (b) may be made only on an application by—

(a) the adopter,

(b) the child (where he has leave), or

(c) any person with leave.

(4) Before making the application the court must be satisfied that the applicant has leave.

(5) The court must consider the welfare of the child throughout his life as the paramount consideration.

(6) In deciding whether to make an order, and what order to make, the court must have regard to—

(a) the child's ascertainable wishes and feelings (considered in light of his age and understanding),

(b) his physical, emotional and educational needs, past and future,

(c) the likely effect on him of having ceased to be a member of his original family and become

- an adopted person,
- (d) his age, sex, background and any characteristics which the court considers relevant,
 - (e) any harm which he has suffered or is at risk of suffering,
 - (f) how capable each of the persons mentioned in subsection (3) is of meeting the child's needs, and
 - (g) the range of powers available to the court under this Act or the Children Act 1989.

Post-Adoption Contact: Statutory Developments in s.26 and s.51A ACA 2002

35. Section 26 ACA 2002 – Contact Before the Adoption Order

Original Purpose

- To regulate contact during adoption placement (post-placement, pre-adoption order).
- To create a self-contained regime, replacing Children Act 1989 contact orders during this period.
- To ensure clarity and stability for the child and prospective adopters.

Key Amendments

- Children and Families Act 2014 introduced two important changes:

(a) s.26(1)(c): Discharge of activity directions

- Any activity direction attached to a child arrangements order is automatically discharged once the child is placed for adoption.
- Ensures no CA 1989 “residual requirements” disrupt the adoptive placement.

(b) s.26(5A): Definition of “contact provision”

- Clarifies what forms of contact cease upon authorisation to place.
- Ensures all meaningful contact arrangements fall under the adoption regime, not CA 1989.

Practical Significance

- Care/placement proceedings must now contain a full contact analysis.
- Courts may use s.26 to preserve continuity of contact immediately after placement (PLWG recommendation).
- Social workers must document all realistic contact options and explain any exclusions.

36. Section 51A ACA 2002 – Contact After the Adoption Order

Background

- Before 2014, there was no statutory power to order post-adoption contact.
- Contact was by agreement only or in rare cases via inherent jurisdiction.

Creation of s.51A (2014)

This was the most significant reform in over 30 years.

(a) New Court Powers

- Courts may now order:
 - Post-adoption contact, or
 - Post-adoption no contact.

(b) Leave Requirements

- Applications may only be made by:
 - The adopter;
 - The child (with leave);
 - Anyone else with leave.
- The leave filter protects adoptive placements from destabilising litigation.

(c) Paramountcy Test (s.51A(5))

- The child's welfare throughout life is the paramount consideration.
- Emphasises lifelong identity, stability, and emotional needs.

(d) Welfare Checklist (s.51A(6))

- Mirrors CA 1989 principles but tailored to adoption.
- Explicitly includes:
 - Effect of leaving the birth family,
 - Identity considerations,
 - Long-term emotional impact.

Post-2014 Practice Development

- Re B (2019) confirms compulsory orders are exceptional; no presumption for contact.
- PLWG (2024) encourages:
 - Greater consideration of direct contact where safe.
 - Early identification of key relationships.
 - Using s.51A creatively (e.g., timetabled review of contact).

3. Overall Significance for Practice

- The law now provides a complete statutory architecture for contact:
 - s.26 → pre-adoption
 - s.51A → post-adoption
- Courts and professionals must demonstrate:
 - A broad exploration of contact options,
 - Clear welfare analysis,
 - Planning for continuity where safe.
- Growing professional consensus (PLWG) favours more open adoption, but case law still requires caution.

37. The loadstar is however, s1(2)-(4) ACA which I quote in full below and which is at the very heart of the entire issue before us today.

CASE LAW

38. I turn now to deal with key case law in chronological sequence. I begin with *Re R and C (Adoption or Fostering)[2024] EWCA Civ 1302 [2025] 2 FLR 68* This masterful Baker LJ judgment reminds us that it is the judge's duty to set the template for contact: It does not follow that in every case where the court concludes that it is strongly in the interests of the children to continue to have sibling contact, that adoption should be ruled out. Each case turns on its own facts. While it remains extremely unusual to impose contact arrangements on prospective adopters who are not in agreement to contact, that does not obviate the court's responsibility **to set the template** for contact at the placement order stage. In this case, the local authority was committed to search only for adopters willing to accommodate sibling contact and invited the court to make a contact order under s 26 of the Adoption and Children Act 2002 (the 2002 Act). Whilst there was a possibility that the search for such adopters might be unsuccessful or that adopters might subsequently refuse to agree to contact, in the circumstances of this case, that was not a sufficient reason to refuse to make the placement order.

39. **Key elements include the following paragraphs:** Within this typically eloquent judgment the practitioner finds a succinct summary of the changing nature of adoption and the relevant pre Re S case law. Frankly stop reading this and read that! I have pulled out in full the key paragraphs:

[19] Under the 2002 Act as originally enacted, there was no specific power to make a contact order on adoption. The court's only power to make an order for contact on adoption was under s 8 of the Children Act 1989 applying the welfare provisions in s 1 of that Act. Section 26 of the Act, which, as noted above, provided in subsection (2) that after the making of a placement order no application could be made for a contact order under s 8 of the 1989 Act, also provided in subsection (5) that 'this section does not prevent an application for a contact order under

section 8 of the 1989 Act being made where the application is to be heard together with an application for an adoption order in respect of the child.'

[20] Subsequently, Parliament passed the Children and Families Act 2014, repealing s 26(5) of the 2002 Act and inserting into it s 51A which introduced an express power to make a contact order in all cases where an adoption agency has placed or was authorised to place a child for adoption and the court is making or has made an adoption order in respect of the child: s 51A(1). Section 51A(2) provides:

'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.'

[21] Further provision is made in s 51A as to who may be named in, and apply for, an order under the section.

[22] The principles to be applied when considering a plan for adoption and an application for a placement order were reviewed and redefined by the Supreme Court in Re B (Care Proceedings: Appeal) [2013] UKSC 33, [2013] 2 FLR 1075, responding to a series of decisions in the European Court of Human Rights, which had considered the proportionality of non-consensual adoption, culminating in YC v United Kingdom (2012) 55 EHRR 967, [2012] 2 FLR 332. In Re B, Lord Neuberger (at para 104) identified

'the principle that adoption of a child against her parents' wishes should only be contemplated as a last resort – when all else fails.'

At para 198, Baroness Hale of Richmond concluded:

'It is quite clear that the test for severing the relationship between parent and children is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do.'

[23] Following the decision in Re B, the Court of Appeal addressed the approach to proportionality in adoption in a series of cases, in particular Re G [2013] EWCA Civ 965 and Re B-S [2013] EWCA Civ 1146. Those decisions stressed the need for (in the words of McFarlane LJ in Re G at para 54)

‘a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options’.

This requires the local authority, the children’s guardian and the court to carry out a robust and rigorous analysis of the advantages and the disadvantages of all realistic options for the child and, in the case of the court, set out that analysis and its ultimate decisions in a reasoned judgment.

[24] These principles need no further elaboration. As acknowledged by Dame Siobhan Keegan giving judgment in the Supreme Court (with which the rest of the Court agreed) in Re H-W (Children) [2022] UKSC 17:

‘This is now rightly the accepted standard for the manner in which a contemplated child protection order must be tested against the requirement that it be necessary and proportionate.’

[25] The focus of this appeal is the court’s power to order contact when making a placement order. On this point, it is necessary to say rather more about the development in the case law over recent years to which we were referred in counsel’s submissions. [please refer to the following paragraphs].....

[30] In the event, any ‘sea change’ in the years following the implementation of the 2002 Act did not extend to a wider imposition of orders for post-adoption contact against the wishes of the adopters. In subsequent cases, this Court reiterated the principle that it would be extremely unusual to impose on prospective adopters orders for contact with which they were not in agreement: see Oxfordshire CC v X, Y and J [2010] EWCA Civ 581 (sub nom Re J (A Child) (Adopted Child: Contact) [2011] Fam 31) and Re T (A Child) [2010] EWCA Civ 1527.

[31] Following the introduction of s 51A, the issue was reconsidered by this Court in Re B (A Child: Post-Adoption Contact) [2019] EWCA Civ 29. In that case, Sir Andrew McFarlane P (in a judgment with which the rest of the Court agreed) summarised the position as follows:

‘52. The starting point for any consideration of this issue must be the settled position in law that had been reached by the decision in Re R, which was confirmed by this court in the Oxfordshire case and in Re T.

The judgment in Re R was, itself, on all fours, so far as imposing contact on unwilling adopters, with the position described by Lord Ackner in Re C.

53. As stated by Wall LJ in *Re R*, prior to the introduction of ACA 2002, s 51A, the position in law was, therefore, that “the imposition on prospective adopters of orders for contact with which they are not in agreement is extremely, and remains extremely, unusual.”

54. Although s 51A has introduced a bespoke statutory regime for the regulation of post-adoption contact following placement for adoption by an adoption agency, there is nothing to be found in the wording of s 51A or of s 51B which indicates any variation in the approach to be taken to the imposition of an order for contact upon adopters who are unwilling to accept it.’

[32] In response to submissions about the interpretation and application of s 51A, the President added further guidance:

‘59. 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.

...

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 in so far 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 [it] will be "extremely unusual" for the court to impose a contrary arrangement against the wishes of adopters.'

(4) Other recent developments

[37] Although developments in adoption policy that are not yet reflected in legislative change do not, in my view, call for detailed analysis on this appeal, it is right to record that this appeal falls for determination at a time when there is increased public discussion about the future of adoption in general and of open adoption in particular.

[38] These issues were addressed by the President of the Family Division in his two recent lectures – 'Adapting Adoption to the Modern World' (the Mayflower lecture in Plymouth, 9 November 2023, <https://www.judiciary.uk/speech-by-sir-andrew-mcfarlane-adapting-adoption-to-themodern-world/>) and 'Adapting Adoption to the Modern World – Part Two' (the POTATO conference lecture, 17 May 2024, reported at July [2024] Fam Law 797). As he stressed in the second lecture, neither lecture was a court judgment, Practice Direction, or Presidential Guidance, but rather an expression of his 'preliminary thoughts' on the question: 'How will this cultural shift towards greater openness impact upon the work of the Family Court and how may the court support the looked-for change in the default setting so that maintaining relationships with a child's birth family is the starting point, rather than the exception?'

[39] In the course of his second lecture, the President took the opportunity to underline some features of the existing law and also make suggestions about how the law might develop in future. He observed:

'Orders for contact made under ACA 2002, s 26 when making a placement for adoption order set the template for contact going forward. Where continuing contact in some form is ordered at that stage, this will be an important "known known" about the child to be taken on board by any potential adopters with whom placement may be considered.'

He continued:

'... 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.'

[40] In these observations, the President was doing no more than reiterating the approach to s 26 mandated by case law. He went on to express some preliminary thoughts about how courts might in future exercise their powers to make contact orders at the adoption application stage. As he acknowledged, in those remarks he was considering steps which go beyond the current case law. It is likely that this Court will consider these matters again at some point, but they do not arise on this appeal. We are concerned only with the interpretation of s 26.

Discussion and conclusion

*[64] This Court must always proceed with caution when invited to interfere with a judge's evaluation of the evidence after a hearing in which he and he alone has had the opportunity, in the well-known words of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 (at para 114), to 'have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.' In this case, however, I have no hesitation in concluding that the basis of the judge's decision to refuse the placement order was wrong for the reasons set out in the appellant's submissions in support of ground 1.*

[65] A key element in the judge's reasoning was his assertion that 'permanence comes at a significant cost, namely the complete and irrevocable severance of all ties with the natural family'. As demonstrated by the summary of the case law set out above, that may have been true of all adoptions at one stage, and it remains true of some adoptions now. But it is emphatically not true of many adoptions and is at odds with the concept of open adoption which is now embraced as a model in what the President has called the modern world. The judge acknowledged that the severance of ties with the natural family 'can sometimes be ameliorated by continued contact between the birth family and the adopted child' and that, in this case, the local authority has 'committed itself to a search only for adopters willing to promote direct sibling contact'. He discounted these factors, however, on the basis that ongoing contact 'is at the discretion of the adopters' and that 'sibling contact cannot be guaranteed' because 'even adopters who are open to it initially may not continue to promote it after the making of an adoption order'.

*[66] In these observations, **the judge overlooked the fact that it was his duty to 'set the template for contact going forward'**. This case seems to fall four square within the words used by Wall LJ in *Re P* at para 151. As in that case, there is a 'universal recognition' that the relationship between the siblings needs to be preserved. It is 'on this basis that the local authority/adoption*

agency is seeking the placement of the children ... [T]his means that the question of contact between the two children is not a matter for agreement between the local authority/adoption agency and the adopters: it is a matter which, ultimately, is for the court'. In those circumstances, 'it is the court which has the responsibility to make orders for contact if they are required in the interests of the two children'.

[67] In reaching his conclusion, the judge quoted passages from my judgment in *Re T and R*. It does not follow, however, that in every case where the court concludes that it is strongly in the interests of the children to continue to have sibling contact the option of adoption should be ruled out. **Each case turns on its own facts.** In *Re T and R*, the crucial importance of contact to the psychological wellbeing of the subject children and their older siblings, the importance of maintaining the children's sense of their cultural and community heritage, which could only be achieved through contact, coupled with the community's antipathy to adoption which made contact unfeasible, led to a conclusion that adoption was not in the interests of the children's welfare. In other cases, the evidence will clearly demonstrate not only that ongoing sibling contact is in the children's interests but also that it is likely to be achievable in an adoptive placement. In my view, this is just such a case.

[68] Under the current law, as the President said in *Re B*, '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'. **But that does not obviate the court's responsibility to set the template for contact at the placement order stage.** In this case, the local authority was committed to search only for adopters willing to accommodate sibling contact and invited the court to make an order for contact under s 26, both to meet the children's short-term needs and to set the template. There was of course a possibility that the search for such adopters might be unsuccessful or that adopters might subsequently refuse to agree to contact. But in the circumstances of this case, that possibility was not a sufficient reason to refuse to make the placement order.

[69] The judge was wrong to dismiss the argument that, because of their ages, R and C deserve a right to permanency on the grounds that it 'comes perilously close to social engineering'. Although it is not entirely clear, it seems he used the phrase 'social engineering' to mean taking a decision about the children's future by reference to social policy rather than their specific welfare interests. **But the value to a child's welfare of the permanence which only adoption can provide has been recognised in many cases,** including in passages cited by the judge from the judgments of Pauffley J in *Re LRP (A Child) (Care Proceedings – Placement Order)* [2013] EWHC 3974 (Fam) at para 39 and Black LJ in *Re V (Children)* [2013] EWCA Civ 913 at paras 95–96. Every court considering whether to endorse a plan for adoption must take into account the fact that, in Black LJ's words, 'adoption makes the child a permanent part of the adoptive family to which he or she fully belongs'. The professional evidence before the judge was that it was in these children's welfare interests to be placed for adoption. There was no justification for describing this as 'perilously close to social engineering'.

[70] I am also troubled by the judge's statement that 'the role of the court is to protect children from harm. It is not to improve their life chances or to move them to placements where they will be better off.' This is a distorted interpretation of the statutory welfare checklist in s 1(4) of the 2002 Act. The factors in that list include 'any harm ... which the child has suffered or is likely to suffer' but it also includes a range of other factors, including the ability of the child's parents and others to provide the child with a secure environment in which the child can develop and otherwise to meet the child's needs. **Where the court concludes that a child has suffered or is likely to suffer significant harm as a result of the parents' care, the court is obliged to consider all the relevant factors in the statutory checklist in order to determine which outcome best provides for the child's welfare throughout their life.**

[71] I am equally concerned by the judge's further comment that 'the mother cannot be completely ruled out' and that, although 'at present the risks to the children of a return to her care are simply too great', she also 'has much she can offer' once she has resolved her emotional and psychological problems. It is not entirely clear what he was intending to convey by these comments. It may be that he was intending merely to express his view that the continuation of a relationship between R and C and their mother was of value to the children. But the terms in which **he expressed himself imply that he was holding out the prospect of the children returning to their mother at some point in the future.** If so, this was no more than a speculative hope. There was no evidence on which he could have concluded that she would succeed in overcoming her problems so that, in the words of paragraph (f)(ii) of the checklist, she would acquire the ability to 'provide the child[ren] with a secure environment in which [they] can develop and otherwise to meet [their] needs'.

[72] Overall, the judge's reasoning in paras 44 and 45 of the judgment failed to provide a sufficiently robust and rigorous analysis of the advantages and the disadvantages of the realistic options for the children, as required by repeated decisions of this Court, in particular in *Re G* [2013] EWCA Civ 965 and *Re B-S* [2013] EWCA Civ 1146. As McFarlane LJ said in *Re G*, at para 54, 'What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives and each option is then compared, side by side, against the competing option or options'. Here, the judge identified many of the advantages and disadvantages of adoption and long-term fostering in the preceding paragraphs, but his ultimate analysis of the competing factors lacked the necessary balance."

40. I have highlighted the key findings but the takeaway is clear – it is the court's role to set the template and deal with contact with the child's welfare throughout its life at the forefront.
41. **Re S [Re S (placement Order Contact) [2015] EWCA Civ 823 ["Re S"]]** follows. This was an appeal against a decision not to make a s26 contact order. In the event the appeal was refused, however this judgment constitutes a comprehensive revision of

where we are to date, a summary of the relevant statute and precedent and sets out the following by way of valuable guidance:

42. **The legal framework is summarised from § 13 including the following:**

13. The lodestar provision in the ACA 2002 is section 1 which stipulates the considerations that apply to the exercise of powers under the Act:

(1) Subsections (2) to (4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court or adoption agency must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

43. It pays tribute to Baker LJ's judgement in Re R and summarises the three key authorities which bring us to Re S.

"21. Despite the fact that s 26 has been on the statute book and in force for two decades, there is very little caselaw from the higher courts as to its application to, and impact upon, the court's approach to contact at the placement for adoption order stage. Fortunately, in terms of the length of this judgment, in Re R (Children) [2024] EWCA Civ 1302 Baker LJ's judgment includes a comprehensive review of the legal background, including the 'changing nature of adoption', the statutory provisions, the case law and 'other recent developments'. The latter heading referred to a lecture that I had delivered in two parts on 'Adapting Adoption to the Modern World' 1 in November 2023 and May 2024, but did not refer to the important report of the President's Public Law Working Group ['PLWG'] making recommendations for good practice in adoption which was not published until November 2024 (after the judgment in Re R had

https://www.judiciary.uk/speech-by-sir-andrew-mcfarlane-adapting-adoption-to-the-modern-world/ https://www.judiciary.uk/speech-by-the-president-of-the-family-division-adapting-adoption-to-the-modern-world-part-two/) Baker LJ's review of the legal background is authoritative and thorough and I do not intend, therefore, to re-till that ground here.

22. It is, however, necessary to identify the three key authorities on contact at the placement order stage (including Re R) and give an account of what is to be taken from them for application to future cases."

44. I will borrow the PFD's summaries for the purposes of this handout:

"23. The first is Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 535 [Thorpe LJ, Wall LJ and Munby J], in which a s 26 order for inter-sibling contact had been made alongside placement orders for two siblings who might not be placed in the same adoptive home. The appeal was against the making of the substantive placement order, and not the contact order, but in the course of his judgment Wall LJ, giving the judgment of the court, observed [paragraph 151] that it was recognised by all parties that the relationship between the siblings needed to be preserved. On that basis, he held that:

*'the question of contact between the two children is not a matter for agreement between the local authority and the adopters; it is a matter **which, ultimately, is for the Court.** It is the Court*

which will have to make adoption orders or orders revoking the placement orders, and in our judgment, it is the Court which has the responsibility to make orders for contact if they are required in the interests of the two children.'

24. *In Re P, both of the children presented troubling behaviour as a result of the care that they had experienced in the family home. Finding adoptive placements for them was not an easy task, but, as the trial judge held, it was nevertheless 'key' that the two should continue to have contact with each other. Previously the local authority had unilaterally terminated the contact between one of the children and her mother, without resort to the court. Wall LJ expressed concern at that turn of events [paragraph 54] and observed that 'in our judgment it reinforces the point made by the guardian that the children's right to contact with each other, in particular, needs to be **safeguarded by a court order for contact**'. The importance of maintaining contact between the children was such that the Court of Appeal considered that if it turned out that prospective adopters were unwilling to support that contact, then that would provide a proper basis for their mother to apply for leave to apply to revoke the placement order [paragraph 150].*

25. *The second case is Re D-S (A Child: Adoption or Fostering) [2024] EWCA Civ 948, which concerned an 11 month old child ['C'] with two older half-siblings who were in long-term foster care. At first instance, a judge had refused to make a placement order with respect to C. The appeal was allowed, and, rather than remitting the case, the Court of Appeal made a placement order. In doing so, Peter Jackson LJ said [para 17]:*

*'We will make a placement order on the basis of the local authority's plan, which aims for there to be some contact before and after adoption. **We will not make a contact order, because that might complicate the search for adopters, which must be the priority.**'*

26. *In conducting his evaluation of C's welfare Peter Jackson LJ held, at paragraph 52, that 'the dominant feature of C's present situation is ... her particular needs at her very young age. At the heart of the matter, she needs a lifelong family where she can feel that she belongs. I agree with the professional assessment ... that this can only happen through adoption'. The advantages of adoption were 'overwhelming' and even if contact could not be arranged the welfare outcome favouring adoption 'is the same' [paragraph 55].*

27. *The court's reasoning with respect to contact was understandably short as it had not been a principal issue in the appeal. At paragraph 56, Peter Jackson LJ said:*

'As to contact, the local authority can be expected to honour its care plan for current contact, and for a 3-month search for adopters who will accommodate meetings with family members. ... Overall, it would not be better for us to make a contact order, in fact it might be detrimental to the greater priority of finding an adoptive family for C.'

28. The earlier decision in *Re P* was not referred to in the judgments in *Re D-S*, but there is a clear distinction on the facts between the two cases with continuing contact being 'key' in *Re P* in contrast to *Re D-S* where the need to achieve an adoption was the 'overwhelming' factor, even if it were at the expense of contact.

29. The third authority is *Re R* itself. [Please see above]

45. The key is that:

*"32. Standing back from these three authorities, there is a distinction to be drawn between those cases where continuing direct sibling contact is considered to be necessary for the child's future welfare, and cases where the achievement of an adoptive home is the overarching goal, with future sibling contact being desirable as opposed to a prerequisite. In the former circumstances (as in *Re P* and *Re R*) the court has 'a responsibility' to make a s 26 contact order.*

33. As Baker LJ held in *Re R*, each case will fall to be determined on its own facts. The two authorities where an order was made were cases where to do so was justified by the degree of importance that continued sibling contact had as part of the overall adoptive plan."

46. Please note the resources referred to by the ALC and CoramBAAF as follows:

63. The ALC quoted from an article by Professor Neil, 'Maintaining Children's Birth Family Relationships in Adoption' [2024] Fam Law 575:

'Once the child's needs in relation to maintaining relationships have been clearly identified, in searching for adopters at the matching stage these needs must be given priority alongside other needs. It is not good enough to allow the child's contact plans to be driven primarily by the wishes of adoptive parents, or indeed the perceived wishes of as yet unidentified adoptive parents (as happens when contact plans are scaled back lest they 'put off' prospective adopters). It is however vital that once adopters are identified they can have input into the exact shape of contact plans and in determining what support is needed'.....

68. CoramBAAF told the court that there is 'a great deal of confusion' over the approach that should now be taken to issues of contact at the placement order stage. One area of confusion is said to arise from the decision of this court in *Re R (Children)*. As I have already described, *Re R* concerned four siblings, two of whom were to remain in foster care, with the younger two moving to adoption. The care plan provided for direct contact between the siblings at a minimum of six visits a year. The appeal against the refusal of the placement order was allowed and, rather than remitting the case back to the Family Court, the Court of Appeal made a placement for adoption order for the two younger children and made an order under s 26 for visiting contact between the four siblings six times per year.

69. *The point to which Ms Conroy Harris drew attention in terms of the impact of the decision in Re R in the lower courts was that, where continuing direct contact was agreed to be in a child's best interest, courts were, she said, routinely imposing a regime for 'six visits per year' in each case, irrespective of whatever frequency of contact may have been recommended in any of the particular cases. Pausing there, if that is so, then it is a concerning development and one which surprised this court when we were told about"*

47. The point is this – that contact is bespoke to the individual child taking into account their welfare and should not be dictated, or the balance should not be tipped by an assumption of what an adopter's view of those contact arrangements might be.

48. CoramBAFF have launched a revised template for the Child's Permanence Report where the term 'staying in touch' has now replaced 'contact.'

49. It would be wrong for the risk of deferring potential adopters to become or be a determining factor in every case (and pausing there is this not almost always something raised within this discussion, more frequently than one sees a bespoke assessment of the child's needs?)

50. The key point is that this is a case and child dependent exercise and that,

"76. When evaluating the issue of contact, the welfare provisions in s 1, with their life-long perspective, apply in full. It is likely that s 1(4)(c) and (f)(i) will be of particular importance in assessing the value of future contact:

'(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,'

'(f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,'

51. The heart of the judgment lies at §77- 80:

77. Although, in strict legal terms, a contact order made under s 26 is limited to the period between the making of a placement order and either the ultimate adoption of the child or the discharge of the placement and/or contact order, the requirement for the court to afford paramount consideration to the child's welfare 'throughout his life' means that the s 26 decision must look to the place that contact during this crucial transitional phase of placement for adoption will play in the child's overall, life-long, welfare requirements. It may be helpful for professional evidence to be set out in a way

that offers the court and the parties a 'road map' for contact looking forward, through the initial placement stage, and onto the longer term future.

78. In that regard, it may be helpful for the court to consider dividing the period to be covered by any s 26 contact order into two, 'phase one' and 'phase two', with phase one running up to the point where a placement for adoption has been identified, and phase two running thereafter. In the present case, the plan is for sibling contact to be fortnightly pending the identification of a placement, but reducing to two direct and two indirect occasions each year thereafter. In such a case an order might be made expressly providing that at the end of phase one, prior to or at the time of placement, an application to vary or revoke the order may be made under s 27(1)(b). Alternatively, phase two might simply identify the court's endorsement of the principle that some level of direct contact should continue, or set a bare minimum, without being unduly prescriptive.

79. The need for a bespoke analysis of the future contact arrangements in each case for each child, as required by the statute, cannot be too firmly stressed. If, where some continuing direct sibling contact is justified, courts are, astonishingly, fixing the level at six times per year simply because that was the rate endorsed by the Court of Appeal in *Re R*, they are wholly wrong to do so. Just as the decision whether an order is necessary will turn on the particular facts of each case, so too will the detailed contact arrangements.

80. Finally, in terms of general observations on this issue, I wish to endorse Ms Conroy Harris' valuable suggestion that a form of s 26 order which recognised the importance of continuing contact, but allowed for a significant degree of flexibility, might be the most appropriate means of meeting a child's needs in some cases. An express order for finite contact arrangements, specifying the number and circumstances in which it is to take place, may not be apt in some cases. Given the number of uncertainties in play at the time that a placement order is being made, a more flexible statement of the road map for future contact that the court has determined for the child may well be more appropriate. In such cases, rather than having an order for contact in concrete terms, the court might record its views, and its endorsement of the future contact plans, in a recital to the placement order. Although whether to make, or not to make, an order is a binary choice, the terms of any order where justified can, and should, be used to establish flexibility over the contact arrangements where this is justified. Where a precise order for contact may not be appropriate, courts should therefore be encouraged to use recitals in a placement order and/or a s 26 order, setting out in short terms its welfare conclusion as to future contact.

52. The need for bespoke analysis and how the court records that either by way of a recital or an order, as proposed here, sits comfortably, in my view, with the no order principle.

53. What now? I have been able to locate post Re S decisions where recitals have been used, but as yet have not identified any s26 orders. (*A Local Authority v Mother, Father & A (A Child)* [2025] EWFC 217 (B), *Buckinghamshire CC v U&V* [2025] EWFC 365 (B)).
54. I invite you all to keep me posted immediately should you run a case where an order is made. Hopefully what this means is that practice will shift. We will see detailed analysis of contact needs, clearer planning and more judicial time spent on this issue. Let me know whether the tide turns on this and the sea change occurs.

Cleo Perry KC

4PB

19.11.25