



**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

**Case No: FD14P00786**

**IN THE MATTER OF THE HUMAN RIGHTS ACT 1998**

**AND IN THE MATTER OF CHILD A**

2015 EWHC 2609 (Fam)

14 September 2015

**Before :**

**THE HONOURABLE MR JUSTICE PETER JACKSON**

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**Between :**

**KIRSTY LOUISE SEDDON**

**Claimant**

**-and-**

**OLDHAM METROPOLITAN BOROUGH  
COUNCIL**

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**Defendant**

**Kirsty Seddon** appeared in person with a McKenzie Friend

**Lorraine Cavanagh** (instructed by Oldham Borough Council) for the Respondent

Hearing date: 19 June 2015

Judgment date: 14 September 2015

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**JUDGMENT: Seddon v Oldham MBC (Adoption: Human Rights)**

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**IMPORTANT NOTICE**

This judgment may be published in this form provided that no report of the proceedings identifies Child A or her adoptive parents. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice Peter Jackson:**

**Summary**

1. This case concerns the rights of birth parents and children after adoption. It raises these questions:
  - (1) Do rights under Article 8 of the European Convention on Human Rights and Fundamental Freedoms 1950 (ECHR) survive the making of an adoption order?
  - (2) Did the coming into force in April 2014 of s. 51A Adoption and Children Act 2002 (ACA 2002), which allows the court to make a post-adoption contact order, create or maintain an Art. 8 right as between a birth parent and an adopted child?
  - (3) Is s. 51A(4) ACA 2002, which requires a former parent to obtain the permission of the court before applying for contact with an adopted child, incompatible with the ECHR?
  - (4) Does a post-adoption letterbox service run by a public body give rise to Art. 8 rights as between a birth parent and an adopted child?
2. For the reasons set out below, I would answer these questions 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.
  - (3) s. 52A(4) ACA 2002 is not incompatible with the ECHR.
  - (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.

**The proceedings**

3. The proceedings are brought by Kirsty Seddon against Oldham Metropolitan Borough Council (the Council) arising out of the adoption in 2010 of a child (A), who was born to her in 2008.

## JUDGMENT APPROVED FOR PUBLICATION

4. Ms Seddon has represented herself, assisted by her McKenzie Friend Mr Jerry Lonsdale. The Council is represented by Ms Lorraine Cavanagh.
5. Ms Seddon seeks:
  - (1) Declarations under the Human Rights Act 1998 (HRA 1998):
    - (a) That under Art. 8 ECHR she and A have a right to respect for their private and family life and correspondence, notwithstanding the making of the adoption order.
    - (b) That the Council is a public body exercising a public function within the meaning of ss. 6 and 7 HRA 1998 and can be held accountable when running its post-adoption letterbox service.
    - (c) That the Council acted unlawfully on one occasion by redacting and refusing to forward her correspondence via its letterbox service, and should be replaced by another service provider.
    - (d) That s. 51A(4) ACA 2002 is incompatible with the ECHR.
  - (2) Leave to issue an application for contact under s.51A ACA 2002.
6. My decision in relation to these applications is that:
  - (1) Ms Seddon's claims for declarations are dismissed. Instead I declare that:
    - (a) All pre-existing Art. 8 rights between Ms Seddon and A were extinguished by A's adoption.
    - (b) In running its post-adoption contact service, the Council, as it now concedes, is performing a public function.
    - (c) In redacting or not forwarding correspondence sent via its letterbox service on one occasion the Council's actions were lawful.
  - (2) Ms Seddon's application for permission to apply for contact is dismissed as being totally without merit.

### **The facts**

7. I extract these from the comprehensive document agreed between the parties.

### Background

8. Ms Seddon is now 27 years old. At the age of six, she was placed in care and lived in

no fewer than nine foster homes in the following ten years.

9. In late 2008, when she was 20 years old, Ms Seddon gave birth to A. A's father is Ms Seddon's sister's partner, by whom he had two children. He has played no part in A's life, though he and Ms Seddon's sister, A's maternal aunt, were assessed as possible carers at one stage.
10. During A's early days, Ms Seddon was not coping and the Council, which had been involved since early in the pregnancy, intervened. A core assessment was carried out and in February 2009, Ms Seddon and A were placed in a residential assessment unit. The placement was unfortunately not a success and ended after fifteen weeks.

#### The care and adoption proceedings

11. In May 2009, the Council brought care proceedings.
12. In June 2009, A was placed with foster parents within the framework of the Concurrent Planning scheme of the Goodman Project, part of the Manchester Adoption Society. Under this programme, if A could not return to her mother she would remain with her carers, who would become her adopters.
13. The final hearing of the Council's applications took place before HHJ Allweis at Manchester in February 2010, when he made care and placement orders. When doing so, he said:

*99. ... A, as every child, is entitled to a family life in which all her needs will be met. I am afraid mother cannot meet those in the next few months, and it is too long to wait in the forlorn hope that perhaps things will change through a process of further work, notwithstanding the assessment processes of the last twelve months, or through some attempt to address the issues of her past.*

*100. So I am satisfied that although it is very much a draconian step, it is an overriding necessity in the best interests of A that the court should take this step. Having in effect rehearsed the welfare checklist in the course of the judgment which I have given, essentially mother is not capable, and will not be capable in anything remotely approaching a child of 14 or 15 months of age's timescale, of meeting A's emotional and holistic needs. So with profound sadness, but without hesitation, I approve the care plan.*

14. As to contact after adoption, the judge said this:

*101. ... The Guardian in her evidence did not totally discount direct contact but said it is very dependent on mother's ability to accept the placement and that she is not the parent. ... I think Miss Hogan [the social worker] got it right eventually when, leaving aside the issue of indirect contact, which is not really an issue, she looked at the question of possible direct contact. She said this: "The carers are*

*open to indirect contact twice a year. They are open to the possibility of direct contact but would like to hear about the outcome of the professionals' assessment and make their own decision. They are concerned how they would protect A with her unusual name", and of course they now have the modern day curse of social networking sites and the Internet which sometimes get in the way of preservation of confidentiality of placement.*

*102. That sadly, not just as an issue in this case but as an aspect of a new Local Authority policy which I think is being replicated across the country, in the experience of this court, has given rise to angst amongst adoption professionals. It means the Local Authority has reluctantly concluded that it would not be appropriate to have the conventional indirect contact insofar as that might include photographs. So on the issue of direct contact, the carers have reservations. They have not ruled it out. Miss Hogan herself would have some concerns. Mother said if it was only going to be once a year, what is the point. The real problem is that mother would have to accept the placement, which, as Miss Hogan rightly said in the context of somebody who was emotionally and bitterly opposed to the plan for adoption, would be a big ask.*

*103. I think the short answer is that today is not a day for decisions in that regard. The carers will have a short term and no doubt, as the dust settles, a long term view. Mother's response to this judgment and to the possibility that she might have to work with professionals if there were to be direct contact would be an important factor. I am pessimistic that it is achievable, given mother's views, but I may be wrong and time will tell. I think that is for the future, although I think the Local Authority at some stage will have to file a very short amended or revised care plan just dealing with the issue of contact, and how it will pan out is something for the future in the light of the carers' views, the mother's perceptions and views, and trying to get it right and work out what is in A's best interests.*

15. At that stage, the care plan was for post-adoption contact to consist of an exchange of letters twice a year. This was subsequently reduced to once a year in the light of Ms Seddon's sustained opposition to the adoption.
16. In March 2010, face-to-face contact between Ms Seddon and A took place for the last time.
17. In May 2010, at a hearing that Ms Seddon did not attend, HHJ Allweis made an adoption order in favour of A's carers, who thereby became her parents. In relation to contact, the judge made no order. He said this:

*35. The issue of contact of course has had to be considered. I return to the judgment I gave in February. The guardian had said that post-adoption direct contact (and I add that the plan is for indirect contact) would be very dependent on the mother's ability to accept the placement and that she is not the parent. I*

*am bound to say that the mother's actions and attitudes since judgment emphasise that the one thing she is not doing is accepting the placement and that she is not going to parent. She cannot accept it. That is a tragedy in the case. However distressing the outcome may be, the mother must move on and it would be, and perhaps will be, very much against her long-term interests and emotional equilibrium if she refuses to move on and fights a hopeless fight against A's removal from her and the court's considered decision, in the light of the most intensive assessments of the mother, not to return A to her.*

36. ...

*37. In the three months that have passed, if anything, time is telling us that the mother refuses to accept the judgment. I accept the evidence of Miss Hogan and of course, under section 46(6), I have to consider before making an adoption order whether there should be arrangements for allowing any person contact with the child. I accept the evidence of Miss Hogan today that direct contact would manifestly not be in A's interests and that the mother is confusing her own and the child's interests. She is not accepting adoption is right, or the plan, even if she does not necessarily fully agree with it. Her view of the future is clearly not what the court has determined is best for A and, as things stand, I regret to conclude that any direct contact, given the bitterness and depth of the mother's opposition, will have the potential to unsettle A and/or her carers. It would be very much against A's interests. In any event, the harsh reality is that the carers know what mother's current position is and would, I have no doubt, find it extraordinarily difficult to embrace contact with such an oppositional mother.*

18. In May 2010, the Goodman Project came to an end and responsibility for post-adoption contact passed to the Council.
19. In July 2010, Ms Seddon issued an application under s.10 Children Act 1989 for permission to apply for a contact order and for HHJ Allweis to recuse himself. In August 2010, the applications were heard by HHJ Allweis who declined to recuse himself and refused leave to apply for a contact order.

#### Subsequent litigation

20. Ms Seddon has never accepted that she could not meet A's needs. For the past five years she has challenged A's adoption through legal processes and on the internet:
  - (1) In March 2010, her application for permission to appeal against the care and placement orders was heard on notice to the parties by Wall LJ and was dismissed.
  - (2) In May 2010, a second attempt to appeal those orders was dismissed by Wilson LJ on the papers as being totally without merit.

- (3) In September 2010, she sought permission to appeal the decision of HHJ Allweis to dismiss the application for leave to apply for a contact order and his refusal to recuse himself. This application was dismissed by Thorpe LJ in December 2010, who said:

*The applicant has put her case this morning to me with conviction, ability and careful preparation. However, it is in reality a hopeless application. The judge has dispatched both applications not just within the ambit of his discretion but plainly as any judge would have dispatched them. There is no role for this court and I refuse the application for permission.*

- (4) In October 2010, Ms Seddon petitioned the European Court of Human Rights.
- (5) In December 2011, she made her first claim under the Human Rights Act 1998. It was in very much the same terms as the present claim. Ms Seddon sought declarations that she retained Art. 8 rights, and also claimed that the Council had acted unlawfully in relation to indirect contact and in not assessing the viability of direct contact. In response, the Council filed a statement from the adoption team which included this narrative:

*A's adopters have been very aware of Ms Seddon's involvement of the media including television, radio, newspaper articles and the internet, in publicising her legal action to challenge the adoption. It has been unsettling for them and has caused them some anxiety but they nevertheless remain committed to indirect contact through the letter box arrangement. They do not bear any ill-will towards Ms Seddon and have A's best interests at heart at all times.*

In March 2012, those proceedings ended. Charles J, having heard counsel for Ms Seddon (Alison Russell QC) and the Council (Anthony Hayden QC), made no order, with the following recording:

*UPON IT BEING RECORDED THAT there is a firm commitment on the part of the adopters to continue with indirect contact in the form of an exchange of information by letterbox once each year; their first letter having been sent on the 7 March 2012.*

- (6) In July 2012, the European Court of Human Rights in its decision in *KS v United Kingdom* Application No. 62110/10 declared Ms Seddon's complaints inadmissible. It held that:

*[44] The decision to refuse the applicant's request for direct contact, following the making of the adoption order, was also fully reasoned and justified. The judge concluded, on the basis of the evidence, including his knowledge of the applicant's opposition to the adoption, that it would be contrary to M's need for stability with her new parents to allow the*

*applicant direct contact.*

*[45] In view of the foregoing, the Court is satisfied that the various assessments and orders were intended to safeguard the well-being of the applicant's daughter, and were not disproportionate to that aim. In particular there is no evidence in the file to suggest that the national authorities failed to respect the applicant's right to family life because of any preconception that her own childhood had left her unfit to care for her child. The court reiterates that given the importance to be attached to the protection of children and the fostering of secure family environments, it must not rush to substitute its own judgment in place of the authorities who are best placed to assess and respond to the needs of society (see *B and L v United Kingdom*, no. 36536/02, §36, 13 September 2005). In the circumstances of the case, and particularly taking into account the rights and interest of the child, the Court considers that the measures taken did not exceed the margin of appreciation afforded to the respondent State under Article 8.*

21. In the meantime and separately, in April 2010, Ms Seddon had issued a civil claim against the Council for breach of statutory duty and negligence, claiming that they had failed to remove her from home earlier during her own childhood and had failed to provide therapy to her during her childhood. In July 2013, this claim was tried in June 2013 at Liverpool County Court by Ms Recorder Yip QC, who handed down a judgment dismissing the claim in July 2013. Ms Seddon appealed that decision and in September 2014, Patten LJ refused permission to appeal.
22. In the course of her civil claim, Ms Seddon had obtained a report from a social worker, Dr Peter Dale. He had been asked to give an opinion on the Council's actions in relation to Ms Seddon as a child, and did so. However, he went well beyond the scope of his instructions by making these comments relating to A:

*Given the research evidence on direct post adoption contact is that this is beneficial or neutral (except in cases where parents undermine the placement), in my view A's lifelong best interests are likely to be compromised by her contact with her mother ceasing for the remainder of her childhood.*

*From the perspective of A growing up with an inaccurate sense of her true identity, heritage and generic connections; cessation of contact would likely result in disadvantage described by Owusu-Bempah (2007) as the absence of "genealogical connectedness".*

*The adopters need to appreciate (in a socially-networked virtual world) that it is now almost inconceivable that A and Ms Seddon will not resume contact with each other at some stage during A's adolescent/young adult years.*

*It is also likely one day that A will read the court papers concerning her history and her adoption. She will learn how vigorously her mother 'fought' to have her*



*returned to her care, and how they were prevented from maintaining contact with each other. This could fuel her resentment and anger towards her adoptive family and be a disturbing experience for A, which could threaten her lifelong wellbeing.*

*If the adopters are not willing at this stage to promote some agreed level of direct contact between A and her mother during her childhood years (on the basis that Miss Seddon can abide by terms and conditions), the more likely it is that A will eventually reject them in favour of her mother in her teenage/young adult years.*

23. In a further regrettable consequence of the civil litigation, shortly before the trial the solicitors acting as agents for the Council unaccountably sent confidential documents from the adoption file to Ms Seddon's solicitors in error. Litigation to recover these documents from Ms Seddon is continuing and I will do what I can to ensure that it is swiftly concluded.

#### Indirect contact

24. The exchange of correspondence is scheduled to take place in September of each year. There have been a number of communications:
- (1) In October 2010, Ms Seddon called the Council's adoption team. She was told that the arrangement was for contact once a year. Ms Seddon was unwilling to sign the Council's letterbox arrangement form.
  - (2) In November 2010, Ms Seddon called the adoption team and was given advice again about the independent support service she could access via Caritas and a leaflet regarding this service was sent out to her.
  - (3) In November 2011, Ms Seddon sent her first letter to the letterbox. It was forwarded to the parents and a letter of thanks was sent to Ms Seddon.
  - (4) In March 2012, the parents wrote to Ms Seddon via the letterbox system and the letter was subsequently forwarded to her.
  - (5) In September 2012, the parents sent another letter to Ms Seddon through the letterbox system.
  - (6) In December 2012, Ms Seddon replied via solicitors (Goodman Ray). They sent two letters from Ms Seddon to the letterbox, one directed to the parents and one to A, with copies to the Council's legal department under cover of a legal letter that enclosed the social work report of Dr Dale.

In their letter, Goodman Ray referred to passages in Dr Dale's report. They asked the Council to assess Ms Seddon for suitability for having direct contact

and also asked it to send the report to the parents with the request that they agree to direct contact.

- (7) The Council did not forward this correspondence in its entirety to the parents, considering that it was not the purpose for which letterbox contact had been set up and that it would be likely to unsettle them. In December 2012, its legal department told Ms Seddon this. (Ms Seddon says she did not receive this letter and some other correspondence from the Council, but nothing now turns on this.)

The Council's letter to Ms Seddon included this passage:

*Neither A nor her family live within the area of Oldham Council. It does not have parental responsibility for A. It is not the business of this Authority to be applying any pressure for the adoptive family to agree to direct contact when it is plain that they are not comfortable with it given the number of court hearings and appeals as far as the Court of Appeal and the European Court of Human Rights instigated by your client, none of which have found in your client's favour.*

- (8) In the same month, Ms Seddon telephoned the adoption team and when she was told that the social work report would not be sent to the parents, she hung up.
- (9) In January 2013, the Council forwarded Ms Seddon's letter to A and the parents with some relatively minor redactions. The redacted passages were emotive (for example referring to her rescuing a kitten "*that was too young to be away from its mum*") and their removal was in my view appropriate. The Council did not forward the letter from Ms Seddon to the parents, or the solicitors' letter, or the social work report. It wrote to Ms Seddon saying what it had done and reminded her to write again in September 2013.
- (10) In September 2013, the adoption team received a telephone call from an angry Ms Seddon. She wanted to send cards and presents and asked for a meeting. It was explained that although a meeting could be arranged, the parents wanted to receive a letter and nothing more. Post-adoption support was offered through Caritas.
- (11) Later in September 2013, the parents wrote to Ms Seddon and the letter was subsequently forwarded to her.
- (12) In October 2013, Ms Seddon met the adoption team manager and arrangements for letters to be sent by email were agreed.
- (13) In September 2014, Ms Seddon wrote to the parents and the letter was forwarded by the Council.

- (14) In March 2015, the parents wrote to Ms Seddon and the letter was subsequently forwarded to her.
- (15) The next exchange of letters will take place in September 2015.

These proceedings

25. In July 2014, Ms Seddon began these HRA proceedings without warning.
26. The Council's response was an application to strike out the claim. It subsequently adapted its position to one of submitting that the claim is totally without merit.
27. The Council originally asserted it is not performing a public function when operating its post-adoption letterbox service. It has subsequently accepted that it is performing a public function in this respect and also agreed not to argue that Ms Seddon's claim might be time-barred.
28. Preliminary hearings took place before Cobb J, Bodey J and Holman J. The matter came before me for directions on 29 April and was set down for final hearing on 19 June. Written and oral submissions were delivered at that hearing by Ms Seddon and Ms Cavanagh, and I reserved this judgment.

Overview of the litigation

29. In one way or another, the Council and Ms Seddon have been litigating for over six years:
  - (1) The proceedings and appeals surrounding A's adoption ran between May 2009 and December 2010.
  - (2) The ECHR proceedings ran between October 2010 and July 2012.
  - (3) The first HRA proceedings ran between December 2011 and March 2012.
  - (4) The civil proceedings concerning Ms Seddon's own care ran between April 2010 and September 2014.
  - (5) These proceedings began in July 2014 and have continued for a year.
30. Ms Seddon's current HRA claim is in very much the same terms as her first one, resolved in 2012; her application for leave to apply for contact effectively repeats the application that was dismissed in 2010.

**Question 1: Do Art. 8 rights survive the making of an adoption order?**

Status: s.67 ACA 2002

31. An adopted child is to be treated in law as if born as the child of the adopter or adopters: s. 67(1) ACA 2002.
32. An adopted child is to be treated in law as not being the child of any other person other than the adopter or adopters: s. 67(3)(b) ACA 2002.
33. s. 1(4)(c) ACA 2002 specifically contemplates the child ceasing to be a member of the “original” family on the making of the adoption order, when requiring the court to have regard to:

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

34. No provision in our law is more elemental than s. 67. In *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 Simon Brown LJ said this:

*The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights and responsibilities in relation to that person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents.*

35. Before the enactment of the ACA 2002, the court could impose terms and conditions on an adoption order: s. 12(6) Adoption Act 1976. The effect of this rarely-used power was considered by Balcombe LJ in *Re D (A Minor) (Adoption Order: Validity)* [1990] Fam. 137:

*Thus, in this context, section 12(6) of the Act of 1976 seems to be intended to enable the court to limit, or impose conditions upon, those parental rights and duties which would otherwise be extinguished in the natural parents. Thus, by imposing a condition relating to access in favour of the natural parents, the court will both qualify the parental rights conferred upon the adopters and leave to that extent unextinguished the parental rights of the natural parents.*

36. When the ACA 2002 was enacted, s. 12(6) of the 1976 Act was repealed and not replaced. There is now no mechanism in domestic law to preserve any of the rights and responsibilities of birth parents on the making of an adoption order.

Contact: s. 46 ACA 2002

37. There has never been an order for contact in respect of A, but even if there had

been, the making of an adoption order operates to extinguish any order under the Children Act: s. 46(2)(b) ACA 2002.

38. Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings: s. 46(6) ACA 2002.
39. The court can make a post-adoption contact order when making an adoption order: *Re P (Placement Order: Parental Consent)* (CA) [2008] 2 FLR 625. It is good practice for the question to be resolved at the time the adoption order is made, and not later: *X and Y v A Local Authority (Adoption: Procedure)* [2009] 2 FLR 984.
40. In contrast to the strong obligations that arise in relation to children in care, there is no duty upon a local authority under the ACA 2002 or elsewhere to promote contact between a child and a birth family. On the contrary, unless an enforceable right is conferred on others at the time of making the adoption order, it is the adoptive parents only, and not the local authority or the birth parents, who are responsible for all decisions relating to the child's welfare, including questions of contact.
41. In the present case, when applying s. 46(6), Judge Allweis concluded that "*direct contact would manifestly not be in A's interests... given the depth and bitterness of the mother's opposition.*"

#### The European Conventions on the Adoption of Children

42. Domestic law regarding status has been in conformity with European jurisprudence.
43. The 1967 European Convention on the Adoption of Children, which was ratified by United Kingdom in December 1967 and entered into force in April 1968. Art. 10 stated:
  1. *Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock. Adoption confers on the adopted person in respect of the adopter the rights and obligations of every kind that a child born in lawful wedlock has in respect of his father or mother.*
  2. *When the rights and obligations referred to in paragraph 1 of this Article are created, any rights and obligations of the same kind existing between the adopted person and his father or mother or any other person or body shall cease to exist.*
44. In 2008 the European Convention on the Adoption of Children was revised and the UK again became a signatory, although it has not ratified the Convention as Art. 7 does not recognise same-sex adoption. Art. 11(1) of the 2008 Convention states:

*Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established. The adopter(s) shall have parental responsibility for the child. The adoption shall terminate the legal relationship between the child and his or her father, mother and family of origin.*

45. The European Court of Human Rights has stated that the Adoption Convention is a primary instrument for the interpretation of Art. 8 obligations and the effects of adoption on existing relationships: *Pini v Romania* (2005) 40 EHRR 13.

The European Convention on Human Rights

46. Art. 8 provides:
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.*
47. By guaranteeing the right to respect for family life, Art. 8 presupposes the existence of a family: *Marckx v Belgium* [1979] 2 EHRR 330 at paragraph 31.
48. The birth of a child creates between her and her natural parents a bond amounting to family life which subsequent events cannot break, save in exceptional circumstances: see e.g. *Gul v Switzerland* [1996] 22 EHRR 93.
49. A child being taken into public care does not terminate a natural parent's family life with their child: *W v United Kingdom* [1987] 10 EHRR 29.
50. In contrast, see *P, C & S v UK* [2002] 35 EHRR 1075, where freeing orders were described as "*severing all parental links*"; the admissibility opinion of the Commission in *Keegan v Ireland* [1994] EHRR 342 that adoption of the applicant's daughter "*would have had the effect of extinguishing any right he might have in respect of her*"; the statement in *Soderback v Sweden* [2000] 29 EHRR 95 that "*the adoption in the present case... had the legal effect of totally depriving the applicant of family life with his daughter.*" See also *Eski v Austria* [2007] 1 FLR 1650; *Emonet v Switzerland* Application no. 39051/03 and *YC v United Kingdom* [2012] 55 EHRR 967.
51. These decisions accordingly make clear that the termination of the legal relationship as between the birth parent and the child also ends their family life under Art. 8.

52. The familiar approach to the identification of family life in the ordinary non-adoption context is found in *K v United Kingdom* [1986] 50 DR 199 at 207:

*The question of the existence or the non-existence of 'family life' is essentially a question of fact depending upon the real existence in practice of close personal ties.*

53. I accept Ms Cavanagh's submission that the making of an order for contact at the same time as an adoption order would create a new right to contact, though not necessarily an Art. 8 right. The right is not the preservation or extension of a previous right held by virtue of being a birth parent.
54. It is difficult but not impossible to imagine a rare case (entirely different from this one) where the post-adoption ties between a former parent and an adopted child might be close enough to found family life. For example, an intra-family adoption: if in this case A had been adopted by her father and her aunt (his partner), with Ms Seddon playing an aunt-like role in her upbringing; or an unprecedented case where there was a significant post-adoption contact order. However, any family life that arose in this way would owe nothing to the extinct parent-child relationship but be a new and distinct creation based on the altered relationships.
55. To show that Art. 8 rights persist after adoption, Ms Seddon says that the significance of the blood tie cannot be denied. She relies upon the requirement to consider contact on the making of an adoption order, the beneficial effects of contact, and the absence of any explicit statement in domestic or European law that Art. 8 rights end when parental responsibility ends. In my view, none of these arguments bring any weight to bear on the question.
56. The fallacy in Ms Seddon's position is seen in her statement in these proceedings:
- "I know I have addressed A as my Daughter throughout this statement, this is because she is and always will be my Daughter, biologically but I would just like to note that I am aware and do accept that she is the Adoptive Parent's Daughter as well."*
57. In fact, A has two parents, not three. Family life between Ms Seddon and A came to an end with the adoption and has certainly not been recreated since then. A is now aged six and has not had contact with Ms Seddon for five years. There are no ties of any kind between them. There cannot be any interference with family life that does not exist.
58. The question addressed here has previously been touched upon, but not determined. In *Oxfordshire County Council v X, Y & J* [2011] 1 FLR 272, the Court of Appeal (Lord Neuberger MR, Moses and Munby LJ) allowed an appeal against an order for indirect contact that had been imposed on adopters. The trial judge had considered the birth parents to have *"more than residual Art. 8 rights and rights*

*which... entitled them to the order they sought". As to that, the Court said:*

*43. Now given the effect of an adoption order as set out in sections 46 and 67 of the 2002 Act it is very far from obvious, to say the least, that the natural parents can thereafter have any Article 8 rights at all vis-à-vis a child who is no longer their child. ... The point, however, has not been fully argued out before us and we therefore say no more about it, except to make clear that even if Judge Corrie was correct in assuming that the natural parents had Article 8 rights capable of being engaged in the application before him (and we do not assume, let alone decide, that they did), those rights would not, in our judgment, have sufficed to tip the balance in their favour.*

59. The Court's inclination in that case is entirely consistent with the conclusions to be drawn from the domestic and European law summarised above.
60. 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.
61. For the sake of completeness, I note Ms Seddon's argument that she and A have the right to respect for their private life. The difficulty with this is that Ms Seddon's 'inner circle' does not include A, since A's parents do not wish her to have any relationship with Ms Seddon beyond the letterbox contact. The argument about respect for private life entirely fails to get off the ground.

**Question 2: Does s. 51A ACA 2002 create or maintain an Art. 8 right as between a birth parent and an adopted child?**

62. On 22 April 2014, s. 9 of the Children and Families Act 2014 amended the ACA 2002 by inserting the following section:

*51A Post-adoption contact*

*(1) This section applies where –*

*(a) an adoption agency has placed or was authorised to place a child for adoption, and*

*(b) the court is making or has made an adoption order in respect of the child.*

*(2) When making the adoption order or at any time afterwards, the court may make an order under this section –*

*(a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other, or*



*(b) prohibiting the person named in the order under this section from having contact with the child.*

*(3) The following people may be named in an order under this section –*

*(a) any person who (but for the child's adoption) would be related to the child by blood (including half-blood), marriage or civil partnership;*

*(b) any former guardian of the child;*

*(c) any person who had parental responsibility for the child immediately before the making of the adoption order;*

*(d) any person who was entitled to make an application for an order under section 26 in respect of the child (contact with children placed or to be placed for adoption) by virtue of subsection (3)(c), (d) or (e) of that section;*

*(e) any person with whom the child has lived for a period of at least one year.*

*(4) An application for an order under this section may be made by –*

*(a) a person who has applied for the adoption order or in whose favour the adoption order is or has been made,*

*(b) the child, or*

*(c) any person who has obtained the court's leave to make the application.*

*(5) In deciding whether to grant leave under subsection (4)(c), the court must consider –*

*(a) any risk there might be of the proposed application disrupting the child's life to such an extent that he or she would be harmed by it (within the meaning of the 1989 Act),*

*(b) the applicant's connection with the child, and*

*(c) any representations made to the court by –*

*(i) the child, or*

*(ii) a person who has applied for the adoption order or in whose favour the adoption order is or has been made.*

*(6) When making an adoption order, the court may on its own initiative make an order of the type mentioned in subsection (2)(b).*

*(7) The period of one year mentioned in subsection (3)(e) need not be continuous but must not have begun more than five years before the making of the application.*

*(8) Where this section applies, an order under section 8 of the 1989 Act may not make provision about contact between the child and any person who may be named in an order under this section.*

63. Subsection (4) gives an automatic right of application for a contact order to the

adopter and the child. All other persons require the court's leave.

64. A birth parent may be named in a contact order – Ms Seddon would qualify under subsections (3)(a) and (c) – but requires leave to make an application.
65. Ms Seddon argues that the enactment of s.51A underlines the importance of post-adoption contact and is a legislative witness to the ongoing existence of Art. 8 rights of the birth parents and adopted children.
66. I conclude that s. 51A does no more than provide a means by which post-adoption contact can be agreed or ordered. It cannot in itself create or maintain an Art. 8 right as between a birth parent and an adopted child.

**Question 3: Is s.51A(4) ACA 2002 incompatible with the ECHR?**

67. Ms Seddon argues that it is inconceivable that there is one rule for some (adopters) and another for others (birth parents) and that this discrimination places her at a disadvantage and is incompatible with her Art. 6 right to a fair trial.
68. There is nothing in this argument. As the Explanatory Notes to the 2014 Act make clear, leave provisions such as this (and the same might be said for s.10(9) Children Act 1989 on which it is based) are designed to prevent the harm that can arise from unmeritorious litigation. There is nothing in the legislation to prevent a birth parent with a solid case from obtaining leave to apply.
69. I therefore conclude that s. 52A(4) ACA 2002 is not incompatible with the ECHR.

**Question 4: Does a post-adoption letterbox service gives rise to Art. 8 rights as between a birth parent and an adopted child?**

70. The Council has a statutory duty to establish and maintain within its area a service with requisite facilities to meet the adoption needs of children who may be or have been adopted, persons wishing to adopt a child, adopted persons, and their parents and natural parents: s. 3(1) ACA 2002.
71. The facilities must include the making and participation in arrangements for the provision of adoption support services: s. 3(2)(b) ACA 2002.
72. Adoption support services include counselling, advice and information and any services prescribed by the Adoption Support Services Regulations 2005 (ASSR 2005): s. 2(6) ACA 2002.
73. Regulation 3(1)(c) ASSR 2005 prescribes adoption support services as including:

*assistance, including mediation services, in relation to arrangements for contact between an adoptive child and a natural parent, natural sibling, former guardian*

*or a related person of the adoptive child;*

74. It is under this provision that the Council maintains its adoption letterbox service, described in a leaflet that includes the following:

*What is the Adoption Letterbox Service?*

*The Adoption Letterbox Service is a confidential service which allows information to be exchanged between adoptive parents and birth relatives after a child has been adopted. Oldham Adoption Service passes information between adoptive parents and birth families while keeping names and addresses confidential.*

*What can I send via the letterbox service?*

*Depending on your letterbox arrangement you can send:*

- Letters*
- Drawings*

*Unfortunately we **cannot** accept cards, gift vouchers, presents, parcels or photographs.*

*How often is the letterbox?*

*This depends on your letterbox arrangement, but it is usually once or twice a year.*

*Is the letterbox agreement legally binding?*

*Unless a Contact Order has been made by the court, this is not a legally binding agreement. However we would expect people to maintain arrangements agreed for the benefit of the child. This means you must be realistic about what you can cope with, otherwise this leads to disappointment.*

*If the information is inappropriate the letterbox administrator will discuss this with you.*

*You can contact the letterbox administrator for advice at anytime. We are here to help make your arrangement work.*

*How long does letterbox last?*

*The letterbox lasts until a child reaches 25 years old. Decisions then need to be made about the future. The wishes, needs and circumstances of the adopted child will need to be the main consideration.*

The leaflet then explains the steps that correspondents should take and gives guidance and examples.

75. The Council currently facilitates over 300 letterbox exchanges annually, entailing a significant number of transactions, all of which have to be carefully handled. The service is staffed by social workers who, where possible, know the birth families or adoptive family. The sharing of information is designed to allow birth families (not

just birth parents) to have a growing picture of the child's progress and to provide adopters with information to share sensitively with the child. Photographs of children are no longer exchanged due to concerns about children being traced through the internet.

76. There is no compulsion in the letterbox process. A local authority is not required to promote its use or entitled to interfere with the autonomy of the adoptive parents, the child or the natural parents in deciding whether to engage with the process.
77. I have no doubt that in (using the words of the Regulation) assisting with contact arrangements, a local authority is performing a public function. Its letterbox scheme is a medium for appropriate correspondence. It must act as an honest broker, exercising its professional judgment about whether the correspondence is appropriate and within the scope of the scheme. It cannot act arbitrarily by (to choose a far-fetched example) destroying or simply failing to deliver appropriate correspondence sent as agreed.
78. Art. 8 guarantees the right to respect for correspondence. The opening, censoring or refusal to pass on mail is an interference with this right, particularly (as for prisoners) where there is only one means of communication: see the many European and domestic authorities cited in Lester, Pannick & Herberg, Human Rights Law and Practice at 4.8.82-86.
79. Against the background of adoption, a most severe interference with family life, particular vigilance is called for in relation to post-adoption correspondence, where the letterbox system is often the only available medium for communication.
80. I conclude that 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, an obligation arising from the nature of the correspondence and not from the former parent-child relationship.
81. I reject the Council's argument that Art. 8 is not engaged because it is the recipient of the correspondence: it is not, it is an intermediary. I also reject Ms Cavanagh's submission that the correspondence is not private because Ms Seddon knows that it will be vetted. The correspondence is of a private nature, even if its privacy is constrained by the circumstances.
82. In this case, I would distinguish between the redaction of Ms Seddon's correspondence and the refusal to pass on certain letters. In relation to the solicitors' letter, the social work report and Ms Seddon's letter to the parents, I find that no Art. 8 right was engaged. That correspondence fell outside the scope of the letterbox scheme and there could be no reasonable expectation on Ms Seddon's part that the documents would be passed on. As to the letter to A, I would hold that it did fall squarely within the scheme and that Art. 8 was engaged.

83. Any interference with the right to respect for correspondence must be necessary and proportionate if it is to be lawful. There are a range of legitimate interests that may justify interception of correspondence on the basis of the protection of the rights of others: see Lester *et al* at 4.8.124.
84. In the present case, the justification for interference in correspondence is not hard to find. The local authority's obligation is to assist in contact arrangements. To achieve this important objective, a screening process is a necessary part of any letterbox scheme. If the scheme is to be effective and trusted, it is essential that it is moderated. In this case, A's parents will only agree to receive correspondence that has been moderated by the Council. No doubt most post-adoption correspondence is constructive and valued, but where it is not, adoptive parents and children should be protected from it. Moreover, the letterbox should not become a means of persuasion or pressure. I therefore reject the proposition that the Council has no right to redact Ms Seddon's correspondence in a reasonable manner, or that it is obliged to pass on whatever she sends.
85. The Council's actions were accordingly lawful. It was lawful (in that there was no obligation) for it not to pass on the letter to the parents, the solicitors' letter and the social work report. It was also lawful (as being necessary and proportionate) for it to edit material that was reasonably judged to be inappropriate.

**Ms Seddon's application for leave to apply for contact under s.51A ACA 2002**

86. I must consider s. 51A(5).
87. I find that further proceedings risk disrupting A's life to a harmful extent. As seen in the overview of proceedings, there has, to the knowledge of A's parents, been incessant litigation. They have been appropriately consulted by the Council during these proceedings, most recently in mid-July. From the fact that they participated in the Goodman Project, it can be seen that they are no common adopters. They have been remarkably forbearing about Ms Seddon's campaign but I accept that the never-ending process causes them exceptional strain and is harmful to A's emotional development.
88. I consider Ms Seddon's connection with A to be entirely historic.
89. I consider the views of A's parents, who are strongly opposed to direct contact and to further litigation. In a letter to the court, they write:

*We cannot understand why after the court proceedings where a decision was clearly set down by Judge Allweis that direct contact should not take place this issue is constantly being raised.*

*We feel that while we were expecting to have a heightened level of vigilance as adoptive parents we did not anticipate the level of intrusion we have experienced.*

*Our worries never go away – we are there to protect A and she should feel safe, we have felt compromised in this.*

*We wondered if the legal profession could afford us any protection as it seems that all the actions give credence to Kirsty's demands, with little regard to our own feelings and wishes. We just want to know when this will be over for us, so we can begin to function as any other family.*

*We feel that 'the system' has lost sight of the original reasons that A had been placed for adoption. We remember the neglected starved little girl that A was when she first came to live with us.*

*There has not been 1 year since we adopted our little girl when we have not had additional or intrusive contacts in relation to Kirsty's requests.*

*We support the adoption team who are trying to protect our emotional wellbeing in acting in this manner.*

*We do not want to attend court and would like this new request from Kirsty to be quashed.*

90. I also have regard to whether the court is likely to grant a post-adoption contact order if an application was allowed to proceed. There is a longstanding recognition, before and since the ACA 2002, that such orders are extremely unusual: *Re C (A Minor) (Adoption Order: Conditions)* [1989] AC 1; *Re T (Adoption: Contact)* [1995] 2 FLR 251; *In Re R (Adoption: Contact)* [2005] EWCA 1128; *Oxfordshire County Council v X, Y & J* (above).
91. I note that Ms Seddon's first application for permission to apply for contact was described as "*hopeless*" by Thorpe LJ in December 2010 and that in her first HRA claim in January 2012, Ms Seddon's counsel, conceded that an application for leave to apply for contact was "*not a realistic option and would be unnecessarily distressing to the adoptive family, even if it were possible.*"
92. In my view there is no prospect whatever of any contact application by Ms Seddon succeeding to the smallest extent. An application would cause still further stress and expense to no purpose. It would cause further harm. It would meet nobody's needs but Ms Seddon's. A degree of sympathy may be felt for her, but that sympathy must have limits. The legal process should not be allowed to indulge the adult at the child's expense. 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 and tendentious campaigning.
93. Every relevant consideration therefore leads me to refuse leave to Ms Seddon to apply for contact. Her application is totally without merit.

94. I invite the parties to submit an order reflecting this judgment. It will
- (1) Dismiss Ms Seddon's claims under the HRA 1998 and her application under s51A ACA 2002.
  - (2) Make provision for the claim for recovery of the adoption documents to be transferred to me if it is not resolved by agreement, as I hope it will be.
  - (3) Provide for Ms Seddon to pay the costs of the Council, to be enforced only if she comes into substantial means (i.e. on lottery terms). While recovery is improbable, the order is appropriate against the background of the Council having incurred, but not claimed, the costs of £140,000 that it incurred in successfully defending Ms Seddon's civil action in 2012. Unless further submissions are made, the order will be on the standard basis.
  - (4) The Council has given forewarning that it may seek a civil restraint order against Ms Seddon. If it does, I will give any necessary directions. As matters stand, I direct that any further litigation of any kind issued by or on behalf of Ms Seddon concerning the Council or A or her parents shall be referred to me for directions or determination upon issue. That may be sufficient to meet the concern that must be felt about this litigation history.
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