



Review of Contact Arrangements for Children in Care: A call for views

Family Rights Group's Response August 2012

For further information contact:
Cathy Ashley (cashley@frg.org.uk)
Bridget Lindley (blindley@frg.org.uk)
David Roth (droth@frg.org.uk)

Family Rights Group
The Print House
18 Ashwin Street
London E83DL
Tel: 0207 9232628
www.frg.org.uk

1. About Family Rights Group

1.1 Family Rights Group advises and supports parents and wider family members in England and Wales who are involved with local authority children's services about the needs, care and protection of their children. The Charity was founded in 1974. We promote the involvement and support of family members in making safe plans for their children which will enhance their welfare. We campaign to challenge injustice, to improve access to effective services, and to increase the voice children and families have over decisions affecting their lives. Our free telephone and email advice service advises 7,000 parents and relatives per year about their legal rights and the options open to them:

- within the local authority decision-making processes for supporting and safeguarding vulnerable children, including when there are child protection concerns, before care proceedings are issued, and when children are looked after in the care system, including those for whom the plan is adoption;
- when family and friends carers are considering the different legal arrangements under which they could raise such children; and
- when a court application is made by the local authority for an emergency protection order, care order or placement order.

1.2 We also:

- publish a wide range of advice sheets on all aspects of child care law and practice which can be downloaded from our website at www.frg.org.uk/advice_sheets.html;
- run a web based discussion board for parents;
- run a web-based electronic discussion board and set up support groups for family and friends carers, including grandparents who are raising children unable to live with their parents;
- convene the Kinship Care Alliance and national Family Group Conference Network;
- run training courses on a regular basis for child care professionals including Independent Reviewing Officers;
- run action research programmes, for example on contact arrangements with parents and relatives for children living with family and friends carers; and
- lobby for improvements in childcare law and practice.

1.3 This submission is informed by our direct work with families who are involved with local authority and judicial decision-making processes which are concerned with the safety and well-being of their children.

2. Introduction and historical context:

2.1.1 We welcome the opportunity presented by this discussion document Contact Arrangements for Children: A Call for Views to open up a debate about one of the most significant issues for children who are in the care system or adopted, i.e. contact with their birth families and others. This issue has not been reviewed since the Children Bill was debated in parliament prior to enactment in 1989.

2.1.2 At that time there was clear research evidence on contact¹ indicating that:

- children benefited from maintaining important existing relationships, yet little took place because local authorities did not do enough to promote contact for children in the care system. For example Rowe et al found that only 21% of children in long term foster care had had any contact in the previous 12 months;
- the key to children being discharged from care early was maintaining good quality contact with their family;
- even for those children who did not return home, contact was key to children developing a positive sense of their own identity, helping them to understand the circumstances that led them to be separated from their birth family and providing an up-to-date source of information about their personal history and family of origin.

2.1.3 This research evidence, together with a number of cases brought by parents and relatives² who were not being allowed contact with their children in care³, influenced the Law Commission Report on child care⁴ which recommended there should be a presumption of contact for children in the care system including those under voluntary arrangements. They considered it not only to be the right of the parent but also the right of the child to see their family. This resulted in two key duties being included in the Children Act (CA) 1989:

- i) the duty on the local authority to allow reasonable contact between children in care and their parents, others with parental responsibility and other key people unless the court authorises the termination of contact (s.34 CA 1989), although

¹ Millham, Bullock, Hosie and Haak (1986) *Lost in care* Aldershot: Gower Publishing; Rowe, Cain, Hundleby and Keane (1984) *Long term Foster care* London: BAAF; Fanshel, D and Shinn, E (1978). *Children in foster care: A longitudinal investigation*. New York: Columbia University Press; DHSS (1985) *Social Work Decisions in Child Care: Recent Research Findings and Their Implications* London: HMSO

²For example, A –v- Liverpool City Council 1981; 2 AER 385; R- Bolton MBC ex parte B 1985 FLR 343.

³ The Health and Social Security Act and Social Services Act 1983 introduced a new right for parents to apply for contact with their child when they were in care under a court order. It did not apply to voluntary arrangements. This led to a number of challenges to local authority decision making about contact during the 1980's but later research by Millham et al (*Access Disputes in Childcare*, Gower) found that it had only limited success hence the need for further legislation to introduce contact duties on local authorities in the 1989 Act.

⁴ Law Commission Report no 172, 1988

Regulations allowed for contact to be suspended by the local authority in an emergency without such authorisation for up to 7 days;⁵ and

- ii) the duty on the local authority to endeavour to promote contact between all looked after children and their parents and other family members provided it is consistent with the child's welfare and reasonably practicable (Sched 2 para 15 CA 1989).

This includes children in voluntary accommodation under s.20 CA 1989

2.1.4 These duties were supported by statutory guidance which, drawing heavily on the research, set out the importance of contact for looked after children even when children are likely to stay in care long term.⁶

2.1.5 Although the research evidence cited in the discussion document highlights some of the difficulties presented by contact, particularly for infants, most of these relate to practical difficulties such as travelling making the infant tired, the stresses of disruption to their daily routine etc. No research is cited which contradicts the basic premise which underpins the existing Children Act contact duties cited above, namely that contact is generally beneficial for children in the looked after system.

2.1.6 The great majority (93%) of looked after children return home to their families or home communities.⁷ In our view, any policy on contact should therefore support these children's basic need to remain in touch with their family to optimise this majority outcome. Indeed our concern is that, given the extreme pressure on local government staff and resources, contact may well not be prioritised by local authorities, despite children's needs and their expressed wish for more contact⁸, unless it is a statutory requirement. If the existing contact duties were removed as proposed, it would leave parents in the bizarre position of having parental responsibility but being prevented by the local authority from having contact with their child, who may be accommodated under S20, without the authority having to go to court to prove why such action was in the child's interest. This would be bound to result in an increase in litigation on contact and under the Human Rights Act 1998, brought not only by parents and relatives but also by children whose rights are being infringed, at additional expense to the public purse. In our view, government policy should not only retain the existing contact duties but should also seek to improve the support for contact by addressing some of the identified practical difficulties, so as to enhance the chances of it being a positive experience for children in the looked after system.

⁵ Review of Children's cases Regulations 1991, now replaced by Reg. 8, CPPCRR 2010

⁶ Children Act 1989 Regulations and Guidance Volume 3, HMSO para 6.9

⁷ Bullock, Gooch and Little (1988) *Children going home: the re-unification of families* Aldershot: Ashgate

⁸ Timms, JE and Thoburn, J (2003) *Your Shout! A Survey of the Views of 706 Children and Young People in Public Care* London: NSPCC

- 2.1.7 Furthermore, we fear that the analysis of contact and the proposals made in this discussion document are skewed by an over-emphasis on children who are or may be placed for adoption, for whom less or no contact may be more appropriate than for looked after children. This is despite the fact that the document itself cites statistics which confirm that adoption is a minority outcome for looked after children. We entirely agree that there will be a minority of cases in which contact is not in the best interests of a looked after child because it might be harmful to them. In these circumstances, the current legal framework already empowers the court to terminate where the child's welfare requires it. We are not aware of any evidence to suggest that whilst children continue to be looked after this system does not provide adequate protection for them. There is therefore no justification for changing the existing system for looked after children and to do so could profoundly damage the welfare of by far the majority of looked after children.
- 2.1.8 With regard to children who are subject to placement orders with a clear plan for adoption, the law already treats the question of contact differently to other children in the looked after system, because once a placement order is made the Children Act contact duties cited above cease to have effect. The court is required to consider contact at the placement order stage⁹ but there is no duty or presumption to allow contact from this point onwards. It is decided on a case by case basis according to the child's individual welfare needs. No evidence is presented that this system is not working satisfactorily and it does not add extra delay to the court process because contact is considered at the same time as the placement order application. We cannot therefore see any reason to change the existing system.
- 2.1.9 We are very concerned that the proposals in this document may have been overly influenced by the government's proposal to promote a policy of 'foster before adoption' whereby local authorities will be required to consider placing children with approved adopters who will **foster first** before an application for adoption has been made. In these circumstances the child will be a looked after child hence the Children Act contact duties cited above will apply (although it can of course be terminated by the court in the small minority of cases where the child's welfare requires it). Whilst the views and wishes of potential adopters may be relevant to what long term contact arrangements are appropriate for an adopted child, at this stage they are foster carers (who don't have parental responsibility), hence their views should not override the child's right to have contact with their family.
- 2.1.10 When considering the views submitted in this consultation we would urge the government to take full account of:
- i) the reasons why the Children Act 1989 introduced duties to allow contact with looked after children, namely that research highlighted the positive short and long

⁹ S.27(4) Adoption and Children Act 2002

term benefits of contact for children in the care system and that there is no new research to contradict this;

- ii) The fact that the long term outcome for the vast majority of children is that they return home, hence the legal framework should support, rather than undermine their continuing family relationships;
- iii) The fact that contact often did not happen before these duties were implemented without the local authority being required to arrange it;
- iv) The likelihood of increased litigation about contact from parents, young people and other family members if the contact duties are removed;
- v) The existing legal framework adequately protects children for whom contact is not in their best interests as the court may already terminate it on a case by case basis according to the child's best interests;
- vi) Only a very small number of looked after children will be subject to a plan for adoption and in any event the duty to allow contact ceases once the plan for a child's adoption is confirmed by the court when a placement order is made.

2. 2 Summary of main concerns about the document's proposals

We are concerned that the discussion document is flawed in a number of areas:

2. 2.1 There is an inherent contradiction between the declared aim on the one hand of assessing each contact arrangement according to the child's individual welfare needs, and on the other attempting to impose presumptions of reduced or no contact that will form that basis for decisions. This leads to the following misguided proposals:

- that stress caused to infants by factors like travel arrangements should be addressed by reducing contact rather than by making travel arrangements (or other causes of stress) less stressful;
- that there should be a presumption of no contact for children who are going to be adopted, which contradicts the idea of considering each case on its own merits; and
- that parents who want to have contact with children who are going to be adopted should have to go through an additional layer of court process (a 'permission filter') while the time remaining before the child's adoption may already be short.

2.2.2 It fails to acknowledge the importance of maintaining the child's relationships with their parents and other key family relationships through positive contact when proceedings are live and a final decision of the court is awaited. Instead it seems to revert to the pre Children Act 1989 position of leaving contact to the discretion of the local authority which may well result in the next generation of looked after children being once again 'Lost in care'.¹⁰

¹⁰ Millham et al (1986) ibid

- 2.2.3 It does not address the situation of children living with family and friends carers, when there are reliably estimated to be 200,000 to 300,000 children nationally living in this arrangement,¹¹ many as the result of social work interventions and some of whom are looked after and placed with relatives.¹² Family connections between parents and carers, and lack of social work support, mean that contact in these placements can have distinctive difficulties, for example where the relationship between the carer and the parent has become strained, leading to tensions in the contact arrangements, and the carer nevertheless has to manage this without support or assistance.¹³ Any framework for addressing contact issues should include the support needs of family and friends placements where there is contact;
- 2.2.4 It fails to address the vast range of relatives and other significant relationships the child has, thereby overlooking key aspects of their well-being. Looked after children are at particular risk of losing contact with their grandparents, siblings and friends, and many children in care report this as a significant loss;¹⁴ and
- 2.2.5 There are no recommendations to consult with the children concerned in individual cases, meaning that the very people for whose benefit it is said these proposals were put forward are not to be given a voice. The only non-professionals whose voice is to be considered, according to the document, are adopters, who are to be given additional powers to apply for termination of contact.

2.3 Key recommendations

We recommend that:

- 2.3.1 For children in care, including those for whom there is not yet a placement order, the existing contact duties in s.34 and schedule 2 para 15 CA 1989 should remain. It could be that the best plan for some children will be that contact should be terminated, but the existing legal framework allows for this, with the court applying the welfare principle and checklist. Large numbers of children in care already feel that they are not having enough contact with their parents, siblings and others.¹⁵ We do not have confidence that local authorities which are already stretched for

¹¹ Richards, A and Tapsfield, R (2003) *Funding Family and Friends Care: The Way Forward* London: Family Rights Group

¹² For looked after children who cannot be placed with a parent or a person with parental responsibility, the first choice of placement is with relatives who are approved as local authority foster carers (s.22C CA 1989).

¹³ Roth, Tunnard, Lindley, DeGaye and Ashley (2011) *Managing contact: Research findings on managing contact with parents and relatives for children living in family and friends care arrangements* London: Family Rights Group

¹⁴ Morgan, R (2009) *Keeping in touch* London: Ofsted; Timms, JE and Thoburn, J (2003) *Your Shout! A Survey of the Views of 706 Children and Young People in Public Care* NSPCC

¹⁵ Timms, J and Thoburn, J (2003) *ibid*

resources will consistently ensure meaningful contact takes place, if there is not a duty on them to do so.

- 2.3.2 Children should be consulted about their wishes for contact, and asked who they wish to see and how often. There should be open discussion with them about contact with grandparents, siblings, friends and other people who are significant to them, and the arrangements should be reviewed regularly with the children.
- 2.3.3 Where contact is said to be stressful for children, including infants, there should be an assessment of what is making it stressful and appropriate support put in place to diminish the stress. This might involve changing the venue for contact or the travel arrangements, or it might involve making greater use of mediation to help resolve any tensions arising between the foster carer and the family member during contact in the foster home. If the contact itself is not causing the stress, then the solution should be to address the cause of stress rather than to reduce the contact
- 2.3.4 There should be evidence-based guidance on managing contact for children in family and friends placements, recognising the tensions that can arise between family members in these placements, and the low level of support they are currently provided with.
- 2.3.5 An evaluation of the risks and benefits to a child of having contact with their birth family should also include an evaluation of the effects that denying contact could have on the child. While for some children breaking off birth family contact will be the best plan, breaking off contact can also have negative effects, for example children feeling a loss of identity¹⁶, anxiety about the family members they are not seeing, leading to some children running away,¹⁷ and for children separated from siblings there can be a lifelong sense of loss.¹⁸
- 2.3.6 There should be no presumption about contact, either that it will take place or that it will not, for adopted children. It is likely that the majority of adopted children will not have direct contact with their birth family, and for many this will be the right plan. But there are still a significant number of adopted children who maintain links with their birth family, enabling them to find out more about their family and identity, especially when they are adults. There are sound, research-based indicators that can be used to assess which adopted children are likely to find post-adoption contact beneficial,

¹⁶ Harris, P (2006) *In search of belonging: Reflections by transracially adopted people* London: BAAF

¹⁷ Morgan, R (2009) *ibid*; Timms, J and Thoburn, J (2003) *ibid*

¹⁸ Prynne, B (1999) 'Looking back: Childhood separations revisited' in *We are family: Sibling relationships in placement and beyond* London: BAAF

and these children should be matched as far as possible with adopters who are open to keeping such links alive for their children's long term well-being.¹⁹

¹⁹ It should not be forgotten that the Children Act 1975 introduced the right for adopted adults to seek information about their birth family in response to a report by the Houghton Committee which cited evidence of adopted adults in so-called closed adoptions wanting to know more about their personal history.

3 Detailed response to the discussion document

3.1 Contact arrangements for children in care

3.1.1 The discussion document makes a number of significant points that must be considered in any discussion about contact arrangements for children in care. Among these points are:

- As stated in the introduction, the most likely outcome for a child entering the care system is that they will return home again, and contact with birth families can assist this, although not enough work is done with birth families to prepare for this, particularly through purposeful contact
- Many children in care are having significant levels of family contact, with a minority of around one in six having no family contact
- Local authorities are required to make contact arrangements with the child's birth parents, but where they consider it is not in the child's best interests they have the power to temporarily suspend contact or apply to court for it to be terminated
- Contact can have many important benefits for children in care. These include:
 - staying in touch with people they love and people who are important to them
 - helping to make sense of their experiences
 - continuity of important relationships
 - it's what most children want.

3.1.2 However, we feel that some of the assertions made in the discussion document about contact bear some further examination.

3.2 Contact 'planned with a purpose'

3.2.1 It is stated that "*Contact should be planned with a purpose.*"²⁰ This is fine as far as it goes, but it needs to be recognised that the terms 'planned' and 'with a purpose' can encapsulate a wide variety of meanings with regard to contact. Certainly, where there is some risk of harm to children, contact can require careful planning, to ensure not only that children are physically safe during contact but also that they are helped to feel secure. However, there are also contact arrangements with a lower degree of risk, where contact arrangements take place more informally. Iain Sinclair found that 40-50% of looked after children were having weekly contact with a family member,²¹ and a Family Rights Group survey of 92 family and friends carers²² found that 23% of the children who were having contact with their mother were seeing her at least once a week, with 5% seeing her daily, and 14% of those having contact with their father were seeing him at least weekly, with 3% seeing him daily. Where contact has

²⁰ DfE and Narey, M (2012) *Contact arrangements for children: a call for views*

²¹ Sinclair, I (2005) *Fostering Now: messages from research* London: Jessica Kingsley

²² Roth, Tunnard, Lindley, DeGaye and Ashley (2011) *ibid*

become such a routine feature of a child's life, it will often just be planned between the parties concerned, within certain agreed parameters, without requiring the careful planning that is needed where the risks are higher.

3.2.2 Similarly, the statement that contact should have a purpose seems to imply that it should be working towards a goal, such as the child's reunification with family. In some cases, this will be the purpose of contact, but in other instances the purpose will just be that the child can spend time with someone they love but are unable to live with. To be without it would cause them loss for which they would grieve. We would suggest that there should be a recognition that contact does not always have to be goal-oriented; it can often simply be beneficial in itself. Recognising the different types of purpose that contact can have would enable appropriate support and safeguards to be put in place when contact is being planned.

3.3 Practical arrangements for contact

3.3.1 The document discusses the practical arrangements for contact, presenting some of the problems described by foster carers and children, and claims made arising from research into contact for infants. For older children, there are worries around travelling long distances and being taken by escorts they don't know. It is suggested that *"Involving birth parents in contact arrangements at an early stage can help avoid negative or disruptive relationships between birth parents, the local authority and the foster carers and makes contact arrangements work better for the children concerned."*²³ For infants, it is said that a study of Coram's concurrent planning project²⁴ showed that contact of several hours a day for three to five (or more) days a week could disrupt their daily routines and cause them distress.

3.3.2 **We would wholeheartedly endorse the suggestion that parents should be involved in making contact arrangements at the earliest date possible.** It is extremely important that local authorities work in close partnership with the parents of children in care, whether this is towards reunification or to assist the child's move on to a permanent alternative placement; the arrangements for contact between children and their parents is one of the key areas where partnership working must be put into practical effect.

3.4 Proposals addressing practical difficulties around contact

²³ DfE and Narey, M (2012) *ibid*

²⁴ Kenrick, J (2009) Concurrent planning: a retrospective study of the continuities and discontinuities of care and their impact on the development of infant and young children placed for adoption by the Coram Concurrent Planning project. *Adoption and Fostering* 33:4, 5-18

3.4.1 The impact on children of travelling long distances to contact, with escorts they do not know, is surely something that can be addressed by using some relatively straightforward measures, including:

Where contact takes place in the foster carer's home.

- While we recognise that there will be some instances where this cannot take place, because of risks to the child and the foster carer. We would suggest the following:
 - an expectation that parents can visit children in foster homes should become part of the induction and preparation of foster carers, subject where necessary to a risk assessment
 - contact supervision should be included as a task in the professionalisation of foster care
 - wherever possible, foster placements should be within easy travelling distance for contact, particularly for parents visiting infants and children having contact with parents in prison
 - contact supervisors should travel to the homes of foster carers where independent supervision and evaluation of contact is required
 - standard contact agreements should be drawn up between parents, foster carers and social workers. They should include the time, dates, place, length of time of contact arrangements, what any party should do if they cannot keep an appointment or are going to be late, whether time will be made up for missed or late contacts, how this will be decided, any behaviour that will be unacceptable during contact, and what the foster carer should do in this event.

3.4.2 We recognise that in some cases the relationship between parents and foster carers can be difficult. Parents who are angry about local authority involvement with their child may vent against the foster carer, and foster carers may be exposed to the risk of false allegations. While every effort should be made to avoid exposing foster carers to these problems, these risks must be counterbalanced by the benefits of contact taking place in the foster home. The parents will be able to see where their child is staying, and hopefully be reassured about the child's living circumstances. The child will be given the opportunity to see their parents and their foster carer working cooperatively in their interest. The contact itself can take place more naturally in someone's home, rather than the artificial environment of a contact centre, which, regardless of how well designed, will invariably inhibit the way children and parents can relate to each other. The child will avoid being taken long distances by strangers to meet their parents, in many cases having to spend this time with their parents while being observed by strangers.

3.4.3 Where there are specific problems in the inter-personal dynamics of contact in the foster home, far greater use could be made of family mediation, now well established in private law but under-used in public law cases, to resolve such tensions and improve the arrangements.

3.4.4 When contact is not in the foster home:

Where contact cannot take place in the foster carer's home, then it should take place in a location that is near to the child, with the foster carer or a member of the foster family wherever possible being the person to take the child to and from contact. Only where this is clearly not possible should an escort be used, and then every effort should be made to use the same escort, who is able to build a relationship with the child.

3.4.5 We realise that for some local authorities and fostering agencies, these proposals will mean making additional demands of their foster carers. We would advocate that preparation and training for foster carers should include an explanation of why it can benefit children for contact to take place in the foster carer's home, with the foster carer working in partnership with parents, so that this becomes a routine expectation of foster carers wherever it can happen safely for children and carers.

3.4.6 It should also be noted that, **although contact can result in challenges for foster carers or residential staff who are raising children in care, denial of contact can also lead to problems.** Timms and Thoburn²⁵ report that *"There is evidence that the chronic anxiety of separation being experienced by so many children may itself undermine their capacity to make new relationships or to settle in new places. It may also lead to their running away in order to reassure themselves about what is going on at home"*. This was supported by the discussions about contact with looked after children in *Keeping in touch*,²⁶ who described running away from placements to see family members they were denied contact with.

3.5 Proposed contact arrangements for infants

3.5.1 **We do not agree with the document's recommendation that the starting point of contact for children under two should be no more than 2 or 3 sessions a week of no more than 2 hours each.** Schofield and Simmons (2011)²⁷ examine the research basis this proposal is derived from, and make a number of recommendations for decision-making around infant contact plans during care proceedings. Discussing the issues of frequency and length of contact, they write *"The goal is to achieve good-quality contact that enables the infant to experience their parent as a familiar figure with whom contact visits are enjoyable and rewarding, and that enables the parent to interact with, care for and enjoy their child, and to retain their role as parents. But this frequency should be at a level that does not interfere with the infant's need for consistent physical and emotional care in the*

²⁵ Timms, JE and Thoburn, J (2003) *ibid*

²⁶ Morgan, R (2009) *ibid*

²⁷ Schofield, G and Simmonds, J (2011) Contact for infants subject to care proceedings. *Adoption and Fostering*, 35:4, 70-74

foster home and to form a positive relationship with the foster carer. This must include sufficient recovery time from stressful experiences.”

3.5.2 In order to stop the contact being stressful, they recommend the following issues be addressed:

- A welcoming, friendly venue
- Travel arrangements to address distance and consistent escort arrangements
- Supervision to prioritise the needs of the infant
- Practical and emotional support for parents
- Consideration of all these factors as a whole package which is reviewed throughout proceedings so as to promote and protect the infant’s development.

3.5.3 Scholes and Simmonds make no recommendations about a starting point for frequency of contact arrangements, and we would follow this approach. It has to be recognised that an important purpose of contact is to allow the infant to maintain their relationship with the people who have until this point been the most consistent persons in their life. **If the factors that cause infants distress when they have contact are not the contact itself, but rather the disruptions to its routines, the long journeys to contact venues, the unsuitability of the venue where contact is taking place, or are due to the lack of practical and emotional support given to the parents, then we would suggest that the solution is to address these issues, and not to reduce contact to levels that will undermine the relationship between parent and child.**

3.6 Contact leading to reunification

3.6.1 Children may be living separately from their parents in public care for a variety of reasons, often as a temporary measure requested by the parent during a difficult period, and with the aim of the child returning to them after the situation has improved. Even where there are care proceedings, the question of whether the parents have caused ‘significant harm’ will not have been settled at the outset of proceedings, when the arrangements for contact are being agreed. It may be that through the legal process parents are able to demonstrate that the threshold of significant harm was not met, or that they have been able to deal with the issues that gave rise to the local authority’s concerns. Maintaining a high level of contact will enable children to maintain continuity in their relationship with their parents and wider family, which has already been disrupted by leaving their parents to live in foster care. If the children return to live with their parents, maintaining this continuity will prove vital: Sen and Broadhurst (2011) in their research review of contact for children who are in out-of-home placements, find that *“There is consistent evidence*

that children who enjoy regular contact are more likely to return to parental care”,²⁸ particularly where it takes place in combination with certain other identified factors, and where there is a thorough assessment of the family’s capacity and readiness for reunification.

3.6.2 Clearly there has to be flexibility in the approach to contact during proceedings. Where during the course of proceedings contact arrangements are going well, parents keep to the contact arrangement, they demonstrate parenting skills, and are able to confront and deal with concerns which may have led to their children being separated from them, then it should be possible to work to a programme of increasing contact leading to reunification between children and parents. Conversely, where parents do not keep to the arrangements, do not demonstrate satisfactory parenting skills, and behave in ways that are risky to the children, the court would be justified in changing the contact arrangements so as to make them safe and secure for the child, including setting contact at lower levels, until such time as the parents demonstrate a capacity to care safely for their children.

3.7 The duty to allow ‘reasonable contact’

3.7.1 **We would oppose the document’s proposal to “look again at the duties on local authorities in primary legislation to allow children in care reasonable contact with their birth parents and to promote contact for looked after children”,²⁹ in order to “redress the balance”.³⁰** The existing legal duties around contact are already subject to consideration of the child’s welfare in individual cases because:

- In the case of s.34 duty to allow contact with children in care under a care order, the local authority will apply to court to terminate it if it considers it is not in the best interests of a particular child;
- In the case of the sched 2 para 15 duty to endeavour to promote contact between looked after children and their families it is explicitly stated in the statute that this is subject to it being consistent with the child’s welfare.

3.7.2 Despite the discussion document stating that its authors “do not want to see a return to contact being exceptional rather than the norm”,³¹ we do not have confidence that local authorities will prioritise assisting children in care to maintain family contact where there is no duty on them to do so. It has to be recognised that for the child, the loss of family contact involves the loss of significant, potentially lifelong relationships, and we are of the view that this should only be imposed after careful consideration of

²⁸ Sen, R and Broadhurst, K (2011) ‘Contact between children in out-of home placements and their family and friends networks: a research review’ in *Child and Family Social Work* 16: 298-309

²⁹ DfE and Narey, M (2012) *ibid*

³⁰ DfE and Narey, M (2012) *ibid*

³¹ DfE and Narey, M (2012) *ibid*

whether it is in the child's best interests for it to happen. It should remain that the onus is on those wishing to minimise or remove contact to explain why it is in the child's best interest, and not on those who wish to promote 'reasonable contact' to explain why it should be permitted.

3.7.3 There is already significant evidence that, from the children's perspective, many children in care already have less contact with family members and others than they would wish. Timms and Thoburn's survey³² of 706 children in public care found that 60% said they did not see enough of their father, and over a third did not see enough of their mother (39%) or siblings (37%), with the figure for minority ethnic children who did not see enough of their mother rising to 50%. The Children's Rights Director for England's report on children in care's views on contact³³ found that although children recognised the potential hazards of contact, many regretted the loss of contact with particular individuals, and this was not confined to contact with members of their immediate family. **35% of the children consulted for that report had no contact with any of the friends they had before coming into care.** These findings suggest that already not enough work is being done with children to consult them about the contact arrangements they would like, or to explain to them if contact is not possible. A proposal that reduces or removes the local authority's duties to arrange reasonable contact is likely to reduce still further the work that is done with children in care to consult them about contact and arrange where possible for them to see the people who are important to them, not only parents but also other relatives and significant people.

3.7.4 Perceiving contact as something that is arranged *for* children rather than *in consultation with them* overlooks a critical dimension of their wellbeing. For many children and young people, entering the care system is accompanied by a feeling of having lost control over significant aspects of their lives, as they have little or no input into where they are going to live, whether they will change school or not, and, crucially, who they are going to see, where, and when. Consulting children in the care system about contact can contribute to their sense of identity and self-esteem, and support them in feeling settled in their placement.

³² Timms, JE and Thoburn, J (2003) *ibid*

³³ Morgan, R (2009) *ibid*

4. Contact arrangements where adoption is the plan

4.0.1 The discussion document states that “*after the local authority has taken the decision that a child should be placed for adoption, plans for contact should be carefully reassessed.*”³⁴ This section of the document then identifies three points at which it proposes contact plans ought to be reassessed.

4.1 The point at which contact should be reassessed

4.1.1 When it is clear that a child is not going to return to their parents, and is likely to be placed instead with an alternative adoptive family, then we agree that the child’s contact with parents and others should be reassessed. However, **the discussion document states that this should happen after the *local authority* has decided the child should be placed for adoption. We are concerned that this, along with the foster before adoption initiative, will pre-empt the court’s decision and thereby undermine the child and parents right to respect for family life and accordingly may be challenged under the Human Rights Act 1998 or at the European Court.**

4.1.2 The discussion document identifies Point 1, where contact should be reassessed, as being where the local authority has made a decision that a child should be placed for adoption but no placement order has yet been made by the court. The basis for the reassessment is stated as being that “*prospects of a reunification between the child and birth parents are by this point remote, notwithstanding the decision of the court.*”³⁵ It is clear that the aim is to substantially reduce the child’s contact with parents and others at this point.

4.1.3 **We believe it would be wholly wrong to pre-empt the court’s decision by making a decision in advance of the court’s,** particularly as the decision that adoption would be in a child’s best interests is made by a decision maker from the same agency that is making the application to court for a placement order: from 1st September 2012 the local authority adoption panels will no longer have any responsibility for agreeing plans for children who are to be adopted, removing a source of independent scrutiny of this major decision. Before coming to its decision, the court will have an opportunity to hear arguments both for and against the granting of a placement order, whereas an agency decision maker’s primary source of information for making decisions will usually be reports by the social worker. The decision as to whether adoption is the right plan is tested far more thoroughly by the court, when considering whether to grant a care order and/or placement order, than is possible for the agency decision maker, however experienced or expert.

³⁴ DfE and Narey, M (2012) *ibid*

³⁵ DfE and Narey, M (2012) *ibid*

4.2 Contact when there is a placement order

- 4.2.1 As described by the discussion document, Points 2 and 3, when contact arrangements should be considered and reassessed, come when the court makes a placement order, and then when the local authority decides that a child should be placed with particular adopters. We agree that these are both significant points, in law and in terms of the child's journey, when consideration should be given as to what contact arrangements will best meet the child's needs, in the light of plans for the child's future. **This must include consideration of whether the child's needs would best be served by an open adoption.** An assessment of whether an open adoption is a viable option that could meet the child's needs to know about their origins and identity should be part of an overall assessment of the child's needs. Given that the immediate aftermath of a court hearing to decide on a placement order, possibly at the same time as judgment is being made about granting a care order, is likely to be an emotional time for parents, and for children who are old enough to be aware of what is happening, it may be that a decision about open adoption is best delayed until these parties have had time to absorb the significance of the court's decision, possibly being helped to do this by taking expert advice.
- 4.2.2 In making recommendations for the way forward when adoption is the plan, the discussion document does make a number of assertions and proposals that we feel need closer scrutiny.
- 4.2.3 **We agree with the statement that “We need to ensure that contact arrangements change as a child's circumstances change and that they are consistent with plans for the child's future.”**³⁶ However, we feel that the statement which follows bears closer scrutiny: *“We also want to discourage the practice of making informal arrangements or ‘deals’ outside of the court process.”*³⁷ Many adoptions involve an arranged meeting between the child's adopters and the child's parents, which can be part of the adoption agency's procedures but not necessarily part of any court process. Not all parents or adopters want to take part in such meetings, but where they happen they can provide reassurance for parents about who is going to take over the parenting of and legal responsibility for their children, and at the same time allow adopters to gain some insight into and sympathy for the parents as human beings, a picture which may not have emerged from reports about their poor parenting. In Ryburn's study of post-adoption contact after contested adoptions³⁸, in all instances where children were having direct contact with birth parents there had been such a meeting before the adoption order

³⁶ DfE and Narey, M (2012) *ibid*

³⁷ DfE and Narey, M (2012) *ibid*

³⁸ Ryburn, M (1996) A Study of Post-Adoption Contact in Compulsory Adoptions *British Journal of Social Work* 26: 627-646

was granted, although not all such meetings led to direct contact. In all the cases in this study where children were having direct birth parent contact, this was arranged informally between the birth parents and the adopters. **It need not be that contact can only take place if it is formally arranged through a court process.**

4.4 The proposed presumption of no contact when a placement order is made

4.4.1 **We would oppose the proposal to introduce a presumption of ‘no contact’ at the point when the placement order is made**, unless the local authority is satisfied that that contact would be in the best interest of the child. The example is given of an older child who wants to meet his or her birth parents, implying a situation where contact has ceased and the onus is on the child to request it, rather than a situation where a pattern of contact with birth parents is arranged at the time of adoption.

4.4.2 The effect of this proposal would be to shut off post-adoption contact with birth families for most adoptions. This is to ignore a wealth of research evidence examining post adoption contact, which indicates that when properly arranged and supported this contact can work well for children. Neil's (2004)³⁹ study of children adopted under the age of four found that while birth families were more likely than adopters to drop out of the contact arrangement, 70% of arrangements were maintained, and were generally positive or unproblematic for children: face-to-face contact with grandparents could be particularly positive. Fratter's (1996)⁴⁰ interviews with adopted young people who had birth family contact identified the following benefits: *“increasing a young person’s knowledge and understanding about her/his personal history; lessening anxiety about the circumstances of birth parents and the need to search them out; reducing the potential for fantasy about birth parents; and contributing to an adopted child’s self-esteem.”* Face-to-face contact was also *“particularly helpful for a few of the children who had been placed transracially.”* Even one young person who *“had ended contact with negative feelings towards her birth mother felt that meetings had helped her sort out to which family she wished to belong.”*

4.4.3 While post-adoption contact may not have these benefits for all adopted children, it would be wrong to introduce a system of presumption against contact when it can clearly work well for some children. **If each case is to be decided on its own merits, then there should be no prior presumptions about what the contact arrangements should be.** We would suggest instead that there be clear guidelines about contact, based on current research findings about when contact is in a child's best interests, and what should be put in place for post-adoption contact to work well for the child, if it is to take place. This could include assisting adoptive parents to

³⁹ Neil, E (2004) ‘The “contact after adoption” study: face to face contact’ in Neil, E and Howe, D (ed) *Contact in adoption and permanent foster care* London: BAAF

⁴⁰ Fratter, J (1996) *Adoption with contact: implications for policy and practice* London: BAAF

understand why contact might assist their adopted child in the ways described by Fratter. It is understandable that the initial response of many adopters might be a reluctance for contact to take place. Logan and Smith⁴¹ describe the role that social work professionals can play in helping prospective adopters to appreciate the value of contact for their adopted children.

4.5 The ‘permission filter’ for birth parents

4.5.1 We would also oppose the introduction of the ‘permission filter’ for birth parents applying for contact, at the stage of the placement order being made. This would introduce delay into the decision-making process, at a time when there might not be much time before the child is placed for adoption.

4.6 Seeking the views of potential adopters

4.6.1 We support the proposal to explicitly seek the views of potential adopters in relation to contact. In fact, we believe that the views of adopters about the issue of contact should already be known, having been discussed during preparation training and their home study assessment. The adopters’ views about post-adoption contact should form part of the matching process between child and adopter, so that **children whose best interests would best be served by ongoing family contact should ideally not be matched with adopters who would not wish to adopt a child who will be in contact with their birth family.** However, from knowing the adopters’ general views about contact, it would make sense to consult them once a specific child has been identified as potentially suitable to be placed with them.

⁴¹ Logan, J and Smith, C (2004) ‘Direct post-adoption contact: Experiences of birth and adoptive families’ in Neil, E and Howe, D (ed) *Contact in adoption and permanent foster care* London: BAAF

5. Contact arrangements for adopted children

- 5.1.1 The discussion document, and Martin Narey's interview on the DfE website⁴², claim that research by Macaskill⁴³ "*found that the proportion of children suffering negative consequences from contact was twice the proportion for whom contact had a positive effect*".⁴⁴ However, **this is a misreading of Macaskill's study**, whose primary aim was to discover what factors when present would assist or prevent face-to-face contact from working satisfactorily. The study concludes by presenting valuable good practice guidelines for face-to-face contact, based on the perceptions of those who participated in the research.
- 5.1.2 Macaskill's study examined a total of 106 children in permanent placements who were having face-to-face contact with birth relatives. Macaskill describes her sample as follows: "*Seventy-one children (67 per cent) had been victims of sexual abuse within their birth family. In 30 instances it was not just a case of one family member perpetrating abuse but rather that the child was caught up in the activities of a familial paedophile ring. The members of these paedophile rings were never strangers. They were always family members and in some cases networks of family friends had also been drawn into the sex ring activity. Some sexual practices were bizarre, involving a range of sinister satanic rituals.*"⁴⁵
- 5.1.3 This is clearly a group of children for whom contact with their parents and other family members is likely to be particularly difficult. It cannot be taken as being in any way representative of children in permanent placements who would be having face-to-face family contact. It is clearly a useful cohort for studying how to make contact safe and satisfactory in difficult circumstances, which would fit with the purpose of the study. It would be wholly wrong to draw any conclusions from such a sample about whether contact is likely to be positive or negative for the general population of adopted children having face-to-face birth family contact. Even where contact was negative, Macaskill found that "*In some situations it was not contact itself that was causing difficulties but excessive levels of contact that did not allow sufficient time between one contact meeting and the next for the distraught child and the overwrought adoptive family.*"⁴⁶
- 5.1.4 It would be wrong for standard adoption practice and the legal framework for contact to be based on this misunderstanding of research. We agree with the discussion document's suggestion that "*It is clear there is a need for evidence based practice in*

⁴² <http://www.education.gov.uk/inthenews/multimedia/a00212049/podcast-interview-of-martin-narey>

⁴³ Macaskill, C (2002) *Safe Contact? Children in permanent placement and contact with their birth relatives*
Lyme Regis: Russell House Publishing

⁴⁴ DfE and Narey, M (2012) *ibid*

⁴⁵ Macaskill, C (2002) *ibid*

⁴⁶ Macaskill, C (2002) *ibid*

*the family justice system as well as many local authorities, to ensure that when decisions are made about contact, they can be made in the light of the best available evidence about the impact on a child's development and welfare.*⁴⁷ We hope that this will involve **an objective assessment of the research evidence that indicates what factors are likely to be present when face-to-face post-adoption contact works well for the child**, as well as negative indicators. Fratter⁴⁸, Ryburn⁴⁹, Macaskill⁵⁰ and Neil⁵¹ all provide well researched examples of the factors that can lead to post-adoption contact working well, and the support that can assist.

5.2 The 'no contact' order proposal

5.2.1 The discussion document proposes the introduction of a post-adoption 'no contact' order, on the basis that *"Post-adoption contact should be exceptional but in a minority of cases it may be appropriate, for example in the case of an older child."*⁵² The aim of this proposal is clearly to limit post-adoption contact to a small minority of cases, and probably to no younger children. Since there is research evidence that contact can work well for children adopted under the age of four⁵³, we would be opposed to any pre-supposition about face-to-face contact based on the age at adoption of the child. **It would be illogical to construct a policy and legal framework on the basis that "post-adoption contact should be exceptional", while at the same time saying that each case should be decided on its own merits.**

5.2.2 We would expect that any such 'no contact' order should be subject to the same principles that would apply if birth parents were applying for a contact order, i.e. **the paramount consideration for the court in making the decision should be the child's welfare**, and no order should be made unless it is better than not making an order. **It should not be possible to be granted such an order unless it can be demonstrated that there is a need for it**, e.g. because members of the birth family are seeking contact which would not be in the child's best interests. The danger of such an order is that it could remove flexibility and discretion, by imposing a fixed position of no contact when at a later date some type of contact may be in the child's best interests, e.g. if the child as a teenager starts to become curious about their family of origin, or a sibling who was adopted separately is seeking contact. **It should not be an order that adopters can routinely apply for**, if the basis for the application is the adopters' fears over contact rather than the child's needs. **It**

⁴⁷ DfE and Narey, M (2012) *ibid*

⁴⁸ Fratter, J (1996) *ibid*

⁴⁹ Ryburn (1996) *ibid*

⁵⁰ Macaskill (2002) *ibid*

⁵¹ Neil (2004) *ibid*; Neil, Cossar, Jones, Lorgelly and Young *Supporting Direct Contact after Adoption* London:

BAAF

⁵² DfE and Narey, M (2012) *ibid*

⁵³ Neil (2004) *ibid*

should also be clear which individuals such an order applies to. There may be good reason to deny contact to a parent who sexually abused a child, for example, but not the child's siblings or grandparents. Interviews with children have showed that they are very capable of distinguishing which family members they wish to have contact with and which they don't.⁵⁴

⁵⁴ Timms, JE and Thoburn, J (2003) *ibid*; Morgan (2009) *ibid*

6. Other key points not covered in the discussion document

6.1 Children's views

6.1.1 We would observe that the people whose wishes and perspectives would not be considered if the proposals in this discussion document were to be followed would be those of the children who are having contact, and the parents and other people they would be having contact with. There are discussions and recommendations about ensuring the child's welfare is safeguarded and promoted, but nothing about consulting children. Research studies where children have been consulted have shown that they have strong views about who they do and don't want to have contact with, and many of them feel they are not having enough contact with their parents and other people who are significant to them; where contact is denied some children will become anxious about their parents' or siblings' welfare, in some cases running away from their placements to check up.⁵⁵

6.1.2 The discussion document appears to prioritise the wishes of children's adopters, for example in the proposal that adopters should be able to apply for a 'no contact' order. The 'no contact' order proposal would give the adopters the power to apply to terminate all contact, at a point where they hardly know the child, or indeed their family, and therefore would find it hard to make their own assessment of whether contact would be right for the child or not. The basis for an application in these circumstances is likely to be based on the adopters' fears about contact, however well or ill informed, and not any judgment the adopters have been able to make about how well the child's needs would be met by ongoing contact. For example, adoptive parents may fear that birth parents will disrupt a child's placement with them by not accepting the child's adoptive placement, whereas in a recent study of direct contact after adoption 70% of the birth parents scored high or very high on a measure of acceptance of the child's dual connection.⁵⁶ In the same study, 88% of adopters whose adopted children *were* having contact were more positive than negative about the contact.

6.2 Contact with family, friends and other significant people

6.2.1 The discussion document has focused very strongly on contact with birth parents. However, any full consideration of the issue of contact has to take account of the child's potential need for contact with other people who are significant to the child. Some of the children who were interviewed for *Keeping in touch*⁵⁷ identified people

⁵⁵ Timms, JE and Thoburn, J (2003) *ibid*; Morgan (2009) *ibid*; Fratter (1997) *ibid*; Thomas, Beckford, Lowe and Murch (1999) *Adopted Children Speaking* London: BAAF

⁵⁶ Neil et al (2011) *ibid*

⁵⁷ Morgan, R (2009) *ibid*

such as godparents, their brother's girlfriend, or their first social worker, who they missed having contact with.

6.2.2 However, if the proposals in this discussion document were to be implemented, to make birth family contact exceptional for children who are in care or adopted, then it is likely to lead to widespread disruption of these children's relationship with their siblings. 75% of the children in Macaskill's study⁵⁸ were having contact with their siblings, and 60% of those in Fratter's study⁵⁹, indicating that this is a significant matter that needs proper consideration. Pavlovic and Mullender⁶⁰ discovered that, after birth mothers, siblings formed the next largest group of birth relatives putting their name on the adoption contact register, an indication of a wish by significant numbers of siblings separated by adoption to trace their lost siblings. Based on interviews with adult separated siblings, this study found that *"For birth siblings it is often experienced as a major loss – even when they never knew the adoptee – and having only one parent in common does not lessen the feelings involved"*.

6.3 A return to 'clean break and fresh start'?

6.3.1 The basis for the proposals throughout the discussion document appear to be a return to the "clean break and fresh start" philosophy that was prevalent before inclusive adoptions became more frequently used. This may indeed be the best approach for some adopted children, but it should not become the template for all adoptions with only a few exceptions, as there is evidence that secrecy about origins can be damaging for some adoptees, and some will retain an enduring need to find out about their biological origins and the reasons for their adoption.⁶¹ The move to a more open adoption policy than there had been in the past came was aligned with and responded to the wishes of adopted people whose origins had been kept secret from them.⁶²

6.4 Family and friends care overlooked

6.4.1 We were disappointed that there was no mention in the report of contact arrangements for children living with family and friends carers. We support the proposal in Aldgate and MacIntosh's report to the Scottish Social Work Inspection

⁵⁸ Macaskill, C (2002) *ibid*

⁵⁹ Fratter, J (1997) *ibid*

⁶⁰ Pavlovic, A and Mullender, A (1999) 'Adult birth siblings: Who are they and why do they search?' in *We are family: Sibling relationships in placement and beyond* London: BAAF

⁶¹ Howe, D and Feast, J (2000) *Adoption, Search and Reunion: The Long Term Experience of Adopted Adults* London: The Children's Society; Triseliotis, J, Feast, J and Kyle, F (2005) *The Adoption Triangle Revisited: A Study of Adoption, Search and Reunion: A Study of Adoption, Search and Reunion Experiences* London: BAAF; Harris, P, ed (2006) *In search of Belonging: Reflections by transracially adopted people* London: BAAF

⁶² Triseliotis, J (1991) 'Open adoption' in *Open adoption: the philosophy and practice* London: BAAF

Agency⁶³ that family and friends care should be recognised as a unique arrangement for bringing up children unable to remain with their parents, which requires its own model of support. This is never more true than with contact, which research studies⁶⁴ have shown to be, along with the financial impact on carers, the most problematic aspect of these arrangements, which are otherwise overwhelmingly safe and beneficial for the children placed in them. The Government's statutory guidance for local authorities on family and friends care identifies contact as a significant issue,⁶⁵ we are therefore unclear why this is not addressed in a discussion document which is about contact arrangements for children who have been placed away from their parents through social work intervention or with local authority support.

⁶³ Aldgate, J and McIntosh, M (2006) *Looking after the family: a study of children looked after in kinship care in Scotland* Edinburgh: Social Work Inspection Agency

⁶⁴ Farmer, E and Moyers, S (2008) *Kinship Care: Fostering Effective Family and Friends Placements* London: Jessica Kingsley; Hunt, J, Waterhouse, S and Lutman, E (2008) *Keeping them in the family: Outcomes for children placed in kinship care through care proceedings* London: BAAF

⁶⁵ DfE (2011) *Family and Friends Care: Statutory Guidance for Local Authorities* paras. 4.27-4.33