

## Public Law Children

January 2025

**An application made by the birth mother ('BM') of a child ('X') who wants to have direct contact with X. X was adopted in February 2024 by the adoptive mother ('AM').**

**BM v AM& Ors [2024] EWFC 383 (B)**

**26 November 2024**

**Full judgment can be found [here](#).**

### Judgement of HHJ Marin

#### **Background [1] – [16]:**

X is now four years old. She was involved with the local authority for several years before proceedings were issued in late 2020, resulting in a final hearing before HHJ Marin in July 2022.

Extensive evidence was heard referring to “*BM’s lack of insight, neglect, a serious lack of hygiene in the family home, a lack of empathy, a failure to protect another child of the family from sexual abuse and critical deficits in her parenting*”.

Final care and placement orders were made at that hearing and were not appealed.

X was matched with AM in February 2023, and BM had her final contact with X in March 2023.

In July 2023, AM applied to the court for an adoption order and in September 2023, BM applied to seek permission to oppose the granting of an adoption order. She also sought direct contact with X.

In December 2023 BM was refused leave to oppose the adoption order. BM did not appeal this decision. A final adoption order was made in favour of AM in February 2024.

The matter of the post-adoption contact application was listed for a hearing in March 2024. This was adjourned for nine months due to a CAMHS report that advocated against direct contact between BM and X, the fact that AM was willing to meet with BM, and the child’s guardian starting to work with the family.

The child's guardian was concerned for X and applied to the court to bring forward the determination of the contact application. The matter of post-adoption contact between X and BM now comes before the court for determination.

## Positions of the parties [15] – [16]

The positions of the parties were summarised as follows:

*“The position now is that BM seeks direct contact with AM once or twice each year. She also wants letter box contact to be properly set up for her and X's siblings.*

*AM is not opposed to direct contact but maintains that now is not the time for it to start. Her position is that she would be guided by the professionals working with X as to when direct contact was appropriate for X and at that point, she would have no objection to it taking place. Meanwhile, AM had no objection to indirect contact between X and BM and her siblings. CG and the local authority supported AM's position.”*

## The law

The judge summarised the relevant legislation in the Adoption and Children Act 2002, considering whether BM was allowed to make the application and whether she needed the permission of the court (at [18] – [23]).

The court then considered the law relating to the substantive issue of contact. The judge gave a helpful analysis of the case law since the introduction of section 51A:

25. *In this regard, I have been referred to and considered a number of authorities which address the issue of post-adoption contact including Re C (Adoption Contact) [2005] EWCA Civ 1128; Re T [2010] EWCA Civ 1527; Re C (A Child) (Adoption by FosterCarers) [2024] EWFC 87; Re B (A Child) (Post Adoption Contact) [2019] EWCA Civ 29; Re R and C (Adoption or Fostering) [2024] EWCA Civ 1302. These authorities in turn refer to other cases. The parties' position statements also set out the relevant law which is not in dispute.*
26. *The principle for many years was that a court should not make an order for post-adoption contact with members of the birth family against the wishes of the adopters save in "exceptional circumstances". Lord Justice Baker in Re R and C referred to this principle as having been "firmly applied."*
27. *The introduction of section 51A was at a time when the thinking was more towards a concept of "greater openness in terms of post-adoption contact" (per Sir Andrew MacFarlane P in Re B).*

28. However, as Lord Justice Baker remarked in *Re R and C*:

"30. In the event, any "sea change" in the years following the implementation of the 2002 Act did not extend to a wider imposition of orders for post-adoption contact against the wishes of the adopters. In subsequent cases, this Court reiterated the principle that it would be extremely unusual to impose on prospective adopters orders for contact with which they were not in agreement.."

29. He said further:

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

"52. The starting point for any consideration of this issue must be the settled position in law that had been reached by the decision in *Re R*, which was confirmed by this court in the Oxfordshire case and in *Re T*. The judgment in *Re R* was, itself, on all fours, so far as imposing contact on unwilling adopters, with the position described by Lord Ackner in *Re C*.

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

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

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

"59. ACA 2002, s 51A has been brought into force at a time when there is research and debate amongst social work and adoption professionals which may be moving towards the concept of greater 'openness' in terms of post-adoption contact arrangements, both between an adopted child and natural parents and, more particularly, between siblings. For the reasons that I have given, the juxtaposition in timing between the new provisions and the wider debate does not indicate that the two are linked. The impact of new research and the debate is likely to be reflected in evidence adduced in court in particular cases. It may also surface in terms of advice and counselling to prospective adopters and birth families when considering what arrangements for contact may be the best in any particular case. But any development or change from previous practice and expectations as to post-adoption contact that may arise from these current initiatives will be a matter that may be reflected in welfare decisions that are made by adopters, or by a court, on a case by case basis. These are matters of 'welfare' and not of 'law'. The law remains, as I have stated it, namely that it will only be in an extremely unusual case that a court will make an order stipulating contact arrangement to which the adopters do not agree. ...

*"61. Post-adoption contact is an important issue which should be given full consideration in every case [ACA 2002, s 46(6)]. Whilst there may not have been a change in the law in so far as the imposition of a contact regime against the wishes of prospective adopters is concerned, there is now a joined-up regime contained within the ACA 2002 for the consideration of contact both at the placement for adoption stage and later at the hearing of an adoption application. Further, and in contrast to the situation prior to 2014 where the issue of contact on adoption was determined under s.8 by applying the CA 1989, s.1 welfare provisions, issues under both s.26 and s.51A of the ACA 2002 will be determined by applying the bespoke adoption welfare provisions in ACA 2002, s.1, where the focus is not just upon the welfare of the subject of the application during childhood but throughout their life.*

*62. A placement for adoption hearing has the potential for having an important influence upon the development of any subsequent long-term contact arrangements. As required by ACA 2002, s.27(4), the court must consider the issue of contact and any plans for contact before making a placement for adoption order. The court's order may well, therefore, set the tone for future contact, but the court must be plain that, as the law stands, whilst there may be justification in considering some form of direct contact, the ultimate decision as to what contact is to take place is for the adopters and that [it] will be 'extremely unusual' for the court to impose a contrary arrangement against the wishes of adopters."*

The judge then went on to consider the Public Law Working Group's November 2024 report "*Recommendations for best practice in respect of adoption*", and their recommendations for post-adoption contact:

- 30. In November 2024, the Public Law Working Group's adoption sub-committee published a report entitled "Recommendations for best practice in respect of adoption."*
- 31. The report considered the issue of post-adoption contact saying that "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."*
- 32. Referring to the provisions of section 51A of the ACA, it noted that there was "little reported case law to suggest that these provisions are being actively used" and that there needed to be a "sea change in the approach to the question of fact-to-face contact between the adopted child and the birth family or other significant individuals."*
- 33. Equally though, the report recognised that "imposing an order on unwilling adopters is a very serious matter, and that the decision of the Court of Appeal in Re B outlines the limits in which it is appropriate. Adoptive parents will need to be fully involved in decisions about contact with a strong emphasis on the needs of the child."*

## Evidence

In paragraph 35 onward, the judge set out the oral evidence he heard from the social worker, the child's guardian, and the author of the CHAMS report ('CH').

Of particular note was that *"life story work had not been done even though X had been living with AM for nineteen months which L accepted was "not acceptable." L also accepted that indirect contact forms had not been processed or even sent direct to X's siblings. She had also not considered the comments about contact in the judgment following the care proceedings"* [37].

The judge stated that he was "disappointed" with the social worker's evidence: *"There is no doubt that the local authority has let down not only X but also BM and AM."* [64]

The child's guardian was clear that X's age was a main factor in her decision not to support direct contact, although the court *"was not satisfied that she addressed the issue of direct contact with sufficient depth and understanding of the contemporary research and trends in this challenging and developing field."* [73]

The judge was impressed with the evidence of CH and placed substantial weight on it.

## Decision

The judge refused BM's application for permission to appeal:

81. *The first stage is to consider whether to give BM leave to make her application for post-adoption contact.*
82. *Turning to the factors in section 51A(5), BM has a connection with X as she is her birth mother (section 51(A)(5)(b)).*
83. *I take into account the representations made by CG on behalf of X (section 51(A)(5)(c)(i)) as well as those made on behalf of AM (section 51(A)(5)(c)(ii)).*
84. *That leaves section 51(A)(5)(a) which refers to any risk of the application disrupting X's life to the extent that X would be harmed by it.*
85. *Harm is defined by reference to the Children Act 1989 where at section 31 it includes impairment of health or development.*
86. *I have reached the conclusion that if I were to give leave for the application to be made, there is an almost guaranteed risk of harm being caused to X.*
87. *X is four years old. She is starting to explore her world and it is clear that positive work has been done to help her to address her past and present difficulties. However, the work done so far is really only a beginning.*

88. *I accept CH's evidence as to X's situation. In particular, her view that direct contact could destabilise X and cause her to become emotionally derailed; the potential threat to the relationship between X and AM and the confusion and anxiety X would suffer.*
89. *I am in no doubt that if direct contact were to take place now or in the short term, there would almost certainly be a risk of disruption to X's placement and to her life and emotional wellbeing. X needs time to adjust to her new life and to benefit from professional help to work through the many issues and matters identified by CH. Those issues are clearly not straight forward or easy to resolve.*
90. *Added to the matters identified by CH is the fact that life story work has not started properly. As I have said, this is vital and part of the path to direct contact or at the very least to allow X to understand her past life.*
91. *When considering the welfare check list in section 1 of the ACA, it is the potential for emotional harm that would almost certainly be suffered by X through direct contact that stands out as a factor against allowing this application to proceed. There is also the need for X to enjoy stability in her placement and to continue her work with CAMHS. I also note that X's connection to her birth family can be provided by indirect contact and life story work.*
92. *Accordingly, I refuse leave to make the application. For the sake of completeness though, if I had given leave, I would have refused to make an order for direct contact at this point of time. It would be against the wishes of AM which are well founded, based on X's welfare needs and not a whim of her own and should therefore not be ignored or overridden; X would suffer emotional harm as evidenced by CH's evidence and the fall out from direct contact would more likely than not harm X as well as AM with the potential to damage her placement. Direct contact would not be in X's welfare interests. Indeed, the factors I refer to in refusing leave would apply equally here.*
93. *Turning to the future though, I accept AM's assurance that she will facilitate direct contact at a point when the professional advice she receives is that X would be emotionally safe and such contact would be appropriate and in X's welfare interests.*
94. *I direct the local authority to finalise its life story work by the end of January 2025 and to ensure that indirect contact is formalised in the next four weeks not only between X and BM but also between X and her siblings.*
95. *My hope is that CH will continue her work and progress matters to reach a point when X can deal with direct contact and all that brings with it. X's welfare interests reflect her whole life and not just her childhood and X will need a solid emotional base to address direct contact and all the issues that flow from it which include stability of her life with AM. At what point in time direct contact may be viable is therefore impossible to say. X is a child with*

*complicated needs and resolution of her issues cannot be rushed. Meanwhile though, indirect contact and life story work is sufficient.*

96. Accordingly, as I have said, I refuse leave to BM to apply for direct contact with X. I believe that indirect contact is agreed between the parties but if any points arise regarding that or generally, I can deal with them either on paper or at a short hearing. I give permission for this judgment to be shared with CAMHS. I would invite Counsel to agree an order to reflect my judgment.

## Practical Consequence

This judgment provides a welcome analysis of the law in light of [R and C \(Adoption or Fostering\), Re \[2024\] EWCA Civ 1302](#). It is also a reminder of the need to continually review contact and life story work once an adoptive family is found.



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