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# **Speech by Sir Andrew McFarlane: Adapting Adoption to the Modern World**

**The Mayflower Lecture 2023**

**Adapting Adoption to the Modern World**

**Thursday 9 November 2023**

It is a true honour to be giving this year's Mayflower lecture. I am most grateful to the Plymouth Law Society for their kind invitation, and to the City of Plymouth and to the University of Plymouth who also co-hosts of tonight's event.

The focus of my address is upon the adoption of children. In giving it, I am conscious that I am speaking to a number of audiences in addition to those of you who have been kind enough to gather this evening. Although many of you are lawyers, and what I say may be read by a good number of Family lawyers, I also hope that my words may be of interest to the wider public. With that in mind, I will take some time in setting out matters of history and context to assist 'new readers', as it were, without, I hope, boring those for whom that information may be well known.

What follows is not a conventional 'law lecture', and you will find only passing reference to case law within it. My purpose is twofold. Firstly, to raise public awareness of the fact that the Family Court is regularly making orders which will have a profound impact throughout their lives on those who are adopted and their families. Secondly, to suggest that there is a pressing need for courts and those who advise them in these matters to modernise the approach that is taken to supporting a young, adopted person by enhancing the degree to which they may maintain some form of relationship with their birth family after adoption.

It is the case that adoption, and the issue of contact on which I will focus, have been the subject of a number of recently published reports to which I will make appropriate reference in what follows.

The thought that the wider public may be interested in how the law and the courts currently approach issues of adoption is not an idle one. It is common place for the Press or media to carry stories of celebrities and others who were adopted long ago and who are now speaking out about their experience. Many of you will be familiar with TV programmes such as 'Long Lost Family', in which researchers trace blood relatives, often decades after the event, and reunite brothers, sisters and other family members of individuals who were adopted in infancy. Not infrequently the adopted person will not even know if they have a brother or a sister until they are told of them, on camera, and shown a photograph. It is plainly 'good telly', and the show has already run for 13 series. I suspect that, in part, it hooks the viewer because, on one level, it seems incredible that someone can live a long life, yet have no awareness of, let alone contact with, their mother or father or other close blood relatives.

In another, grimmer, context, there is clear public interest in the practices of the, now infamous, 'Magdalene Laundries' or 'Magdalene Asylums' active in Ireland from the 18th to the late 20th century. Although predominantly run by the Roman Catholic church, these institutions were operated by both protestant and catholic churches in both the north and south of Ireland. The laundries have recently been depicted in an award winning novel – 'Small Things Like These' – by Claire Keegan and a TV drama 'The Woman in the Wall'. In all it is thought that some 30,000 'fallen women' were confined in Magdalene Laundries. Reasons for admission were broadly spread and were by no means confined to young women who had become pregnant out of wedlock. Once contained in a laundry, a woman might stay there for life. If she gave birth, her children went on to be adopted, as depicted in the book and film, 'Philomena', by journalist Martin Sixsmith. It is a striking fact that it was only in 1996 that the last Magdalene Laundry closed.

In 2013, following the report of a government inquiry, the Taoiseach issued a formal apology for the hurt done to every woman who had spent time in a Magdalene Laundry.

My reason for taking time in a lecture about adoption in England and Wales, to tell you about these shocking, but historic, practices in a different country is that, whilst of a wholly different order to Ireland, the treatment of young women here who became pregnant out of wedlock in the middle of the 20th century is also deeply shameful.

In 2022, the Joint Committee of the Commons and Lords on Human Rights published a report on 'The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976' [JCHR]. It makes for grim reading. Its contents are important. It describes practices which provide a context in which it is possible to understand how the stories covered in Long Lost Family began.

The report covers the period from the Adoption Act 1949 to the Adoption Act 1976. Its summary describes how, during that period

'...thousands of children of unmarried women were adopted even though their mothers did not want to let them go. Many of those affected, both mothers and

children, have faced life-long suffering as a consequence of this separation.'

The inquiry sought to consider whether the treatment of these women and children respected their right to family life, as we understand it today, and how they were affected by the severing of that crucial bond between mother and child.

'The experiences of the mothers and their children are at the centre of this inquiry. They did not, as is often said, give their children away. Unmarried women who found themselves pregnant during this period faced secrecy and shame from the earliest stages. Those who would have seized the chance to keep their sons and daughters with them and brought them up themselves did not have the opportunity to do so. Societal and familial pressures, and the absence of support, contributed to thousands of children being taken from loving mothers and placed for adoption.'

The committee estimated that around 185,000 babies of unmarried mothers were adopted during this 27 year period – that is nearly 7,000 per year. The report records:

'Many young women were sent away from home to conceal their pregnancy, and many spent their final weeks of pregnancy and weeks after the birth in mother and baby homes. Some of our witnesses recounted the abuse they faced whilst away from home. We were struck by descriptions of the ways in which the women were being "punished" for what was seen as a transgression. There was an overwhelming feeling amongst the mothers we heard from that their treatment during and after giving birth was deliberate punishment for their pregnancy while unmarried.

We also heard about the continuing impact of the adoption of their baby on the mothers with many recounting ongoing mental health difficulties, others telling us the impacts on their family lives for decades. As one mother told us, "53 years later and here I am, a wreck because of what happened to me and my daughter." The mothers we heard from were subjected to cruelty because they were considered to have transgressed. Their treatment stands as an important reminder that human rights should be protected for all, including those who at any particular time are regarded as transgressors.'

The adoption orders that were made at that time, with respect to these women, were made 'by consent', with the mothers signing away their rights, and the court simply acting upon the basis of that apparent consent in subsequently making an adoption order. The report describes the overwhelming culture amongst professionals, whether they be medical or social work practitioners, and voluntary adoption agencies, many of which were run by religious organisations, which was that there was no question of the mother caring for her child as a single parent and the only option was that of adoption. As a result, adoptions achieved in this way are, correctly, labelled as 'forced adoption', rather than, as is often the case, 'relinquished children' – a phrase which wrongly suggests that these mothers had some choice in the matter.

The report justifies reading in full. One aspect that it highlights is the difficulty that adopted adults encounter in accessing information about their birth family, despite now being entitled to do so.

To give one illustration of the finality of this form of adoption, in 1995 I had the privilege of representing a woman whose baby daughter had been adopted in 1960. All this lady wanted was simply to be told how things had turned out and if her daughter was well that this was so. She did not want to trace her or be put in touch. The application was refused and my appeal against the refusal was dismissed with the Court of Appeal holding that truly exceptional circumstances were required to justify disclosure of information in the official adoption registers. As far as I know, that mother may have gone to her grave not knowing anything about the life of the child she had given birth to. To my mind at the time, and at all times since, that outcome seemed cruel in the extreme to me. The same strict regime would not apply to modern adoptions, but that it was still applied to these forced adoptions only 25 years ago is striking.

For those who are interested, a recent 'File on Four' documentary by Jon Holmes describes his quest for information about the circumstances of his own adoption during that period. The programme shows that even for the adopted person, the task of tracing your own records is not made easy.

There is a group known as the 'UK Adult Adoptee Movement', which believes that, despite the JCHR Report, there is still insufficient understanding of the impact of forced adoption on adoptees and their families. The group campaigns to raise awareness of the lifelong trauma adoptees face and to ensure appropriate support is available for all those involved. They state that:

'The impact of being adopted, does not magically disappear when you become an adult. Different life events, such as relationships, careers, healthcare and menopause are greatly affected by our adoption experiences – yet this is completely ignored by society.'

Inquiries similar to those of the JCHR have been undertaken in Scotland and N Ireland into forced adoption. In Scotland and in Wales, the respective governments have issued a formal apology for the state's knowledge of and involvement in this practice. The UK government has concluded that a formal apology with respect to England would not be appropriate.

The practice of 'forced adoption' ended in the 1970's. My purpose in highlighting it today is to draw attention to the Joint Committee's report, which did not receive wide media coverage on its publication last year. I believe, that, just as is the case with the Magdalene Laundries in Ireland, there is a legitimate public interest in knowing how the authorities in our jurisdiction approached the problem, as they saw it, of pregnancy out of wedlock in the middle of the last century. As a judge it is certainly not my place to comment on whether a public apology should, or should not, be made. There is, in any event, a legitimate debate to be had with respect to such apologies, and I do not intend to enter into it. I do, however, believe that many, if not all, in this room this evening will share my own sense of astonishment and shame that this practice was being undertaken in our country not so long ago, and that you may also share my profound sorrow for the women who were so clearly harmed by it.

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

an adopted child and their birth family.

Until the 1970s adoption largely involved the relinquishing of young babies by a parent or parents with no expectation of any future contact. Children placed under this arrangement were usually very young and had no attachment or memory of their birth family. The stigma attached to illegitimacy and infertility meant that the decision not to promote contact was considered to be a protective factor for the adopter, the adopted child and the birth family. There was thus little call for post-adoption contact.

Against that background, and before turning to the modern law and practice, it is helpful to stand back and remind ourselves of what is meant by 'adoption' in English law.

An adoption order is an order giving parental responsibility for a child to the adopters. At the same time an adoption order operates to extinguish permanently the parental responsibility which any person had for the child immediately before the order was made. An adoption order is irrevocable (save in very restricted circumstances) and the child will be deemed in law to be the adopters' legitimate child, as if he or she had been born to them. The legal relationships within the child's natural family cease to exist.

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

Following the end of the days of 'forced adoption' or 'relinquished babies' reforming legislation in the 1970's, adoption is now largely used for children who have been protected from child abuse by removing them from the care of their natural family. Such children are likely to

require continued protection in the years to come, but, one may ask, how bad must the home circumstances be to justify not merely keeping the child safe during childhood, but legally removing her from her family forever and grafting her permanently into another family for the remainder of her life. The answer to that question, established by a decision of the UK Supreme Court, is that adoption will only be the proportionate remedy when it is necessary to meet the child's welfare needs throughout their life and 'nothing else' (meaning no less intrusive arrangement) 'will do'.

The court must look at the realistic options for the child's future care and must, in particular, consider the relationship that she has with any person and the impact of ceasing to be a member of the birth family and becoming an adopted person.

It is right to record that the change in the model of adoption from one which sought to remove many children born out of wedlock from their mothers, to one which aims to find permanent homes for abused children who cannot return to their family has had a radical impact on the volume of adoption applications which have fallen from a peak of around 25,000 in the 1960's to below 5,000 children adopted from care in 2010 and again to around 2,950 in 2022.

An adoption order, or an order authorising a local authority to place a child for adoption, can only be made if each parent who has parental responsibility for the child either consents to the order, or the court has dispensed with the need to obtain their consent. Where consent is given, it must be unconditional and with full understanding of what is involved. Where a parent does not agree to the order, a court can only dispense with their consent where, either:

- (a) The parent cannot be found or lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent; or
- (b) The welfare of the child requires the consent to be dispensed with.

It is this latter requirement upon which, as I have already trailed, the Supreme Court focussed in *Re B (A Child)* in 2013. The judgments variously stressed that adoption should be seen 'as a last resort – when all else fails' and where 'the court must be satisfied that there is no practical way of the authorities or others providing the requisite



assistance and support' for the child and where 'nothing else will do'. The test is very strict with adoption only being ordered 'in exceptional circumstances' and where motivated by overriding requirements pertaining to the child's welfare.

Finally, in this whistle-stop introduction to adoption law for newcomers, it is necessary to describe two other elements of the legal process. Firstly, in a change introduced by the Adoption and Children Act 2002 ['ACA 2002'], where a local authority intends to place a child who is in their care for adoption, they can only do so with the consent of both parents or where a court has made a 'placement for adoption' order. Such an order may, itself, only be made with consent, or where the court dispenses with parental consent on the basis that I have explained. Once a placement for adoption order has been made, the adoption issue is considered to be finalised so far as the parents are concerned and they can only apply to reopen the plan for the adoption for further court scrutiny if there has been a change in the circumstances underpinning the order and it is in the child's interests to reopen the issue – this is a high, and usually insurmountable, hurdle in most cases.

The importance of determining the issue of parental consent and for the court to endorse the plan for adoption before any adoptive placement takes place is that the child and the potential adopters will proceed into the placement knowing that, if it works out between them, an adoption is likely to follow without a further contested court hearing. Under the previous law, the parents were able to challenge the whole plan in a head-to-head trial with the adopters after the child had made his or her home with them and had settled down; that was, as you will imagine, often a most unsatisfactory and unsettling experience for the adopters. It was also less than fair to the parents who were facing a *fait accompli*, where it was hard to contemplate that a court would now remove their child from the adopters.

The second and final element of the legal structure that I need to paint in relates to 'contact'. As will become clear, it is this element that I consider needs to be developed in order to adapt adoption more suitably to the modern age.

Once a placement for adoption order has been made, all previous orders or arrangements for a child and his or her

natural family to have contact with each other come to an end. When making a placement order, the court has the power to make a further order under ACA 2002, s 26 requiring the person with whom the child lives, or is to live, to allow him to visit or stay with the person named in the order, or for them otherwise to have contact with each other. Unless such an order has been made, there is no legal requirement for the local authority to arrange any contact with the child's natural family.

Although s 26 speaks of a child being allowed to visit or stay with another person, such arrangements will be very rare given that the plan is for the child to cut all legal ties with his natural family. The normal arrangement, after a short interim period in which existing contact arrangements are run down and cease with a 'farewell' visit, is for a minimal link to be established via what is called 'letterbox contact'. The details will vary from case to case, but normally involve each side of the divide, namely the adopters and the natural parents, communicating with each other by a short letter or report once each year. These communications might, or might not, contain photographs and would give a brief update.

It is obviously important, as an adopted child grows up and comes to terms with who they are and what adoption means, for them to have some knowledge of their natural family. Adopters are taught and encouraged to maintain a 'Life Story Book' and undertake regular Life Story work with their child. In this context, the information gained through letterbox contact will be important and, minimal though the level of connection with the child might be, its value is not to be under-estimated.

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

'It was important to remember that contact should be for the benefit of the child, not for the parents or other relatives. The reasons why a child might benefit from contact were spelled out in evidence from After Adoption: "it is not about maintenance of the relationships as they were with the birth family . . . what [children] like is to have some continuity that enables them to integrate the past with the present, and obviously then the future. I think

contact can play a very useful role for the child in helping them understand their world and their life history.”

Helen Oakwater described the role that facilitated contact could play in assisting a child to “integrate their past, allowing them to form a coherent narrative and more robust sense of self.”

Turning, at last, to the title of this address, ‘Adapting Adoption for the Modern World’, what do I mean by the ‘modern world’ and why does adoption need adapting?

I suspect that I only need to begin to sketch out the ‘modern world’ point for you to understand the need for some form of rethink.

Picture the scene, the primary means by which an adoption might achieve the goal of creating an entirely new life for a child was hitherto to establish a largely impervious wall around them, with little detailed knowledge of or contact with their natural family. Going back decades and decades, this is manifest in the extreme situations that are played out in ‘Long Lost Families’, but still in relatively recent times a child, who might even live in a neighbouring town to his previous family, would be unlikely to know them or know much about them. In a world where communication was confined to letters and landline telephones, and a photograph was always a physical thing, it was possible, indeed easy, to maintain an adopted child in an hermetically sealed environment of this nature into adulthood unless the adopted person actively sought to trace their original family. Should they wish to do so, the process of giving them the identifying information was, for their own benefit, carefully controlled and supported by trained post-adoption counsellors.

You will now be ahead of me .... With the explosion of digital communication in the past two decades it is possible for an adopted child, quietly, alone in their bedroom, without the knowledge of their adopted parents, to trace and find their family. The temptation to do so, and then to make contact with them, must be almost irresistible. But the dangers of doing so, and the potential for significant emotional harm to result, are easy to contemplate. Unlike the babies taken at birth of yesteryear, today’s adoptees have normally been removed from their family because they have experienced, or were likely to experience, significant harm there; harm of a nature and

degree that justified permanent life-long placement as part of another family.

It is, sadly, now a not uncommon experience, despite the best efforts of adopters who have made a full, lifelong and loving commitment to their child, to experience the breakdown of that relationship during the teenage years with, in some cases, the young person moving with their feet and trying to rejoin their birth family. Such attempts often fail, or are a cause of further harm to the child. Fresh child protection procedures may be commenced between local authority social services with the adopters, as the child's parents.

Even where events do not take such an extreme course, the task of bringing a young person up through the teenage years, never an easy one, must be all the more complicated where the child has been adopted and has had some experience, which may have been deeply traumatic, of their natural family. Gaining a sense of one's own identity, where we come from, where we fit in and who we are, is a journey each of us will have undertaken during our adolescence. It was not easy was it, even if, like me, you had the security of a nuclear family that had been solidly consistent throughout your early years. Imagine how much more difficult it may be for one who has experienced a dysfunctional and abusive start in life, followed, probably, by a series of foster carers before becoming permanently part of your adoptive family only a few years before the onset of puberty.

That these difficulties exist is made evident by the fact that there is an active support group for adopters. It is called the 'Potato Group', standing for 'Parents of Traumatized Adopted Teens Organisation'. Potato describes itself in these terms:

'We are a group of around 400 parents of adopted teenagers and post teens from all over the UK.

Collectively we parent young people who have suffered early, repeated trauma and continue to face difficulties in their teen and young adult years.

Our purpose is to provide a peer based service for families with teenagers who hurt and help them access support,

information, resources and friendship from people who are living it and truly understand.’

This is a lecture about the law rather than social policy. It is in no manner the place of a judge to pontificate on the latter. That is so not only in constitutional terms, but also because, as a lawyer, I am not qualified to do so. These are matters, ultimately, for government and Parliament and it is welcome news that the Department for Education, which has responsibility for adoption, has commissioned a wide-ranging study about the lives of teenagers and young adults in adoptive, or alternatively ‘special guardianship’ families. A special guardianship order [under CA 1989, s 14A], which is intended to endure throughout childhood, is made to secure the placement of a child in the care of someone who is not their parent, but is often a close family member (for example a grandparent, aunt or uncle). Such placements, often referred to as ‘kinship care’, have a sense of permanence, but allow the child to remain within the birth family.

In announcing the current project Sarah Jennings, Deputy Director at the Department for Education said “This ground-breaking research will inform future government policy and delivery of both adoption and kinship care support. ... This research will inform our thinking on how to further improve the support provided to adoptive and kinship care families.”

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

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

The first point to make is that the term ‘contact’ is itself unhelpful in this context. To lawyers, and no doubt to birth parents, it is likely to mean direct communication, and/or

meetings, with the child. Such a narrow, or functional, view is unhelpful as it can obscure one of the core features of adoption, namely the severing of the child's relationship with their birth parents and the establishment of a new set of relationships with the adopters. The consequences of the breaking and making of relationships is significant for all those involved including a profound sense of loss for the birth parents, a sense of confusion for the child/adolescent/adult and a source of anxiety for the adoptive parents. Any attempt to re-build these relationships in a meaningful and safe way through contact must take into account the needs of the individuals in a more comprehensive way than that provided by annual 'letterbox' messages.

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

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

All of these issues underpin the significance of avoiding any delay in agreeing the plan and solution for the child. We know that what every child needs throughout their life is a stable, loving family life that is or becomes their secure base. As a part of this, the child's curiosity about their past

including their birth family and other people who were important to them such as foster carers must be acknowledged and accommodated. The experience of feeling connected and having a personal narrative that is meaningful to the child/adolescent/adult is a core part of the recovery from an early life that was traumatic.

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

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

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

In preparing this address, I have been greatly assisted by the fact that the report of a working group that I established some 18 months ago has recently been published and I intend, if I may, to spend some short time setting out its main conclusions before offering my own observations. The group, which is the President's Public Law Working Group, Adoption Sub-Group (we are very inventive in the matter of group names), was made up of lawyers, judges, social work professionals and others who were all specialists in adoption work with Mrs Justice Frances Judd as its chair. Its report was published for consultation in September.

The report noted how adoption had adapted and changed down the years, but was clear that it needed to continue to do so saying:

‘First and foremost, we recommend that there needs to be a greater focus on the issue of contact with the birth family as long as it is safe and for adopted adults to have more straightforward access to their records.’

Although the report ranges far and wide, for the purposes of this lecture I intend to take up its lead and focus in on contact after adoption. An opening paragraph summarises the group’s approach:

Whilst there has been a great deal of research in recent years as to the potential advantages to adopted children of maintaining some sort of face-to-face contact with the birth family, it remains unusual for the care plan for children who are going to be placed for adoption to propose more than indirect or letterbox contact. The House of Lords Children and Families Act 2014 Committee, which reported in December 2022 , concluded that the current system of letterbox contact was outdated and warned that the failure to modernise contact threatened to undermine the adoption system.

The group suggests a change in social work practice and training for all involved in the process (including prospective adopters) to give more focus to contact and the benefits that it can bring for many (although not all) adopted children.

The first chapter, on Adoption and Contact, opens with this statement:

Our main recommendation is that there should be a tailormade approach to the issue of contact for each adopted child which includes and promotes face-to-face contact with important individuals in that child’s life if it can be safely achieved. The issue of contact needs to be actively considered throughout the child’s minority, not only before the adoption order is made. The other recommendations are intended to support this overarching aim.

The PLWG report goes on to quote from the December 2022 House of Lords report:

“Contact, where safe, appropriate and properly managed, can be valuable for an adoptive child, their new family and their birth family, including siblings and other relatives.



However, contact orders and support can vary, and the current system of letterbox contact is outdated. The failure to modernise contact threatens to undermine the adoption system.”

They reference a 2019 lecture that I gave to a Coram BAAF conference in which I said ‘that any move towards greater openness and flexibility in post-adoption contact must come on a case-by-case basis, in a manner that brings prospective adopters along on a consensual basis. At each stage the court must give consideration to the issue of long-term contact, relying on advice from well-informed social workers and guardians as to the benefits (or otherwise) of contact in the particular case.’

The PLWG summarises the key messages from recent research:

- i. There is considerable evidence that transparency and openness around the circumstances and experiences of the adoptee’s birth family is beneficial to an adopted child.
- ii. The purpose of contact post-adoption is for the adoptee about enabling a process to help them understand their experiences and develop a sense of identity. Existing relationships with birth parents must change to take into account their different role as a result of the legal process of adoption.
- iii. Separating siblings can lead to an enduring sense of loss.
- iv. There are strong indications that face-to-face contact helps adoptees develop a sense of identity, accept the reasons why they were adopted and move forward with their lives.
- v. However, ensuring that contact is safe for the child is pivotal to positive outcomes.
- vi. Communication with and understanding from the parties involved in contact (birth parents or other relatives/adoptees/adopters) is an important component in its success.
- vii. Despite the research indicating the benefits of face-to-face contact, where it can be safely managed, the overwhelming majority of cases continue to recommend only letterbox contact. Where direct contact does occur it often happens without any formal agreement being in place.
- viii. Letterbox contact can prove problematic. A high number of arrangements stall as a result of one (or both) parties failing to maintain the arrangement. This leaves many adoptees without any effective contact from birth

families.

ix. The experience in Northern Ireland tends to suggest that a shift in mindset by professionals involved in the process of adoption and strong guidance from the judiciary can bring about a change in approach to post adoption contact without the need for changes in primary legislation. The group also recommends greater support and counselling for birth parents and that the full range of contact options, including digital options, should be actively considered by the professionals and the court during care and placement proceedings. They do not suggest that contact orders should routinely be made in the face of opposition from adoptive parents, whether at the time of the adoption itself or later, but it is believed that opposition is much less likely where adoptive parents are given a thorough understanding of the child's needs right at the start and are given the right support.

A similar perspective is provided by another recent report. It is from the Consortium of Voluntary Adoption Agencies 'A home for me?' (November 2022) . It is a comparative review of different forms of permanence for children through adoption, SGO's and fostering and it opens with the following sentence:  
'The adoption system in the United Kingdom is not working well for children'

In the body of the CVAA report (p 13) the authors state that:

'... it should be recognised that birth family contact can be preserved and facilitated within adoption. Our research, and that of others, recognises that the awareness of birth family contact within adoption helps to facilitate it, and ongoing support for it within adoption ... needs to be improved. Realistically, in this age of social media, children are able to locate birth family and vice versa; therefore, earlier strategies of separating children from their birth family are no longer realistic. If this issue were to be addressed and there was recognition that adoption could support birth family contact, this could increase the likelihood of social workers recommending children and young people for adoption.'

Finally, before moving towards the recommendations made by the group, I wish to quote from oral evidence given to the Lords Children and Families Act 2014 Committee on 4 April 2022 by Al Coates who is a very experienced adoptive parent, former foster carer and a

social worker as Mr Coates captures the essence of the thrust of each of these recent reviews and delivers it with the authority of one who has experienced the playing out of these issues first hand.

‘We have a system that was developed in the 1950s, before computers were even invented. We are asking people to write letters. I do not know about you, but I do not write letters. We are asking vulnerable people and adult adoptive parents to write letters. We live in a social media age, and yet our feet are firmly stuck in the last century. We need a flexible, intuitive, risk averse but appropriately safe system that allows for meaningful support for lifelong contact with safe members of birth families.

I was recently given information from a freedom of information request across all RAAs in the UK. The amount of birth parents writing to adopters and not getting responses is amazing; it is in the hundreds. Once the adoption order is made, adopters do what they want. The needs of five-year olds in relation to contact are very different from the needs of 10 year-olds. Then children become adolescents.

Twenty years ago, you would have had to go to the library and look through a microfiche—if you can remember what those are—to find someone. Now, if you give me three minutes with a mobile phone, I can find you. We need to have a flexible approach and to find an antidote to what are, as we have all been, angry teenagers acting impulsively. We find lots of families really struggling to support their children. We have a system that works on the worst-case scenario and presumes that all birth parents are dangerous and unsafe.

Do we need social workers who do an annual review and ask, “What are your contact needs”? ... When children are young adults, physical contact might be appropriate, because we know that the physical risks to a three year-old are not present for a 15, 18 or 22 year-old. Those relationships cannot be restored. You cannot get time back. If we can keep a thread going through, let us do it with ongoing reviews.’

It is now time to draw this address to a close. After such a long run up, you are entitled to anticipate a number of punchy 'conclusions' and guidance for future practice. Timing is not, however, favourable in that regard. The recommendations of the PLWG Adoption group are currently out for consultation until 30th November. After that date, and taking account of the consultation responses, the group will submit its final report and it will then be for me, as President, to consider the detail and indicate whether or not any final recommendations are accepted and are to be followed.

I therefore need to hold back and do no more than I have done by describing the current landscape around the issue of contact and by, now, summarising the PLWG group's key recommendations, together with some comments of my own.

Currently, in many cases, when the court makes a placement for adoption order consideration of contact may be confined to the immediate cessation of the current arrangements, with little or no thought being given to the medium and long-term support that can be given to the child prior to, during and after placement for adoption. My own view is that there is a need for a radical departure from that model. It should be the responsibility of the court, at this key stage when it has determined that a child is to be adopted, but before the adoptive placement has been identified, to establish the basis and structure for any continuing relationship with the birth family. This may require looking beyond the birth parents to other members of the child's wider family to see if there is someone, for example an aunt or a cousin, with whom the child may have an intermittent, safe, but real, relationship down the years. The 'Lifelong Links' model, operated by the Family Rights Group, for contact to children in long-term care may provide an example of how such a link might be established and maintained for an adopted child.

It is that approach which lies behind a key recommendation of the PLWG group which is that the full range of contact options (including digital options) should be actively considered by professionals and the court during care and placement proceedings rather than being dealt with by an assumption that contact will be via letterbox only.

The group goes on to recommend that courts should consider how they can use the jurisdiction to make contact orders under s 26 of ACA 2002 to set out clearly the assessed needs of the child to stay in touch with relevant members of their birth beyond the point of the placement order (where prospective adopters may or may not yet be identified), particularly in cases where it would be detrimental for the child to have contact cut off at this stage. Any such orders end when the adoption order is made, but they may set the tone for what the court determines should happen after the adoption order.

It may be said that, for the court to act in this way, might hinder the task of finding prospective adopters, who may be deterred by the idea of the child having some continuing contact with the birth family in the future, or that it may compromise the autonomy normally afforded to adopters. I do not agree that this should be an inhibiting factor in the court making an order where that is justified. The court's focus is solely on the best interests of the child, not on those of potential future adopters. Where, for the reasons that I have attempted to set out in this lecture, the court considers that there should be continuing contact up to and after adoption it should establish this by a court order at the time of making a placement order. The contact regime will be reviewed at any subsequent adoption hearing at which the adopters can be heard.

At that later stage, the group recommends that courts should consider, in the right case, the use of section 51A ACA 2002 which contemplates the making of a contact order now or at any time after the making of an adoption order. In some cases, that provision may be used to facilitate a review of contact by the court at a suitable time after the making of the adoption order, for example where direct contact is not appropriate at the time of the order but may be indicated at a time in the foreseeable future.

The group recognise that imposing an order on unwilling adopters is a very serious matter, but they consider that, if the other recommendations in their report are accepted, there is hope that, with greater support and training for all concerned, decisions about contact are overwhelmingly likely to be made by consent. In this regard, they also recommend that consideration should be given in every case to a meeting between the adopters and members of the birth family.

Finally, in this selection of highlights, the group recommend that after the adoption order is made, periodic reviews of contact plans should be offered by the adoption social worker to ensure the plan is still meeting the child's needs and to consider any changes to the contact or support for contact that might be needed. Such a change would indeed be a radical departure from current practice, but, with the words of Mr Al Coates fresh in your minds, you will not be surprised to hear me say that, subject to the consultation process, I consider that this suggestion is well founded.

I would conclude by stressing that adoption is a life changing and life enhancing process. Making an adoption order is one of the most significant decisions and actions the State can take. The plan for any adopted child is to ensure that they become settled on a pathway similar to any child whose life is centred around their birth parents and family, with provision for day to day care, a secure base, stimulation, connection and identity. In addition, an adopted child has needs beyond the 'typical child and family experience' that are stimulated by curiosity and the need to know about family history, relationships, and their past circumstances. The term 'open' is often used to give recognition to these issues in modern adoption – the modern approach is fundamentally different to the evidence and conclusions explored by the Joint Parliamentary Committee in pre-1970's adoption, where secrecy, denial and condemnation were prevalent. What we now know is that the concept of modern adoption needs to be developed further, so that services are improved, in particular with regard to provision for a continuing relationship with and knowledge of the birth family, with the child's needs being at the centre of all that we do. Every adopted child has a right to no less.