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# RIGHTS AND RELATIONSHIPS OF CHILDREN WHO ARE ADOPTED FROM CARE

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## ABSTRACT

The rights of children who are adopted in England and Wales, their birth parents, siblings and extended family, and their adoptive parents are considered in this article. This includes the rights of parents and children regarding consent to adoption; their rights to post-adoption contact; children's rights to develop an understanding of their identity as an adopted person; and adopters' rights to support in helping their children – in the framework of domestic law and human rights conventions. The article draws on findings from the Wales Adoption Cohort Study to inform the discussion. This study included a case file study of 374 children's adoption records, surveys of newly adoptive parents (96) and interviews with them (40). These findings included that, generally, adoptive parents had respect for the child's previous family ties. Adopters had a positive attitude toward helping their children with contact (especially with siblings) and making sense of their identity, but often struggled with a lack of professional support. There was a tendency amongst agencies toward a blanket policy on indirect contact, rather than planning more flexible individual arrangements.

## I. INTRODUCTION

Although relatively low numbers of children who come into state care in England and Wales are adopted, the rights of those children and their families have been a source of continual discussion and concern amongst lawyers for decades. The debate centres on the legal termination of the relationship between the child and the birth family, and the consequences for all of them, and for the adoptive parents. It is no longer imagined that a court order simply resolves every issue for an adopted child, and answers all questions about their identity and pre-adoption legacy. Furthermore, adopters are expected to help the child make sense of why she is an adopted person and maintain any earlier links that may still be positive for her.

The United Kingdom appears, internationally, to have a relatively high rate of domestic adoptions of infants, although comparative data is difficult to collate (United Nations, 2009). More specifically, adoption law and policy in England and Wales are controversial in a human rights context because statistics suggest that adoption without birth parents' consent has become the placement of choice for a higher proportion of children than in other European countries (Fenton-Glynn 2015; 2016). This article considers this problem in terms of the human rights of the adopted child, their birth family and their adopters, under the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC). It will focus on post-adoption relationships and draw on findings from a national study in Wales to explore the approaches and attitudes that new adopters take to help their child come to an understanding of their past, while integrating into their new families. It will look specifically at post-adoption contact arrangements and the ways in which new adoptive families are supported by agencies with these tasks. The findings of this study suggest that adopters usually expect to be open with their children and may be more flexible about maintaining ties with the birth families than is usually imagined, but that adoption services may not be adequately resourced to support these endeavours.

It is now accepted that the narrative of normalising the social problems presented by the illegitimate child, the unwed mother, and the infertile married couple concealed the reality of many women being left bereft and many children growing up with a sense of loss. This has been graphically portrayed in popular culture as 'forced adoption', an oppressive combination of religious and political forces. By the 1970s, however, adoption in the UK was becoming less concerned with removing the stigma of illegitimacy and more with a route to permanence for older children in state care. There was eventual recognition of a shift from a 'gift/donation' model to a 'contract/services' model of adoption of older children which includes an informal contract between the birth family, child and adoptive family and obliges the State to provide substantial support during and after the adoption process (Lowe 1997). Such a model highlights the individual rights and interests of all parties, and reflects 'family life' in the ECHR, Article 8, which states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or

the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 not only protects the individual family member from interference in his or her family life but also places positive obligations on the State to support family life (*Marckx v Belgium*).<sup>1</sup> Therefore, birth families and adoptive families have the same rights to be supported without discrimination, although their respective interests may need to be balanced. While the most common feature of the ECHR in adoption cases is Article 8, in a wider child protection context, Article 3 has been called on to protect children from abuse and Article 6 in ensuring a fair trial.

In theory, children and adults have equal Article 8 rights, although case law reveals more emphasis on parents' Article 8 rights, with children remaining the object of 'welfare' rather than asserting their own rights (Fortin 2006). The other international convention relating to domestic adoption is the United Nations Convention on the Rights of the Child 1989 (UNCRC), ratified by the UK but not incorporated in domestic law, although it has been integrated to an extent in Wales, imposing duties on Welsh Government to have due regard to the UNCRC when making policy (Children Rights Measure 2011).

The current law and the influence of human rights principles with regard to relationships will first be summarised, followed by a discussion informed by the Wales study.

## II. ADOPTION LAW IN ENGLAND AND WALES

### 1. Background

The process of adopting children in England and Wales is heavily regulated because of the welfare and protection issues involved, and historically because of the very peculiar legal situation where parenthood is completely transferred from one set of parents to another. By the 1990s, this transplant model came to be recognized as a legal fiction that no longer served its purpose (Lowe 1997; 2000).

Adoption was first legally recognized by Parliament in 1926; the law was reformed in 1976, but not touched by the overhaul of most child and family law in the Children Act 1989. Instead, adoption law was subject to

later consultation and debate, culminating in a new framework under the Adoption and Children Act 2002 (ACA). In the interval since the Children Act 1989, the Human Rights Act 1998 (HRA) had been passed, which incorporated the ECHR into UK law. This development was explicitly addressed in the Parliamentary passage of the ACA. The current law is still mainly to be found in the ACA, together with subsequent regulations and guidance, and some amendments in the Children and Families Act 2014 and the Children and Social Work Act 2017. Since adoption was devolved to Wales in 2006, the law has gradually begun to diverge, with most of these recent amendments applying in England only.

## **2. Birth parents' rights - consent to adoption**

There are safeguards on obtaining parental consent to adoption under the ACA, for example, that consent is valid only when given at least six weeks after birth and must be witnessed by a court-appointed officer as being given freely and unconditionally (ACA s. 52(3); s. 52 (5), (7)). Consent of fathers who do not have parental responsibility is not required, although it is good practice to notify them so that they have an opportunity to apply for this (ACA s 52(6)). (Normally, where parental responsibility has been acquired by a father, this will be where his name has been added to the child's birth certificate, which requires both parents' agreement, so is not universal.) Matters are more controversial in the larger proportion of adoptions where consent is not voluntarily given, either because the parent lacks capacity, is not prepared to sign, or actively contests the adoption plan. In this situation, the court has power under the ACA to dispense with consent (ACA s. 52(1)).

To comply with Article 8, the power of the court to remove parental rights can be exercised only if this is necessary, when balanced with the rights of the child. Prior to the ACA, the most commonly used provision whereby birth parents' consent to adoption could be dispensed with, by the court, was if they were unreasonably withholding it. Fortin's (2009) view was that although this test had been a fiction, it did at least remind the courts of the balance to be struck between the birth family's and the child's interests. The ACA test, that consent could be dispensed with where the child's welfare required this, was more controversial and faced strong opposition at the time (see, for example Bainham 2003; Choudhry 2003). Elevating the child's welfare was seen by some as potentially leading to social engineering, moving a child simply because she might be better off with relatively affluent adopters (Fortin, 2009: 537). The law needed to 'tread a tightrope' between protecting valuable aspects of a child's relationship with her birth family and ensuring she has an opportunity for a fresh start without undue delay. Fortin concluded that

'the combination of government policy and Strasbourg jurisprudence has produced a worryingly incoherent set of aims and principles' (2009: 544).

This has since been addressed by the European Court of Human Rights (ECtHR) in *YC v UK*,<sup>2</sup> which concerned a boy who was placed for adoption at nine years old. He had been moved back and forth between parents and foster carers throughout his life. The mother was objecting to the adoption plan. After examining the facts and legal processes in England in detail, the ECtHR concluded that the law and the decisions in this case were compliant with Article 8. Under section 1 of the ACA, the court and the adoption agency must make the child's welfare its paramount consideration in making any decision, but this exercise includes specific reference to the birth family's wishes and feelings and to future contact. The Court emphasized the child's right to a secure family life.<sup>3</sup> It was reiterated that in cases concerning the placing of a child for adoption entailing the permanent severance of family ties, the best interests of the child are paramount. Two considerations had to be borne in mind: it is in the child's best interests that family ties be maintained except in cases where the family has proved particularly unfit; and it is in the child's best interests to ensure his development in a safe and secure environment. Therefore family ties may only be severed in very exceptional circumstances and everything must be done to preserve relationships and, where appropriate, to rebuild the family. Although it is not enough to show that a child could be placed in a more beneficial environment, where the maintenance of family ties would harm his child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained. Identifying best interests and assessing overall proportionality of the state's action require a number of factors to be weighed in the balance. The ECtHR had not previously set out an exhaustive list of factors because these may vary depending on the circumstances of each case. However, the Court held that the considerations in ACA section 1 broadly reflected the various elements inherent in assessing necessity under Article 8. The Court highlighted that the English court will demonstrate that it has had regard to the age, maturity and ascertained wishes of the child, the likely effect on the child of ceasing to be a member of his original family and the relationship the child has with relatives.

Despite the *Y v UK* judgment, a perception that the UK (England, in particular) was rare or even alone in Europe in allowing adoption against a parent's wishes lingers, even to be found in judgments at high levels. (It was accepted in a House of Lords 2006 judgment by Lady Hale, *Down Lisburn HSST v H*,<sup>4</sup> and more recently by Mostyn J in *Re D (A Child) (Special Guardianship Order)*).<sup>5</sup> Fenton-Glynn (2015), reporting to the European Parliament, concluded that *all* EU states had a mechanism for

permanently removing children from their parents without consent, when necessary, even if England appeared to use this more often than other countries. She added a caveat that a lack of disaggregated data from EU states on frequency made it impossible to ascertain accurate comparisons. The Court of Appeal has, however, acknowledged in *Re N (Adoption: Jurisdiction)* [2015] that this perception of over-zealous child removal and adoption in England persists.<sup>6</sup>

An important development since the ACA was passed is the speed with which courts are now obliged to make decisions about permanence plans for children. This, together with an explicit policy since 2010 to increase the number of children adopted in England, has made the dispensation provisions of the ACA even more controversial than they were when being drafted (Doughty 2015). There is now far more pressure on the judiciary to work toward the 'timetable for the child' in reaching a solution within 26 weeks (Masson 2017). However, some argue that parents are not given enough time to demonstrate their capacity to overcome their parenting problems (Broadhurst et al 2016). This dilemma is, of course, most pertinent with babies and younger children, for whom adoption may be the best option, if reunification is not, but where procedural delays may reduce the opportunities for a successful placement.

In 2013, the Supreme Court considered the Article 8 issues in *Re B*,<sup>7</sup> articulating the severe interference with respect for family life of adoption against parents' wishes as 'the last resort', 'when nothing else will do'. Subsequent judicial interpretation seems to owe more to resource pressures in the High Court and Court of Appeal than application of the human rights analysis in *Re B* (Doughty 2015; Masson 2017). The number of adoption orders began to drop in 2013, with the number of special guardianship orders (usually made to kinship carers) rising. With the UK government currently diverted by far wider differences of opinion with Europe than non-consensual adoption, it seems unlikely that new adoption policies are about to emerge, but recent judicial comment suggests that a more nuanced approach to the relative advantages of adoption and kinship placements is now being taken (McFarlane 2017).

With regard to the fears that had earlier been expressed about the potential of the dispensation provisions of the ACA for social engineering, it has been firmly established by the ECtHR that it is not justifiable to take a child into care rather than offer support services (*Kutzner v Germany*).<sup>8</sup> In *Soares de Melo v Portugal*, the Court was explicit about the positive duty on the state to provide financial support to vulnerable families and opportunities for parents to get into paid employment.<sup>9</sup> In *Re B*, the parents were peculiarly resistant to engaging with support agencies, but

in more straightforward cases, services are not commonly available, especially at a time of reduced public expenditure.

### **3. Birth parents' rights - maintaining links**

As noted in *Y v UK* above, and earlier in *Johansen v Norway*,<sup>10</sup> the ECtHR has been clear that permanent deprivation of parental rights and contact can only be justified as 'necessary' under Article 8(2) if supported by compelling reasons. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; measures hindering such enjoyment amount to interference with their Article 8 rights. However, contact restrictions may be lawfully imposed in the child's bests interests and be a proportionate interference with Article 8 (*Levin v Sweden*).<sup>11</sup> In *R and H v United Kingdom*<sup>12</sup> (a case from Northern Ireland so decided on slightly different legislation to the ACA), the ECtHR observed that expert evidence recommending post-adoption contact had been followed by the higher domestic courts and that appropriate efforts had been made by the authority to find adopters who would agree to post-adoption contact. The parents argued that their parental rights should not have been removed before those adopters had been found, but the ECtHR judgment concluded: 'had the domestic courts not clearly expressed their preference for post-adoption contact, the Court might have seen greater force in the applicants' submission that they were acting reasonably in refusing to agree to adoption.'.<sup>13</sup> Overall, there was no violation of Article 8.

When the ACA was being drafted, the concept of open adoption was popular, in theory if not in practice. There was some disappointment that the Act did not impose a duty on agencies and the courts to actively promote post-adoption contact, in the same way that the Children Act 1989 promoted contact with children in care (Cullen 2005). There was no explicit right to post-adoption contact in the ACA. There was, however, scope for the anticipated improvement in provision of post-adoption services to have regard for support for contact, and make the law more effectively compliant with Article 8, if properly resourced (Harris-Short 2008). Post-adoption contact was therefore envisaged as more mainstream than previously, even if unlikely to become mandatory.

When making any decision under the ACA, the welfare of the child, throughout his life, is the paramount consideration. Section 1 obliges the court and the adoption agency to have regard to a list of factors in s 1(4), which includes the relationship the child has with relatives (or other people), the likelihood of this continuing and its value to the child, and the wishes and feelings of those relatives regarding the child. Additionally,

under s 46(6), the court has to consider, before making the order, whether there should be any arrangements made for allowing future contact. 'Arrangements' do not necessarily suggest that these require an order, and the courts' reluctance to impose such an arrangement on unwilling parents continued after implementation of the ACA. In 2008, Wall LJ said: 'in normal circumstances it is desirable to have a complete break' (*SB v County Council* at para 143).<sup>14</sup> In a leading case, Thorpe LJ held that, although in law the adoptive parents' wishes could not be determinative, it would be extremely unusual to make an order with which adoptive parents did not agree. A decision undermining parents will not be in child's best interests. If this did occur, the exceptional reasons would need to be set out in the judgment (*Re J (A Child) (Adopted Child: Contact)*).<sup>15</sup>

Under the ACA, any pre-existing contact orders cease on the making of an adoption order and, until 2014, the only mechanism available to birth parents would have been to apply for leave for a contact order under section 8 Children Act 1989, the route for a relative in a private law dispute. As a side effect of amendments to section 8 by the Children and Families Act 2014, the ACA was amended by the insertions of sections 51A and B. These provide that orders can be made for, or prohibiting, post-adoption contact either with or subsequent to the adoption order. Statutory guidance on these provisions issued in England is brief and emphasizes the prohibition provisions under section 51A(2)(b) (Department for Education 2013). The rights of birth parents to contact did not appear to have become any easier to exercise and may have even been an entrenchment of the assumption against contact (Sloan 2013).

This view was confirmed in 2015 in *Re A (A Child) (Adoption: Human Rights)*.<sup>16</sup> In this case, the mother had indirect contact, although her letters were being edited by the agency, but had never agreed with the adoption plan and applied under s 51A for direct contact. Peter Jackson J summarized his findings [at para 2] as follows:

- (1) The making of an adoption order always brings pre-existing Art. 8 rights as between a birth parent and an adopted child to an end. Those rights arose from and co-existed with the parent-child relationship, which was extinguished by adoption.
- (2) s. 51A ACA 2002 does not create or maintain an Art. 8 right as between a birth parent and an adopted child.  
...
- (4) A public body running a post-adoption letterbox service is obliged under Art. 8 to respect correspondence between a birth parent and an

adopted child and adopters, the obligation arising from the nature of the correspondence and not from the former parent-child relationship.

Taking this view, Article 8 confers no rights (other than privacy) on either the birth parent or the adopted child regarding their pre-adoption relationship. This case is especially poignant, because evidence in earlier proceedings suggested that if the mother (who had been in care herself) had been offered therapeutic services in childhood, she may not have developed the psychological conditions that inhibited her parenting skills.

#### **4. Children's rights - consent**

Policy papers in the early 1990s, including an interdepartmental review (Department of Health 1992) recommended that agreement of a child aged 12 and over should be obtained before an adoption order could be made; in other words, the child would have a veto. Despite considerable support from professional groups in their evidence to parliamentary committees, this proposal was dropped when the ACA was drafted, for unexplained reasons. The omission was criticized by Piper and Miakishev (2003: 60) as the welfare discourse entirely taking over; they thought that descriptions of vulnerable children who needed the protection of Parliament had the effect of 'sabotaging efforts to give children more control over their lives'.

The provision in section 1 for regard to be had to the child's wishes and feelings in accordance with his age and understanding was seen as sufficient to make the new law 'child-centred'. The increasing notice that the judiciary have taken of children's rights in the last 15 years would make an adoption of a child who was old enough to express a view, against her will, unimaginable. Nevertheless, it should be noted that in research in the 1990s, some children expressed confusion and frustration about never having been asked or told what decisions were being made about them (Thomas *et al*, 1999). In one of the very small number of reported cases where an adopted person sought to have the order set aside, deciding factors included the strong wishes of a 14 year-old whose adopters had lost interest in her when she was six and who had returned to her mother.<sup>17</sup>

Additionally, in the ACA, a care planning and review process was put in place, with independent reviewing officers who have responsibility to engage on a regular basis with children in care about their views on the care plan (now found in sections 25A-C Children Act 1989).

#### **5. Children's rights – maintaining links**

Although Harris-Short (2008) thought that a rights-based approach to the ACA promised little to adopters in the way of services, she argued that it forced decision makers to focus on the child as an autonomous individual and not just as 'a child of the family'; this could be very important regarding children's rights to post-adoption contact.

The wording of section 1 of the ACA emphasizes the duties of the court and the adoption agency to make decisions whereby the child's welfare *throughout their life* is the paramount consideration, including the effect on the child of becoming an adopted person. It can therefore be argued that a child has a right to adoption plans being written to incorporate ongoing reviews of the value of contact to them.

Longitudinal research with adopted children found that contact worked best where adoptive parents and birth relatives respected each other's roles and family boundaries, and where everyone focused on the needs of the adopted young person, and that as teenagers, young people started to make their own choices about contact: some stopping contact whilst others chose to increase it (Neil *et al* 2015).

### III. CHILDREN AND THE ECHR

As noted in *Re A*,<sup>18</sup> a birth parent's Article 8 rights cease on the making of an adoption order, so that any application for post-adoption contact under s 51A will be made with the child's welfare needs being the court's paramount consideration. Jackson J concluded that there was no prospect whatever of any new contact application by the mother in *Re A* succeeding; it would only cause further stress, expense and harm. 'The adopters are A's parents and A's welfare depends upon them. The court should do what it can to protect them from further incessant litigation.'<sup>19</sup> Without distinguishing the child's rights from her welfare, he added:<sup>20</sup>

I conclude that the making of an adoption order always brings pre-existing Art. 8 rights as between a birth parent and an adopted child to an end. Those rights arose from and co-existed with the parent-child relationship, which was extinguished by adoption. There is no right to re-establish family life that has ended in this way.

Therefore, neither the birth parent nor child has a right to re-establish the former relationship. However, Fortin (2009) observed the prevailing view that everyone has an inbuilt desire to know their origins, encouraged by our increasing knowledge of genetic science. In the context of assisted reproduction, she was sceptical that knowing one's origins was a basic human right, but conceded that research by Triseliotis (1973) had indicated this was beneficial to adoptees. In England and Wales, an

adopted adult may register their details on a central register if they would like to make contact with birth parents, who can only be traced through the register if they too have sent in their details.

The ECtHR has examined whether Article 8 protects an adopted person's right to know their genetic heritage in *Odievre v France*,<sup>21</sup> and *Godelli v Italy*,<sup>22</sup> but these cases are confined to adult adoptees seeking information, having been anonymously relinquished at birth. In *Odievre*, the Court held that there is a vital interest in obtaining information about who one's parents are; knowledge of a person's birth and the circumstances in which she was born is part of private life and guaranteed by Article 8. However, the Court balanced this interest with the state's assurance of anonymity furthering its aim to prevent dangerous termination of pregnancies or abandonment. The applicant had no pre-existing 'family life' relationship with anyone before her adoption. Although the Court was divided and the judgment has been criticised for being parent-centric, *Odievre* was not overruled in *Godelli*, both judgments focusing on the extent to which the state permits anonymous birth and neither taking account of the UNCRC Art. 7 right to (as far as possible) know one's parents (Simmonds, 2013; Draghici, 2017). Harris-Short (2008) argued that *Odievre* did not preclude rights to maintain any *de facto* links between a child and their birth family, although there would be weight against this if it was likely to be disruptive. In *Levin v Sweden*,<sup>23</sup> the ECtHR noted that the children (aged nine and seven) had expressed their own wish not to see their mother more than twice a year, and never unsupervised. The Court integrated this evidence into their decision and said that these views should not be ignored or trivialised [para 67].

#### IV. CHILDREN AND THE UNCRC

If Article 8 rights have ceased on adoption, the question arises as to a child's rights under the UNCRC, of which judicial notice is increasing in the ECtHR and the UK (see *ZH (Tanzania) v Secretary of State for the Home Department* Lady Hale at 21-23).<sup>24</sup> Lord Neuberger said in *Re B* that the ACA 'must be construed and applied bearing in mind the provisions of the UNCRC' (at 73).<sup>25</sup>

Relevant provisions of the UNCRC include child's best interests being the primary consideration in decision making; the right to know and be cared for by her parents as far as possible; the right to identity and family relations recognized by law; and the right not be separated from her parents against her will, except by lawful process and in her best

interests (Articles 3, 7-9). Article 21 places safeguards primarily on inter-country adoption but also requires the State generally to ensure that if consent is legally required it is genuinely informed.

Article 20(3) states that in alternative care placements, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Article 30 assures children who use a minority or indigenous language that right. However, in the case of *ED v Ireland*,<sup>26</sup> it was argued that adoption would mean the child would lose his heritage and true identity as belonging to the travellers' community. An alternative of long-term fostering would mean that he could learn about travellers and decide whether he wanted to be part of that tradition when he grew up. The European Commission held that it was permissible for a state to decide if the child's need for a permanent family was greater than his need to maintain his cultural heritage.

Concerns have been raised internationally about the numbers of children adopted in England whose parents are temporarily resident in the UK but still citizens of countries in eastern Europe (*Re CB (Adoption and Children Act 2002): Re N (Adoption: Jurisdiction)*).<sup>27</sup> One aspect of this scenario is young children's loss of their native language while in foster care with English-speakers. Furthermore, during supervised contact sessions, parents and children may not be allowed to communicate in their native language if no interpreter is available. Fenton-Glynn (2016) suggested that this practice may be a breach of Article 30 UNCRC and, possibly, Article 8 ECHR for the child and the parent. She emphasized that, although this is more worrying where reunification is being contemplated, such practice may affect possibilities of meaningful post-adoption contact.

## V. ADOPTERS' RIGHTS

In pre-2002 Act research, adopters were described by Lowe (2000) as seeing the child as 'theirs', getting total legal control on receiving the order. The advantages had to be set against the absence of statutory support structures and systems. He argued that the state had to come to terms with adoption not being a cheap alternative to care; adopters needed full and candid information about the child's history and potential risks and there was an ongoing obligation to adopters who in turn had to accept they were not in complete control of the child's upbringing. This need for support was recognized in the ACA. However, Harris-Short (2008) thought that these new 'rights' did not offer opportunities to

adoptive parents to access improved provision of services under the ACA, because adopters were unlikely to be able to establish that their child's needs were greater than those of children in other family forms. Perhaps it could be argued that the State had a responsibility to remain involved, but she thought it would be difficult to justify discrimination between groups of children according to their different routes in and out of care.

Subsequently, however, discrimination has developed in varying levels of support offered to groups of children who are adopted, or live with kinship carers, or still receive looked-after children services because they live with foster carers. The children's pre-placement experiences are the same. This remains unresolved: children who are looked after by foster carers are entitled to support through to young adulthood, although some foster carers also battle for access to professional help for traumatised children.

Concerns about a lack of post-adoption support were expressed in a Parliamentary enquiry in 2012 and a review in Wales in 2016, the latter leading to reorganisation of services in Wales into a national service (Rees and Hodgson 2017). Comprehensive research on disruption by Selwyn and colleagues (2015) revealed a worryingly high incidence of very challenging circumstances for adopters over the previous decade. The apparent success of adoption in its low disruption rate compared to other types of placement belied the extent of difficulties adopters were facing. In England, an Adoption Support Fund was established to provide therapy and help with parenting skills. An evaluation found unexpectedly high levels of demand, with children showing small but significant changes, although still having extremely high and complex needs (King et al 2017). The Selwyn studies indicate the importance of experiences in the early stages of the adoptive placement as a predictor of success. The state has positive duties toward the child whom it has removed, which extend to duties to respond to the ongoing needs identified by her new parents.

## V. POST ADOPTION CONTACT FOR CHILDREN

### 1. Contact with siblings and extended family

The potential psychological value of the sibling bond for human development, particularly during childhood, is well documented across a range of domains (Azmitia and Hesser 1993; Davies 2015). The shared pre-placement adversity often experienced by siblings, and the complex living arrangements that ensue, render sibling contact potentially fraught in adoption arrangements and require professional attention. The

psychological, interpersonal and ethical implications associated with the decision, determined by the State, to sustain, disrupt and/or create sibling bonds through adoption cannot be overestimated (Meakings et al., 2017).

Nearly 20 years ago, Lowe (2000) asked why adoption must automatically sever the legal relationship between a child and siblings and grandparents. He queried whether this was compatible with Article 8, but, as we have seen, the ECHR has not proved an effective means of securing post-adoption contact. Although the ACA requires that contact with birth family members must be considered and proposed arrangements set out in the child's placement plan (s 46), it follows from the discussion above that there is no duty under this legislation to promote contact between an adopted child and her birth relatives. Once a child is adopted, birth siblings have very limited legal rights in relation to seeking contact with the adopted child. Prior to 2014, a sibling would need leave of the court to apply for a section 8 Children Act 1989 contact order and courts were unlikely to make an order against the wishes of the adoptive parents. Any contact between an adopted child and his or her birth sibling has traditionally been informal agreement between the relevant parties. However, a limited contact order was made in favour of a grandmother in *MF v LB of Brent & Ors*.<sup>28</sup>

The value of relationships between the child and her siblings and her grandparents' generation have recently been seriously considered in *Re W (Adoption: Contact)*<sup>29</sup> where Cobb J explained that a contact order was not necessary because the adopters and extended paternal family had achieved a constructive working relationship despite a series of fraught legal issues. On the other hand, in (a separate but similarly named case) *Re W (Reunification with family of origin)*,<sup>30</sup> the adopters had never been receptive to sibling or paternal contact, despite judicial encouragement, and eventually they decided to move abroad.

## 2. Contact with previous carers

For some adopted children, foster carers have been the only secure parental figure in their lives before moving into an adoptive family, but current systems pay little attention to this. The psychological experience of the child, particularly their experience of losing their foster carer, can recede in professional minds during this highly anxious transition (Boswell and Cudmore 2016).

## 3. The identity of a child as an adopted person 'throughout their life'

As noted above, section 1 of the ACA prioritizes the welfare of the child becoming an adopted person not only at the date of the court decision but 'throughout their life'. Adopted children's individual needs for support with contact and identity will vary as they grow older; they have a right to these being considered in plans made while they are still being looked after by the state.

Awareness about identity in adoption began in the 1970s. Triseliotis (1973) argued that children can develop their personality and identity on the concept of two sets of parents, provided that they are clear in their own minds about what is happening and that the stability and continuity of care are maintained and not threatened. He suggested that adoptive parents may be more flexible than we think (Hill, 2013: 71). He defined identity as a feeling of being wanted and loved within a secure environment; having knowledge about one's background and history; and being perceived by others as worthwhile person (Hill, 2013: 54). It is now accepted that for some late placed children, feelings about membership of their adoptive or permanent foster family can be intertwined with feelings about the birth family; some children may retain loyalties to their birth family and have only a qualified sense of belonging in their new home, whilst others may express relief and happiness to be legally secure. Regardless of the contact taking place between a child and their birth relatives, birth parents often remain psychologically present to the child (Biehal *et al*, 2010). However, adopters can struggle to discuss this, even if they aspire to openness (Jones 2016).

Talking with birth relatives in contact may be confusing or traumatising if the adopted child is offered a version of past events or of current connections that contradicts the way the adoptive family addresses the same issues (Cossar and Neil 2013). Planning contact arrangements can be exhausting; adoptive parents and foster carers involved in large sibling group contacts have to negotiate relationships with each other as well as between their children. Differences between adults' concepts of family life and the reality of post-adoption contact can give rise to a sense of artificiality. Neil *et al* (2015) concluded that there is no one formula for successful contact arrangements; each arrangement should be individualized. Once a contact arrangement is set in place, it needs to be reviewed at regular intervals, particularly as children reach adolescence.

A longitudinal study (Neil 2012) examined changes in children's appraisal of reasons for their adoption. Most children's understanding was that their birth parents *could not* or *would not* look after them - either lacking (material) resources or rejecting them. However, when children are older and are aware that the decision was not made by their parents

this can arouse difficult feelings; children realise that they were considered at risk from their own parents. For others, understanding they were not 'given away' by their parents may ease feelings of rejection.

The task of renegotiating family boundaries following adoption is complex, but often undertaken by adoptive families without direct professional support, and even where agencies are involved, their role is uncertain. Jones and Hackett (2012) wrote that, 'professional practices that have emerged with the introduction of an ethic of openness have done little to address the issues of ambiguity and fragility'. Jones (2016: 91) further suggested that 'uncertainty regarding the nature of post-adoption relationships persists not only in the minds of adopters, adoptees and birth relatives but also within the minds of adoption practitioners and policy-makers'. She asked why so little progress had been made and concluded that this was not attributable to the increasingly complex needs of the children and birth parents, reflecting Neil's research showing little relationship between levels of need and contact plans.

#### 4. Contact between adopted children and their birth family in practice

Despite ongoing debate about the value of direct contact, especially as the ACA was coming in (Smith & Logan, 2002; Quinton & Selwyn, 2006), most contact with birth parents, nearly 20 years later, still appears to be indirect, 'letterbox', contact – an exchange of letters via the local authority. There is a paucity of research on letterbox contact. In a study of 138 children placed in one English local authority in the mid-1990s (Brocklesby 2007), letterbox arrangements were made for 47 children (34 per cent). Just over a fifth (21 per cent) of the children were envisaged as having direct contact with birth parents. The sample included a number of kinship adoptions (which have been extremely rare since the ACA) and a number of foster-to-adopt placements, contributing to this relatively high figure.

Varying objectives of letterbox contact have been loosely defined as continuity, connectedness, links to direct contact, maintenance of attachments, and enhancement of identity (Brocklesby 2007). However when Sales (2013) read a different local authority's adoption files for 1998-2000, she found birth mothers' stories were marginalized by the agencies so that letterbox contact became meaningless, for all concerned. Jones (2016) argued that there was evidence of difficulties with letterbox contact – it is unidirectional and birth parents don't know what to write. Agencies assume it is straightforward, but it needs careful managing. Neil's studies suggest that direct contact (where it exists) is more enduring than letterbox. However, it appears that letterbox contact is the

default option, with some local authorities maintaining a policy that never contemplates direct contact – a position that is now being questioned by the senior judiciary (McFarlane 2018).

## VI. THE WALES ADOPTION STUDY

### 1. The study

The Wales Adoption Study used a sequential mixed-methods approach to examine the characteristics and experiences of children recently placed for adoption, to consider the early support needs of the adoptive families and to better understand what helps these families to flourish. Ethical permission was granted by the Ethics Committee at Cardiff University School of Social Sciences. Permission was obtained from the Welsh Government to access local authority data. The material drawn on for this article originates from three data sources:

- 1) *Review of Child Assessment Reports for Adoption (CARA) records (n=374)*: The records of all children placed for adoption by every local authority in Wales between 01 July 2014 and 31 July 2015 were reviewed. These records provided information about the characteristics, needs and experiences of all children placed during the study window.
- 2) *Questionnaire to adoptive families (n=96)*: Newly-formed adoptive families completed a questionnaire four months into placement. Families eligible for inclusion in this part of the study were those with whom a child from Wales had been placed for adoption between 1 July 2014 and 31 July 2015. The characteristics of the 96 children whose families participated in the study were compared to all Welsh children placed for adoption during the study period (n=374). The questionnaire sample is representative of children placed for adoption during the study window for gender and past experiences of abuse/neglect. The questionnaire gathered information on the background characteristics of the adoptive families, alongside their support needs and views of how they thought the placement was faring, what was going well in family life, as well as any concerns.
- 3) *In-depth interviews with adoptive parents (n=40)*: Participants were drawn from families who had completed the first questionnaire and had agreed to be contacted for interview. The semi-structured interviews typically took place nine months after the adoptive placement commenced. Children placed for adoption must have been living with their prospective parents for at least ten weeks before the application to court for an adoption order can be made. At the point of the interview, 28 of

the 40 families had secured the adoption order, including one that had disrupted.

4) *Follow-up parent questionnaires*: The majority of adoptive families completed a follow-up questionnaire approximately 18 months post-placement ( $n=80$ ) and again 12 months later ( $n=71$ ) when they were approximately 2½ years post-placement.

Findings on the range of families' support needs regarding their children's well-being in this first year have been reported elsewhere (Meakings et al., 2017; Meakings et al. 2018). Amongst these support needs, help to prepare for and manage contact and help to develop the child's understanding of their identity were key.

## 2. Characteristics of children placed for adoption

The records provide useful information about children's backgrounds, their characteristics and pre-placement experiences. Of the 374 cases reviewed, just over half (55 per cent) of children were male; the majority were described as White British (95 per cent). Most children had no recorded religious orientation; those who did were mainly identified as Christian. English was the first language for the vast majority of the children, with just four described as from Welsh-speaking origins. Most children (91 per cent) had been removed from their birth home once, rather than having been subject to failed reunification. The average age of the children on entry into care (final entry if removed more than once) was one year and two months (range 0 months to 6 1/2 years). A quarter of the children entered care at or shortly after birth, whilst a similar proportion (23 per cent) did so after the age of four. Almost half (47 per cent) of the children placed for adoption had experienced four or more adverse childhood experiences (ACE); including maltreatment, domestic violence and parental substance abuse. This figure stands in marked contrast to figures from Public Health Wales for the adult population, which reported that 14 per cent of Welsh adults surveyed had experienced four or more ACEs (Bellis et al., 2016). Records also showed that more than a quarter (27 per cent) of the children's birth mothers and a fifth (19 per cent) of birth fathers were care leavers. More information about the profiles of the children and their birth parents, their characteristics and experiences, can be found elsewhere (see Roberts et al., (2017); Anthony et al., (2016)).

## 3. Contact plans for children with their birth parents

From the CARA review, we collated information on the planned contact arrangements between the child and members of their birth family.

Of 369 children for whom we had information about post-adoption contact, 363 had a plan for contact with birth mothers (98.4 per cent). All but one arrangement was for letterbox contact. For one child, voluntarily relinquished at birth, face-to-face contact was requested by birth parents and proposed by the local authority, with the proviso that the adoptive parents agree. For just six children (1.6 per cent), no contact was anticipated. In these instances, either birth mothers had died or had explicitly asked for no contact.

Far fewer children had a plan for contact with birth fathers (n=287, 78 per cent). For those who did, letterbox contact was planned for all but one. For one relinquished child (above), face-to-face contact was proposed. For just more than half of the 79 children with no planned birth father contact (n=43, 54 per cent), the father's identity was not known. Decisions for no contact were made for other birth fathers, who had (according to the records) not established a relationship with their child and had refused to engage with the adoption process. For five children, the reason that the local authority proposed no contact, in any form, was the gravity of harm that birth fathers had caused and/or the risk that they continued to pose. The variation in the proportion of mothers and fathers envisaged as having any continuing involvement in their children's lives is not surprising, given the relatively high number of fathers simply not known to the local authority, but raises questions about marginalizing fathers' rights.

The rationale for selecting letterbox contact was rarely reported in the CARA. Accompanying notes, where made, usually simply stated the frequency which was almost always expressed as 'annual' (n = 109) or 'biannual'. Often this was specified to take place around the child's birthday and/or Christmas, but sometimes to be during summer holidays to minimise emotional disruption. There would sometimes be a prohibition of photos.

There were no significant predictive indicators in the CARA records of the choice of contact arrangements. It was not often clear what consideration had been given to the potential benefits to the child of direct contact. In the following vignette, we provide an example of a case where future supervised contact might have posed no risks and better respected the rights of the child and mother than the vague plans that we saw:

Kayla had learning difficulties, including significant cognitive impairment and an IQ of 70. At the age of 23, her first child was born. She and the baby initially lived in kinship care with an elderly relative. Safeguarding concerns were raised when the baby was just a few weeks old. A care order

was made, with Kayla and her child moving promptly into a mother and baby foster care placement. An assessment of her parenting skills concluded that due to her learning disabilities, Kayla was unable to meet the child's emotional needs. She displayed 'rigid parenting' and was unable to follow instructions to, for example, safely sterilise bottles. There was never any suggestion of malicious harm. Kayla wanted to parent her child, but following a court hearing four months after they entered the foster placement, a placement order was made and the child was subsequently placed for adoption. Kayla was directed to leave the mother and baby foster care placement without her child. Letterbox contact (of undetermined frequency) was proposed between Kayla and her child once the baby moved into the adoptive home. It was noted in the CARA that despite her profound difficulties, Kayla did not qualify for support from the local authority learning disability team.

#### **4. Contact plans for children with their siblings**

A large majority of the 374 children in the CARA sample ( $n=325$ , 87 per cent) were known to have at least one brother or sister (full or half sibling). A third of the children ( $n=122$ , 33 per cent) were placed for adoption as part of a sibling group: 55 pairs and four groups of three. Most were placed with full siblings ( $n=86$ , 71 per cent), others with maternal half siblings ( $n=26$ , 21 per cent). The remaining 8 per cent of children ( $n=10$ ) shared the same birth mother, but the paternity of at least one child in the sibling group was unknown or not revealed. It was therefore not possible to establish whether these children were maternal half-siblings or full siblings. There were no recorded cases of paternal half-siblings being placed together for adoption during the study period.

The contact arrangements for those children recorded as having at least one sibling not placed with them for adoption were examined. Of the 256 cases reviewed, contact was proposed between 70 per cent of the children and a sibling living elsewhere ( $n=177$ ). Where there were no plans for sibling contact, it was rarely possible to ascertain why this was the case. Proposed contact arrangements were most often letterbox, although just more than a fifth ( $n=38$ , 21 per cent) were for face-to-face contact. In other instances, the type of contact had not been recorded or yet decided.

#### **5. Adopters' views and experiences of contact**

The contact arrangements set out in the CARA forms are usually planned before adopters are identified, and are therefore presented to adopters as having been formulated in the child's best interests, as required by the

ACA, section 1(1). This does not mean that contact always takes place as envisaged. At 18 months post-placement, adoptive parents reported that direct contact was agreed with foster carers in 40 per cent of cases, with siblings in 28 percent, and other family in 4 per cent of cases. Table 1 sets out the adopters' reports of what contact had actually taken place at 18 months and 2 1/2 years months post-placement with birth family:

**Table 1: Contact that had taken placed with birth family by post-adoptive placement.**

	Direct contact		Indirect contact		No contact or N/A	
	N	%	N	%	N	%
18 months post-placement						
Birth mother	0	-	53	74	19	26
Birth father	0	-	33	47	37	53
Siblings	17	24	15	21	40	56
Other birth family	5	9	14	28	32	63
30 months post-placement						
Birth mother	0	-	46	65	25	35
Birth father	0	-	29	44	37	56
Siblings	13	24	11	20	30	56
Other birth family	4	9	14	30	28	61

That only between 47 and 74 per cent of adopters reported indirect contact with birth father and birth mother at 18 months post-placement, respectively, suggests that the letterbox plans for mothers (98 per cent for the CARA group) were not happening. This reflects the known fragility of letterbox arrangements (Brocklesby 2007).

Many adoptive families were still in touch with their children's former foster carers 2 1/2 years post-placement: 44 respondents had engaged in contact with the foster carer either face-to-face (37 per cent) or indirectly (28 per cent). Among families where contact was occurring with the foster carer, 32 families (73%) reported that the child was aware that contact was taking place (of whom, 22 children were directly involved with contact) compared with 10 families where parents reported that the child was not aware of the contact. The majority of these parents (22/32) agreed that it was important to retain contact with the foster carer.

We asked adopters if they had needed any support, advice, or assistance from social workers, in managing, organising, implementing or responding to contact. Thirty per cent had wanted support with contact with birth parents, while 24 per cent wanted support with contacting birth siblings.

A smaller percentage (5 parents, 6 per cent) wanted support with contacting other members of the birth family. Many adopters, at this early stage, identified some common points where they needed advice or better support including: what to put in the first letter; a lack of response from the birth family; loss of documents by the agency or being unable to contact the social worker; and generally waiting for responses from the agency. Some said that a template, or example, letter would have been useful. The practical arrangements sometimes went awry when letters crossed with each other.

Three responses reported lack of progress on contact with siblings who were adopted elsewhere. In another family, one child was expected to participate in letterbox contact but her half-sibling not, and the adopters had not had any advice on how to explain this to her. One set of adopters had been trying to set up a meeting with the birth mother for months, as they were not getting anywhere with a letter, but were not getting any response from the adoption social work team. One family had been told to use the child's previous name in letters, which they also found difficult to explain. In one case, a child was having weekly meetings with his sister that 'worked'.

Of these reports, there were only three that were negative about contact that had occurred: one adoptive parent had felt marginalized at a meeting with the birth family; another said that one of the children was always very upset; another that they were not able to take arrangements forward because they feared a negative impact on their birth child. Generally, adopters demonstrated strong commitment to the value of sibling contact and were making efforts to facilitate this as best they could, with little support.

## **6. Children's understanding of their history and identity**

In interviews, adopters were asked about their own feelings about the circumstances in which their child came into care. Most expressed sympathy with birth parents, often described as 'not having had a chance' because of their own backgrounds and childhood. Among the adopters who responded at 18 months post-placement, 84 per cent perceived that all relevant information about the child or their circumstances had been shared with them by professionals. Eight families (10 per cent) reported that information had emerged in the past year about their child that parents believed some professionals were aware of before the child moved in, while 5 families (6 per cent) reported that information had

emerged about their child which they perceived had not been known by professionals at the time of placement.

### *Life story work*

Agencies are required to undertake 'life story work' with children, as appropriate to their age, on which adopters can build (Baynes 2008; Watson et al 2015). Of 96 questionnaire responses, 39 (41 per cent) parents reported that at least some life story work had been carried out with their child in preparation for them moving into their adoptive home. At interview, a few parents spoke very positively about the often simple, but creative and helpful preparation provided by foster carers. However, 17 (18 per cent) parents said that no work had been carried out with their child to prepare them for moving into their adoptive home, four (4 per cent) parents said they did not know whether or not any preparation had taken place. The remainder said their child was (then) too young.

Fourteen (16 per cent) parents reported that their child was confused about the *reasons* for their adoption (notably this included 30 per cent of all children over the age of four at placement). Examples of confusion were one child who spoke about past 'bad' experiences but had been told he was in care because his dad was 'ill' and had been poorly prepared for adoption, and another child who thought his foster carers were his parents. Thirteen (15 per cent) parents said their child was confused about the *meaning* of adoption, 33 (36 per cent) parents said their child was not confused, and the rest were too young.

Twenty-five (27 per cent) parents reported that professional support in helping their child to make better sense of their lives and circumstances support was needed, but had not been provided (notably this included 43 per cent of all children over the age of four at placement); 23 (24 per cent) parents said that the support was needed and had been provided. Forty-six (49 per cent) parents reported that such support was not needed.

### *Life story books*

Whatever the child's age, the adoption agency is required to provide material for the future, known as a life story book, that provides appropriate accounts of decisions that have been made about the adoption plan and, where possible, photos and mementos (Department for Education 2013: paras 5.48-5.50).

In questionnaires completed when the child had been in placement for four months, 64 (68 per cent) parents said that the child did not have their life story book in the adoptive home, four (4 per cent) parents said the child did have the book, but it lacked detail or was of poor quality, while 26 (28 per cent) parents said that the child had a well-prepared life story book at home. The large number of families not in receipt of the life story book was concerning. There was clearly frustration amongst some adopters, who described 'empty promises' made by social workers, about when they could expect to receive the book. Books were sometimes incomplete, such as for one child whose book had an 18-month gap for a period in foster care.

Most parents who had received the book were satisfied with its quality and several parents made positive comments about how useful it was or would be. However, during the interviews, some important contextual information came to light. Several parents said that although satisfied with the book they now had, this was only after having complained about, and returned previous versions given to them. There were many reports from parents about inaccurate, vague, and poorly presented material.

## VII. DISCUSSION AND CONCLUSIONS

Legislation stipulates that a child who is being adopted has their future planned, so far as is possible, in a way that will help them form a secure identity as an adopted person. It is therefore disappointing to find that some children are not going to have access to professionally prepared information as they grow up.

However, findings from the Wales Adoption Study indicate that many adoptive parents had been provided with and engaged with training and preparation that helped them develop a finely tuned and balanced approach to their child's history and how this would be relayed to the children and wider family. Even taking account of social desirability bias amongst respondents, there was little indication that adopters were unduly negative about the child's birth family.

Adopters did not seem to be involved in opportunities for direct contact, as this had been ruled out before matching. It is not always clear why post-adoption contact is limited to an annual exchange of letters, but as this is the norm, presumably this is what adopters are led to expect. Although Brocklesby, Neil and others have called for contact planning and review to become more diverse and flexible, it seems unlikely that local authorities (in Wales and England) will find the funding needed to meet

this. Nor is there any reason to expect adopters to question agencies' guidance on the contact arrangements that have been assessed as best for their child.

Blanket policies of annual or biannual letterbox contact seem to assume that this level of communication would be unproblematic, but the findings of the Wales Adoption Study show that exchanging letters is not always straightforward, even when adopters see it as important or even obligatory. Experiences of contact were more varied where there were arrangements made for siblings, extended family members or foster carers, but adopters were generally committed to making these work, even where support was scarce or non-existent. The extent and quality of life story work, and life story books, was also variable.

The data from the Wales Adoption Study suggest that professionals need to take a lifespan perspective on the issue of post-adoption contact, so that decision-making can be flexible in relation to the child's needs in both the immediate and longer term. While strong conclusions cannot be drawn from the first two years of post-adoption experience, the findings indicate that adopters recognize that their children's identity needs may vary in relation to contact with different birth family members and will change over the years. Although resources need to be focused on enabling the adults (professionals and carers) and the children at the crucial time of transition into the adoptive family, attempts to finalize such processes with court orders for contact or fixed support plans at this stage are likely to fail. Looking to the longer term, however, it would be unrealistic and intrusive to expect continuous monitoring by agencies of all adopted children. What is required is a move away from fixed expectations and blanket policies, toward a system where appropriate long term services are going to be available and adopters are fully informed, early in the placement, about how these can accessed when or if required.

An adoption decision must balance the rights of the child to a safe and secure family life that justifies their removal from the birth parents; the rights of the parents to be able to dispute and contest such a decision together with their right to maintain such links as are in the child's welfare; and the rights of the adopters to the support they need for the child to develop as 'a worthwhile person' (Triseliotis 1973). Although a birth parent's Article 8 right to respect for family life with the child may legally cease on the adoption order, it would be wrong to assume that adopters have no respect for that relationship. Some adopters in the UK have turned to campaigns and social media to raise awareness of the problems that adopted children can face. The extent to which these problems could have been prevented or lessened by respect for the rights

of the respective parties will turn on many factors - but there can be no assumption that a child's welfare is guaranteed without balancing the rights of all involved.

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## NOTES

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<sup>1</sup> (1979-80) 2 EHRR 330

<sup>2</sup> [2012] ECHR 3005

<sup>3</sup> In paras 134-135.

<sup>4</sup> [2006] UKHL 36

<sup>5</sup> [2014] EWHC 3388 (Fam)

<sup>6</sup> [2016] EWCA Civ 1112

<sup>7</sup> [2013] UKSC 33

<sup>8</sup> (2002) 35 EHRR 25

<sup>9</sup> 16 May 2016, Application no. 72850/14

<sup>10</sup> (1997) 23 EHRR 33

<sup>11</sup> 24 September 2012, Application no. 35141/06

<sup>12</sup> 31 May 2011, Application no. 35348/06

<sup>13</sup> Para 88.

<sup>14</sup> [2008] EWCA Civ 535

<sup>15</sup> [2010] EWCA Civ 581

<sup>16</sup> Also known as: *Seddon v Oldham MBC* [2015] EWHC 2609 (Fam)

<sup>17</sup> *PK v Mr & Mrs K* [2015] EWHC 2316 (Fam)

<sup>18</sup> Note 16.

<sup>19</sup> At para 92.

<sup>20</sup> At para 60.

<sup>21</sup> 13 February 2003, Application no. 42326/98

<sup>22</sup> 25 September 2012, Application no. 33783/09

<sup>23</sup> 15 March 2013, Application no. 35141/06

<sup>24</sup> [2011] UKSC 4

<sup>25</sup> [2013] UKSC 33

<sup>26</sup> 18 October 1995, Application no. 25054/94

<sup>27</sup> [2015] EWHC 3274 (Fam); [2015] EWCA Civ 1112

<sup>28</sup> [2013] EWHC 1838 (Fam)

<sup>29</sup> [2016] EWHC 3118 (Fam)

<sup>30</sup> [2015] EWCA Civ 1284