



An Roinn Leanaí  
agus Gnóthaí Óige  
Department of Children  
and Youth Affairs

# Review and Consultation in respect of the Potential Introduction of Open or Semi-Open Adoption in Ireland

Report produced in accordance with Section  
42 of the Adoption (Amendment) Act 2017

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## **Minister's Foreword**

I am very pleased to bring this report to the Houses of the Oireachtas. I committed to undertaking a review and consultation in relation to the important issue of open and semi-open adoption under an amendment to the Adoption (Amendment) Act 2017. The 2017 Act is a progressive and child-centred piece of legislation which enshrines the best interests and voice of the child at the heart of our adoption processes. It also ensures that our adoption laws reflect the diverse forms of the modern Irish family and it provides more opportunities for some children in foster care to be adopted, where that is in their best interests.

It is timely that this review has been undertaken at this time of transformation in adoption policy and practice.

The matter of open and semi-open adoption is a complex and sensitive one. It raises fundamental questions about how to meet the identity and developmental needs of the adopted child while also ensuring the safety and wellbeing of that child and supporting and respecting the broader family.

In seeking to make policy that is in the best interests of adopted children and their families, we have listened to a broad range of stakeholders, including those with personal experience of adoption as well as those working directly in this area. We have also drawn on international experience of open and semi-open adoption and have been guided by available research evidence regarding outcomes for children.

We have learned that above all decisions in this area must be made on a case-by-case basis. Arrangements work best where everyone is on the same page about what decisions are in the best interests of the child and have had due regard to the views of the child, where a flexible approach is taken and where families have access to guidance and supports when challenges arise.

This report sets out a clear pathway for ensuring that families and service-providers are supported to achieve the best possible outcomes for adopted children.

I look forward to the implementation of these recommendations.

**Dr Katherine Zappone TD**  
**Minister for Children and Youth Affairs**

## Executive Summary

This report is based on a review and consultation on the potential introduction of open or semi-open adoption in Ireland, which, pursuant to Section 42 of the Adoption (Amendment) Act 2017, was carried out over a period of 18 months by the Department of Children and Youth Affairs.

The review included policy and legal analysis in addition to various forms of consultation with members of the public and key stakeholders.

Arrangements for open or semi-open adoption involve post-adoption contact, direct or indirect, between members of the birth and adoptive families of adopted children under 18. Post-adoption contact may involve a range of types of communication, such as the exchange of letters, information or items through a social worker or direct face-to-face meetings between members of the adoptive and birth families, including the adopted child.

Such arrangements have become increasingly common in a number of countries, owing to factors such as the changing profile of adopted children, greater understanding of adopted children's identity needs and the growth of social media.

There is substantial evidence that adopted children generally benefit from developmentally appropriate open communication in relation to their birth family history and adoption. Direct or indirect contact with birth relatives provides one important potential channel for the child to access such identity-related information. In addition, such contact may bring other benefits such as allowing the child to maintain relationships, where it is in their best interests, with birth relatives, including grandparents and siblings. However, evidence indicates that there are also potential risks involved in post-adoption contact, particularly in cases where the adopted child may be unsettled by such contact or where they may be put at risk of harm. It is important to note in this respect that adopted children can benefit, in the absence of birth family contact, from open communication within their adoptive family in relation to their identity and origins.

A key finding of the review and consultation is that decisions in relation to post-adoption contact should be made on a case-by-case basis. Open adoption is a sensitive and complex area of policy and practice. It requires a proportionate, planned, flexible and resourced approach. Social work supports should be made available to families where needed to ensure that arrangements take account of the needs and circumstances of children and families and that the best interests of the individual child over time is the paramount consideration.

Although the review found that voluntary post-adoption contact is currently taking place in Ireland, only informal supports are available and there is a lack of consistency in approach as well as an absence of clear information in relation to what is involved in open adoption, the voluntary status of post-adoption contact in Ireland and the supports that may be required.

In order to address this situation, and in line with the findings of the consultation as well as available evidence on what works well for children and families, the report makes a number of recommendations. These measures will ensure that policy, legislation and practice in relation to open adoption is centred on respecting the rights of the child to have their best interests be the paramount consideration in matters concerning them, to have their views heard and be given due weight and to have their developmental needs met.

### **Recommendation 1**

Provide a statutory basis for services to support voluntary forms of post-adoption contact, including the exchange of information and items between birth family members and adoptive family members, where requested, in cases where: i) It is agreed by all parties involved and ii) it is determined to be in the best interests of the child or children involved to do so, taking account of the views of the child or children involved, with due regard to their age and maturity.

### **Recommendation 2**

In line with good practice in other jurisdictions where post-adoption contact is common and in order to ensure a clear pathway for service-users, guidelines should be drawn up in relation to the provision of services to support post-adoption contact where such support is requested. Such guidelines to make provision for:

- ❖ A determination that any agreed contact is in the best interests of the child or children involved
- ❖ An initial assessment of the needs of the parties involved
- ❖ A risk-assessment
- ❖ A post-adoption contact plan, setting out who is to be involved in the contact, the purpose of the contact, the agreed level and frequency of contact, the types of social work supports required and the mechanism for review
- ❖ A requirement to take due account of the views and needs of the child, having regard to age and maturity level, with capacity to vary the plan according to the evolving needs of the child.

### **Recommendation 3**

Adopted children and young people with experience of open adoption arrangements should be directly consulted to gain their views as to what worked well for them, the challenges they experienced and what supports are needed. The findings of this consultation should feed into the guidelines developed under recommendation 2.

### **Recommendation 4**

Create an online resource for birth parents and relatives, adoptive parents, and adopted children. This resource should include information in relation to the following:

- ❖ The importance of supporting the adopted child's identity needs and on the benefits associated with appropriately open communication in relation to the adoption and the adopted child's family and cultural history.
- ❖ The different types of open and semi-open adoption arrangements, best practice advice and the supports available.
- ❖ The fact that arrangements or agreements for contact are based on the voluntary agreement of all parties and may alter over time or cease altogether.

A child-friendly version of this resource should be made available.

## Chapter 1: Background

### Introduction

Section 42 of the Adoption (Amendment) Act 2017, which came into law in July 2017, provides that:

*“Not later than 10 months after the passing of this Act, the Minister shall initiate a review and consultation in respect of the potential introduction of open or semi-open adoption in Ireland. Such a review shall include public consultation and legal and policy analysis. A report on the findings of this review and consultation shall be laid before the Houses of the Oireachtas not later than 18 months after its initiation”.*

The Minister for Children and Youth Affairs, Katherine Zappone announced the initiation by her Department of this review and consultation in May 2018.

This report sets out the findings of the review and consultation undertaken by the Department of Children and Youth Affairs (DCYA). It contains an overview of the policy context, which includes the broader context of increasing openness in adoption and information regarding the Irish adoption landscape. Relevant international models are considered, as is the available research evidence regarding outcomes associated with open or semi-open adoption. The report also provides an overview of the consultation process that was carried out as part of the review and an analysis of its results. In addition, it includes a legal analysis. The report concludes with a set of recommendations based on the overall findings of the review and consultation.

### Methodology and Guiding Principles

The terms of the review and consultation which are the subject of this report are set out in Section 42 of the Adoption (Amendment) Act 2017. Section 42 requires that the focus of the review be the potential introduction of open or semi-open adoption in Ireland. It also stipulates that the review must contain policy and legal analysis as well as public consultation. In addition, a report based on the review must be laid before the Houses of the Oireachtas within 18 months of the review being initiated. It was necessary, consequently, for the required policy and legal analysis, public

consultation and composition of a report to be completed within a statutory 18-month timeframe.

Adoption policy in Ireland falls under the remit of the Department of Children and Youth Affairs. The mission of DCYA is to 'lead the effort to improve outcomes for children and young people in Ireland' (DCYA Statement of Strategy 2016- 2019). Its vision is of an Ireland 'where the rights of all children and young people are respected, protected and fulfilled; where their voices are heard; and where they are supported to realise their maximum potential now and in the future' (Ibid.) Current adoption policy and legislation gives paramountcy to the best interests of the child and requires that the views of the child be taken into due account (see **Chapter 2**). Guided by these child-centred principles, the best interests of children and evidence in relation to outcomes for children have been the foremost considerations of the review and consultation.

An initial scoping analysis established the key factors and types of information that should be considered as part of the review. This analysis determined that the following elements should be addressed:

- ❖ Definitions and forms of open or semi-open adoption and relevant international practice models
- ❖ The current legal, legislative and operational context in Ireland, including information in relation to any informal open adoption practices
- ❖ Evidence in relation to the benefits and risks associated with open or semi-open adoption, with a particular emphasis on outcomes for children
- ❖ The views of key stakeholders and the public

There were four distinct components to the work that was undertaken, some of which were progressed concurrently. The first component consisted of a review of international evidence and practice models. The purpose of this was to build an informed picture of how open or semi-open adoption arrangements work in practice and of the associated benefits, challenges and risks.

The next component involved consultation. The input of the Adoption Authority of Ireland and Tusla Adoption Services was sought in relation to the relevant operational context. The views of all key stakeholders as well as members of the public were subsequently invited by means of an Open Policy Debate held by DCYA as well as an online public consultation. These processes provided information in relation to the openness of current adoption arrangements, the perceived benefits and risks of open and closed adoption, whether it is considered necessary for formal provision to be made to support open or semi-open adoption and if so, what form this provision should take. The Research and Evaluation Unit and Participation Unit of the Department of Children and Youth Affairs assisted in the design of these

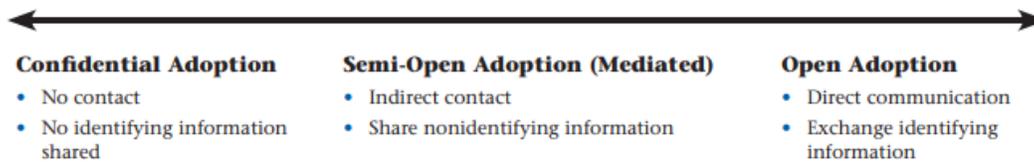
consultation processes. A short report summarising the findings of the Open Policy Debate was published on the DCYA website in July 2019. The qualitative analysis of the findings of the public consultation was carried out by DCYA's Research and Evaluation Unit. Formal submissions were also received from Barnardos, the Ombudsman for Children and Helping Hands Adoption Mediation Agency.

The third component of the review comprised the completion of the required legal analysis. Given the complexity of the legal and constitutional landscape at issue, it was considered necessary to commission an external specialist with relevant expertise in law and adoption to complete this portion of the review. The work of legal analysis was conducted jointly by Dr. Aisling Parkes of University College Cork's School of Law and Dr. Simone McCaughren of University College Cork's School of Applied Social Studies.

The final component of the work consisted in the analysis of all the relevant material and the completion of the report to be submitted to the Oireachtas.

## **Definitions**

It is necessary to define what is meant by 'open or semi-open adoption', the specific terminology used in Section 42 of the Adoption (Amendment) Act 2017. There are different models of open and semi-open adoption in place in different jurisdictions and the use of these terms sometimes varies. In practice, adoptions which are open or semi-open allow varying degrees of communication, access to information or contact between birth and adoptive families, either directly or mediated by an agency (USHSS, 2010, p. 2; Grotevant, 2013, p. 193; ISS, 2015; McCaughen & McGregor, 2017, p. 239). Open and semi-open adoption can be contrasted with closed adoption, which seeks to install a 'clean break' between the birth parents and the adopted child. In a closed adoption, no contact occurs between birth and adoptive families and no identifying information is shared. Semi-open adoption allows for mediated contact, whereby information or items such as letters or photographs are shared indirectly through a medium such as a social worker. A fully open adoption allows direct contact between members of the birth family and the adoptive family, including in some cases the adopted child. The degree and frequency of this contact are generally agreed between the birth and adoptive families and usually fluctuate over time (Siegel and Smith, 2012, p. 14, p. 35).



**Figure 1: The continuum of openness in adoption (U.S. Department of Health and Human Services, 2013, p. 2)**

Contact between birth and adoptive families in open or semi-open arrangements may take the form of letters, telephone calls, communication through social media, the exchange of photographs or occasional face-to-face visits (Grotevant, 2013, p. 193). It may involve information sharing or direct contact between the child and various members of the birth family, such as the birth parents, siblings and grandparents. According to Barnardos, while “a general guideline for the frequency of contact would be contact with the child’s birth parents or other significant people 3-4 times per year,” the unique circumstances of the situation should factor into the contact arrangements (Barnardos Australia, 2014).

The absence of an agreed definition of openness in adoption means that researchers use this term to refer to significantly varying degrees and types of contact, including situations involving no birth family contact. According to some researchers, openness can be achieved in the absence of birth family contact by providing the child with knowledge about their family history and the circumstances of their adoption, which can be accessed through the adoptive parents or social workers (Brodzinsky 2005, p. 151-2; Neil, 2009, p. 5; MacDonald & McSherry, 2011, p. 4; de Rosnay et al, 2016, pp. 3-4). In such cases, openness is shown in the attitudes and behaviours of the adoptive parents or social workers who support the adopted child in their wish for information about the circumstances of their adoption or details about their family or cultural background. There is substantial evidence that this type of openness plays an important role in outcomes for adopted children (see **Chapter 3**).

Generally, researchers, policy-makers or practitioners use ‘open adoption’ as an umbrella term denoting a range of forms of communication, direct or indirect, between the birth families and adoptive families of an adopted child. If we see potential openness in adoption as taking place on a continuum from fully closed to fully open (see **Figure 1**), any form of such communication can be understood to represent a degree of openness. The term ‘semi-open adoption’ can be understood to refer exclusively to arrangements for the exchange of information and/or items such as letters between members of the birth and adoptive families which are facilitated or mediated by social workers. In accordance with the reference made in

Section 42 to 'open or semi-open' adoption, this review has considered the full range of forms of contact between birth and adoptive families, both direct and indirect.

It is important to note that open or semi-open adoption do not mean that parenting responsibilities or rights are shared between the adoptive and birth parents. The legal duties and rights in relation to the adopted child are retained fully by adoptive parents, irrespective of any agreements for contact with birth family members that may occur (Grotevant and McRoy, 1998 p. 8; USDHSS, 2013, p. 3). For the purposes of this report, open adoption will be used to refer to any arrangements involving post-adoption contact, direct or indirect, between members of the birth and adoptive families of adopted children under 18.

The matter of access to records and potential contact with birth family members also arises for adopted adults. However, legislation in relation to an information and tracing service for adults is being progressed separately by DCYA. The review under consideration in this report focused on policy and legislation specifically in relation to adopted children under 18 and their families.

## **Chapter 2: Policy Context**

### **Increasing openness in adoption**

The typical mid-twentieth century model of adoption was fully closed, which was considered to be in the best interests of the birth mother as well as the adopted child and the adoptive parents (Grotevant and McRoy, 1998, p. 3, Neil, 2013, pp. 5-6). However, there has been a shift towards increasing openness in adoption over the past number of decades. This development reflects growing concerns that the closed model of adoption may have a detrimental impact on the adopted child's development of a healthy sense of identity (Neil, 2013, p. 6; de Rosnay, 2016, p. 20). As one report notes, 'adopted individuals often lack information about their biological and genealogical history, which is important in constructing a coherent self-identity that connects one's past, present, and future' (de Rosnay, 2016, p. 20). The move towards open adoption has also been driven in some jurisdictions by the needs of birth mothers and recognition of their experience of unresolved grief following adoption (Townsend, 2009, p. 1). The changing profile of children being adopted has been an additional factor. In the UK, for instance, the decline in infant adoption and increase in the numbers of children adopted from foster care raised questions about the suitability of closed adoption for an older cohort of children with established ties to their birth families (Neil, 2013, p. 6). More recently, the development of social media and access to it by a growing number of children has opened up unregulated channels of communication between adopted children and birth relatives (USDHSS, 2013, p. 9). This may potentially undermine the viability of a closed adoption process. For these reasons, some jurisdictions have introduced different degrees of openness into the adoption process (see **Chapter 3**).

### **Adoption in Ireland**

Adoption in Ireland is a legal process that formally establishes a parent-child relationship between persons unrelated by birth (Shannon, 2010, p. 445) while simultaneously legally severing the relationship between the child and at least one of his or her birth parents. Once an adoption is effected, the child becomes the legal child of the adoptive parents who assume the duties and rights of parents in relation to that child.

The Adoption Authority of Ireland (AAI), established in November 2010 by the Adoption Act 2010, is responsible for regulating domestic adoption in Ireland, including the making of adoption orders. The AAI is also, in line with the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption (the Hague Convention), the Central Authority in Ireland for intercountry adoption.

The Adoption Acts provide for children to be placed by Tusla – the Child and Family Agency (Tusla) for the purposes of arranging an adoption in cases of consensual domestic adoption or where Tusla has successfully applied to the High Court to dispense with parental consent where appropriate and where adoption is in the child's best interests. Tusla also has legislative responsibility for assessing the eligibility and suitability of prospective adoptive parents and for providing information and advice to birth mothers and guardians prior to adoption.

The Adoption Acts provide for the recognition of the adoption of a child not of Irish origin, provided that certain conditions are met and that the adoption is compliant with the Hague Convention.

There is currently no provision made in Irish legislation for the exchange of information or any level of contact between members of birth and adoptive families. As such, legally speaking, adoption in Ireland is a closed process, although in some cases informal open arrangements have developed in practice (See **Chapter 4**).

In line with the experience in other countries, the role of adoption within Irish society has altered significantly over time. When the first formal adoption legislation was introduced in 1952, adoption was seen as a solution to the stigma of illegitimacy and the shame attached to unmarried mothers (Shannon, 2005, p. 264). It also served to meet the needs of couples who were unable to have children of their own (O'Brien & Palmer, 2018, p. 4). By contrast, adoption is now a child-centred measure, which is fundamentally premised on the child's best interests, as provided for by Section 19 of the Adoption Act 2010, as amended by the Adoption (Amendment) Act 2017.

A 2012 referendum on children's rights led to the introduction of Article 42A into the Irish Constitution. The Adoption (Amendment) 2017 Act incorporated the child-centred principles arising from Article 42A.3 into adoption legislation. This Act provides for the principle of the paramountcy of the best interests of the child. In addition to the primacy given to the best interests of the child, current adoption policy and legislation seeks to ensure that, insofar as possible, the views of the child are ascertained and given due weight in relation to adoption matters, proceedings and applications. In accordance with this requirement, the AAI hears the views of children during adoption order hearings and the High Court will also take into account the views of the child in the context of adoption applications, where appropriate. Adopted

children and young people were consulted by DCYA in 2018 in relation to the best ways of including the voice of the child at all stages of the adoption process, based on their experiences of the process.

It is critical that any policy position in relation to open or semi-open adoption reflects the paramountcy given in current adoption legislation and policy to the best interests of the child as well as the requirement to take due account of the views of the child.

## **Current Adoption Trends**

### **Domestic adoption**

The numbers of domestic adoptions in Ireland has declined substantially over the last number of decades (AAI Annual Report, 2018, p. 51). The current predominant forms of domestic adoption are step-parent adoptions and adoptions from foster care. Of the 72 domestic adoption orders granted in 2018, the majority (35) were step-parent adoptions, while 25 were adoptions from foster care. A very small number of infant 'stranger' adoptions and extended family adoptions occur each year.

In the case of step-parent adoptions, parental rights and duties are extinguished at the point of adoption for one birth parent. This raises a question about the adopted child's continued access to the former parent, with whom they may or may not have an existing relationship.

In relation to adoptions from foster care, it is currently the case that the majority of children being adopted by long-term foster carers are close in age to 18. Numbers remain extremely low, when considered, for instance, alongside the 6012 children that were in care in Ireland as of May 2019. However, the numbers of children in long-term foster care being adopted at a younger age may increase as a result of the Adoption (Amendment) Act 2017, which revised the criteria by which the State can dispense with parental consent, thereby establishing adoption for the first time as real and viable option for children in care (O'Brien & Palmer, 2016, p, 1; McCaughren & MacGregor, 2017, pp. 233 - 4). A modest increase in the numbers of children being adopted from foster care since the introduction of the Act is in evidence (AAI Annual Report, 2018, p. 30).

Children in long-term foster care are likely to have established links to their birth families. Under Section 37 of the Child Care Act 1991, the Child and Family Agency must 'facilitate reasonable access to the child by his parents, any person acting in loco parentis, or any other person who, in the opinion of Agency has a bona fide

interest in the child and such access may include allowing the child to reside temporarily with any such person'. The National Standards for Foster Care (2003) stipulate that children in foster care must be 'encouraged and facilitated to maintain and develop family relationships and friendships' and that children's wishes in relation to contact must be facilitated (p. 12). It is also the case, however, that many such children have been taken into foster care owing to experiences of neglect and/or abuse in their families of origin. In order for children in foster care to be adopted, it must be proven that 'for a continuous period of not less than 36 months immediately preceding the time of the making of the application' the birth parents 'have failed in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected', that 'there is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare' and that 'the failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child'. It must also be proved that the child has been in the custody and home of the prospective adoptive parents for a continuous period of 18 months and that 'the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents' (Adoption (Amendment) Act 2017). Policy regarding open or semi-open adoption must take careful account of the complex needs of this cohort of children, who may be adopted in increasing numbers in the coming years.

### **Adoptions from overseas**

Ireland currently recognises the adoption of children from a number of other countries. In 2018, there were 41 entries made in the Register of Intercountry Adoptions in respect of applicants living in Ireland. The majority of these related to children adopted from the United States, Vietnam and Thailand. In addition, a very small number of domestic adoption orders are granted each year for children who come from overseas under guardianship arrangements. There has been an overall trend of decline in the numbers of intercountry adoptions registered in Ireland since the passing of the Adoption Act 2010, which gave force of law to the Hague Convention. This mirrors international experience of a reduction throughout Hague Convention Contracting States of the number of children available for adoption as more children are cared for in their country of origin (O'Brien & Palmer, 2016, p. 9).

Article 16 of the Hague Convention stipulates that the Central Authority of the State of origin must prepare a report which details, among other elements 'information about [the child's] identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of

the child'. Article 30 provides that Contracting States must ensure that the information held by them in relation to the 'child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved' and that 'the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State'. In principle, then, adopted children have a route of access to this material in relation to their background. Contracting States, however, have latitude in relation to whether or not identifying information in relation to the child's parentage may be disclosed to the Central Authority of the receiving State (Article 16 (2)). Significant variation in the information available, coupled with the considerable geographical distances between birth and adoptive families involved, means that intercountry adoptions present a distinct challenge in relation to formal provision for open or semi-open adoption. It would be extremely difficult to enforce post-adoption contact in an intercountry context. It may also be challenging to provide certain forms of social work supports – such as facilitated meetings – in such a context.

## **Information and Tracing**

In line with other jurisdictions, Ireland has experienced a significant drive from groups representing adult adoptees for the right to access birth records. The detrimental impact on many Irish adopted people of the past practices of secrecy in relation to adoption is well documented (see, for instance, *Adoption Legislation: 2003 Consultation and Proposals for Change*, 2005, p. 90). Current government policy recognises the importance of addressing the identity needs of adopted people and supports the fullest release of information to adult adoptees that is legally and constitutionally possible. Legislation on access to information and tracing services for adult adoptees is being progressed separately by DCYA.

A significant proportion of Tusla's Adoption Service resources is dedicated to providing an information and tracing service to adopted adults and their birth relatives seeking access to birth records. The numbers of such applications for information received by both Tusla and the AAI has steadily increased.

The historically closed nature of adoption in Ireland can be seen, therefore, to have led to considerable demand amongst adult adoptees for access to records and in some cases, reunion with birth relatives. By contrast, children with open or semi-open adoption arrangements, or who otherwise experience appropriately open communication on identity-related themes, are likely to have any questions in

relation to their origins, family background and adoption addressed gradually and at an earlier stage, within their family settings.

## **Chapter 3: Forms of open or semi-open adoption in different jurisdictions**

This review considered a range of examples of how various jurisdictions have provided for a degree of contact, direct and indirect, between birth and adoptive families.

A number of jurisdictions provide explicitly in legislation for birth and adoptive families to enter into some form of post-adoption contact. This is the case in the majority of US States, the UK, New Zealand and parts of Canada and Australia.

The exact conditions attaching to any agreement for contact vary. In several jurisdictions, a contact agreement must be shown to be in the child's best interest. In others, contact agreements are only applicable for children leaving foster care or in the case of extended family adoption and not infant stranger adoption. Failure to adhere to such agreements is not grounds for nullifying the adoption in any of these jurisdictions.

In other jurisdictions, such as in Northern Ireland, contact may take place on a more informal basis or may be ordered by the court in particular cases.

For a legal analysis of a sample of international models, see **Chapter 6**.

### **England and Wales**

By the 1990s, there was a trend in practice towards post-adoption contact in England and Wales, which reflected a new sense that children's sense of identity seemed to be linked to their understanding of their origins (Neil et al, 2003, p. 6). Nowadays, most children adopted in England and Wales have a plan for some degree of post-adoption contact, the majority of which is letterbox contact, a facility whereby letters are exchanged with birth family members via an agency (Neil, 2018, pp. 1178 - 1179). The first stage of the "Contact After Adoption" longitudinal study, carried out by the University of East Anglia between 1996 and 2014, found that just 11% percent of the cohort of children involved, all children adopted below the age of four, had a fully closed adoption, where no ongoing contact was planned. Mediated letterbox contact was planned for 81% of children; while face-to-face contact was planned in 17% of cases. Later stages of this study reported varying and fluctuating degrees of contact being maintained: 'Contact arrangements were in some cases very frequent,

friendly and informal and took place at the home of the adoptive parents or the birth relatives. In other cases contact meetings were as infrequent as once a year and could be quite brief and supervised by a social worker in a neutral setting. Many variations between these two ends of the spectrum were found.’ (Neil et al, 2003, p. 15) Only a small proportion of adopted children in England and Wales have face-to-face contact with their birth relatives (Neil, 2018, p. 1179).

Post-adoption contact is formally provided for in England and Wales under the Children and Families Act 2014, which empowers the court, upon application at the time of the adoption order, or any time thereafter, to make an order either enforcing or prohibiting contact between the child and a member of his/her family of origin or former guardian. The application for such an order may come from the child, the adoptive parent (s), and, where the court allows, the other party. In considering whether to accept applications from a member of the family of origin/former guardian, the court must take into account the relationship between the child and the individual in question, any risk of harmful disruption to the child and any representations made by the child and/or the person who has made the application for an adoption order or on whose behalf such an application has been made. The legislation also allows for any court order to be revoked or altered.

## **United States**

The greater practice of open adoption began to take place in the United States in the 1970s and 1980s, largely in response to a growing view that secrecy had a negative psychological impact on the adoptee and as a response to the numbers of adult adoptees seeking access to information on their origins (Siegel and Smith, 2012, pp 11- 12; USDHSS, 2012, p. 2). Over time, the number of such open or semi-open adoptions has steadily grown (USDHSS, 2012, p. 3). One survey conducted between 2007 and 2008 reported that over two-thirds of private infant adoptions involved post-adoption contact (Siegel and Smith, 2012, p. 15). In addition, adoptions involving children adopted from care often involve open arrangements (USDHSS, 2012, pp. 5-6).

Post-adoption contact often takes place in the United States on an informal, mutually agreed basis (USDHSS, 2012, p. 3). By August 2018, 29 US states and the district of Columbia had provided in legislation for birth and adoptive families to enter into written and court-approved contact agreements (USDHSS, 2018, p. 2). These agreements set out who will be involved in the contact as well as the type and frequency of intended contact. Such agreements must usually be shown to be in the

best interests of the child. In a number of States, contact agreements are only legally enforceable in particular circumstances, for instance, where a child has been adopted from foster care (USDHSS, 2012, p. 2).

### **Northern Ireland**

There are notably high rates of informal post-adoption contact in Northern Ireland. A 2017 survey of adoptive families, involving children adopted from care found that 81% of the children had face-to-face contact with birth relatives, most of which involved contact with siblings, usually twice a year (MacDonald, 2017, pp. 10-11). There has been a growing trend towards face-to-face contact in more recent adoptions (Ibid., p. 6). In most cases, a social worker is present during such direct contact. There are also high rates of contact with birth relatives by post, email, social media and telephone (Ibid., p. 12).

In Northern Ireland, post-adoption contact, while not explicitly provided for in legislation, is supported as part of the post-adoption support services provided by local Health and Social Care agencies. In recent years, court-ordered post-adoption contact, involving a number of direct visits per year, is becoming more common (Ibid., p. 3).

Concerns have been raised in relation to some of the contact that is taking place between adopted children and their birth relatives and whether the best interests and wellbeing of children are being safeguarded (Department of Health, Northern Ireland, 2017, pp. 30 – 31). Work is underway to update Northern Ireland's adoption legislation in order to make it more child-centred (Ibid., p. 8). It is expected that the new legislation will include provisions relating to post-adoption contact.

### **New South Wales, Australia**

Policy and legislation in New South Wales, where adoption rates are extremely low, places an emphasis on supporting the adopted child's links to their birth families and cultural identity. There is an expectation that there will be continued contact between the adopted child and the birth family (B. Luu et al, 2018, pp. 5-6). Legislation introduced in 2000 provides that adoption plans that detail arrangements for the exchange of information and contact may be agreed between the parties to an adoption. Such adoption plans are mandatory for adoptions involving children of

indigenous heritage. Birth parents who have not consented to the adoption must, as far as possible, be given the option of participating in the creation of an adoption plan. The legislation allows for the agreed plan to be included as part of the application for an adoption order or registered to the court. When considering such plans, the court must be satisfied that it is in the best interests of the child.

## Chapter 4: Evidence on Impacts and Outcomes

There have been a number of studies undertaken on the impact of openness in adoption on all members of the adoption triad – the adoptive parents, the birth family and the child. Several of these, such as the University of East Anglia “Contact After Adoption” study, are longitudinal studies, which provide insight into the effect of openness at different stages of a child’s development. In 2015, the Institute of Open Adoption Studies, a joint venture between the University of Sydney and Barnardos Australia, was set up as a publicly funded independent research centre to inform and guide good practice in the area of open adoption and has generated a number of research outputs. There is also a range of government publications on the subject in jurisdictions where post-adoption contact has been introduced, as well as reports prepared by Non-Governmental Organisations such as the International Social Service. The available evidence indicates that there are benefits associated with openness in adoption, as well as challenges and risks (MacDonald & McSherry, 2011, p. 4; USDHSS, 2012, pp. 4-8; ISS, 2014; de Rosnay et al, 2016, 37; Neil, 2018, 1179).

It must be borne in mind that the varying definitions of openness in adoption used by researchers, as well as the fact that levels and forms of openness typically alter over time within individual families, make it a challenge to draw a singular, definitive picture of open adoption arrangements or their outcomes.

Three key factors emerging from available studies should be taken into account when considering potential outcomes:

- ❖ **There is a distinction between communicative openness and openness that involves contact with birth relatives**

Studies on open adoption distinguish between communicative openness, in which adoptive parents speak openly to the child about their adoption and in which the child has access to information about their familial or biological history, and openness involving contact with birth family members (Neil, 2009, p. 5; MacDonald & McSherry, 2011, p. 4; de Rosnay et al, 2016, pp. 3-4).

The majority of studies agree that communicative openness benefits the adopted child, particularly in relation to developing a healthy sense of identity (Neil, 2009, pp. 6-7; MacDonald & McSherry, 2011, p. 4; de Rosnay et al, 2016, p. 3). Research in relation to the impact of post-adoption contact is at an early stage and there is no clear evidence of a general link between post-

adoption contact and more positive outcomes for children (Neil, 2009, p. 6; MacDonald & McSherry, 2011, pp. 4 – 5). While benefits associated with post-adoption contact have been reported in some cases, particularly in connection with its role in supporting greater communicative openness, in other cases it has been found to bring significant challenges and risks (Jones, 2013, pp. 86- 87; Neil et al, 2013, pp. 9-10).

❖ **Reported outcomes are highly contextual and depend on the circumstances of the adoption, the circumstances of the contact involved, the needs and emotional skills of the individuals involved and the level of support available**

Specialists in the area of open adoption caution against a one-size-fits-all approach to open arrangements, which must instead take account of the needs of the individual child and the circumstances involved (USDHSS, 2012, p. 8; O'Brien and Palmer, 2016, p. 55; Neil, 2018, p. 1180). Agreed arrangements must always be in the best interests of the individual child and this is not the case where contact or a particular type of contact may put him or her at risk (Neil et al, 2003; de Rosnay et al, 2016, p. 6; Neil, 2019, p. 1180). A complex range of factors may have a bearing on outcomes. One important indicator of positive outcomes, where open arrangements exist, has been found to be the adoptive parents' support of those arrangements and of the child's link to his or her birth family and history (Neil, 2009, p. 8; Grotevant et al, 2013, p. 196; Neil, 2013, p. 17; de Rosnay et al, 2016, p. 6; Neil, 2018, p. 1181). The availability of social work and mediation supports, where needed, is also seen by researchers as an integral component in effective open arrangements (Neil, 2002, p. 27; Townsend, 2009, p. 10; ISS, 2015; O'Brien and Palmer, 2016, p. 55).

❖ **The balance of potential risks and benefits in any individual case may fluctuate over time**

An adopted child may require different levels of openness –or none – at different stages of their development. A report from the Institute of Open Adoption Studies provides the following example: '*An 8-year-old adopted girl might adamantly maintain that she does not really want to see or discuss her biological mother, but as an adolescent or young adult she might experience a burning need to get information from and perhaps spend time with her biological mother*' (de Rosnay, 2016, p. 70 [original emphasis]). The goal of any agreed open arrangements may change as the child develops (Ibid.). The circumstances of birth parents and adoptive parents may also change (Neil,

2013, p. 262). To achieve optimal outcomes, a flexible approach which allows any agreed arrangements to be reviewed and which seeks to uphold 'the best interests of the child over time' is required (Neil, 2013, p. 262; Neil, 2018, p. 1181). There have been reported instances of contact potentially detrimental to children taking place owing to an expectation of fixed contact arrangements (McDonald, 2017, p. 41).

A list of the key benefits and challenges that have been reported in studies of openness in adoption is included overleaf. These studies involved a range of adoption types and levels of openness. The experience of any of these potential benefits or potential challenges is highly dependent on the context of the individual adoption.

## Reported Benefits

Development of Child	Practical	Broader Family Wellbeing
May help the child develop a positive identity as an adopted person	May allow access for adopted children to their own medical, genealogical and family histories	Leads to greater communicative openness about the adoption within the adoptive family
Provides a channel for children to ask different identity-related question which may emerge at different stages in their development	Helps young adopted people be better prepared for social media contact	May help adoptive parents empathise with and develop more positive feelings towards the birth parents and their child's origins
Shows the child that the adoptive family values the child's background and origins		May lessen some of the grief of birth parents
May help the child to obtain a realistic view of their birth parent		May lead the birth parent to have more realistic views of their relationship to the child and the adoptive family
The child may feel less conflicted about their feelings of curiosity about their birth family		May help the adoptive parent feel more secure, reducing their fears that birth relatives could threaten their relationship with the child.
May help the child come to terms with the reasons for his or her adoption		Acknowledges in a healthy way the fact that all members of the adoption triad are to some extent already "psychologically present" in each other's' lives, regardless of whether they have actual contact with each other

## Reported Challenges

Wellbeing of Child	Relationship Dynamics	Broader Family Wellbeing
Contact may put the child at risk of harm or distress	Variations in the backgrounds between the two family groups may present challenges	Neither adoptive nor birth parents may have the capacity or skills to deal with emotional challenges raised
May undermine the child's sense of security in his or her family	Some birth parents may have serious personal problems, including mental health and addiction issues, which might be challenging for adoptive parents and the adopted child	It may become too painful for birth parents to continue contact
Child may be distressed or confused if contact suddenly ceases	One party may desire a different level of contact	There may be challenges where there are multiple adopted children in one family with varying degrees of contact possible
The child's needs or wishes may change over time	Trust may be broken and distress caused if one party does not follow through on the agreed contact	May create anxieties in adoptive parents regarding the security of his or her relationship with the child

## Studies of Openness in Adoption: Key Findings

### *Minnesota Texas Adoption Research Project Longitudinal Study (1985 – 2014)*

**Cohort:** A national study of 190 adoptive families and 169 birth mothers studied over 4 stages.

**Adoption type:** Domestic infant adoption

### **Notable Findings:**

- ❖ The first stage found that the average levels of self-esteem did not differ by level of openness in the children's adoptions.
- ❖ By the second stage, adolescents who had contact with birth mothers reported higher degrees of satisfaction with their level of adoption openness and with the degree of their contact with birth mother than did adolescents who had no contact.
- ❖ Adoptive parents in fully open adoptions reported higher degrees of empathy toward their children's birth mothers, as well as more empathy with their children about adoption, and talked more openly about adoption with them than did counterparts with other levels of openness.
- ❖ Both the first and second stages of the study found that birth mothers in fully open adoptions had lower adoption-related grief and loss than those in closed adoptions.

### ***Sample from the California Long-Range Adoption Study (1988/89 - 1997)***

**Cohort:** 231 questionnaires completed by adoptive parents who had been included in all three stages of the study

**Adoption Type:** Adoption from foster care

### **Notable findings:**

- ❖ Overall, the average number of contacts between the adoptive parent and birth family members per year was approximately three. When contacts were made, they were more likely to be by letter or telephone, rather than in person.
- ❖ 57% of parents reported that contact between their child and their child's biological family had a positive or mostly positive effect on the child.
- ❖ One-third of families significantly changed their contact arrangements over the course of the study, either starting contact when there was none or stopping contact altogether.
- ❖ Adopted children were more likely to have had contact with other biological relatives, such as siblings, grandparents and uncles or aunts, than with their biological parents.

## ***University of East Anglia Contact After Adoption Longitudinal Study 1996 – 2013***

**Cohort:** The adoptive and birth families of 168 children, including the children. The numbers of this initial cohort represented at each of the 3 stages varied. All of the children were younger than 4 at the time of adoption.

**Adoption Type:** The majority were adopted from foster care.

### **Notable findings:**

- ❖ The most common form of contact planned at the time of adoption was letterbox contact, mediated by a social worker. This contact was usually planned for once or twice a year.
- ❖ Stage 1 found that many adoptive parents found letters hard to write and found the response (or lack of response) from birth relatives disappointing. Children were not necessarily being included in letter contact.
- ❖ By the second stage of the study, completed when the adopted cohort were in middle childhood, almost all children felt they were loved and that they belonged in their adoptive family. This was true regardless of the contact arrangements with birth relatives.
- ❖ By the third stage, which occurred when the adopted cohort were approximately 18, contact had diminished overall, although it had increased in some cases. One third of young people were no longer in contact with any birth relatives.
- ❖ Direct contact arrangements were more enduring over time than indirect contact arrangements.
- ❖ The main benefits of contact identified by young people at the third stage were: getting information about their birth family; building relationships with birth relatives; and being able to talk openly with their adoptive parents about their background and birth family. The main reported challenges were: dealing with emotional strain; managing feelings of loss; and not getting full or accurate information about their birth family.

***Adoption UK Survey of Adoptive Parents in Northern Ireland, commissioned by the Health and Social Board (2016)***

**Cohort:** 93 adoptive parents with post-adoption contact completed a survey. 26 took part in one of four focus groups.

**Adoption Type: Adoption from foster care**

**Notable findings:**

- ❖ 81% of children had face-to-face contact with birth relatives.
- ❖ Most of the face-to-face contact was with birth siblings in different placements.
- ❖ Most families had contact visits twice a year.
- ❖ Over a third of the children were having face-to-face contact with a birth parent in whose care they had been neglected or abused.
- ❖ In 78% of cases, a family support or social worker was present during direct contact.
- ❖ Just over half of adoptive parents had indirect contact with birth relatives via post, email, social media, text or telephone.
- ❖ More than half of the adoptive parents agreed to there being benefits to contact.
- ❖ The most challenging difficulty identified by adoptive parents was if birth parents did not turn up for contact or if plans were changed last minute.
- ❖ Over half of respondents worried that contact may be doing their children more harm than good.

## **Chapter 5: Openness in the Irish Adoption Context**

### **Current Practice**

#### **Supporting the Child's Identity Needs**

Current Irish legislation recognises the importance of the adopted child's identity needs. Section 34 (b)(v) of the Adoption Act 2010 stipulates that in order to grant an adoption order or recognise an intercountry adoption, the Adoption Authority must be satisfied that the intending parents have a reasonable expectation of being capable of 'valuing and supporting the child's needs in relation to his or her – (i) identity, and (ii) ethnic, religious and cultural background.'

Section 19 of the Adoption Act 2010, moreover, provides that, in adoption proceedings, the Adoption Authority or the court must, when determining the best interests of the child, have regard to, among other factors, '(f) the child's upbringing and care and (g) the child's relationship with his or her parent, guardian or relative, as the case may be'.

It is the role of Tusla to make recommendations to the Adoption Authority on adoption applications. A consideration of the prospective adoptive parents' capacity to support the child's identity needs is central to the assessment that informs this recommendation. Factors that may be taken into account in this assessment include, for instance, the research undertaken by prospective adoptive parents or their participation in adoption support groups. Tusla social workers discuss with prospective adoptive parents the importance of the adopted child's identity needs and the benefits of communicative openness in relation to the adoption.

In its assessment of prospective adoptive parents in the case of intercountry adoptions, Tusla looks for evidence of the applicant(s)' capacity to support the child's identity needs in relation to his or her culture of origin and ethnic background. Prospective adoptive parents in intercountry adoptions must also undergo preparation courses that underline the importance of supporting the adopted child's identity formation and of birth family history and links. In addition, Helping Hands Adoption Mediation Agency (HHAMA), which is accredited by the AAI to mediate between applicants and the appropriate authorities in the country of origin in cases of intercountry adoption, plays a role in preparing prospective adoptive parents for supporting the adopted child's identity and links to their country and family of origin.

Tusla encourages prospective adoptive parents, including pre-adoptive foster carers, to keep the adopted child's early life and birth family information safe. They are

encouraged to retain all documents, certificates, letters, photographs, mementos, and toys for the child and to commence 'Life Story' work with the child as appropriate.

In the case of domestic adoptions, Tusla records detailed birth family history, including medical data, during the adoption assessment process.

### **Informal Arrangements**

While there is currently no legislative provision in Ireland for ongoing contact or information-sharing between the birth and adoptive families, this review has confirmed that a degree of voluntary post-adoption contact in Irish adoption has developed in practice. Where their assistance is sought, Tusla, and in some instances, Barnardos and HHAMA, provide support, advice, facilitation and mediation in such cases. Tusla is aware of post-adoption contact taking place in 12 cases in 2018 and 20 cases in 2017. Most of the current post-adoption contact known to Tusla involves letter-box exchange and, to a more limited extent, facilitated meetings. Such facilitated meetings may involve contact between the adopted child and their birth parents as well as with birth siblings or members of the extended birth family. The frequency and level of contact varies depending on the case involved, although, where such arrangements are in place, facilitated meetings usually take place once or twice a year.

While there is no formal post-adoption contact support service, the Tusla's Adoption Service operates an 'open door' policy in respect of adoptive families, birth families and adopted children. This allows challenges involved in contact arrangements to be addressed as they arise, for arrangements to be reviewed if necessary and appropriate supports and interventions to be provided. The majority of post-adoption contact arrangements are managed independently by the families involved without significant intervention from Tusla. In this respect, Tusla notes the role of social media in creating further avenues for post-adoption contact to occur without any social work support, which has been known to create difficulties for the children and families involved.

Tusla endeavours to ensure that any post-adoption contact in which it has a role is in the best interests of the individual child. Where the child is old enough, his or her views on the matter will be sought by Tusla.

Tusla reports that in some cases of informal post-adoption contact known to it, challenges associated with mental health issues or feelings of anger or upset at the adoption process itself have arisen. In other cases, adoptive or birth parents have

not followed through on agreed commitments for contact; and in such situations, there is currently no mechanism to advocate on behalf of the child's best interests and views in decisions relating to contact.

Tusla reports that post-adoption contact has occurred in all types of Irish adoption, domestic and intercountry. In some cases of intercountry adoption, families have maintained significant links with the adopted child's country of origin, in some instances by visiting the country to meet with birth family members or significant carers in the child's early life. In these cases, the families involved sometimes contact their original assessing social worker for advice and support in relation to post-adoption contact.

HHAMA also provides support for voluntary open arrangements in intercountry adoptions on an informal basis. The agency provides a letterbox service by means of which adoptive parents and birth family members who have agreed to ongoing contact can exchange letters as well as photos and medical information. In addition, HHAMA may facilitate contact between siblings that have been placed with different families as well as ongoing meetings between birth families, the adoptive parents and the adopted child, where agreed by all. In its engagement with DCYA as part of this review, HHAMA advised that it informs applicants before adoption of the importance of maintaining ongoing contact with the birth family.

### **The Adoption (Information and Tracing) Bill 2016**

In addition to providing structured access to adult applicants for an information and tracing service, the Adoption (Information and Tracing) Bill 2016 provides for the sharing of items and information between the birth and adoptive parents of a child under 18, with Tusla to act as a mediator.

Section 33 of the Bill allows the birth parent or former guardian to apply, via Tusla ('The Agency'), for '(a) information about the adopted child's health, social and educational development and general well-being, (b) letters, photographs or other mementoes relating to the adopted child, and (c) any other information or items that an adoptive parent may wish to provide to the Agency for the purpose of its transmission to the birth parent.'

Sections 35 and 36 of the Bill allows the adoptive parent to apply, via Tusla, for medical information and other relevant information from the birth parent, as well as '(a) information relevant to the adopted child's health, social and educational development and general well-being, (b) letters, photographs or other mementoes,

and (c) any other information or items that a birth parent may wish to provide to the Agency for the purpose of its transmission to the adoptive parent.’

In both cases, consent is required before the information and/or items are shared.

Sections 33 (4) and 35 (4) allow for Tusla to ‘facilitate the implementation of an arrangement between a birth parent and an adoptive parent of an adopted child’ related to the provision of information and items. These subsections provide scope for Tusla to facilitate an arrangement for the direct exchange of information and items between birth parent and adoptive parent.

If enacted, this legislation will provide formally for the possibility of continued linkages between the adopted child and his or her origins and biological identity. It will allow a channel of indirect communication to be kept open between the biological parent/former guardian and adoptive family, which will enable the adoptive parents to request information or items to address any questions about their origins or identity that may arise for the adopted child at different stages of their development.

## Chapter 6: Legal Analysis on Open Adoption in Ireland

*DCYA commissioned an external analysis of the legal landscape relevant to the matter of open or semi-open adoption. This analysis, set out below, was undertaken by Dr. Aisling Parkes and Dr. Simone McCaughren of University College Cork.*

### Introduction

Adoption has always had a unique place in the social history of Ireland. The landscape of adoption in Ireland has changed significantly since it was first legislated for under the Adoption Act 1952. For many years, secrecy was the cornerstone of adoption, a perceived morality taking precedence over a child born out of wedlock. However, the last few decades have witnessed a radical transformation in the practice of adoption, owing in part to adoption discourse having been reframed through the lived experience of those with first-hand experience of it. The stories of birth mothers, adopted people and adoptive parents have contributed in a major way to revolutionizing peoples' knowledge and understanding of adoption. Although embracing open adoption later than its European and international counterparts, Ireland is now coming to terms with a new and challenging adoption concept.

This concise legal analysis will highlight the responsibilities of the Irish State under both international and European Law in the context of open adoption. It will examine the approaches in other jurisdictions on the issue of open adoption with a view to highlighting good practice. It will explore existing practice on open adoption in Ireland and consider the need to regulate such practice through legislation. Finally, it will conclude with a consideration of the way forward based on Ireland's international legal obligations, as well as highlighting aspects of good practice from the jurisdictions discussed.

### Adoption in Ireland

Articles 41 and 42 of the Irish Constitution enshrine the centrality of the family and establish the rights of parents (Irish Constitution, 1937). Generally, the family is free from interference from external systems except where state intervention is necessary. Article 42A. 2. 1 provides that the state will endeavour to supply the place of parents where they fail to such an extent that the safety and welfare of the child is prejudicially affected.

Ireland's adoption legislation was originally written with infant adoption in mind. It was written to facilitate the adoption of infant children where adoptions would be

closed. In its original form under the Adoption Act 1952, Irish Adoption law and practice operated a closed model of adoption. From a legal perspective, the adopted child was treated as if they were born into the adoptive family and instead of having a birth certificate, they had an adoption certificate as evidence of their date of birth. This legislation was drafted at a time when it was inconceivable that adopted children would continue to have contact with their birth parents.

Recent constitutional and legislative changes have necessitated a reformulation of adoption law and practice. In particular, Article 42A of the Constitution has led to some significant changes in law. Article 42 A of the Irish Constitution states 'Provision shall be made by law that in the resolution of all proceedings... concerning the adoption...of any child, the best interests of the child shall be the paramount consideration'. It also recognises that 'Children born to married parents who have been in long-term foster care would be eligible for adoption after a specific period of time'. The 'specific period of time' is set out under the Adoption (Amendment) Act 2017, which provides for the adoption of a child who has been in the care of the state for a continuous period of 36 months, and where there are no reasonable prospects that birth parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare. The adoption order is granted only on the basis that the child has lived with the applicants for a continuous period of not less than 18 months (Adoption Act, 2017). However, this Act does not go so far as to recognise open adoption.

Yet, the significance of recent legislative change in this area is that it paves the way for more children from state care to be considered for adoption. If Ireland is now moving towards adoption from care, then open adoption requires even further exploration and consideration since many of these children will have pre-existing relationships with members of their birth family. The needs of this group of children are potentially more complex and families will require more support in parenting children in open adoptions.

However, it is important to note that adoption culture *has* changed in line with broader ideological shifts and how society now thinks about the family. Therefore, children adopted into a new family cannot be viewed in isolation from their genetic family. The concept of open adoption has developed out of a recognition that information and understanding about one's origins is a basic human right and contributes to a more holistic and integrated sense of self. Open adoption has developed in line with other changes that have occurred within the Irish traditional family system which was based on the nuclear model. Diverse forms of family life have since proliferated in Irish society, each presenting their own challenges. This has resulted in significant changes to our legal landscape with the introduction of laws such as the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and the Children and Family Relationships Act 2015 for example.

## **Open Adoption in the context of International and European Law**

Ireland has legal responsibilities under the *UN Convention on the Rights of the Child 1989 (CRC)* the *European Convention on Human Rights 1950 (ECHR)* and the *European Convention on the Adoption of Children 1967*. The CRC contains rights which are specific to children, while the ECHR contains human rights applicable to adults and children alike. The *European Convention on the Adoption of Children 1967* sets out a framework of minimum standards applicable in the field of adoption. Each of these instruments provides guidance which is of benefit to Ireland when attempting to shape an approach towards the regulation of open adoption.

### **UN Convention on the Rights of the Child 1989 (CRC)**

The CRC, to which Ireland is a party, is an international human rights treaty which is holistic in nature, containing both the civil and political rights as well as the economic, social and cultural rights of children all over the world. While the CRC is almost universally ratified with 196 states parties, it should be noted that this international treaty is outdated given that it was drafted in the 1980s.

There are four general guiding principles which are provisions that underpin the implementation of each and every provision in the Convention: (a) the right to non-discrimination; (b) the best interests' principle (3) the right to life, survival and development and (d) the right of the child to have their views heard in all matters affecting them. All of the latter provisions must be respected in adoption-related decisions and proceedings as these rights underpin the adoption provisions of the CRC.

Under Article 20(3) CRC, adoption is recognised as one form of alternative care for a child who is deprived of the care of their parents. Article 21 further provides that if a state establishes or provides a system of adoption, it must comply with the standards which are set out in that provision. The principle requirement is that at the heart of any adoption system must be the best interests of the child being recognised as of paramount consideration. Moreover, it is critical that when any decisions are being made in the context of the adoption process, that the process respects the developmental needs of the child (Article 6) and takes account of his/her views throughout the process (Article 12). All children who are at the centre of adoption processes must be treated equally and should not be subject to discrimination (Article 2). In all actions concerning children the best interests of the child should be of paramount consideration (Article 3).

Accordingly, where a plan regarding post-adoption contact is being made, the best interests of the child must be central to any agreement reached. Moreover, these children should not only be involved in this process, but they should be kept informed and be given the opportunity to have input into the process at all times. In

accordance with Article 12, their views, once expressed, should be given due weight in accordance with the age and maturity of the child concerned. Since children are not a homogenous group, age limits should never be applied to determine whether children will be heard. Children should always be heard where the decision concerns them. Due weight can then be applied as necessary to decide how seriously those views should be considered in the final decision-making process. The importance of not applying age restrictions in the context of any adoption decision, in law or in practice is set out by the UN Committee on the Rights of the Child (the international body responsible for overseeing the CRC's implementation) in the General Comment on Article 12 (2009)

The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him<sup>1</sup>.

With the introduction of the Adoption (Amendment) Act 2017, effect was given to Article 42 A 2 and now the AAI (or court) is required to ascertain the views of all children who are subject to adoption proceedings, where the child is deemed capable of forming his or her views. It is important to note that the views and wishes of children are also legislatively enshrined under the Child Care Act 1991 and the Guardianship of Infants Act 1964 (as amended). Thus, any consideration given to legislating for post-adoption contact would need to be inclusive of the views and best interests of all children equally.

Any agreement should also take into consideration the developmental rights and needs of these children with a mechanism to review such needs overtime.

There are several specific measures listed under Article 21 CRC that countries like Ireland must take to secure the best interests of the child in adoption processes. This provides that states 'shall' take the measures listed. Thus, there is no room for state discretion in this regard. Paragraphs (a) – (e) set out the minimum procedural safeguards and 'the provision of the listed measures is not to be taken as satisfying the obligation to ensure the best interests of a child<sup>2</sup>'. Given the holistic nature of the CRC, it is well recognised that any measures which are designed to protect the best interests of a child must be consistent with all CRC rights. In the context of adoption specifically, this means that a child's right to know his or her parents, as far as possible, and his or her right to preserve his or her identity, including nationality, name and family relations as recognized by law, under Articles 7 and 8 of the CRC,

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<sup>1</sup> UN Committee on the Rights of the Child, General Comment No. 12: The Right of the Child to be Heard (2009)

UN Doc. CRC/C/GC/12 at para. 21, 20 July 2009.

<sup>2</sup> Alston P. et al, 'Article 21. Adoption' in Tobin J., *The UN Convention on the Rights of the Child: A Commentary* (UK: OUP, 2019) 773.

must be respected during the adoption process and thereafter. The child's right to know his or her biological origins is addressed under Articles 7 and 8 of the CRC. While the CRC does not provide children with a specific right of access to biological information, the CRC Committee has made a recommendation which was accepted during the Universal Periodic Review process as basis for calling upon one particular State to legislate to guarantee children a right to know their origins.<sup>3</sup>

While it could be argued that the CRC creates a presumption in favour of open adoption, it does not demand that this be imposed in every case, taking into consideration the best interests of the child concerned. Significantly, under Article 9 of the CRC, a child has the right to maintain a relationship with his or her parents following separation unless it is not in the child's best interests. As this could be argued to refer to the birth parents in an adoption scenario, it may suggest that States are required to develop procedures to not only assess whether the biological parents of a child are prepared to maintain contact with a child that they have placed for adoption, but also a process to determine if such contact is in the best interests of a child. While the open adoption process has generally been viewed through the lens of the adults involved (birth mothers being willing to place a child for adoption if there is some guarantee of ongoing contact v. the feelings of adoptive parents around continuing birth parent involvement), the CRC enables us to view the process through the lens of the child. This is particularly important in light of current Irish legal developments (discussed below) where children in long term foster care are eligible for adoption after 36 months and so many will be of an older age by the time the adoption is processed.

### **European Convention on Human Rights 1950 (ECHR)**

The European Convention on Human Rights Act 2003 gives more weight to the ECHR in Irish Law. In line with The Irish Constitution and Irish legislation, it is unlawful for certain government agencies or departments to act in a way that interferes with a person's ECHR rights. It also allows the Irish courts to hear arguments concerning violations of ECHR in cases before them. Where Irish Law is found to be in breach of a right under the ECHR in the Irish Courts, the Court can issue a declaration of incompatibility with European Law. The European Court of Human Rights issues judgments on cases involving different legal systems across the 47 member states of the Council of Europe. Irish law is obliged to take account of the judgments of the European Court of Human Rights, even when those judgments involve countries other than Ireland – some of the most important judgements

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<sup>3</sup> Concluding Observation of the Committee: Bulgaria, UN Doc. CRC/C/BGR/CO/3-5, para. 37 (D).

concerning post adoption contact with birth parents and other relatives are outlined below.<sup>4</sup>

### **Post-Adoption Contact Cases**

To date, the European Court of Human Rights has given some consideration to the issue of post-adoption contact. Indeed, in the case of *R and H v. United Kingdom*,<sup>5</sup> the birth parents argued that the Northern Ireland High Court had violated their right to respect for family life under Article 8 by freeing their child for adoption in the absence of their consent. Despite the fact that the claim failed, and while there is nothing substantive in the judgment regarding how post-adoption contact should occur, the point is that some attention was given by the Court to the issue of post-adoption contact which, as argued by Sloan, could indicate that it views this issue as related to Article 8.

In the case of *IS v. Germany* (2014),<sup>6</sup> the applicant claimed that her rights to private and family life under Article 8 of the ECHR had been violated. She had voluntarily consented to placing her twins for adoption as they were born as a result of an extra marital relationship, but she maintained that she was promised that she could have a 'half-open adoption' (semi-open adoption) with contact with the children which was later denied by the German Courts. In particular, the applicant claimed that her consent to placing the children for adoption did not automatically terminate her 'family life' under Article 8 of the ECHR – she had merely waived her rights as a legal parent but not as a natural mother. She claimed that as a natural mother, contact and information about her children formed a part of her private life as it was part of her identity despite the fact that she had ceased to have legal rights over the children. Significantly, the court noted that while the mother's relationship with her children would have come within the meaning of family life when they were born, this '...might have ceased to fall within the scope of "family life" when the applicant signed the deed which irrevocably placed the children for adoption' in 2000. Indeed, the court noted that biological links between a natural parent and a child alone, in the absence of other evidence indicating a close personal relationship, was not enough in and of itself to attract the protection afforded by Article 8.<sup>7</sup> What is of particular significance in this judgment is that the Court explicitly stated the following:

...the Court considers that the determination of remaining or newly established rights between the applicant, the adoptive parents and her biological children, even if they fall outside the scope of "family life", concern

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<sup>4</sup> Hale, B. and Fortin J., "Legal Issues in the Care and Treatment of Children with Mental Health Problems" in Rutter, M. et al (eds) *Rutter's Child and Adolescent Psychiatry* (UK: Oxford, 2008) p.102.

<sup>5</sup> (Application No. 35348/06) [2011] 2 FLR 1236.

<sup>6</sup> (Application no. [31021/08](#)) [2014].

<sup>7</sup> *Schneider v. Germany*, [17080/07](#), § 80, and *Hülsmann v. Germany* (dec.), no. [33375/03](#), 18 March 2008.

an important part of the applicant's identity as a biological mother and thus her "private life" within the meaning of Article 8 § 1.8

However, despite this reasoning, the Court by a decision of 5:2 found that there was no violation of Article 8 in the instant case.

However, the dissenting opinions of the latter case warrant closer attention in this context.<sup>9</sup> There were two identified difficulties with the State's discharge of its positive obligations under Article 8 ECHR highlighted by the dissenting judgments but the first of these will form the focus of the current discussion given its importance for present purposes. The dissenting judges noted that it was *particularly problematic that the State failed to provide clear legal principles to govern the operation of 'half-open adoptions'*. The domestic court, which authorised the final adoption order, noted the existence of an agreement concerning the 'half open adoption'. Yet the German Civil Code does not contain any reference to 'half adoption' and the latter was a point noted by the majority of the Court. Moreover, after the mother signed the consent papers to adoption but before the adoption order was made (a situation which is similar to Ireland), an expert report issued by the Department of Adoption and Special Care stated that an agreement had been reached (two months post written consent but six months prior to the adoption order) that the adoptive parents would once a year send photographs and report on the twins to the mother. This agreement, to which the authorities were party, not surprisingly led the applicant to believe that she would continue to receive this information after the adoption order was granted. However, once the adoption order was granted, the information was no longer sent, and the adoptive parents were left with exclusive power to decide whether this agreement would be honoured. Since this arrangement was not one which was legislatively enshrined, the applicant was left without any recourse. The Judge noted the following:

The fact that statutory bodies can enter into 'half-open' adoption agreements with birth mothers before an adoption order is made creates, unfortunately, the entirely false and misleading impression that such agreements can have a binding effect upon the subsequent adoption that follows.

There can be few, if any, decisions of greater magnitude in a person's private or family life than the decision to allow one's children to be adopted. Given the gravity of what is at issue, there ought to be no room for the kind of vagueness and uncertainty that prevailed in this case. There is, to my mind, **a positive obligation on a State that permits of such 'half-open' adoptions to ensure that legal clarity is unequivocally available to a vulnerable birth mother who enters into such a pre-adoption arrangement.** Where the State is party to or involved in the making of such an agreement with a

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<sup>8</sup> (Application no. [31021/08](#)) [2014] at para.69.

<sup>9</sup> This joint opinion was delivered by Judge Power-Forde and Judge Zupancic.

birth mother, it is incumbent upon the authorities to ensure that she is left in no doubt as to its utter worthlessness in the event that adoptive parents withdraw therefrom after an adoption order is made. To my mind, the State should not be complicit in a situation where vulnerable mothers take such a vital decision concerning their private and family life based on agreements that are entirely unenforceable. **The general lack of clarity and the failure to provide the applicant with any procedures whereby the validity of the ‘half-open’ adoption agreement could have been tested and, if necessary, enforced demonstrates a failure on the part of the respondent State to have clear and unambiguous legal principles regulating such a vital area of the applicant’s private and family life.**

Given the fact that in Ireland currently, the absence of a legal framework means that any ‘voluntary agreement’ concerning open adoption is entirely unenforceable before the courts, means that the Irish state is in a similar situation to that which the dissenting Judge was concerned about in the preceding paragraph. While in the case of IS, the State was not found to be in violation of Article 8 ECHR, the dissenting judgments raise concerns which equally apply to Ireland which could be avoided if there were a suitable legal framework in place governing all the rights of those involved. This is not only from the point of view of being fair and equitable to the birth and adoptive parents involved, but more so from the child’s perspective. Unlike Germany, there is a constitutional obligation under Article 42 A on the Irish state to ensure (through the provision of law) that in adoption proceedings, the best interests of the child should be of paramount consideration. In the absence of legal regulation of post adoption contact, arguably there can be no guarantees that the state is fulfilling its positive obligations under Article 8 ECHR to protect the private and family life of those involved in open adoption cases. However, it is acknowledged that this was a dissenting judgment of the Court and thus, hasn’t got the same weight attached to it as the majority judgment of the Court.

The recent case of *Bogonosovy v. Russia*<sup>10</sup> highlighted the importance the ECHR places on post-adoption contact with birth family relatives of the adopted child. This case concerned a grandfather who wished to maintain contact with his granddaughter after her adoption. The grandfather in this case had looked after the child (who was later adopted) between 2008-2013 after her mother passed away. When the adoptive parents prevented him having contact with the child, he applied to the domestic court in St Petersburg to appeal against the adoption. While he was unsuccessful, the court did lead him to believe that he could later apply for contact through the courts. However, when the applicant made this application, the court found that since there was no reference to the need for family ties to be maintained between the grandfather and his child at the time of the adoption order, then he had no such right to seek contact after the order was made.

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<sup>10</sup> (Application no. 38201/16) [2019].

Thus, as a result of the fact that the grandfather in this case had a relationship with the child prior to the adoption taking place, he was found by the European Court of Human Rights to have family ties with the child at the time she moved in with her adoptive family. Such family ties meant that he had rights which fell within the right to family life under Article 8 ECHR. The Court found that the domestic court's failure to conduct an examination of the applicant's post-adoption ties with his granddaughter led to a breach of his right to respect for family life under Article 8 ECHR. Moreover, the European Court of Human Rights made it clear that the domestic courts should have conducted an assessment of the applicant's request to maintain a relationship with his granddaughter after the adoption took place. However, it not only failed to do so but it interpreted and applied the law in a manner which denied him such an examination. As a result, he had been excluded completely from his granddaughter's life.

The latter case holds particular importance for those relationships outside of birth parent's post-adoption. Such extended family ties will exist in some cases post adoption in Ireland where children have been in long term foster care and are then deemed eligible for adoption. The facilitation of an open adoption relationship with extended family will be important post adoption in many of these cases.

On a general note, each of the above cases considers the issue of post-adoption contact from the perspective of a violation of the rights of an adult applicant. This is not surprising given that the focus of the ECHR is not on children's rights but on the human rights of all persons. It would be interesting to see how the ECtHR would approach a case where the child was a litigant who sought post-adoption contact with birth parents or relatives. The reality is that the ECtHR is not accessible to children; it wasn't designed with them in mind.

### **The Right to Know One's Origins**

While not directly on the issue of post-adoption contact, there are a number of cases which examine the related area of the right to know one's origins at European level.

The case of *Godelli v. Italy*<sup>11</sup> where the applicant, who was abandoned by her mother at birth, was denied information about her origins and life history due to the guarantee of confidentiality to the birth mother. The applicant argued that by not knowing information concerning her identity, it was having a serious detrimental effect on her. The European Court of Human Rights held that there had been a violation of Article 8 of the Convention – the right to respect for *private* life. This was due to the fact that the relevant Italian legislation had not struck a fair balance between the applicant's interests and those of the birth mother. In particular, where

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<sup>11</sup> (Application no. [33783/09](#)) [2002].

the mother had opted not to disclose her identity, there was no provision for the child to request non-identifying information about his or her origins or the disclosure of the birth mother's identity with her consent. The complete absence of such a right on the part of the adoptee to do so within the legislation meant that it was not fairly balanced and thus there was a violation of Article 8.

In the case of *Odièvre v. France* (2003),<sup>12</sup> similar issues arose where the applicant had been abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother did not want her identity revealed to the applicant who had been placed in care and was later adopted. After some time, the applicant sought information about her origins and in particular, her birth parents and siblings, but this information was denied to her. The applicant argued that this denial of vital information concerning her origins was highly damaging to her as it meant that she could not ever understand her true life history. She also argued that the French rules on confidentiality governing birth amounted to discrimination on the grounds of birth.

The Grand Chamber of the European Court of Human Rights asserted that the circumstances in which a child is born forms an integral part of a person's private life under Article 8 ECHR. However, in the instant case, the applicant had been given access to non-identifying information about her natural family which allowed her to trace her roots to some extent, without violating third party rights. The Court also took into consideration the fact that legislation enacted in 2002 enabled confidentiality to be waived. The latter legislation also allowed for the setting up of a body which would facilitate searches for information about biological origins. The applicant could use this body to request disclosure of her mother's identity which would be dependent on the mother's consent. The Court found that the private life aspect to Article 8 ECHR was relevant in this case but due to the wide margin of appreciation afforded States, the right had not been violated

It appears from the foregoing cases that it is imperative that adopted children have access to, at a minimum, non-identifying information about their biological origins. It is preferable that this is done through legislation to ensure consistency in approach and certainty for adoptees.

### **European Convention on the Adoption of Children 1967 (Revised 2008)**

This Convention, which is quite dated in nature, seeks to identify common principles and standards of practice to serve as international benchmarks for the parties involved in adoption. It also confirms that the best interests of the child should be at the centre of the process (Art. 8(1)) and it contains specific provisions concerning the

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<sup>12</sup> (Application no. [42326/98](#)) [2003].

right of an adoptee to information concerning their origins. While there are no provisions in this Convention which speak to the practice of open adoption, there is recognition of the rights of a child to have access to information concerning their origins. Article 22(1) for example notes that provision should be made to enable an adoption to take place without disclosing the identity of the adopters to the birth parents.

Article 22(3) provides:

The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.

Arguably much of what is contained in this Convention is based on the traditional closed model of adoption which is currently viewed by many jurisdictions (as evidenced below) and the current literature as an outdated approach.

## **Comparative Jurisdictions: International Perspectives on Open Adoption**

This section will explore the approaches taken in other jurisdictions, and in particular, examine the effectiveness of legislative regulation where it has been applied. There are some jurisdictions where Statute, just like in Ireland, does not explicitly provide for post-adoption contact. New Zealand is one such example where there is not a seamless fit between law, policy and practice.

### **New Zealand:**

New Zealand's *Adoption Act 1955* has been criticised for being out-of-date as it does not reflect modern-day adoption practices. Gibbs and Scherman (2013) note that while the Adoption Act 1955 still regulates adoption within New Zealand today, the government agency responsible for adoptions (Child, Youth and Family) has had an 'unlegislated' policy of placing children into open adoption arrangements since the 1980s<sup>13</sup>.

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<sup>13</sup> Gibbs, A. & Scherman, R. (2013), Pathways to parenting in New Zealand: issues in law, policy and practice' 9(1-2) Kotuitui: New Zealand Journal of Social Sciences Online, pp. 13-26.

Despite the fact that open adoption is widely practised in New Zealand, "...it is not recognised in law and Family Court judges struggle to reconcile open adoption with the Adoption Act which acts as a statutory guillotine, promoting secrecy and the complete severance of ties between birth parents and children".<sup>14</sup> Current adoption practices facilitate varying degrees of contact between the birth parents and the adoptive family. According to the New Zealand Law Commission, open adoption contact is often something requested by birth parents prior to consenting to an adoption order.<sup>15</sup> However, there is no provision in legislation for these arrangements and there is no legal redress for birth parents if adoptive parents do not adhere to these arrangements.

It is significant that although New Zealand was seen as the leader as far as open adoption is concerned, to date they have still failed to legally regulate this practice and is in fact in a very similar position to Ireland.

### **Northern Ireland:**

The *Adoption (Northern Ireland) Order 1987* is the principal legislation governing adoption in Northern Ireland. These are adoptions that are initiated by social services for children in the care of the state and fulfilled with or without parental consent. Under Article 8(1) of the *Children (NI) Act 1995* a contact order (which is applicable to all types of family proceedings including adoption) can be made "...requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other"<sup>16</sup>. However, it is unusual for a contact order to be made in adoption proceedings. A number of recent judgements illustrate the reluctance of the judiciary to make contact orders part of an adoption order. In *ZH v. Mr and Mrs H and a Health and Social Care Trust* [2016] NIFAM 6, Justice Keegan commented that "...in our (NI) jurisdiction it is unusual for a contact order to be made in adoption proceedings. This is because of the inherent inflexibility of an order". He went on to say that usually agreements in post-adoption contact are drafted by experienced lawyers and social workers, and that while the court may offer a view as to the way forward, "...it is a very rare case where the court would consider making conditions of an adoption order". Similarly, in High Court of *Northern Ireland Family Division RE: Kate and William – Reduction of Post Adoption Contact* [2017] NIFAM13, Justice O'Hara commented that in Northern Ireland, "...most care orders and freeing orders are made with agreements as to the way in which contact will be maintained in future rather than form court orders". He further went on to speak about the value of this approach in that "...it allows and encourages flexibility to a greater degree, and it

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<sup>14</sup> New Zealand Law Commission, *Adoption: Options for Reform* (NZ: Wellington, 1999) para. 74.

<sup>15</sup> New Zealand Law Commission, *Adoption: Options for Reform* (NZ: Wellington, 1999) p.20.

<sup>16</sup> Article 8(1) and 8(4).

avoids unnecessary applications to amend orders as circumstances change in the future". These judgments acknowledge the inherent complexities of attaching a contact order to an adoption order and seem to indicate a preference for post-adoption contact to be overseen by other professionals. However, it is worth noting that Northern Ireland's adoption legislation has been criticised for being out-of-date with an *Adoption and Children (Northern Ireland) Bill* having been drafted and open for consultation in 2017. The aim of the latter legislation is to enhance the existing legal framework for adoption in Northern Ireland to make it more consistent with the principles and provisions of the *Children (Northern Ireland) Order 1995* and international human rights standards. Section 49 is dedicated to post adoption contact. It sets out who can apply for the order as well as the safeguards to be applied in cases of post-adoption contact. The orders can be made at the same time as an adoption order or any time thereafter.<sup>17</sup>

It is important to point out that while the current law in Northern Ireland makes legal provision for contact orders to be made post adoption, these contact orders are legally housed within normal family relationship legislation and are not part of the mainstream adoption legislation. Moreover, from the above, it would seem that there is a reluctance on the part of the Courts to get involved in making such orders as they see it as more appropriate for professionals to manage these complexities. This would be akin to Ireland's Children and Family Relationships Act 2015 being amended to allow contact orders to be made for post adoption contact. Significantly however, Northern Ireland has recently made efforts to move towards making specific provision for post adoption contact orders as part of mainstream adoption legislation which most likely would lead to these orders being granted more frequently by the courts. This is also seen as being more in line with current international human and children's rights frameworks.

### **New South Wales, Australia**

In New South Wales, only foster carers are eligible to adopt children from care and open adoption arrangements are a legal requirement.<sup>18</sup> The *Adoption Act 2000 (NSW)* makes an adoption plan a legal stipulation of any adoption. Face-to-face contact is encouraged (unless it is deemed unsafe). The plan for contact is agreed by relevant parties and must be approved by the court<sup>19</sup>. The plan can be registered in court, but this is not compulsory. However, once the adoption plan is registered the agreement becomes an enforceable court order.

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<sup>17</sup> [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/Draft%20Adoption%20and%20Children%20Bill.PDF](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/Draft%20Adoption%20and%20Children%20Bill.PDF).

<sup>18</sup> Del Pozo de Bolger, A et al, "Open Adoptions of Children from Foster Care in New South Wales Australia: Adoption Process and Post-Adoption Contact", (2018) 21:2 *Adoption Quarterly*, 82-101.

<sup>19</sup> *ibid*, p.86.

The Adoption Plan must be agreed to by two or more of the parties to the adoption of a child. It is of concern that there is no guarantee that the child will be involved in the latter process. The plan must include provisions relating to the exchange of information between the parties in relation to any one or more of the following:

- (i) the child's medical background or condition,
- (ii) the child's development and important events in the child's life,
- (iii) the means and nature of contact between the parties and the child,

and any other matter relating to the adoption of the child.

If the parties to an adoption agree to an adoption plan, a copy of the plan must accompany the application for an adoption order. The parties to an adoption who have agreed to an adoption plan may apply to the Court for registration of the plan. An adoption plan that is registered has an effect on the making of the relevant adoption order, as if it were part of the order. The legislation also makes provision for adoption plans to be reviewed and changed.

In practice, contact might have already been established for the child pre-adoption. The contact could be between child, carers, birth parents, siblings and other birth family members. The plans for post-adoption contact are "mutually agreed to by all involved and written clearly into an Adoption Plan. The form and frequency of contact are determined on a case-by-case basis, with emphasis on the child's best interests"<sup>20</sup>. In the case of NSW, a number of factors are carefully determined including who the child will have contact with, when the contact will occur and for how long, what the contact will involve. It is also determined where limited or supervised contact may be necessary if it is deemed to be in the best interests of the child. The wishes of the child are considered once they are old enough to express their preferences about contact<sup>21</sup>. This model appears to be similar to what is done in the Irish adoption system whereby adoption social workers may mediate an informal agreement of contact between the parties. The significant difference between the two systems is that there are currently no provisions in Irish law for judicial oversight of open adoption agreements thereby making agreements enforceable. There are also no services in place that specifically target supporting adoptive families in open adoptions.

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<sup>20</sup> Luu, B., Wright, A.C. & Pope, S. Open adoption of children in NSW out-of-home care: General public perceptions and motivations, (Sydney, Australia: Institute of Open Adoption Studies, The University of Sydney March 2018) 13.

<sup>21</sup> Ibid.

## England and Wales

In England and Wales, adoption policy has differed to a large extent from the Irish position and for this reason, it is important to remind ourselves how the political and legal landscape in the England and Wales has operated to date. In Ireland, the Constitutional protection afforded the family unit as well as the presumption that the best interests of a child are best served within the family made it extremely difficult for a child in long-term care to be adopted. Indeed, until recently, the law resulted in a practice whereby children just under 18 years of age were applying to be adopted by their foster families. While the *Adoption (Amendment) Act 2017* has since formally changed this position so that younger children can be adopted, the above-mentioned practice of older children making applications still continues.

Juxtaposed to the Irish approach is that of England and Wales where adoption is seen as the gold standard of providing permanency for children in care. In England and Wales, it is generally believed that the best interests of children in care are best served by a quick adoption process. Indeed, the *Adoption and Children Act 2002* sought to encourage 'more adoptions, more quickly' for children in care<sup>22</sup>. Under the 2002 Act, it is the responsibility of local authorities to initiate adoption proceedings where it is satisfied that a child ought to be placed for adoption. An adoption agency can place a child for adoption with the consent of birth parents and without the need for a court order. Birth parents can provide the final consent to the adoption order at the same time as consent to placement. Similar to the Irish position, in cases where the consent of birth parents is not forthcoming, the court can dispense with such consent if in the opinion of the court, the 'welfare of the child requires it'. The 2002 Act was amended by the *Children and Families Act 2014*. The latter Act made a number of changes to the practice of adoption including post-adoption contact. Section 2 of the Act provides that a local authority which is considering adoption as an option for a child must consider placing the child with a local authority foster carer who has also been approved as a prospective adopter where the authority is satisfied that placement with a relative, friend or other person connected with the child who is also a local authority foster parent is not the most appropriate placement. The latter is called a fostering for adoption placement and requires the local authority to consider placing the child with prospective adopters despite the fact that it does not yet have authorisation to do so from the birth parents or in the absence of their consent, the court. It is against this background where there is clearly a drive towards ensuring that children are adopted quickly in England and Wales that the laws regarding post-adoption contact are discussed. As pointed out by Sloan, 'the insistence on promoting adoption as a solution for looked-after children only increases the importance of recognising the link between birth parent

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<sup>22</sup> Harris-Short, S., "New Legislation: The Adoption and Children Bill – A Fast Track to Failure?" [2001] *Child and Family Quarterly* 405, 4-07.

and adopted child in appropriate cases, notwithstanding the severance of the relevant legal parenthood'.<sup>23</sup>

In England and Wales, the norm is for most children who are adopted to have some form of contact with members of their birth family. The latter is because of the increasing ages at which children are adopted, the fact that many of them will have had contact with their birth families, in addition to the many benefits which post-adoption contact are perceived to confer.<sup>24</sup> Contact of this nature is known as letter box contact, which has been described as 'an arrangement where adoptive parents, birth parents and adopted children agree to exchange letters, photographs, cards and/or gift vouchers' with the adoption agency acting as intermediary. What is important to note here is that the 2002 Adoption and Children Act gives recognition to the fact that open adoption is a continuous, evolving and ongoing process. The Act requires agencies to devise post-adoption support plans for every child.<sup>25</sup> Adoptive parents, children and birth parents have a right to ask for an assessment of their support needs.

Section 46(6) of the 2002 Act provides that the Court should decide whether there should be arrangements for allowing any person contact with the child before the making of an adoption order. Similarly, section 27(4) (a) provides that similar obligations apply where a placement order is being made. According to Sloan, it appears that the Courts seem to refrain from imposing contact in England and Wales if it is against the wishes of the adoptive parents.<sup>26</sup> In all such decisions concerning post-adoption contact, the welfare of the child must be treated as the paramount consideration.

In the case of *Re P (Placement Orders: Parental Consent)*<sup>27</sup> while largely concerned with its jurisdiction to order contact during placement for adoption under the 2002 Act, the Court stated that 'the 2002 Act envisages the court exercising its powers to make contact orders post-adoption, where such orders are in the interests of the child concerned'.<sup>28</sup> Under sections 1(4)(c) and 1(4)(f) of the *Adoption and Children Act 2002*, the 'extended meaning' afforded to welfare requires the court to take into account the effect of ceasing to be a member of the birth family and the child's relationships with relatives as aspects of welfare. Arguably in the Irish context, the requirement that the best interests of the child be of paramount consideration in

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<sup>23</sup> Sloan, B., "Post Adoption Contact Reform: Compounding the State Ordered Termination of Parenthood", *Cambridge Law Journal* 73(2) July 2014, pp. 378-404, p. 383.

<sup>24</sup> Neil, E., "Post-adoption Contact and Openness in Adoptive Parents Minds': Consequences for Children's Development" (2009) 39 *British Journal of Social Work* 5, 6.

<sup>25</sup> Neil, E., "Post-adoption Contact and Openness in Adoptive Parents Minds': Consequences for Children's Development" (2009) 39 *British Journal of Social Work* 5, 6.

<sup>26</sup> Sloan, B., "Post Adoption Contact Reform: Compounding the State Ordered Termination of Parenthood", *Cambridge Law Journal* 73(2) July 2014, pp. 378-404, p. 384.

<sup>27</sup> [2008] EWCA Civ 535

<sup>28</sup> [2008] EWCA Civ. 535 at 154.

adoption proceedings affecting them requires that any law enacted in this area necessitates that such factors as well as others be considered. Article 42 A of the Irish Constitution states ‘Provision shall be made by law that in the resolution of all proceedings... concerning the adoption...of any child, the best interests of the child shall be the paramount consideration’.

Significantly, in the case of *Re J (A Child) (Adopted Child: Contact)*<sup>29</sup> the court adopted a much more conservative approach referring to the original approach to post-adoption contact as envisaged under the *Children Act 1989*. Indeed, Lord Neuberger MR re-asserted the old position which emanated from *Re R (Adoption: Contact)*<sup>30</sup> that “it is ‘extremely unusual’ to make an order [for contact] with which the adoptive parents are not in agreement”.<sup>31</sup>

Under the *Child and Families Act 2014* in England and Wales, section 51 (A) (2) provides the court with the power to make a post-adoption contact order when making an adoption order or any time thereafter. A post-adoption contact order can be of a positive nature requiring adoptive parents to facilitate contact with the person named in the order or it can be negative in nature, prohibiting the person named in the order from having contact with the child concerned. While the latter order can be made by the court on its own initiative, a positive order can only be made by the court where it is applied for by the birth parents. Furthermore, the contact order can be made subject to conditions that the court deems appropriate. There are only certain categories of person that can be named in a contact order. The latter include a person who is connected to the child by blood (including half-blood) marriage or civil partnership, a former guardian, a person who had parental responsibility for the child immediately before the making of a contact order, a person who has contact by virtue of an existing contact arrangement with the child, and a person with whom the child has lived for a year in certain circumstances. While birth parents must seek prior leave of the court should they wish to apply for a contact order – adoptive parents and the child are not subject to such requirements. When making a decision concerning whether or not to grant leave to apply for contact, the court is obliged to consider whether the proposed application might pose a risk of disruption to the child’s life to such an extent that they would be harmed by it.<sup>32</sup>

A recent decision of the Court of Appeal (Civil Division)<sup>33</sup> in England and Wales also sheds some light on how the issue of post-adoption contact is being dealt with by the

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<sup>29</sup> [2010] EWCA Civ 581 at 5.

<sup>30</sup> [2005] EWCA Civ 1128

<sup>31</sup> Thus, as a result, a consideration of post-adoption contact was not determined by the welfare checklist as set out under section 1 of the 2002 Act. The 2014 Act has since clarified this position and provides that any decisions concerning post-adoption contact must be governed by the welfare checklist as set out under section 1 of the 2002 Act.

<sup>32</sup> Section 51 A (5).

<sup>33</sup> *Re B (A Child) (Post-Adoption Contact)* [2019] EWCA Civ. 29

Courts in particularly challenging circumstances. This appeal related specifically to post-adoption contact under the Adoption and Children Act 2002 (as amended) and was the first case of this nature to reach the Court of Appeal. The child at the centre of the case 'B' was born in April 2017. In this case, B's birth parents have intellectual disabilities which in the case of B's mother, is a very significant disability. At the time of B's birth, the Local Authority was concerned that B's parents may not be able to cope with the child's care. As a result, the birth parents were persuaded within a few days of her birth to move with her to a residential assessment centre. The Local Authority commenced care proceedings at the same time. By the end of the 12-week assessment period, the report of the centre concluded that the parents were not capable of providing adequate care and attention for their child. In August 2017, the court approved of the baby's removal from the residential care centre and her placement into the care of Mr and Mrs X, approved foster parents who were also approved as adopters. A month later, the Local Authority applied for an order allowing them to place the child for adoption. In October 2017, a final care order and a placement for adoption order was granted. The final care plan before the court concluded that ongoing contact between the parents and the child was not appropriate. The reasoning outlined for this was that such contact may ultimately lead to a placement breakdown or in the child having difficulty finding a further placement. Significantly, Mr Recorder Norton QC stated that he had not been asked to make an order for contact but if he had been, he would be reluctant to do so. He noted that he was required to look into the value for B of having a continued relationship with the parents. He didn't go any further on this, but he did '...invite further discussion between the local authority, the carers and, potentially, these parents, once they have had a chance to reflect on the decision'<sup>34</sup>. In November 2017, the final visit took place between the birth parents and the child was formally placed for adoption with Mr and Mrs X that same month. Following a formal application for adoption in December 2017, the birth parents indicated that they would like post-adoption contact with B. They indicated that they didn't consent to nor oppose the proposed adoption. As outlined above, under the new legislative framework in England and Wales, birth parents must first secure leave of the court in order to make a formal application for a post-adoption contact order under the 2002 Act. The parents were granted this leave to apply for post-adoption contact in May 2018, but were denied an order for post-adoption contact in September 2018. The birth parents appealed, having been granted leave to do so to the Court of Appeal.

In delivering the judgment of the Court, McFarlane P reiterated the approach as laid out by Wall LJ in *Re R* wherein he stated that that 'the imposition on prospective adopters of orders for contact with which they are not in agreement is extremely, and remains extremely, unusual'. In particular, McFarlane asserted that despite the fact that a new statutory regime had been introduced under section 51 A of the 2002 Act

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<sup>34</sup> *Re B (A Child) (Post-Adoption Contact)* [2019] EWCA Civ. 29 at para. 3.

providing for the regulation of post-adoption contact following placement for adoption by an adoption agency, there was nothing to indicate a variation in the pre s51 A approach as set out in *Re R*. The Court found that there was nothing unusual about this case which would justify the court from departing from the adoptive parents' views on post-adoption contact. The Judge dismissed the appeal on that basis.

While the adoption landscape in England and Wales is quite different in nature to Ireland in terms of how quickly adoptions from care occur, this jurisdiction is still worth taking note of due to its well-developed legal framework as far as post-adoption contact arrangements are concerned. Moreover, it seems that Northern Ireland is moving closer to the approach adopted by England and Wales in terms of making post-adoption contact part of the adoption order. However, the actual determination of post-adoption contact arrangements in this context only seem to take serious account of the views of the adoptive parents. The question remains to what extent the children are involved in this process and what weight is attached to their best interests as a result.

### **Current practice of open adoption in Ireland in the absence of legal regulation**

In the absence of any legal regulation, openness in adoption has to date been facilitated informally and without legal recourse. Currently, there are no practice guidelines in place for the management of open adoption. Research has discovered that there is great diversity in approach as well as in the level of professional discretion in how open adoptions were approached<sup>35</sup>.

The informal supports for open adoption currently in place raise a number of legal questions. Given that the best interest of the child (Article 3 CRC) should be central to the process, the question remains as to how this is achieved. Who represents the best interests of the child in current practice in an objective manner? There is no formal mechanism whereby adoption agreements are formally reviewed on a regular basis. Current practice would seem to indicate that the review of contact agreements operates in a reactive and sometimes ad hoc manner as crises or other issues arise. This begs the question as to how the developmental rights and needs of adopted children (Article 6 CRC) nationally are consistently taken into account in line with their age and maturity in an equal and non-discriminatory way (Article 2 CRC). Finally, it would seem that in current practice, there is no independent representative for the child at the centre of the process who advocates on their behalf, assesses their unique and individual needs and brings their views to the process (Article 12 CRC). Given the changing nature of adoption in Ireland due to recent constitutional

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<sup>35</sup> Some of the open adoptions referred to here are cases where Tusla have facilitated open adoption for domestic infant adoptions.

and legislative change, children will potentially be of an older age with established links to their birth family which means that the provision of standardised post adoption contact becomes all the more important. The questions remain as to how best this can be achieved within the Irish context.

Any open adoption agreement that is currently entered into by birth and adoptive parents does not form part of the final adoption order and lacks any formal independent oversight. There is no legal or any obligation on either party to uphold the agreement. The open adoption agreement is totally voluntary and based on the goodwill of the parties involved. In theory, the adoptive parents and/or birth parents could renege on the agreement once the order has been granted and the other party would have no legal recourse.

There is a constitutional obligation under Article 42A on the Irish state to ensure (through the provision of law) that in adoption proceedings, the best interests of the child should be of paramount consideration. Arguably the best way to ensure that the best interests of the child are paramount in open adoption agreements is through enshrining this in law. Equally, there is also an obligation to ensure that any law in this area ensures that the voice of the child is taken in to consideration in post-adoption contact agreements. Furthermore, the case of *Bogonosov v. Russia* highlighted the importance of protecting the Article 8 right to family life of extended birth family members who have pre-existing relationships with the adopted child. In particular, the ECtHR noted that the Court did not conduct an adequate assessment of the grandfather's family ties with the child. This begs the question, if an open adoption arrangement is made in Ireland facilitated by Tusla (as is currently the case), facilitating access between a biological grandparent and an adopted child for example, which is later reneged upon by the adoptive parents, then how can a Court assess a breach of an adoption agreement which is of no legal standing? This would appear to be in potential violation of Article 8 ECHR.

The status of the ECHR in Irish law is at a sub-constitutional level under the ECHR Act 2003. In the Irish Constitutional context, Article 41 as well as the right to privacy of the adoptive family are protected against state interference. However, any court would still need to consider the issue of contact from the perspective of the child and their best interests in accordance with Article 42 A.

In the absence of a formal policy, let alone legislation, in this area, there is a danger that a less rigorous approach will result in unsatisfactory outcomes for children and potential violations of their rights. Furthermore, where agreeing to such voluntary arrangements is left to the adults concerned, there is a danger that the needs, interests and rights of the child can be diminished over time, particularly where one or more parties' renege on their part of the agreement. Moreover, in the absence of legal regulation, there may be a consequent lack of resources dedicated to supporting families who are engaging in an open adoption arrangement. Indeed, in

cases where one of the parties reneges on the agreement to facilitate open adoption, this can cause damage in the long term, and there are no consequences for non-compliance with what is effectively regarded as a voluntary agreement with no legal standing. Furthermore, as the ECtHR has pointed out:

The fact that statutory bodies can enter into 'half-open' adoption agreements with birth mothers before an adoption order is made creates, unfortunately, the entirely false and misleading impression that such agreements can have a binding effect upon the subsequent adoption that follows.

In order to be in line with Article 42 A and existing legislation in the field of adoption, it is imperative that any law in this area would enshrine the best interests of the child as being of paramount consideration and any determinations concerning open adoption or semi-open adoption would need to consider the views of the child on the matter. By their very nature, family relationships change over time as do the views, interests and needs of children as they develop. Any legislative framework would need to account for this and facilitate changes to an open adoption/ contact order that recognises the changing circumstances of the families involved.

## **Conclusion**

Open adoption is something that ideally is undertaken as a long-term venture. It is a commitment to acknowledging the child's biological background. However, for a large part of the child's life, the success of open adoption depends on the commitment, reliability and efforts of those adults to whom they are biologically and legally related as well as those professionals who guide the process. Furthermore, where there is any threat to a post-adoption contact agreement for whatever reason, there should be a legal safety net to ensure that the best interests of the child remain central to the process. Unless there is a shared commitment to this process, it introduces the possibility of more anguish and hurt for the child even into adulthood. What is important is that any legislative reform of adoption to put open adoption on a legal footing is also accompanied by a commitment to supporting the process.

Social workers play an important role not only in facilitating and responding to changes in the open adoption plan, but as key players in supporting the longevity of open adoptions. To date, Ireland does not have any dedicated statutory post-adoption support service. While Tusla operates an 'open door policy', practice needs to evolve in such a way that it is responsive to the needs of families living with open adoptions. The way in which to guarantee that is to ensure any post-adoption legislation includes provision for families to access support services. A service that is ad hoc and reactive does not serve the best interests of the child. What is important is that a suite of support mechanisms that reflect and recognise the multitude of complexities associated with open adoption are made available to children and their

families. Numerous services that address issues such as family boundaries, the use of social media, how to engage with each other in post-adoption contact meetings, emotions associated with post-adoption contact and navigating the logistics of contact would be required. The cost of services should not be a prohibiting factor. Barnardos provides a post-adoption service that is part-funded by Tusla. While the service is available in Dublin and more recently in Galway and Cork, it is not nationwide. While its expansion is a welcome development, the right to a post-adoption service should be made a priority.

Ireland's changing landscape of adoption practice represents a clear departure from the clean break associated with traditional closed adoptions. Emerging adoption practice, in some cases, repositions the adopted child in relation to its natural family and instead of complete severance of family ties, the child has the opportunity to retain not only a link to their biological origins but also a social and emotional connection. It is very timely that legislation reflects the changing nature of Irish adoption.

## **Bibliography**

### **Academic Articles (International peer-reviewed)**

Alston P. et al, 'Article 21. Adoption' in Tobin J., *The UN Convention on the Rights of the Child: A Commentary* (UK: OUP, 2019) 773.

Del Pozo de Bolger, A et al, "Open Adoptions of Children from Foster Care in New South Wales Australia: Adoption Process and Post-Adoption Contact", (2018) 21:2 *Adoption Quarterly*, 82-101. *ibid*, p.86.

Gibbs, A. & Scherman, R. (2013), Pathways to parenting in New Zealand: issues in law, policy and practice' 9(1-2) *Kotuitui: New Zealand Journal of Social Sciences Online*, pp. 13-26.

Giroux M. and De Lorenzi, M. 'Putting the Child First': A Necessary Step in the Recognition of the Right to Identity' (2011) 27 *Canadian Journal of Family Law* 53, 69-79.

Harris-Short, S." Making and Breaking Family Life: Adoption, the State and Human Rights", (2008) 35 *Journal of Law and Society* 28,40.

Hale, B. and Fortin J., "Legal Issues in the Care and Treatment of Children with Mental Health Problems" in Rutter, M. et al (eds) *Rutter's Child and Adolescent Psychiatry* (UK: Oxford, 2008) p.102.

Harris-Short, S., "New Legislation: The Adoption and Children Bill – A Fast Track to Failure?" [2001] *Child and Family Quarterly* 405, 4-07.

Luu, B., Wright, A.C. & Pope, S. Open adoption of children in NSW out-of-home care: General public perceptions and motivations, (Sydney, Australia: Institute of Open Adoption Studies, The University of Sydney March 2018) 13.

Neil, E., "Post-adoption Contact and Openness in Adoptive Parents Minds': Consequences for Children's Development" (2009) 39 *British Journal of Social Work* 5, 6.

Sloan, B., "Post Adoption Contact Reform: Compounding the State Ordered Termination of Parenthood", *Cambridge Law Journal* 73(2) July 2014, pp. 378-404, p. 395.

### **Reports**

New Zealand Law Commission, *Adoption: Options for Reform* (NZ: Wellington, 1999).

[https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/Draft%20Adoption%20and%20Children%20Bill.PDF](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/Draft%20Adoption%20and%20Children%20Bill.PDF).

### **UN Committee on the Rights of the Child documentation**

UN Committee on the Rights of the Child, General Comment No. 12: The Right of the Child to be Heard (2009)  
UN Doc. CRC/C/GC/12 at para. 21, 20 July 2009.  
Concluding Observation of the Committee: Bulgaria, UN Doc. CRC/C/BGR/CO/3-5, para. 37 (D).

#### **ECHR Case Law**

*R and H v. United Kingdom* (Application No. 35348/06) [2011] 2 FLR 1236.  
*IS v. Germany* (Application no. [31021/08](#)) [2014].  
*Bogonosov v. Russia* (Application no. 38201/16) [2019].  
*Godelli v. Italy* (Application no. [33783/09](#)) [2002].  
*Odièvre v. France* (2003) (Application no. [42326/98](#)) [2003].

#### **Northern Ireland Cases**

ZH v. Mr and Mrs H and a Health and Social Care Trust [2016] NIFAM 6  
Northern Ireland Family Division RE: Kate and William – Reduction of Post Adoption Contact [2017] NIFAm13

#### **UK Case Law**

Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 535  
Re J (A Child) (Adopted Child: Contact) [2010] EWCA Civ 581 at 5.  
Re R (Adoption: Contact) [2005] EWCA Civ 1128  
Re B (A Child) (Post-Adoption Contact) [2019] EWCA Civ. 29 at para. 3.

#### **Irish Case Law**

IOT v. B [1998] 2 Irish Reports 3

## Chapter 7: Consultation

Section 42 of the Adoption (Amendment) Act 2017, which stipulates the terms of the review that is the subject of this report, required that public consultation be undertaken. This took place in two parts:

1. Key stakeholders were invited to an Open Policy Debate hosted by the Department of Children and Youth Affairs.
2. Members of the public were invited to contribute to an online survey published on the Department's website.

A number of relevant State bodies and service providers were also consulted directly.

### Open Policy Debate

Key stakeholders were invited by DCYA to an Open Policy Debate held on Monday May 13th 2019. Open Policy Debates provide an opportunity for a wide range of policy-makers, practitioners, representative groups, NGOs and academics to share their views in relation to a particular area of policy at an early stage in the policy-making process.

The purpose of the Open Policy Debate held by DCYA was to identify significant themes and perspectives in relation to the potential introduction of open or semi-open adoption.

The event included two sessions of facilitated round-table discussion involving all participants as well as presentations from invited speakers. The morning session sought participants' views in relation to the comparative benefits and disadvantages associated with closed adoption and with open or semi-open adoption. In the afternoon session, the facilitated discussion focussed on the question of State supports for semi-open or open adoption.

The Open Policy Debate was chaired by Dr. Valerie O'Brien of the School of Social Work, Social Policy and Social Justice in University College Dublin. The keynote speaker was Professor Beth Neil, a leading international expert in post-adoption contact. Other speakers were Dr. Fergal Lynch, Secretary General of DCYA; Dr. Geoffrey Shannon, the Chair of the Adoption Authority; Siobhan Mugan, National Manager of Adoption Services at Tusla; Suzanne Connolly, Chief Executive of Barnardos; and Angela Palmer, a doctoral researcher at UCD's School of Social Work, Social Policy and Social Justice.

A report summarising the key themes and issues which were identified at the Open Policy Debate was published by the Department on the 24<sup>th</sup> July 2019 and is included as an appendix to this report (**Appendix 1**).

The key messages are summarised below.

Open versus Closed Adoption	Key Considerations	Types of Supports Needed
<p>Open adoption is generally preferable to closed adoption. Its main benefits are enabling the child to develop a healthy identity based on the truth and helping them to understand the reasons for their adoption.</p> <p>Closed adoption is still necessary in some cases, such as where there are child safeguarding concerns.</p> <p>The balance of benefits and risks involved in open adoption depends on the circumstances and individuals involved.</p>	<p>The suitability of open arrangements needs to be considered on a case-by-case basis.</p> <p>Planning and supports are key.</p> <p>Arrangements need to reflect and respond to the changing needs of the developing child.</p> <p>There is a continuum of risk and need. Supports should be responsive to this – ranging from unsupported contact to contact supervised by a social worker to no contact. As this can vary, social work support may need to be stepped up or stepped down as required at different times.</p> <p>There is relevant expertise within the existing services but they require resources to support open or semi-open adoption.</p>	<p>Assessment to determine if support is needed</p> <p>Counselling services</p> <p>Mediation services</p> <p>Education of adoptive parents on what is required to support post-adoption contact</p> <p>The option of a voluntary order or contact order, which include a means of reviewing arrangement if it no longer meets the needs of the child</p> <p>A standardised code of practice/ best practice guidelines, based on evidence regarding what works well and what doesn't work well</p> <p>A mechanism to ensure that children are involved in the decision-making process</p> <p>A letter box service, which would include supports for writing the letters</p> <p>Legislation may be required to ensure that resources are made available</p>

## Public Consultation

### Introduction

DCYA ran a public consultation survey for five weeks from May 9<sup>th</sup> until June 14<sup>th</sup> 2019. The survey was designed by the Adoption Policy and Research and Evaluation Units of the Department. The purpose of the survey was to assist the Department in further ascertaining the degree to which informal post-adoption contact arrangements (direct and indirect) between the birth and adoptive parents of adopted children under 18 are already taking place in Ireland, as well as to gain the views of the public and stakeholders in relation to 1) the desirability or otherwise of post-adoption contact and 2) the need for the State to support post-adoption contact and 3) what forms, if any, those supports should take. The majority of questions presented a list of options for respondents to select, as well as an 'Other' category and the opportunity to add their own commentary. In addition, a final open-ended question allowed each respondent the opportunity to submit any additional views relevant to open or semi-open adoption.

Key stakeholders were invited to complete the survey and were asked to circulate it within their own networks. A press release was issued to publicise the survey and it was promoted on the Department's social media account and website.

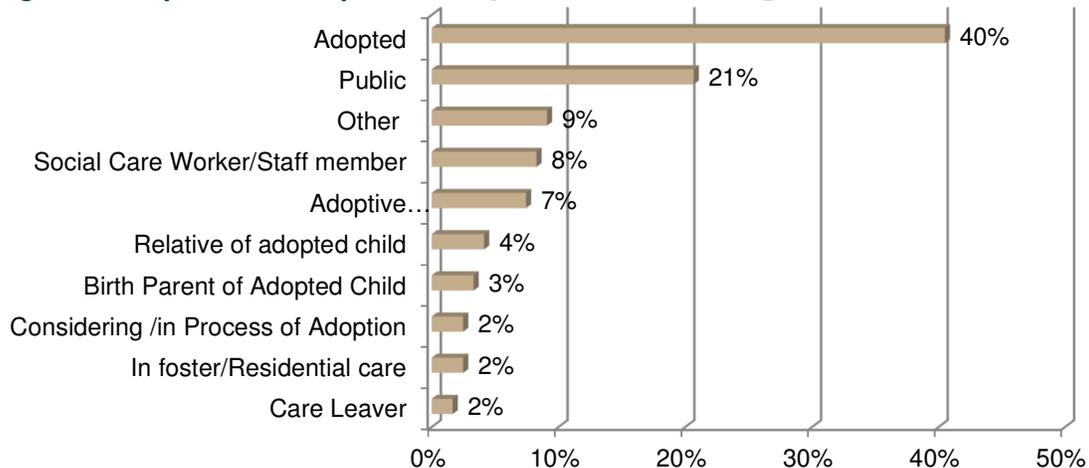
Analysis of the results of the survey was undertaken by the Department's Research and Evaluation Unit. There were 121 respondents in total, made up of individuals with personal experience of adoption, as well professionals working in the area, advocates and others. Owing to the broad range of potential respondents, not all questions included were relevant to all respondents. Responses for a number of questions were too low to produce reliable results. The findings set out below are based on those questions with a sufficient response rate to enable production of valid and reliable results. Interpretation of results have been used to guide and inform the process of policy deliberation, recognising the potential limitations arising from a public consultation survey based on a self-selecting sample of respondents. It is notable that the results in relation to the need for supports for post-adoption contact were broadly in line with the findings of the Open Policy Debate.

The key messages from the public consultation are summarised here. The full report is available at [Appendix 2](#).

## Profile of Respondents

Section 1 of the survey sought to establish who the respondents were. 40% of the responses were from adopted people. 65% of respondents were aged between 45 and 64 years.

**Figure 2: Proportion of respondents by self-described categories**



60% of respondents reporting first-hand experience of adoption had experience of infant adoption; 21% had experience of intercountry adoption; while just 4% had experience of fostering to adoption. The numbers of infant adoptions taking place in Ireland in recent years are very low. As such, their disproportionate representation among the achieved sample, in addition to the prevailing age profile of respondents, the majority of whom identified as adoptees, suggests that the experiences of adoption reported in the survey may relate to adoptions that took place in previous decades. Indeed, although the consultation was concerned exclusively with post-adoption contact in relation to adopted children under 18, some of the comments suggest that a number of respondents considered this issue in the context of past practices of secrecy in adoption as well as current issues in relation to access to information and tracing services for adopted adults:

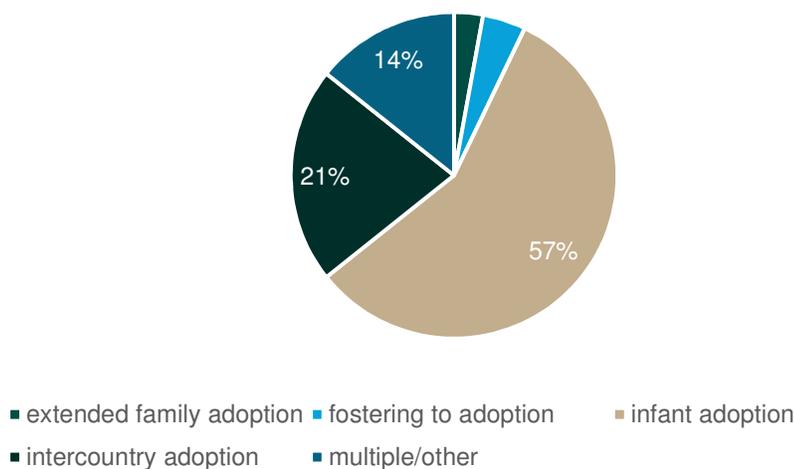
*Hopefully after all the scandals about Bessborough and the shameful way mothers and babies were treated the process of adoption should be fully overhauled. For the people like me it's too late.*

*The time has come to do away with secrecy surrounding adoption. Adopted people should have access to all birth information. Contact between birth parents and their adopted children should be facilitated and supported.*

*Open adoption is preferable, because all parties are invested in ensuring the child's identity is not fractured; it's in the child's best interest. Semi or closed schemes lead to the mess the State/Church is dealing with from the Mother Baby Homes.*

*... I am 31 now, it is often forgotten that adopted people of my age were part of the closed adoption system. I am currently on a 2 year long tracing list to find my birth family [...]. I would have benefited significantly from an open adoption with contact since childhood. It feels strange to only initiate contact at this stage in my life.*

**Figure 3: Proportion of respondents reporting first-hand knowledge of adoption by adoption type**



### Existing Informal Contact Arrangements: Outcomes and Impacts

Sections 2 and 3 of the survey gauged respondents' experience of adoption and post-adoption contact and their perception of the benefits and challenges involved. Over three-quarters of respondents (76%) citing first-hand experience with adoption reported that there had been no contact between the birth and adoptive families of the child in question. 11% of respondents reported contact after adoption; 6% both before and after adoption; and 3% before adoption.

One respondent with experience of post-adoption contact commented:

*The contact that we have with birth family for one child has been fantastic for our child. It was something she 'needed' even as young as 8. We are striving to do the same for our second child [...] Our child's birth family is very happy with the contact and we have gone from formal (through agency) to keeping in contact ourselves. We have visited them twice and it has been a fantastic thing for all involved.*

A small number of respondents answered questions in respect of the outcomes and impacts of contact on the adopted child, and on birth and adoptive families. The most prevalent reported positive impacts upon the adopted child were:

- ❖ S/he has ongoing relationships with members of their birth family
- ❖ S/he understands the reasons for his/her adoption
- ❖ S/he has a better understanding of his/her background and birth parents' circumstances

The most prevalent reported positive impacts of contact upon the wider birth and/or adoptive families were:

- ❖ The birth and adoptive parents develop a relationship
- ❖ The adoptive parents have a better understanding of the birth parents' life circumstances
- ❖ The adoptive parents gain an appreciation of the adopted child's heritage
- ❖ The birth parents can see that the adopted child's life circumstances have been improved by being adopted

Some of the respondents' comments also identified benefits for the adopted child and birth and adoptive families:

*Research has shown that open or semi open adoption allows for the child to feel a greater sense of belonging to their adoptive family and reduces worry, concern, and fantasising about their birth family*

*For the child, no amount of reassurance can truly provide the 'reason' why he or she was placed for adoption from third parties - this has to come from the birth parent for validity to the adoptee. Separately, knowing/getting to know birth parents can assist adoptive parents in understanding their child better, i.e. personality traits, medical issues, characteristics etc*

*I recently had a reunion with a birth mother and her adult adopted child and this went much better because of the previous letter contact when the adopted person was younger. Ongoing face to face contact would also help birth mothers tell their subsequent children about the adopted child as they are growing up rather than a big announcement when their child traces them.*

*Understanding their family and cultural identity is of huge significance to children, particularly in their teenage years, and can have a profound impact on their psychological development and stability.*

A smaller number of respondents noted negative impacts in addition to positive impacts. In relation to the adopted child, 9 respondents noted negative impacts, among them:

- ❖ The adopted child's sense of security and belonging in the adoptive family is shaken
- ❖ The adopted child's expectations regarding contact are not met

- ❖ The adopted child questions the reasons for his/her adoption.

80% of respondents citing negative impacts for the adopted child reported that overall there was a significant benefit from the contact.

15 respondents noted negative impacts on the wider adoptive and birth families, including:

- ❖ The birth parent(s) and the adoptive parent(s) find contact between them to be emotionally challenging
- ❖ While the birth parent(s) and adopted child make contact, the birth family do not want contact with the adopted child
- ❖ Contact arrangements as facilitated by a social worker/counsellor may not work (e.g. one or both families may not adhere to agreed arrangements)

### **Preferred Voluntary Contact Arrangements**

Section 4 of the survey invited respondents' views in relation to the contact arrangements they would prefer, if any. All respondents answering this question (n=66) reported that they would like to see some form of voluntary contact that involved some combination of the adopted child and/or members of the birth and/or adoptive families.

A number of respondents expressed their support for post-adoption contact in their comments:

*As far as I know, children who are fostered continue to have contact with their birth families. It should not be any different when a child is adopted. It is wrong that legislation and formalised adoption cuts off any knowledge or contact with biological families. Even though the legal responsibility for the rearing of the child is taken up by the 'new' parents who may consider the child as their own, adoptees have a right to know their origins.*

*Open adoption offers the form of adoption that best supports the long term well-being of the child, the birth parents, the adoptive parents.*

*Ireland should have open adoptions ensuring the right to identity (not necessarily the right to a relationship as this will depend on several things).*

*It is in the best interests of the child that they have connection to their biological roots and biological relatives.*

However, another respondent expressed concerns about post-adoption contact:

*I think there is a risk that the Government could be seen to be interfering with the family. I think children would like certainty ...who are my parents, that feeling of security and as they become adults it's the legal implications that become important, eg inheritance etc. Any consideration regarding changing the law as it currently stands needs to be carefully weighed up against what is best interest of the child.*

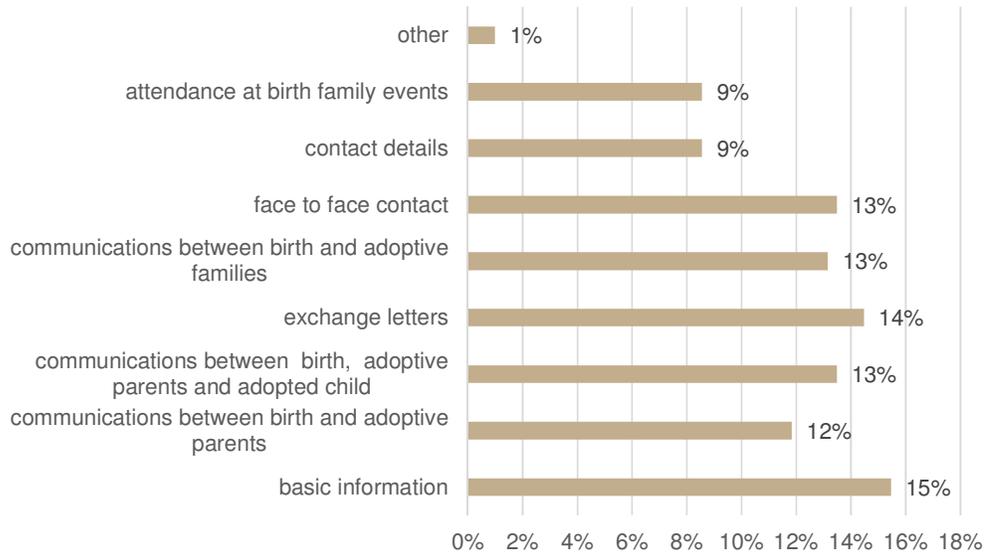
Of those respondents that favoured post-adoption contact, nearly three-quarters indicated that they would like contact between the adopted child and all birth and adoptive family members (including grandparents). 60% of adopted respondents and 83% of adoptive parents also indicated preference for these contact arrangements.

Conversely, a quarter of respondents (n=16) indicated that they would like contact between the adopted child and birth relatives only (suggesting no other contact between adoptive family members and birth family members). Over a third of adopted respondents, in particular, indicated they would like contact between an adopted child and birth family members only.

A majority of respondents, including 53% of adopted respondents, preferred direct or indirect contact facilitated by an agency as a means of initiating contact. While just 3% of respondents selected social media as their first preference for establishing contact, 17% selected it as their third preference, which suggests that the sequence of contact may be a consideration for some people.

Respondents were also asked about their preferred form of contact (**Figure 4**). No strong preferences emerged, although attendance at birth family events was rated lower than other forms of contact.

**Figure 4: Responses on preferred forms of contact**



Although no clear preference could be established in terms of the form of desired contact, respondents selected the exchange of basic information, the exchange of letters, ongoing established relationships and communications between birth and adoptive families, including adopted children, and face-to-face contact as their preferred options.

A number of respondents highlighted the importance of access to information in particular:

*The child must be provided with basic details of health and family background. Make this information available to the adoptive parent and provide a data base with this as well.*

*The right to identity also entitles a child to relevant genetic and health information*

Another respondent commented:

*Face to face contact with birth parents and siblings should be promoted where possible.*

Approximately 60% of all respondents and a similar proportion of adopted respondents, relatives of an adopted child and social workers or paid staff members indicated that they would like contact to be initiated before the adoption process. 10% of all respondents and 14% of adopted respondents indicated that contact should only be made as needed. Nearly three-quarters of respondents describing themselves as relatives of an adopted child stated contact should be made within six months of adoption. 85% of social workers or paid staff members indicated that contact should be made within a year of adoption.

### **State Support for Voluntary Contact Arrangements**

The final section of the survey sought the respondents' views on if and how the State might better support or facilitate voluntary contact arrangements between the birth and adoptive families of adopted children. 82% of respondents felt that people in Ireland are not generally aware of current informal contact arrangements. An additional 12% didn't know if people were generally aware of such arrangements.

83% of all respondents indicated that the State should make provision to support voluntary contact arrangements for all types of adoption. The most frequently cited adoption scenario for which it was considered that the State should make such provision was where the child has an existing relationship with the birth parents, as is the case with many children adopted from foster care. One respondent commented in this respect:

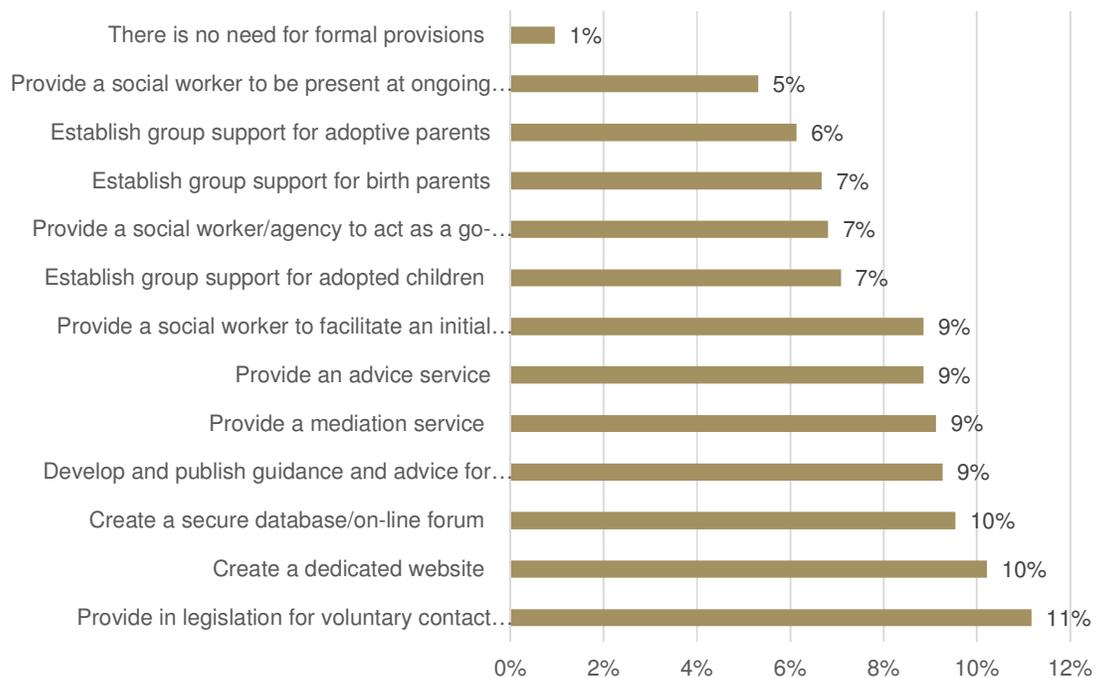
*Where pre adoption contact is already established it should be encouraged to continue. I believe TUSLA have a role in assisting the facilitation of ongoing contact especially if TUSLA were already involved in facilitating this contact.*

No respondent indicated that there was no need for formal provisions, although one respondent indicated that there should be no contact..

16% of respondents indicated that birth and adoptive parents, the adopted child, any family member and a social worker should be involved in voluntary contact arrangements. In total, 58% of respondents indicated that a social worker or counsellor should be involved in voluntary contact arrangements along with other individuals. Of these respondents, 64% indicated that voluntary contact should involve the adopted child, birth and adoptive family members and a social worker or counsellor.

Respondents were also asked about what they considered to be the most important ways in which the State could support voluntary contact arrangements between birth and adoptive families (Figure 5).

**Figure 5: Preferred ways for the State to support voluntary contact arrangements**



No clear pattern emerged from survey results about the single most important form of State support for voluntary contact arrangements. By a very slight margin, legislation was the most preferred single form of State support

One respondent commented in relation to legislation:

*I believe a legal basis is important as currently any contact is conducted on a 'gentleman's agreement' and when this breaks down it can be devastating for those concerned [...] Those seeking open or semi open adoption should be protected in law.*

Other respondents proposed that the emphasis in legislation should be on providing for the State to support open adoption where required:

*I think any legislation should be broad in that it places a responsibility on the state where practical and required to assist in the facilitation of open adoption.*

This view is consistent with the opinion of another respondent that open adoption should be optional:

*It is important to allow the options for children to develop an identity of where they came from and know who they are. This should be optional for all parties but ensuring a child has as much as possible information.*

Thematically grouping all responses relating to multiple preferred forms of State support produced some significant patterns. By grouping these responses, the provision of social work support emerges as the most preferred form of State support. State support for voluntary contact arrangements through a dedicated website, secure database or on-line forum is the second most frequently selected preferred form of support. State support for a mediation or advice service is the third most frequently cited form of support. More intense forms of State support, such as group support for individuals (adopted children, adoptive parents, birth parents), were not frequently cited.

The overriding reported preference for social work supports is consistent with a significant number of the views expressed by respondents in their comments:

*Given that there may be children who have been adopted from families where there may be child protection concerns, contact would have to be supervised. It is a very complicated and emotive area (given what has happened in our country's past) and it is going to be difficult to legislate for. I would believe that the outcomes are better for those adopted individuals who have some form of contact with their family or origin than those who do not, but where open or semi-open adoptions are considered they need to be risk assessed and the decisions made reviewed at regular intervals.*

*Having the support of social workers to initiate and support all parties with the process as well as [named] support groups can ensure that best process is established for the child and family*

*It is a Labour intensive service that will need to be well resourced, and these resources will need to be formalized in legislation. It cannot be left to local decision making.*

The perceived need for social work supports reflects the view that post-adoption contact is a complex and challenging area, requiring a sensitive and flexible approach, as expressed in a number of comments:

*There is not a one size fits all, as people are complicated.*

*The issue of contact can be overwhelming for all the pertinent people involved, however with experienced adoption social work practitioners, I believe that it is in the best interests of the child, birth family and adoptive parents.*

*Everything is case by case and the wellbeing of the children is Paramount.*

*Ultimately it is for the benefit of the child and the family as to whether they have open / semi-open adoption or not and it should be taken into account that not all situations meet the same criteria*

## **Submissions**

### **Adoption Authority of Ireland and Tusla – Child and Family Agency**

The AAI and Tusla are the two State bodies with statutory responsibilities in relation to adoption. DCYA consulted with both bodies in relation to current operational and legal processes and information of relevance to the question of open or semi-open adoption. The information each provided is incorporated into **Chapters 2** and **4** of the report.

In addition, Tusla highlighted that the current lack of enforceable agreements for post-adoption contact means there is no formal mechanism for Tusla social workers to advocate on behalf of the child's best interests. However, it also noted that enforceable agreements for contact might be similarly problematic given that the circumstances of the parties involved in contact are subject to change over time and that the cases involved may be complex. It was submitted that a better resourced and formalised post-adoption support service may be the best mechanism to allow Tusla to better support all parties engaging in post-adoption contact.

The AAI underlined the distinction between 'ongoing communicative openness within internal family dynamics and its known benefits, and the varying levels of practical openness that include contact with birth relatives.'

### **Helping Hands Adoption Mediation Agency**

HHAMA is accredited by the AAI to mediate between applicants and the child's country of origin in cases of intercountry adoptions. In its engagement with DCYA in relation to the review, HAAMA advised that:

- ❖ Formal supports for open or semi-open adoption would be welcomed by applicants and would benefit adopted children.
- ❖ The following services, provided for free for all children adopted from overseas, would be of assistance: training on life story books; a forum to support children encountering challenges owing to racial differences; and training for prospective adoptive parents. Such supports should be provided by the placing agency.
- ❖ Formerly, many families who adopted children from Romania experienced informal open adoptions. Although these arrangements were not supervised or assisted, they have been mostly positive experiences.
- ❖ While some prospective adoptive parents feel that they should have a right to decide if they want an open adoption, it needs to be an 'all party decision'.

Other information provided by HAAMA in relation to its current practices has been incorporated into **Chapter 4** of this report.

### **Barnardos**

Barnardos provided a formal submission to DCYA in relation to this review. Barnardos has extensive experience working with adopted children and their families through its Post-Adoption Service and its Guardian ad Litem work. In addition, a member of Barnardos Post-Adoption Service conducted research, on behalf of the adoption agency Cúnamh, into experiences of post-adoption contact amongst some Irish families. Based on the findings of this research as well as its wider experience in this area, Barnardos submitted the following points (the full submission is available on the DCYA website)

- ❖ Where contact is facilitated in open adoption, it needs to be both planned and supported.
- ❖ There is likely to be an increase in children adopted from care, owing to the Adoption (Amendment) Act 2017. Open adoption is an important element in this development.
- ❖ An Adoption Support Plan should be the cornerstone of any opening up of adoption in Ireland. Such plans should:

- be tailored towards the individual child, based on an assessment of the situation, strengths and risks in the particular circumstances
  - include a needs-assessment of the adopted child, the birth family members and the adoptive family members
  - detail the contact arrangements which will apply and their overall purpose
  - Set out the supports required and have a dedicated professional with overall responsibility for the delivery of those supports
  - be flexible and open to review
- ❖ Barnardos has worked with children and families who have found the intensity of access arrangements, in foster care situations, to be stressful.
  - ❖ Arrangements need to take account of the child's safety and current and future wellbeing.
  - ❖ Open adoption is complex and emotionally challenging for all involved and requires a therapeutic mind-set and approach from those supporting it.
  - ❖ It is critical that adequate financial and human resources are put in place to support open adoption. Increased investment should be made in expert services currently delivered by the community and voluntary sector.
  - ❖ It is critical that children's views in relation to contact and consent to adoption are heard.

### **Data Protection Commission**

As open or semi-open adoption potentially involves a role for the State in supporting the exchange of personal information, including the personal data of children, the views of the Data Protection Commission (DPC) are relevant. The DPC is currently preparing guidance on foot of their consultation on the processing of the personal data of children. The DPC submitted the following key points in relation to the potential introduction of open or semi-open adoption in Ireland:

- ❖ Adoption policy always involves a careful balancing of the right to identity and information, and the right to privacy and data protection.

- ❖ A Data Protection Impact Assessment should be undertaken in advance of any processing of personal data involved in any policy of open or semi-open adoption that may be recommended.
- ❖ Any future legislative measures that arises in relation to this matter that involve the processing of personal data will require further consultation with the DPC, pursuant to Article 36 (4) of the GDPR and relevant provisions of the Data Protection Act 2018.

### **Ombudsman for Children's Office**

The Ombudsman for Children's Office (OCO) is an independent statutory body, one of whose core functions is to promote the rights and welfare of children up to the age of 18 years. The OCO met with DCYA in relation to the review and made a formal submission. In its submission, the OCO made the following recommendations (the full submission is available on the DCYA website):

- ❖ Provision for more open forms of adoption in Ireland should be placed on a statutory footing.
- ❖ The potential introduction of more open forms of adoption in Ireland needs to be underpinned by clear definitions of open and semi-open adoption and the report arising from the DCYA's review should provide for this clarity.
- ❖ Given that adoption is first and foremost about children, their rights and needs, the OCO strongly encourages the DCYA to give full consideration to the rights of children in the context of its current review about the potential introduction of open and semi-open adoption.
- ❖ The OCO suggests that the DCYA should consider how core children's rights principles – as provided for under Articles 2, 3, 6 and 12 of the UNCRC - can be mobilised appropriately and effectively to inform a child-centred approach to providing for and implementing more open forms of adoption.
- ❖ Formal provision for more open forms of adoption should promote and support a case-by-case approach to post-adoption contact planning and review so that the specific experiences, needs, capacities and perspectives of adopted children, adoptive families and birth families are appropriately considered.
- ❖ Formal provision for more open forms of adoption needs to be accompanied by the allocation of adequate resources to ensure that an appropriate range of supports are available to facilitate planning, implementation and review of

different post-adoption contact arrangements and to meet the specific needs that adopted children, adoptive families and birth families may have in this regard.

### **Consultation with Children**

DCYA is committed to ensuring that the voices of children and young people are heard and that their opinions are given due weight in matters that affect them. It was not, however, determined to be feasible to consult effectively and appropriately with children within the statutory timeframe attached to this review. Recruiting children to consultation is a lengthy process. Additional safeguards and supports are necessary when raising sensitive, complex issues in relation to birth family contact and adoption experience with adopted children. The important matter of consultation with children is addressed in a specific recommendations arising from the review (see **Recommendation 3**).

In 2018, DCYA undertook a consultation focussing on how best to hear the views of the child in adoption proceedings. It is of relevance to this review that some children who participated in that consultation noted that they would like information on what their biological family knows about them, what they are allowed to know about them and whether their biological family would like to know about them.

Advocacy groups representing children's rights and perspectives, such as the Children's Rights Alliance, Barnardos, EPIC, and the Ombudsman for Children's Office were consulted as part of the Open Policy Debate carried out under this review.

## **Chapter 8: Conclusion and Recommendations**

This review represents the first detailed consideration by the State of the matter of open adoption, which is a relatively new concept in the Irish adoption context. . It has involved an examination of current policy and practice, a review of the overall policy context, an assessment of the research evidence in relation to outcomes for children and families, a consideration of international models, consultation with key stakeholders and members of the public and a legal analysis. The findings of the review can be considered in terms of four main themes which are set out below.

The report concludes with a set of four recommendations to address these findings.

### **Supporting open communication**

This review has found that Irish policy and practice is in line with a number of other jurisdictions in demonstrating a growing emphasis on supporting the adopted child's identity needs. There is an evident awareness amongst those responsible for the delivery of Irish adoption services of the importance of the adopted child's having access to information about their origins and family background. In line with legislative requirements, prospective adoptive parents are assessed in part on their capacity and preparedness to support the child's identity needs and are informed of the benefits of open communication. These policies and practices are well supported by available research evidence showing that adopted children benefit from appropriate open communication about the circumstances of their adoption and their origins and cultural background. They are also in line with Article 6 of the UN Convention on the Rights of the Child (CRC) in respecting the developmental needs of the child. The legal analysis commissioned as part of this review proposed that adopted children should have access to, at a minimum, non-identifying information about their biological origins.

It is important that adoptive parents continue to be supported to ensure that the adopted child's identity needs are met in this respect. As part of this, service-providers have a critical role in informing and educating prospective adoptive parents and in collecting and sharing information related to the birth family and the child's background.

## **A social work approach to post-adoption contact**

The consultation process carried out as part of this review indicates a clear preference amongst key stakeholders, including social work practitioners, representative groups and NGOs, that the State support the option of post-adoption contact, direct or indirect, where this is in the child's best interests. It was also strongly articulated that the question of post-adoption contact is a sensitive and complex one which requires a proportionate, planned, flexible and resourced approach.

Engagement with adoption service-providers in the course of this review has indicated that varying degrees and types of post-adoption contact are already taking place in Ireland. These include arrangements for indirect letterbox contact as well as, in some cases, face-to-face contact. Such arrangements may involve contact with birth parents as well as birth siblings, birth grandparents or other members of the extended birth family. This reflects experience in other countries where a significant proportion of post-adoption contact taking place occurs between adopted children and birth family members other than the birth parents, most notably birth siblings.

Some of the cases of post-adoption contact taking place in Ireland involve families who have entered into such arrangements independently. In other cases, families have sought the guidance and assistance of Tusla, Barnardos, HHAMA or, in past years, formerly accredited adopted agencies. There are also known instances of unsupported contact between adopted children and birth relatives taking place on social media. There is a possibility that as more children may be adopted from foster care as a consequence of the Adoption (Amendment) Act 2017, the numbers of families seeking post-adoption contact may increase.

It is critical that decisions being made in relation to post-adoption contact are supported to ensure that the best interests of the child are paramount. This is the cornerstone of current adoption policy. This review has found that there may be significant benefits to post-adoption contact, the chief one being that it provides the possibility of an ongoing open channel for children and their adoptive parents to receive identity-related information, which may have varying significance and value for adopted children at different stages of their development. In addition, some adopted children may benefit from maintaining relationships with birth family members, including birth parents, grandparents and siblings. There are also, however, reported risks and challenges associated with post-adoption contact. These range from letters going unanswered to adoptive families being put under significant practical or emotional strain to children potentially being put at risk of harm. Article 2 of the CRC provides that, as part of ensuring the best interests of the child, the child should be provided with 'such protection and care as his necessary for his or her wellbeing, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her'.

Deliberating the best interests of the child in relation to the question of post-adoption contact is therefore a complex task requiring a careful assessment of need and risk, as well as a due regard for broader family wellbeing, responsibilities and rights.

The legal analysis noted that there is a risk that the lack of consistency currently involved in post-adoption contact will lead to unsatisfactory outcomes for children. It is crucial, therefore, that a consistently applied approach to decisions relating to post-adoption contact is taken, one which ensures that any agreed arrangements are in the best interests of the child and have taken account of the views of the child as well as the individual circumstances involved. It is also important that social work supports are provided to families where necessary. The type and frequency of any agreed contact must also be tailored to the individual case and be open to review.

### **The need for legislation to underpin supports**

Key stakeholders as well as surveyed members of the public predominantly favour provision for open adoption being placed on a statutory footing. According to the legal analysis, the purposes of such a statutory basis would be to ensure that decisions in relation to post-adoption contact reflect the paramountcy of the best interests of the child and the right of the child to be heard; to ensure that services for planning and supporting contact are put in place; to address the issue of parties not complying with agreed arrangements for contact; and to bring legislation in line with current practice. The legal analysis also noted that any legislative framework needs to take account of the changing views, needs and interests of children as they develop as well as the changing circumstances of families over time.

For legal as well as policy reasons, it is considered preferable to provide a statutory basis to underpin the delivery of services to support voluntary open adoption arrangements rather than to provide for legally enforceable contact. There are constitutional impediments to legally compelling adoptive parents to allow contact between the adopted child and birth family members where that is against the wishes of the adoptive parents. In addition, the relevant research evidence indicates the desirability of voluntary arrangements over legally enforced contact given that the support of the adoptive parents for any agreed contact is a crucial component in beneficial outcomes for the child. International case law considered as part of the legal analysis indicated that even in jurisdictions in which the adoptive family is not constitutionally protected, it is highly unusual for contact to be enforced in opposition to the wishes of the adoptive parents. Moreover, some judges in such jurisdictions have shown a reluctance to impose court orders in post-adoption contact cases owing to the inherent inflexibility of court orders and the perception that post-adoption contact is better overseen by other professionals. In addition, there are

significant legal and practical impediments to enforcing contact in cases of intercountry adoption.

There is, however, a clear and well-evidenced benefit to placing services to support voluntary arrangements on a statutory footing. The provision of appropriate and responsive social work services will ensure that contact arrangements are well planned and managed thereby leading to better outcomes for children. This will mitigate the risk that beneficial contact agreements will not be adhered to or that the best interests of the child will be sidelined. It will also allow any arrangements to be flexible and capable of meeting the developmental needs of the child over time.

It is important to note in this respect that current draft adoption legislation provides for the first time a statutory role for Tusla to mediate in the sharing of information and items, with appropriate consents, between adoptive and birth families of children under 18.

### **The need for clear information**

This review has also found that there is an absence of clear information available in relation to open adoption. The legal analysis underlines the importance of birth parents being appropriately informed about the voluntary nature of any contact agreements, which depend on the ongoing agreement of everyone involved and which are likely to alter over time as the needs of the child and circumstances of the families change. It is also important that adopted children and their parents are aware of the degrees and types of voluntary post-adoption contact, direct and indirect, the associated benefits and risks and the services available to support such contact.

## Recommendations

### Identified Need

This review has confirmed that a significant degree of post-adoption contact is currently taking place in Ireland. This includes cases of domestic infant adoption, intercountry adoption and adoptions from foster care. There is a possibility that as more children may be adopted from foster care as a consequence of the Adoption (Amendment) Act 2017, the numbers of families entering into arrangements for post-adoption contact may increase.

It has been clearly shown that adopted children generally benefit from access to information in relation to their origins and family. Some children may also benefit from more direct contact where it is carefully planned and managed.

A range of service providers (Tusla, Barnardos and HHAMA) are currently providing informal support for families seeking post-adoption contact. There is no statutory basis for this support to be provided, which has implications for resourcing. Moreover, as these services are provided on an informal, ad-hoc basis, there is no consistently applied, clear mechanism for ensuring that any such arrangements are in the best interests of the child and have taken account of the views of the child. A legislative provision would serve to regularise and formalise an existing service.

The need for legislation to support open adoption arrangements was a key message emerging from the consultation process and legal analysis.

### Recommendation 1

Provide a statutory basis for services to support voluntary forms of post-adoption contact, including the exchange of information and items between birth family members and adoptive family members, where requested, in cases where: i) It is agreed by all parties involved and ii) it is determined to be in the best interests of the child or children involved to do so, taking account of the views of the child or children involved, with due regard to their age and maturity.

### Identified Need

The research evidence shows that the suitability of open or semi-open adoption should be decided on a case-by-case basis, depending on the individuals and circumstances involved; that any agreed arrangements should be flexible and open to review; and that such arrangements should be supported where necessary. These

guiding principles also emerged strongly from the consultation process and legal analysis undertaken as part of this review.

In order to ensure that approaches to post-adoption contact embody these principles, best practice guidelines and models have been made available in jurisdictions where post-adoption contact is common. In the UK, for instance, the Contact After Adoption Research In Practice website, which is the result of collaboration between researchers at the University of East Anglia's 'Contact After Adoption' study and practitioners, provides a variety of resources and tools.

### **Recommendation 2**

In line with good practice in other jurisdictions where post-adoption contact is common and in order to ensure a clear pathway for service-users, guidelines should be drawn up in relation to the provision of services to support post-adoption contact where such support is requested. Such guidelines to make provision for:

- ❖ A determination that any agreed contact is in the best interests of the child or children involved
- ❖ An initial assessment of the needs of the parties involved
- ❖ A risk-assessment
- ❖ A post-adoption contact plan, setting out who is to be involved in the contact, the purpose of the contact, the agreed level and frequency of contact, the types of social work supports required and the mechanism for review
- ❖ A requirement to take due account of the views and needs of the child, having regard to age and maturity level, with capacity to vary the plan according to the evolving needs of the child.

### **Identified Need**

It was not feasible to consult effectively and appropriately with children within the statutory timeframe attached to this review. It is important that the voices of young people are heard in relation to the provision of services to support voluntary open or semi-open adoption arrangements.

### **Recommendation 3**

Adopted children and young people with experience of open arrangements should be directly consulted to gain their views as to what worked well for them, the challenges they experienced and what supports are needed. The findings of this consultation should feed into the guidelines developed under recommendation 2

### Identified Need

Government policy is that the adopted child's identity needs should be supported. The link between communicative openness and better outcomes in relation to the adopted child's sense of identity is well supported by available evidence. It is current practice in Tusla to inform prospective adoptive parents about the benefits of communicative openness in relation to the child's family and cultural history and to ensure that they are prepared to support the child's identity needs. However, there is an absence of official public information available in relation to the importance of appropriately open communication with the adopted child about his or her adoption and background.

There is also limited official information, guidance and advice available to support families who opt for post-adoption contact. There is a lack of clarity in relation to what is involved in open adoption or semi-open adoption. It is important that the advice and information being provided to adoptive parents and prospective adoptive parents in relation to open adoption is evidence-based and consistent.

It is also important that all parties are made aware at every stage of the adoption process of the voluntary nature of agreements for contact, given that they are not legally binding.

#### Recommendation 4

Create an online resource for birth parents and relatives, adoptive parents, and adopted children. This resource should include information in relation to the following:

- ❖ The importance of supporting the adopted child's identity needs and on the benefits associated with appropriately open communication in relation to the adoption and the adopted child's family and cultural history.
- ❖ The different types of open and semi-open adoption arrangements, best practice advice and the supports available.
- ❖ The fact that arrangements or agreements for contact are based on the voluntary agreement of all parties and may alter over time or cease altogether.

A child-friendly version should be made available.

## Bibliography

The Adoption Authority of Ireland (2018) *Annual Report*.

Barnardos Australia. (2001) *Child Welfare Decisions Practice Paper 2: Decisions on Contact in Open Adoptions*. Sydney, Australia.

Brodzinsky, D. (2005) 'Reconceptualizing Openness in Adoption' in Brodzinkey, D. and Palacios, J. Eds. *Psychological Issues in Adoption: Research and Practice*. Westport, Connecticut: Greenwood Publishing Group, pp. 145- 166.

Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children's Bureau. (2013) *Openness in Adoption: Building Relationships Between Adoptive and Birth Families*. Washington, DC: U.S.

Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children's Bureau. (2013) *Working with Birth and Adoptive Families to Support Open Adoption*. Washington, DC: U.S.

Child Welfare Information Gateway, U.S. Department of Health and Human Services, Children's Bureau. (2018) *Postadoption Contact Agreements between Birth and Adoptive Families*. Washington, DC: U.S.

Department of Children and Youth Affairs (2018) *Report of Consultations with Children and Young People on Adoption Regulations*. [Internal Document].

Department of Health and Children. (2005) *Adoption Legislation: 2003 Consultation and Proposals for Change*. Dublin, Ireland.

Department of Health and Children. (2003) *National Standards for Foster Care*. Dublin, Ireland.

De Rosnay, Marc, Luu B. and Conley Wright A. (2016) *Young Children's Identity Formation in the Context of Open Adoption in New South Wales: An Examination of Optimal Conditions for Child Wellbeing*. Sydney, Australia: Institute of Open Adoption Studies, The University of Sydney.

Frasch, K.M., Brooks D. and Barth R.P. (2000) 'Openness and Contact in Foster Care Adoptions: An Eight-Year Follow-Up', *Family Relations*, 49 (4), pp. 435-446.

Grotevant, H.D. and McRoy, R.G. (1998) *Openness in Adoption: Exploring Family Connections*. London: Sage.

Grotevant, H. D., McRoy, R.G., Wrobel, G.M and Ayers-Lopez, S. (2013) 'Contact Between Adoptive and Birth Families: Perspectives from the Minnesota Texas Adoption Research Project', *Child Development Perspectives*, 7 (3), pp. 193–198.

International Social Service. (2015) *Fact Sheet: Openness in Adoption*. Information Document No. 4 of June 2015 for the attention of the Special Commission of June 2015 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Jones, Christine. (2013) 'Openness in Adoption: Challenging the Narrative of Historical Progress', *Child and Family Social Work*, 21 (1), pp. 85-93.

Luu, B., Collings, S., Wright, A.C., Pope, S., & Spencer, M. (2018) *Open adoption of children in NSW out-of-home care: Foster carers' perceptions about the motivations and barriers*. Sydney, Australia: Institute of Open Adoption Studies, The University of Sydney.

MacDonald, M. (2017). *Connecting or Disconnecting? Adoptive Parents' Experiences of Post Adoption Contact and their Support Needs*. Belfast: Health and Social Care Board, Northern Ireland.

MacDonald, M., and McSherry, D. (2011) 'Open Adoption: Adoptive Parents' Experiences of Birth Family Contact and Talking to Their Child about Adoption', *Adoption & Fostering*, 35(3), pp. 4–16.

McCaughren, S. and McGregor, C. (2018) 'Reimagining adoption in Ireland: a viable option for children in care?', *Child Care in Practice*, 24 (3), pp. 229-244.

Neil, E., Beek, M. and Ward, E. (2003) *Contact After Adoption: A Follow Up In Late Adolescence*. University of East Anglia: Centre for Research on Children and Families.

Neil, E. (2009) 'Post-Adoption Contact and Openness in Adoptive Parents' Minds: Consequences for Children's Development', *The British Journal of Social Work*, 39 (1), pp. 5–23

Neil, E. (2018) 'Rethinking adoption and birth family contact: Is there a role for the law?', *Family Law*, September edition, pp. 1178-1182.

O'Brien, V. & Palmer, A. (2016) 'Adoption as Part of the Irish Care System: a New Challenge for Social Work?', *The Irish Social Worker*, Spring edition, pp. 52-58.

Seymore, M. L. (2014) 'Openness in International Adoption', *Columbia Human Rights Law Review*, August edition, 46, pp. 16-25.

Shannon, G. (2010). *Child Law*. Dublin: Thomson Roundhall.

Siegel D.H. and Smith. S. (2012) *Openness in Adoption: From Secrecy and Stigma to Knowledge and Connections*. New York: Evan. B. Donaldson Adoption Institute.

<https://www.umass.edu/ruddchair/research/mtarp>: Minnesota / Texas Adoption Research Project (MTARP). Last accessed 22<sup>nd</sup> August 2019.

<https://www.uea.ac.uk/contact-after-adoption>: Contact After Adoption study. Last accessed 22<sup>nd</sup> August 2019.

<https://sydney.edu.au/arts/our-research/centres-institutes-and-groups/institute-of-open-adoption-studies.html>: University of Sydney Institute of Open Adoption Studies. Last Accessed 24<sup>th</sup> September 2019. Appendix 1

# Appendix 1: Report on Open Policy Debate



An Roinn Leanaí  
agus Gnóthaí Óige  
Department of Children  
and Youth Affairs

## Open Policy Debate

The Potential Introduction of Open or Semi-Open  
Adoption in Ireland

Monday May 13th 2019

Department of Children and Youth Affairs

Miesian Plaza

Baggot Street

Dublin 2

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## Introduction

Pursuant to Section 42 of the Adoption (Amendment) Act 2017, the Department of Children and Youth Affairs is currently undertaking a review and consultation in respect of the potential introduction of open or semi open adoption in Ireland.

To assist the Department in its work on this review, key stakeholders were invited to an Open Policy Debate on Monday the 13th May 2019 in Miesian Plaza, Lower Baggot Street.

Attendees at the event included social work practitioners, academic experts, members of the community and voluntary sector, representatives from Government Departments, from Tusla - the Child and Family Agency and the Adoption Authority of Ireland; and representative groups (see Appendix 3).

The focus of the Open Policy Debate was on the potential introduction of open or semi-open adoption in Ireland in respect of adopted children under 18. The purpose of the day was to identify significant themes and perspectives in relation to this issue.

The Open Policy Debate was an opportunity for representatives to have their views heard in relation to the issue of open and semi-open adoption and to hear the perspectives of other stakeholders.

The day included two sessions of facilitated round-table discussion involving all participants as well as presentations from invited speakers.

The Open Policy Debate was chaired by Dr. Valerie O'Brien of the School of Social Work, Social Policy and Social Justice in University College Dublin. The keynote speaker was Professor Beth Neil, a leading international expert in post-adoption contact. Other speakers were Dr. Fergal Lynch, Secretary General of the Department of Children and Youth Affairs, Dr. Geoffrey Shannon, the Chair of the Adoption Authority; Siobhan Mugan, National Manager of Adoption Services at Tusla, the Child and Family Agency; Suzanne Connolly, Chief Executive of Barnardos; and Angela Palmer, also of UCD's School of Social Work, Social Policy and Social Justice.

This report provides a short summary of the key themes and issues which were identified at the Open Policy Debate. The content of this report will inform the final report to the Houses of the Oireachtas in November 2019.

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## Context

The Adoption (Amendment) Act 2017 came into law in July 2017. Section 42 of the Act states that:

*“Not later than 10 months after the passing of this Act, the Minister shall initiate a review and consultation in respect of the potential introduction of open or semi-open adoption in Ireland. Such a review shall include public consultation and legal policy analysis. A report on the findings of this review and consultation shall be laid before the Houses of the Oireachtas not later than 18 months after its initiation”.*

There are different understandings of what is meant by open adoption and semi-open adoption. ‘Open adoption’ is most commonly used to refer to arrangements involving post-adoption contact between members of the birth and adoptive families and ‘semi-open adoption’ to refer to arrangements for the exchange of information and or items between members of the birth and adoptive families, often facilitated or mediated by social workers.

Minister Zappone announced the initiation of this review in May 2018. A report on its findings must be laid before the Houses of the Oireachtas not later than 18 months after its commencement, i.e. by 17 November 2019.

In addition to undertaking policy and legal analysis, there is a statutory requirement under Section 42 for the Department to carry out a consultation in relation to the review. As part of the consultation process, the Department hosted an Open Policy Debate on May 13<sup>th</sup> 2019.

The recent emphasis on Open Policy Debates within the Civil Service is part of a range of initiatives intended to enhance citizen involvement in government decision-making. Open Policy Debates provide an opportunity for a wide range of policy-makers, practitioners, representative groups, non-government groups and academics to share their views in relation to a particular area of policy at an early stage in the policy-making process.

Adoption policy is a complex area involving a distinct legal process and engaging multiple rights and child welfare considerations. The Open Policy Debate held by the Department on the question of open or semi-open adoption provided an avenue for those with relevant experience and expertise to share their perspectives and information in relation to this issue.

The Department also held an online public consultation in relation to the potential introduction of open or semi-open adoption in Ireland, which ran for five weeks between the 9<sup>th</sup> May and the 14<sup>th</sup> June 2019. The findings of the online consultation, along with the views shared at the Open Policy Debate, will inform the final report to be submitted to the Oireachtas in November 2019.

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## Summary of each presentation

**Chair:** Dr. Valerie O'Brien, School of Social Work, Social Policy and Social Justice, University College Dublin

The Secretary General of the Department of Children and Youth Affairs, **Dr. Fergal Lynch**, delivered the opening remarks at the Open Policy Debate. Dr. Lynch welcomed those in attendance and thanked the speakers. He then set out the context of the review and consultation, which originated as part of the Adoption (Amendment) Act 2017. This legislation, it was explained, revised adoption law in Ireland to reflect changes arising from the insertion of Article 42A into the Irish Constitution, following the 2012 Referendum on children's rights. The Adoption (Amendment) Act 2017 emphasises the importance of the best interests of the child throughout adoption legislation and processes, and requires that, where possible, the voice of the child must be given due weight in the adoption process. The Act also introduced revised criteria that will provide more opportunities for some children in foster care to be adopted, where that is in their best interests. Dr. Lynch noted that any change to adoption policy must be focused on the best interests of the child.

The keynote speech was delivered by **Professor Elsbeth Neil**, Professor of Social Work at the University of East Anglia. Professor Neil outlined the relevant findings from studies which she oversaw in relation to post-adoption contact: the 'Contact after Adoption' study (2015), an 18-year longitudinal study of adopters, adopted children and birth relatives; the 'Supporting Direct Contact' study (2011), which focused on agency-mediated direct contact and which involved agencies, adopters and birth relatives; and the Yorkshire & Humberside survey of 330 adoptive families (2017). Professor Neil addressed some of the benefits of post-adoption contact, especially in relation to the developing child's sense of identity. It was noted, however, that such contact also creates challenges. The balance of benefits and challenges varies from case-to-case and over time. Other key points made by Professor Neil were that the degree of communicative openness shown by adoptive parents was key to the child's sense of identity; that the attitude of the adoptive parents towards open arrangements was pivotal to the benefits experienced by the child; that every family is different and that therefore decisions in relation to post-adoption contact must be made on a case-by-case basis; that post-adoption contact involves the navigation of complex feelings and interpersonal dynamics which must be assessed and carefully managed; and that appropriate supports must be made available to families who need it. In addition, Professor Neil provided examples of open or semi-open adoption in other jurisdictions.

### **Dr. Geoffrey Shannon**

Dr. Geoffrey Shannon, Chairman of the Adoption Authority of Ireland, set out the legislative and constitutional context and history of adoption in Ireland. In addition, Dr. Shannon outlined the relevant International law in relation to the right to identity as well as the respect for privacy and family life, all of which may be engaged by forms of open or semi-open adoption. The erosive impact of social media on the

closed model of adoption was also noted by Dr. Shannon. Recent developments in other jurisdictions, such as South Africa and various US states were also considered.

Tusla's National Manager of Adoption Services, **Siobhan Mughan** informed attendees about Tusla's practical experiences of supporting the informal arrangements for post-adoption contact that currently exist between some adoptive and birth families in Ireland. She noted that Tusla is not always involved in these arrangements as families sometimes make them independently. The types of contact involved in the cases known to Tusla include letterbox contact mediated by Tusla Adoption Services as well as phone calls or direct visits once or twice a year. Ms. Mughan outlined the measures Tusla currently takes as part of its assessment process to ensure that prospective adoptive parents are aware of the importance of the child's identity needs. It was also explained that Tusla operates an "open door policy" in response to families seeking post-adoption contact, providing advice, support and mediation where required and based on the consent of all parties. Tusla social workers strive to ensure that any decisions in relation to post-adoption contact reflect the views of the individual child and are in that child's best interests. Ms. Mughan noted that resources could be directed towards the provision of the following: information and research material for prospective adopters on the importance of identity; services to offer advice, advocacy and social work facilitation of direct contact; and counselling services for cases where contact ceases or where parties do not engage.

**Suzanne Connolly**, Chief Executive of Barnardos, shared some of the relevant insights Barnardos has gained through its work in providing a post-adoption support service and a Guardian ad Litem service. Every family situation is unique, Ms. Connolly advised, and open adoption may not be appropriate in all circumstances. It was underlined that to ensure that post-adoption contact is a positive experience, it must be planned, supported and resourced. She also noted the importance of an Adoption Support Plan being put in place.

The final presentation was delivered by **Angela Palmer**, a doctoral researcher in adoption from Irish foster care at the School of Social Work, Social Policy and Social Justice, University College Dublin. Ms. Palmer's presentation was based on interviews with a cohort of adults who had been adopted from Irish foster care in adolescence. Through direct quotation from individuals, she underlined the themes relevant to open and semi-open adoption that emerged for this group of adoptees: the challenges inherent in dual membership of both the birth and adoptive family; managing relationships with different members of the birth family over time; the navigation of boundaries and the significance of transparency within contact arrangements; managing feelings of loss and rejection; and the importance of effective professional pre- and post-adoption support services.

**Dr. Fergal Lynch** provided the closing remarks, thanking the speakers and attendees. He acknowledged Senator Alice-Mary Higgins, who proposed the amendment to the Adoption (Amendment) Act 2017 pursuant to which the review and consultation is being undertaken. He also invited those in attendance to contribute to the Department's online public consultation in relation to open or semi-open adoption and to share it with their own stakeholders and networks.

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## Roundtable Sessions

Two sessions of facilitated roundtable discussion were held over the course of the day. Participants were seated according to pre-arranged plan in order to ensure a diversity of experience and expertise at each table. Each roundtable had an assigned facilitator to support the discussion and to record the main points. These points were then reported back to the room by the facilitator.

Participants were asked to discuss specific questions. There was also opportunity for the participants to share their general views in relation to the questions.

This section summarises the key themes and issues that emerged from both sessions. There was a significant consensus reached among participants, and there was a strong degree of similarity between the points made and responses given by the different groups.

This section is a record of the discussion by participants at the Open Policy Debate and does not necessarily reflect the views of the Department of Children and Youth Affairs.

### Session 1: Contrasting Closed and Open/Semi-Open Adoption

This session sought the views of the participants in relation to the comparative benefits and disadvantages associated with closed adoption and with open or semi-open adoption.

#### Part 1: Closed Adoption

##### **Questions:**

- 1. What are the benefits of closed adoption?**
- 2. What are the disadvantages of closed adoption?**

##### **General Comments:**

- Any benefits depend on the circumstances and the individuals involved.
- Many participants found it challenging to identify any benefits of a closed system. Others expressed the view that the disadvantages outweighed the benefits.
- It was commonly observed that, in reality, adoption in Ireland is no longer closed, owing to the impact of new avenues for contacting birth family members, such as via social media. This has led, it was expressed by some, to a situation in which service-providers are out of step with the reality.

***Benefits of Closed Adoption:***

- Protects the child in cases where there are child protection concerns; where the child may otherwise discover distressing information; or where a mother experiencing a concealed pregnancy might otherwise abandon the child
- Provides a “normal” family life, with no state involvement
- Provides a sense of safety and stability for the adopted child

***Disadvantages of closed adoption:***

- Has a negative impact on the adopted child's identity formation
- The child may seek out unsupported contact, for instance through social media
- Associates adoption with stigma and shame, which impacts on the mental health of all involved
- Prevents access to medical information

**Part 2: Open or Semi-Open Adoption**

***Questions:***

1. **What are the benefits of semi-open or open adoption?**
2. **What are the disadvantages of semi-open or open adoption?**

***General Comments:***

- Planning is key
- Arrangements need to reflect and respond to the changing needs of the developing child.
- Supports and services are required.
- Needs to be considered on a case by case basis
- The adoption context needs to be taken into account e.g. intercountry adoption versus adoption from foster care.

- It was articulated by some that what were recorded as 'disadvantages' for the purpose of the discussion were really challenges that could be overcome.

### ***Benefits of Open Adoption:***

- Helps the child develop a realistic identity based on the truth
- Provides access to health and genetic information
- Helps the child understand the reason for their adoption
- Shows the child that the birth family continues to care for them
- Reassures birth parents that the child is doing well

### ***Disadvantages of Open Adoption:***

- It can be a very complex situation to navigate.
- Contact can break down, causing distress for the child.
- Communication can be difficult, especially if there are additional challenges such as mental health difficulties.
- Ongoing feelings of loss must be managed.
- Requires state involvement, with implications for resources and staff training.

## **Session 2: Proposals for Change**

This session invited the participants' views in relation to the need for State supports for semi-open or open adoption.

### ***Questions***

- 1. Should the State support contact, direct or indirect, between members of adoptive and birth families?**
- 2. If so, why?**
- 3. If not, why not?**
- 4. If so, in what way(s) should the State support this?**

### ***General Comments:***

- If contact was to be mandated through legislation, necessary State supports would have to be provided.
- The need for State involvement would depend on the individual circumstances and the child in question.
- It was remarked that there are currently no supports for contact in cases of intercountry adoption and consideration of these cases requires a separate debate.
- The question of who will have responsibility for making decisions in relation to post-adoption contact was raised.
- State supports should be flexible, individual and based on assessment of need.
- There is a continuum of risk and need. Supports should be responsive to this – ranging from unsupported contact to contact supervised by a social worker to none. This can vary and so social work support may need to be stepped up or stepped down as required at different times.
- There is relevant expertise within the existing services but they require resources to support open/semi-open adoption.

### ***Reasons for the State to support contact, direct or indirect, between members of adoptive and birth families***

- Supports may be needed by the child or family in fostering-to-adoption cases.
- To ensure that the child's wishes and needs are central to the process
- Legislation is needed if the required resources are to be put in place.
- Post-adoption contact is already happening in some cases but there is a lack of clarity in relation to it.
- The State can act as a buffer to manage expectations on all sides.
- There is a necessary duty on the State to follow through after an adoption, especially in fostering-to-adoption cases.

### ***Reasons for the State not to support contact, direct or indirect, between members of adoptive and birth families***

- Any legislation would need to have necessary checks and balances and safeguards.

- It would make the state a 'middleman' in the relationship between the adoptive and birth families.
- There may be distrust in State-run services.
- State involvement may not be required in some cases, such as some step-parent adoptions.
- It will be unworkable unless properly resourced.
- Post-adoption contact should be optional and not imposed on people. It should be based on the agreement of all parties.

***Ways in which the State should support contact, direct or indirect, between members of adoptive and birth families***

- Assessments to determine if support is needed
- Counselling services
- Mediation services
- Sufficient social workers
- Education of adoptive parents on what is required to support post-adoption contact
- By means of a voluntary order or contact order, which include a means of reviewing arrangement if it no longer met the needs of the child
- A standardised code of practice/ best practice guidelines, based on evidence regarding what works well and what doesn't work well
- Legislation to secure funding to resource supports
- A mechanism to ensure that children are involved in the decision-making process
- Make use of Barnardos post-adoption support service
- A letter box service, which would include supports for writing the letters.
- Should be part of a dedicated post-adoption service

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## **Next Steps**

The views shared at the Open Policy Debate held on May 13<sup>th</sup> 2019 will inform the final report on the potential introduction of open or semi-open adoption in Ireland, which will be laid before the Oireachtas in November 2019. This report will also be informed by the results of the online public consultation, which took place from 9<sup>th</sup> May to the 14<sup>th</sup> June 2019, as well as policy and legal analysis.

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# Appendix 1: Background Note



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Department of Children  
and Youth Affairs

## The Potential Introduction of Open or Semi-Open Adoption in Ireland

### An Open Policy Debate

### Department of Children and Youth Affairs

#### Background Note

The Department of Children and Youth Affairs has initiated a review and consultation in respect of the potential introduction of open or semi-open adoption in Ireland, in compliance with a statutory requirement to do so under the Adoption (Amendment) Act 2017. Section 42 of the 2017 Act provides as follows:

*“Not later than 10 months after the passing of this Act, the Minister shall initiate a review and consultation in respect of the potential introduction of open or semi-open adoption in Ireland. Such a review shall include public consultation and legal and policy analysis. A report on the findings of this review and consultation shall be laid before the Houses of the Oireachtas not later than 18 months after its initiation.”*

The Minister announced the initiation of this review in May 2018. A report on its findings must be laid before the Houses of the Oireachtas not later than 18 months after its commencement, i.e. by 17 November 2019

‘Open adoption’ is most commonly understood to refer to arrangements involving post-adoption contact between members of the birth and adoptive families of adopted children under 18. ‘Semi-open adoption’ usually means arrangements for the exchange of information and or items between members of birth and adoptive families, usually facilitated or mediated by social workers. In practice, open adoption and semi-open adoption may take on many different forms, including:

- Birth parents providing information to social workers about themselves and their lives, such as their medical histories or family background, so that these details can be shared with the adopted child;
- The adoptive parents writing to the birth parents by regular arrangement to let them know how the adopted child is getting on, in school, for instance;
- Face to face meetings or visits between the adopted child and his or her birth parent;
- Birth parents sending birthday cards to the adopted child; or

- Arrangements for the adopted child to meet up with his or her birth siblings or grandparents

Adoption in Ireland has traditionally been closed. In closed adoption, there is no further contact or information-sharing between the birth and adoptive families once the child has been legally adopted.

The Department is aware that a degree of informal post-adoption contact and information-sharing has developed in practice in cases where this is agreed by all parties.

The views of a wide range of stakeholders and people who are affected by adoption are being invited in an Open Policy Debate to be hosted by the Department on May 13<sup>th</sup> 2019. In addition, a public questionnaire will be made available on the Department's website shortly. The results from the public consultation process will form part of the report to be submitted to the Oireachtas in November 2019.

## Appendix 2: Agenda



An Roinn Leanaí  
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Department of Children  
and Youth Affairs



### The Potential Introduction of Open or Semi-Open Adoption in Ireland

#### An Open Policy Debate

Department of Children and Youth Affairs

Miesian Plaza, 50-58 Lower Baggot Street

Monday, May 13<sup>th</sup> 2019

9.30 am – 10.00 am	Registration  Tea & Coffee
10.00 am – 10.05 am	Welcome from Chair – Dr. Valerie O'Brien, School of Social Work, Social Policy & Social Justice, University College Dublin
10.05 am – 10.20 am	Opening Address by Dr. Fergal Lynch, Secretary General at the Department of Children and Youth Affairs (Deputising for Minister Katherine Zappone)
10.20 am – 10.50 am	Keynote Presentation by Professor Elsbeth Neil, School of Social Work, University of East Anglia
10.50 am – 11.05 am	Presentation by Dr. Geoffrey Shannon, Chairman of the Adoption Authority of Ireland
11.05 am – 11.20 am	Presentation by Siobhan Mughan, National Manager Adoption Services, Tusla – Child and Family Agency
11.20 am – 11.40 am	Tea & coffee

11.40 am – 12.25 pm	<b>Group Session 1</b>  Topic: Contrasting open and closed adoption
12.25 pm – 12.40 pm	Presentation by Suzanne Connolly, CEO Barnardos
12.40 pm – 1.00 pm	Feedback from Group Session 1

1.00 pm – 2.00 pm	Lunch
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2.00 pm – 2.45 pm	<b>Group Session 2</b> Topic: Ways forward – proposals for change
2.45 pm – 3.00 pm	Presentation by Angela Palmer, School of Social Work, Social Policy & Social Justice, University College Dublin
3.00 pm – 3.20 pm	Feedback from Group Session 2
3.20 pm – 3.30 pm	Closing remarks by Dr. Fergal Lynch, Secretary General, Department of Children and Youth Affairs

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## **Appendix 3: Stakeholders represented at the Open Policy Debate**

Adoption Authority of Ireland

Tusla National Adoption Service

Tusla Alternative Care

Council of Irish Adoption Agencies

Irish Association of Social Workers

Cúnamh

PACT

Here2Help

St Brigid's Information & Tracing Service

Barnardos

Empowering People in Care (EPIC)

Children's Rights Alliance

Irish Foster Care Association

The Natural Parents Network of Ireland

Treoir - The Information Service for unmarried parents and their children

Aitheantas – Adoptee Identity Rights

Data Protection Commissioner

Professor Beth Neil, School of Social Work, University of East Anglia

Dr. Valerie O'Brien, School of Social Work, Social Policy and Social Justice,  
University College Dublin

Angela Palmer, School of Social Work, Social Policy and Social Justice, University  
College Dublin

Dr. Mandi MacDonald, School of Social Sciences, Education and Social Work,  
Queen's University Belfast

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## Appendix 4: Speaker biographies



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Department of Children  
and Youth Affairs



### **The Potential Introduction of Open or Semi-Open Adoption in Ireland**

#### **An Open Policy Debate**

**Department of Children and Youth Affairs**

**Miesian Plaza, 50-58 Lower Baggot Street**

#### **Speakers' Biographies**

##### **Dr Valerie O'Brien, School of Social Policy, Social Work and Social Justice, University College Dublin**

Dr Valerie O'Brien has over twenty years' experience as a lecturer in the University College Dublin School of Social Policy, Social Work and Social Justice. Her particular interests are in the areas of child welfare, systemic psychotherapy, and qualitative research methods. In child welfare, her particular areas of research interest are kinship care, adoption practices (including international adoption) and the adoption of Irish children to the United States between the 1930s-1970s.

She holds a PhD in kinship care, systemic practice and child welfare from UCD, and a Master's Degree in Social Work and Social Policy from the London School of Economics.

##### **Professor Elsbeth Neil, School of Social Work, University of East Anglia, UK**

Professor Elsbeth (Beth) Neil is a registered social worker and Professor of Social Work and Director of Research at the School of Social Work, University of East Anglia, Norwich. She has been undertaking research in the field of adoption since 1996. She has directed a number of large studies including an 18 year longitudinal study focusing on postadoption contact, following to late adolescence a group of adopted children and their birth relatives and adopted parents.

Building on her research into contact, and in collaboration with Research in Practice, in 2017 Beth launched a new website of practice resources for professionals planning and supporting post adoption contact: <http://contact.rip.org.uk/>

### **Dr Geoffrey Shannon, Chairman of the Adoption Authority of Ireland**

Dr Geoffrey Shannon is a solicitor and is a leading authority in Child Law and Family Law. He is the current Chairman of the Adoption Authority of Ireland and the Special Rapporteur on Child Protection.

Dr Shannon's expertise in the adoption area has been acknowledged at an international level. In March 2013, for example, he was selected from a panel of international experts on adoption law to represent the Council of Bars and Law Societies of Europe (CCBE) before the Committee on Legal Affairs of the European Union.

Dr Shannon has recently been asked by the European Commission and the Council of Europe to assist as a child protection expert in drafting new guidelines on cybercrime for judges, prosecutors and law enforcement agencies.

Dr Shannon is the recipient of several awards for his work in the area of national and international family law. These include the 2005 JCI Outstanding Person of the Year Award, the 2006 Canon Maurice Handy Award and the 2013 Irish Law Award. On 23 June 2017, Mr Justice Peter Kelly, President of the Irish High Court presented Dr Shannon with the Dublin Solicitors Bar Association Award for outstanding contribution to legal scholarship for his entire work to date.

### **Siobhán Mughan, National Manager Adoption Services, Tusla – Child and Family Agency**

Siobhán Mughan was appointed National Manager for Adoption Services in August 2014. A Registered General Nurse (Galway University Hospital) and Midwife (Rotunda Hospital), Siobhan is also a graduate of the University of North London, the University of Portsmouth and University College Dublin, from where she holds a MSc in Social Work.

Prior to returning to Ireland in 1999, Siobhan worked for a number of years in London as an Approved Social Worker under UK Mental Health Act, 1983. Since returning to Ireland Siobhan has held a variety of roles in Children Services in the HSE, the Department of Justice, Equality and Reform and TUSLA. These have included Head of Care at Ballydowd Special Care Unit, Child and Adolescence health Development officer, Immunisation Co-ordinator, Director of the Child Protection Unit in the Reception and Integration Agency (RIA) and National Manager for Alternative Care.

### **Suzanne Connolly, CEO, Barnardos**

Suzanne Connolly is CEO of Barnardos. Prior to joining Barnardos in 2001, she had 7 years' experience working as a social worker in Children's Services London, Boroughs of Southwark, Hounslow and in Toxteth, Liverpool and 9 years' experience of management in the UK and Ireland of services providing a range of family support

services in the voluntary sector. She is responsible for the development and implementation of the organisations strategic plan from inception to delivery.

She is also responsible for leading the organisation, ensuring the issues affecting children and families in Ireland remain on the agendas of policy makers and parents and are communicated to Barnardos' supporters and the public.

Her specialist areas include the provision of child protection and family support services with multi ethnic/racial communities as well as the management and development of staff.

**Angela Palmer, School of Social Policy, Social Work and Social Justice at University College Dublin**

Angela Palmer is a doctoral scholar in Social Policy within the Department of Social Policy, Social Work and Social Justice at University College Dublin (UCD), Ireland. She has a professional background in political journalism and policy research. Phase one of Angela's research explores the lived experience of adoption from the Irish foster care system, through interviews with adults who were adopted from foster care as teenagers. Phase two of her research provides analysis of the adoption policy reform process, namely the enactment of the 2017 Adoption (Amendment) Act in Ireland.

Angela has published in numerous peer reviewed journals and presented at multiple conferences both nationally and internationally on the critical issues in relation to adoption from Irish foster care. For further information on PhD research contact [angela.palmer@ucdconnect.ie](mailto:angela.palmer@ucdconnect.ie)

**Dr Fergal Lynch, Secretary General of the Department of Children and Youth Affairs**

Fergal Lynch was appointed Secretary General of the Department of Children and Youth Affairs in January 2015. He has worked closely on a full range of areas affecting children, young people and their families, including policy, legislation, staffing and budgets. He has overseen initiatives relating to expansion of child care schemes, youth policy and youth justice issues.

Before joining the DCYA, Fergal worked for over 30 years in the Department of Health, serving there as Deputy Secretary General there from 2012 to 2015. He has a first class honours degree in Public Management from NUI, an M.Sc. (Econ) from Trinity College and a Doctorate in Governance from Queen's University, Belfast.

## **Appendix 2: Report of the Public Consultation on the Potential Introduction of Open or Semi-Open Adoption in Ireland**

### **Background**

The Research and Evaluation Unit was asked by the Adoption Policy Unit to analyse the results of a public consultation survey on options for, current practices around and possible mechanisms/State supports for post-adoption voluntary contact arrangements between birth and adoptive families in respect of adopted children under 18 years of age. The survey was posted publicly on the Department of Children and Youth Affairs website and notice of the survey was publicly advertised, as well as circulated within relevant networks.

### **Limitations and caveats in interpreting results**

As an open (not sampled) public consultation survey, it was not possible to design or construct an optimum sample. The sample was self-selecting from a wide range of stakeholders, including individuals, professionals working in the area, advocates and others. The open nature of the survey informed the type and nature of the questions, as they had to cater to potentially very different audiences.

The achieved sample (121 respondents overall) was in fact dominated by respondents who were themselves adopted, who represented 40% of all respondents. 21% of respondents were members of the public and another 12% categorised themselves as 'other'. This in turn had an impact on responses to and completion of survey questions. Many questions were not relevant to respondents and/or were not responded to. Therefore, it was not possible to conduct in depth analyses; for example, to disaggregate many responses by key characteristics or to cross-tabulate the frequency of preferred options of post-adoption contact arrangements by all categories of respondent.

Responses for a number of questions were too low to produce reliable results. These questions included the number of and age range of adopted children; and any preference for age ranges of any child that might be adopted. A number of questions to probe timing, frequency, initiation and methods of contact also yielded too few responses to produce reliable results.

Nevertheless, it is possible to draw some tentative conclusions in respect of three key research questions posed by the Adoption Policy Unit:

- What is the degree to which informal post-adoption contact arrangements (direct and indirect) are already taking place in Ireland?
- What are the views of the public and stakeholders in relation to the desirability or otherwise of post-adoption contact?
- What are the views of the public and stakeholders in relation to the need for the State to support post-adoption contact and what forms, if any, those supports should take?

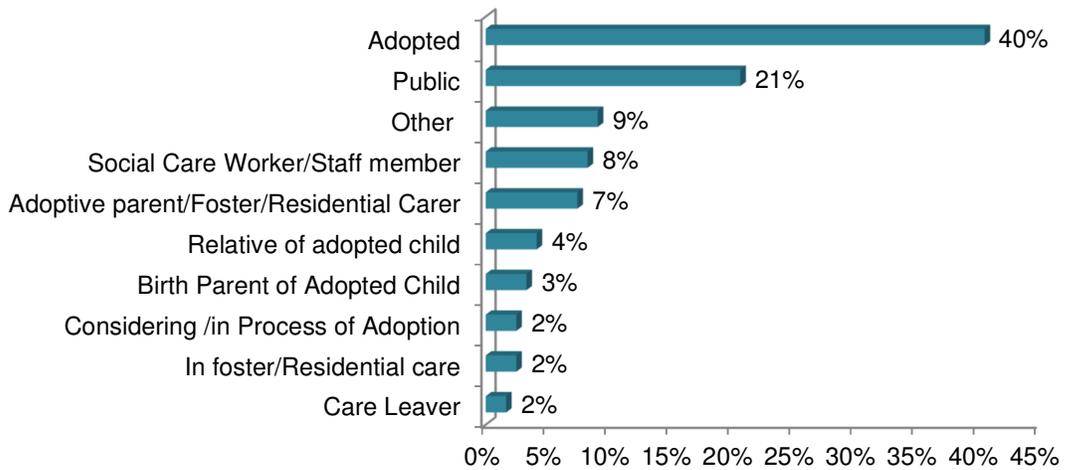
This report first presents a summary overview of respondents and then the results of analysing survey data as relevant to the three questions above, in respect of each Section of the survey for which valid and reliable results can be presented. Finally, it sets out some *tentative* conclusions to inform the Adoption Policy Unit's thinking in respect of post-adoption contact arrangements in line with these three questions.

## **Overview of survey respondents**

Responses to questions in the first section of the survey provided an overview of survey respondents. Respondents were first asked to describe themselves, choosing from a range of options including individual status (e.g. 'I am adopted'); status in relation to the adopted child (e.g. birth or adoptive parent/relative, carer); social worker or counsellor; paid staff member of an organisation working in the area of adoption; volunteer; member of the public; and other.

There were a total of 121 survey responses from a variety of people. The largest proportion of these respondents was adopted people (40% of survey respondents, n=49). This was followed by other members of the public (21% of respondents, n=25). The proportion of other respondents were: people in foster or residential care (2%), care leavers (2%), adoptive/foster parents or residential carers (7%), birth parents of an adopted child (3%), relatives of adopted child (4%), social care workers (8%) and other (12%). The other category is made up of those who selected other and those considering adoption.

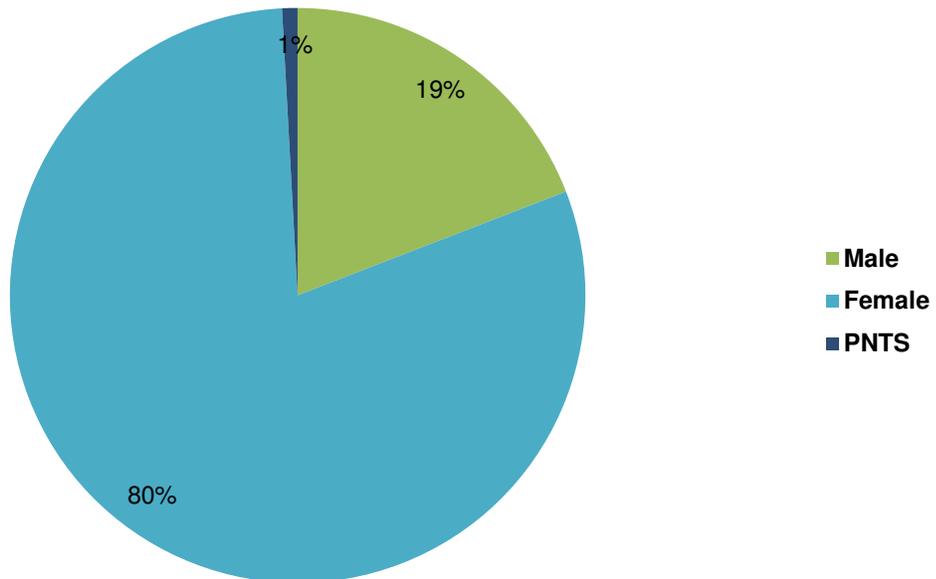
**Figure 1 Proportion of respondents by self-described category**



N=121  
NB Figures are rounded to the nearest percentage point.

19% of respondents were Male, 80% of respondents were Female and 1% preferred not to say (PNTS).

**Figure 2 Proportion of respondents by gender**

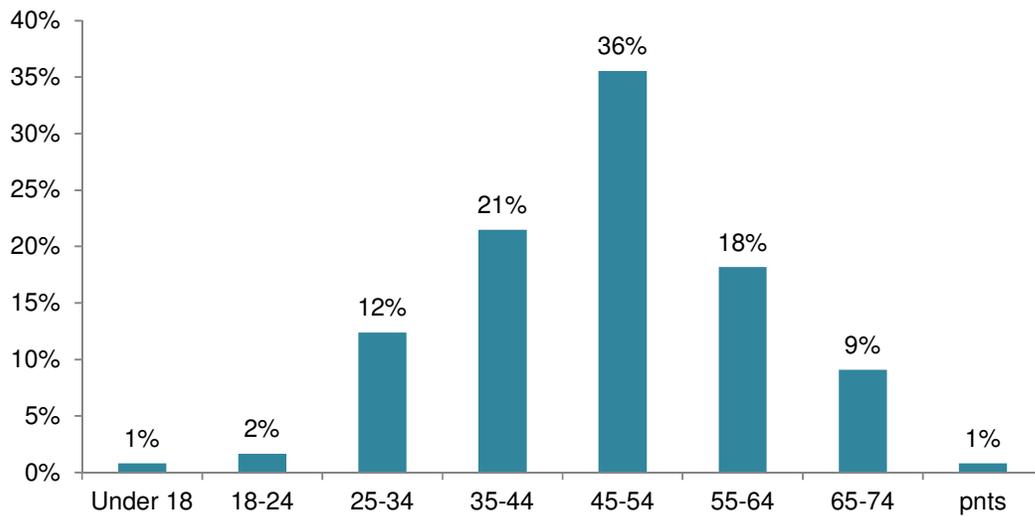


N=121

82% of those who described themselves as adopted were female. Of the 10 respondents who described themselves as social workers or a paid staff member, 90% were female. Similar gender patterns were seen for other categories of respondents.

Survey respondents were asked their age range (or if they would prefer not to say (PNTS)). 36% of respondents were 45 to 54 years old and 63% of respondents were aged 45 and above, as can be seen in the Figure 3 below.

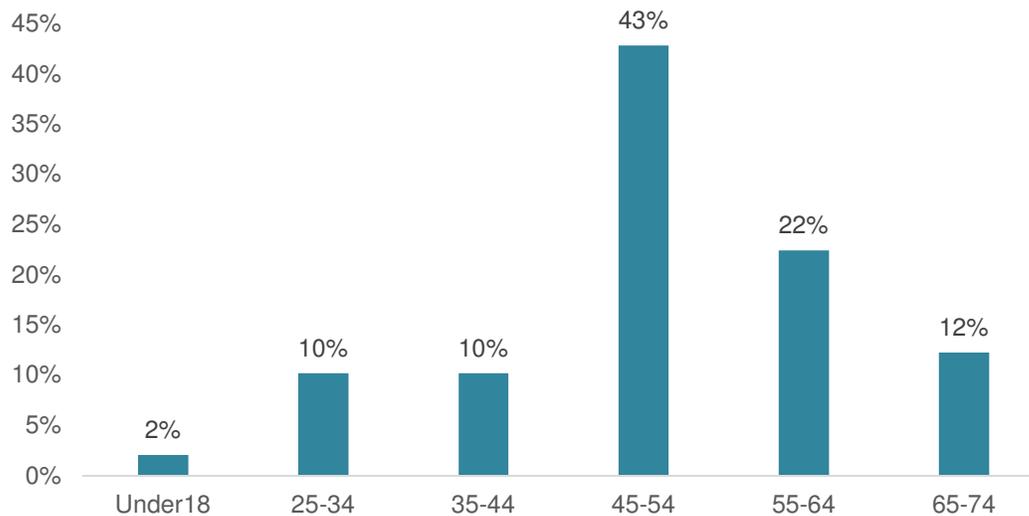
**Figure 3 Age profile of all respondents**



N=121

Of those who described themselves as adopted, (n=49), 43% were aged between 45 and 54 (n=21), with an additional 23% aged between 55 and 64 (n=11). Only one respondent was under 18. See Figure 4 below for the full age profile of adopted respondents.

**Figure 4 Age profile of adopted respondents**



Of adopted respondents in the age ranges under 18 (n=1), 35 to 44 (n=5) and 55 to 64 (n=11), all were female. Of those aged 45 to 54 (n=21) 76% were female while those aged 65 to 74 (n=6) were equally split between female and male respondents. The next largest group of respondents, members of the public (n=25), were more evenly distributed by age ranges from 25 up to age 54, but with fewer respondents in the 55 to 64 age range (n=4) and 65 to 74 age range (n=2).

Respondents were asked whether they had first hand-experience of adoption. Responses to this question were surprising. 35 respondents did not answer this question, all describing themselves as members of the public or other. Of the remaining 86 respondents who answered this question, 81% (n=70) indicated they had first-experience of adoption. However, respondents indicating they didn't have first-hand experience include those describing themselves as adopted, a birth parent of an adopted child and a social worker working in the area of adoption. It might be expected that these respondents would have first-hand experience, so it is not clear why they indicated the contrary.

### **Existing voluntary contact arrangements**

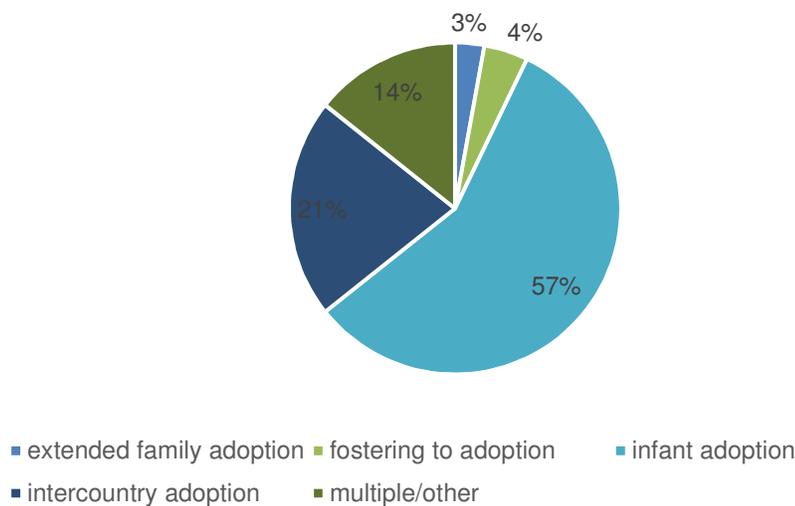
Respondents reporting first-hand experience of adoption were asked in Section 2 of the questionnaire, several questions around their knowledge of; nature, frequency, methods and forms of existing voluntary contact arrangements. They were also asked questions about the types of adoption for which they had first-hand experience, whether contact had been wanted and which individuals were involved in initiating and participating in contact arrangements. Responses to these questions

were varied, with most too low to report reliable results. However, a few questions could be analysed, the results of which are given below.

### Types of adoption

Respondents were asked the types of adoption for which they had first-hand experience. 70 respondents answered this question. The proportion of respondents reporting first-hand experience of different types of adoption is given in Figure 5 below.

**Figure 5 Proportion of respondents reporting first-hand knowledge of adoption types**



**NB** Of those reporting first-hand experience. N=70

### Current post-adoption contact arrangements

Respondents were asked whether contact had taken place between birth and adoptive families in respect of adopted children under 18 years of age. Of the 71 respondents reporting first-hand experience of adoption, 76% (n=53) said there had been no contact. An additional 6% (n=4) responded that there was no contact as they were only considering adoption. 11% (n=8) said there was contact after adoption, 3% (n=2) before and 6% (n=4) both before and after.

### Was contact wanted?

Respondents were also asked if the contact was wanted. Only 14 respondents answered this question. Overall, 86% of these respondents (n=12) reported that

contact was wanted between birth and adoptive families in respect of adopted children under 18.

### **Outcomes and impacts of voluntary contact arrangements**

Section 3 of the survey asked respondents with first-hand experience of adoption questions about the outcomes and impacts of voluntary contact arrangements for the adopted child under 18, birth families and adoptive families. Respondents were asked to rank the three most positive and three most negative impacts, for a) the adopted child and b) for adoptive and/or birth families. They were given a range of options (including other). Only 9 respondents answered this section in full. 8 reported that overall, contact had significant benefits; and 1 reported some benefits; for the adopted child. Of all responses (n=27), the most prevalent positive impacts for the adopted child (at approximately 20% of all responses, respectively) were:

- He/she has ongoing relationships with members of their birth family
- He/she understands the reasons for his/her adoption
- He/she has a better understanding of his/her background and birth parents' circumstances

One respondent (a social worker) reported negative impacts of contact between birth and adoptive families for the adopted child, namely that his/her sense of security and belonging in the adoptive family has been shaken; his/her expectations have not been met; and he/she feels they should not have been adopted.

Of all responses (n=27), the most prevalent positive impact of contact for birth and/or adoptive families is that the birth and adoptive parents develop a relationship (26% of all responses, n=7). The second most prevalent impact is that the adopted parents have a better understanding of the birth parents' life circumstances (22% of all responses, n=6). The next most prevalent responses (at 19%, respectively) are that the adopted parents gain an appreciation of the adopted child's heritage; and the birth parents can see that the adopted child's life circumstances have been improved by being adopted.

### **Desired contact arrangements**

Section 4 of the survey explored respondents' views on their desired voluntary contact arrangements in respect of an adopted child under 18. These questions included who should be involved; their ranked preferred three methods of contact; the form of contact; and when initial contact should be made. In total, 66 respondents with first-hand experience of adoption answered these questions. A final question on the frequency of contact did not yield enough responses to be analysed.

### **Individuals involved in desired contact arrangements**

All 66 respondents indicated that they would like to see some form of voluntary contact arrangements that involved some combination of the adopted child and/or members of the birth and/or adoptive families.

Of these respondents, 65% (n=43) indicated that they would like contact between the adopted child, the birth mother, the birth father, the birth siblings, the birth grandparents, the adoptive parents and/or adoptive siblings. An additional 8% (n=5) indicated that they would like some other form of contact between the adopted child, birth families and adoptive families. 24% of respondents (n=16) indicated that they would like contact between the adopted child and birth relatives only (suggesting no other contact between adoptive family members and birth family members).

Of those who described themselves as adopted and responded to the question about what types of contact they might like (n=45), 36% indicated contact between an adopted child and birth family members only. 60% (n=27) indicated they would like to see some form of contact between the adopted child, all members of the birth family (including grandparents) and the adoptive parents. The remaining 4% (n=2) indicated other forms of contact between the adopted child, birth and adoptive families.

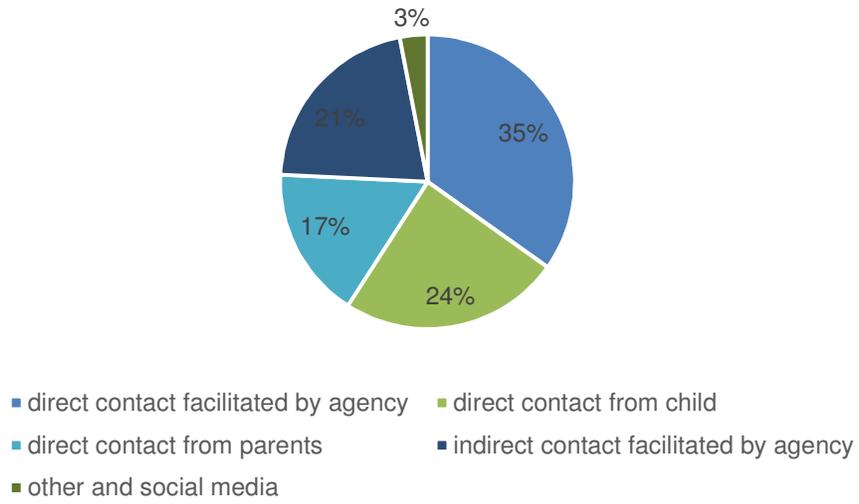
83% of adoptive parents (n=6) indicated they would like contact between all or most members of the birth and adoptive families. Of those related to an adopted child (birth parent or other relative) who answered this question (n=7), 57% (n=5) indicated they would like contact between all members of birth and adoptive families. One respondent (a relative) indicated contact between the adopted child and birth siblings only, while another indicated contact between the adopted child, the birth mother and other family members (adoptive siblings). 86% of respondents describing themselves as social workers or paid staff members and answering this question (n=7) would like contact between all members of birth and adoptive families. The remainder indicated contact between the adopted child, birth and adoptive parents only.

### **Methods for establishing contact**

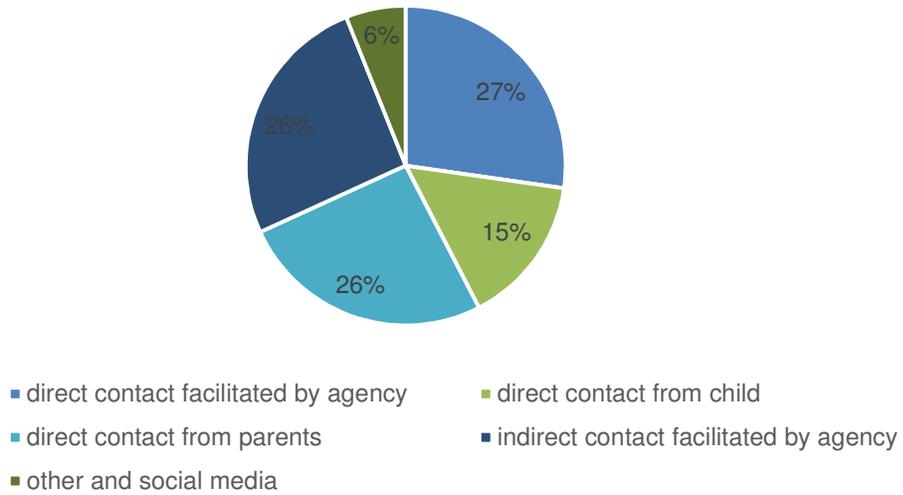
Respondents (n=66) were asked to rank their top three preferred methods for establishing contact between the adopted child and members of the birth and/or adoptive families.

Figure 6 below shows the proportion of respondents by their first preferred method of contact. Figure 7 and 8, respectively, show the second and third preferred method to establish contact.

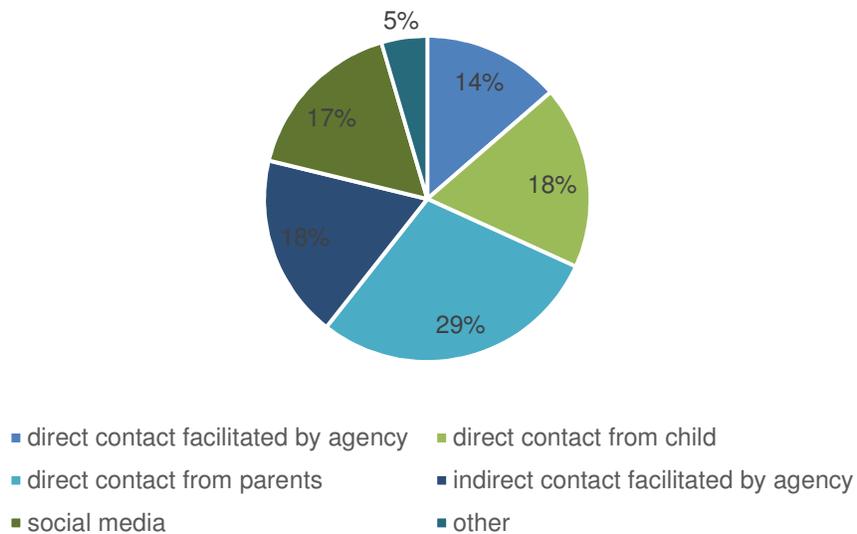
**Figure 6 First preferred method to establish contact, proportion of all respondents**



**Figure 7 Second preferred method to establish contact, proportion of all respondents**



**Figure 8 Third preferred method to establish contact, proportion of all respondents**



What is notable in the graphs above is the proportion of respondents preferring direct contact as facilitated through an agency, at 35% (for first preferred method of contact), then 27% and 14% as the second and third preferred method of contact respectively. Also notable is that the proportion of respondents reporting a preference for contact through social media (including other in the first and second preferences). Only 3% prefer this as the first method of establishing contact, but 17% prefer this as a third method of contact and additional 5% preferred other as a third method of contact. Examples of this 'other' form of initiating contact include a registry for adult adoptees with access to social workers; open records; and letters, cards, health updates and related information exchanges between birth and adopted families.

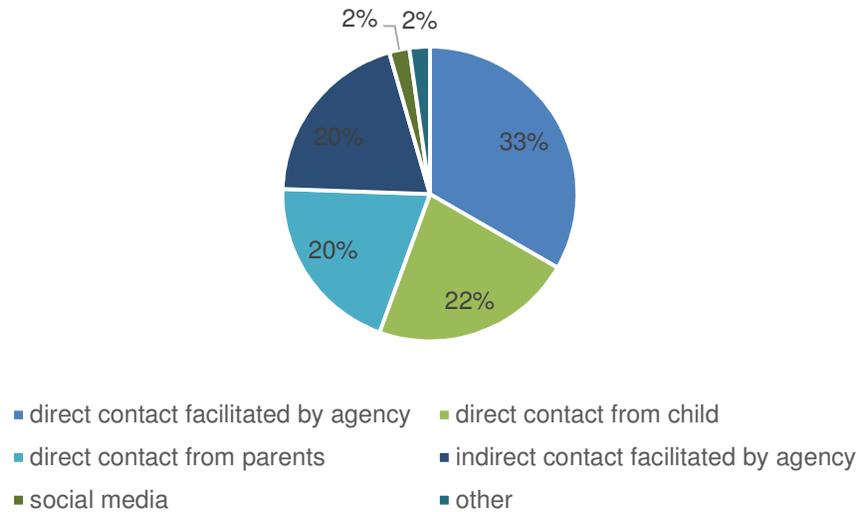
Looking at individual's responses across their three preferred methods of establishing contact, the most prevalent pattern at 14% of these respondents was through establishing contact first through direct contact with the child, second through indirect contact with an agency and third through direct contact with parents. The next prevalent patterns were a) first, direct contact with the child, then direct contact with the parents, then through social media or other (9% of respondents); and b) first, indirect contact as facilitated by an agency, then direct contact through an agency, then direct contact with parents (9% of respondents). Overall, 56% of respondents stated direct or indirect contact through an agency as a preferred first method of contact, then various other forms of contact.

No respondents with a first preference for establishing indirect contact through an agency then preferred direct contact with a child, although two of these respondents did report direct contact with a child as their third preferred method of establishing contact.

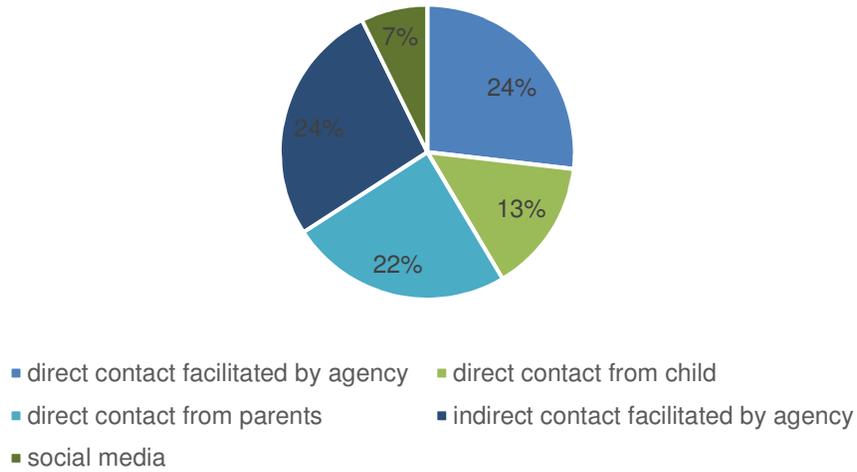
No respondents with a first preference for establishing direct contact with a child or with a parent expressed a second preference for establishing indirect contact through an agency, although 6 respondents did express a third preference for such contact.

Looking at those respondents who described themselves as adopted and who answered this question (n=45), Figures 9, 10, and 11 respectively set out the proportion of all adopted respondents expressing their first, second and third preferred methods of establishing contact

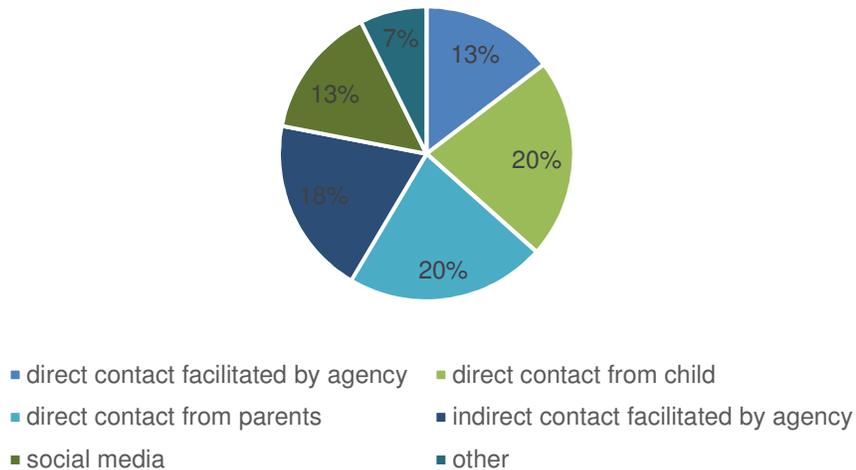
**Figure 9 first preferred method to establish contact, proportion of all adopted respondents**



**Figure 10 second preferred method to establish contact, proportion of all adopted respondents**



**Figure 11 Third preferred method to establish contact, proportion of all adopted respondents**



The proportion of adopted respondents expressing their first, second and third preferences for establishing contact are broadly in line with results for all respondents. This is to be expected given that adopted respondents make up the majority of respondents answering these questions.

Likewise, patterns in the first, then second, then third preferred methods of establishing contact are similar to those of all respondents. 53% of adopted respondents first preferred direct or indirect contact through an agency.

### **Preferred forms of contact**

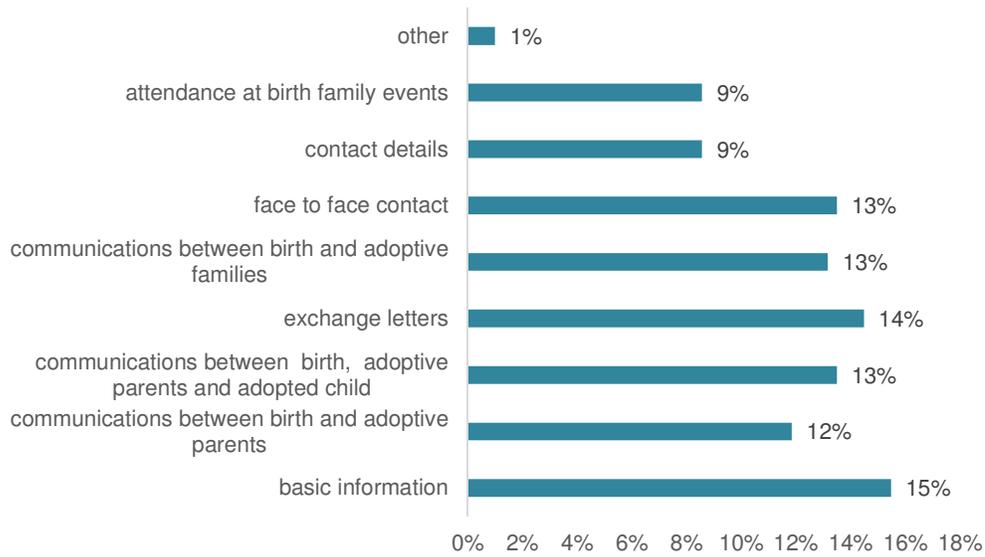
Respondents (n=66) were asked what the preferred forms of contact they would like. The forms of contact were:

- Basic information
- Communications, between a) birth and adoptive parents; b) between adopted child, birth and adoptive families; and c) birth and adoptive families
- Exchange of letters
- Face-to-Face
- Contact details
- Attendance at birth family events
- Other

It is to be expected that respondents answering this question might prefer different and multiple forms of contact, for example as relationships develop. This is demonstrated by the number of responses. The 66 respondents reported in total 304 forms of preferred contact. This makes it difficult to determine what single form of contact might be preferred by the majority of respondents.

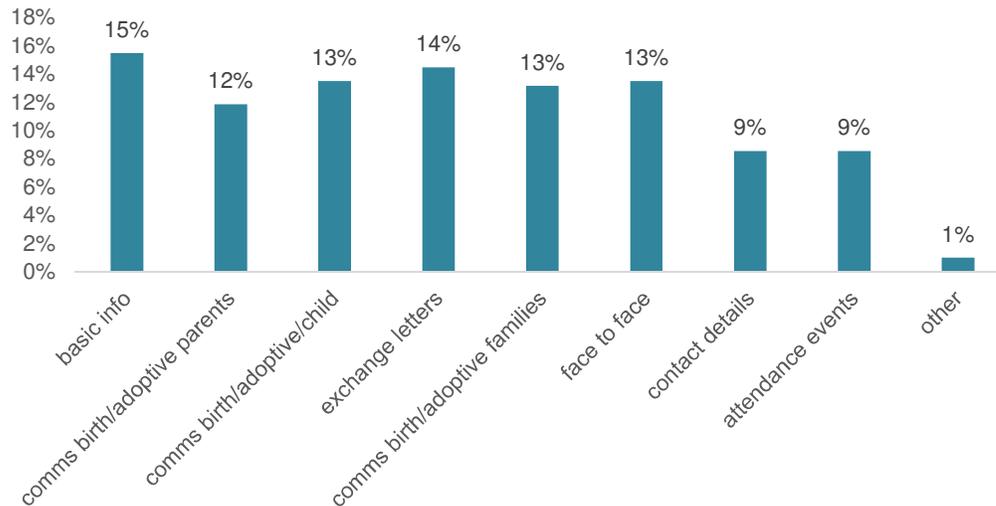
Figure 12 gives the proportion of respondents by each type of preferred contact. The most prevalent form of contact wanted was provision of basic information, by 71% of respondents, but the distribution of other forms of contact are broadly similar. However, respondents do report a lower preference for attendance at birth family events (39%) and for exchange of contact details (39%). However, it is probable that this form of contact is implicit in reports of other forms of contact, which is likely to explain this result.

**Figure 12 Proportion of respondents by preferred forms of contact**



Analysing results by prevalence of all responses provides some insights into the most common forms of contact preferred by respondents. Figure 13 gives the proportion of all expressed forms of contact wanted.

**Figure 13 Proportion of all expressed forms of contact wanted**



N=304

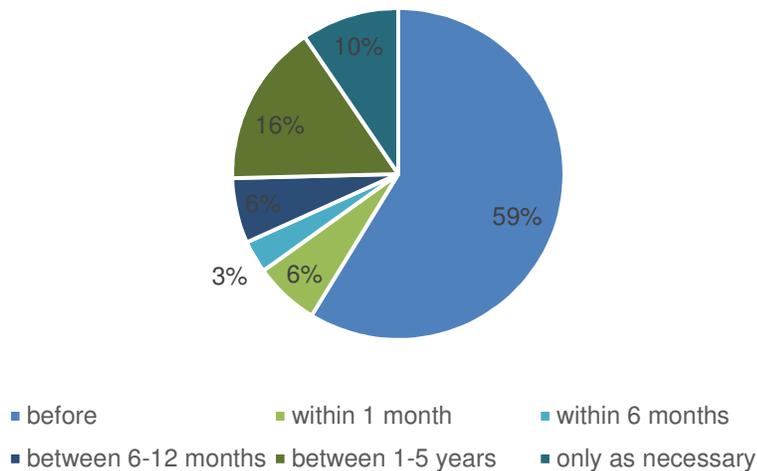
The distribution of preferred forms of contact shows that respondents report the most common preferred forms of contact are: the basic provision of information, any form of communications, exchanges of letters and face to face contact. Exchange of

contact details and attendance at birth respondents are slightly less preferred forms of contact. Again, exchange of contact details is implicit in other forms of contact such as exchange of letters and communications between birth and adoptive family members. This may help to explain why fewer respondents explicitly stated a preference for 'contact details' as a distinct form of contact.

**When should contact be established?**

Respondents (n=63) were asked when they thought initial contact should be made between birth and adoptive families in respect of adopted children under 18. Figure 14 gives the proportion of respondents by time period when contact should be established.

**Figure 14 Proportion of all respondents by when contact should be established**



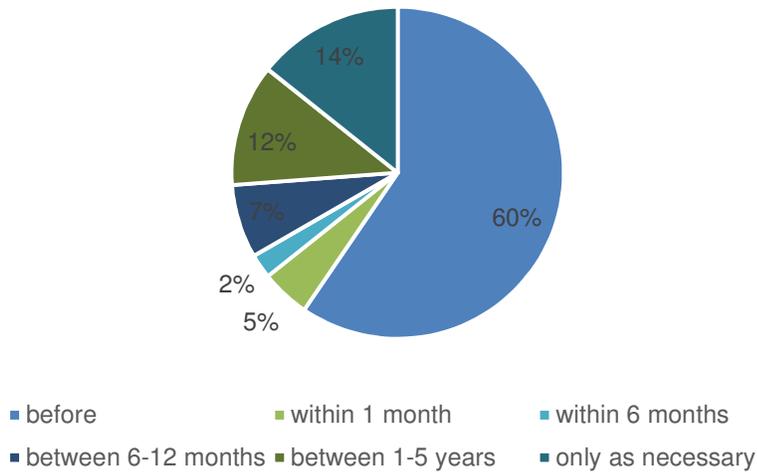
N=63

Figure 14 shows that 59% of all respondents stated they would like to see contact established before the adoption process was finished. A further 9% stated contact within a year of adoption. 16% however stated contact should occur within 1 to 5 years with an additional 10% stating contact should only take place as necessary.

Figures 15, 16 and 17 give the proportion of adopted, relative of adopted child and social worker/staff member respondents by time period when contact should be established, respectively<sup>36</sup>.

<sup>36</sup> Two care leavers make up the remainder of respondents to this question; results by this category are too small to report.

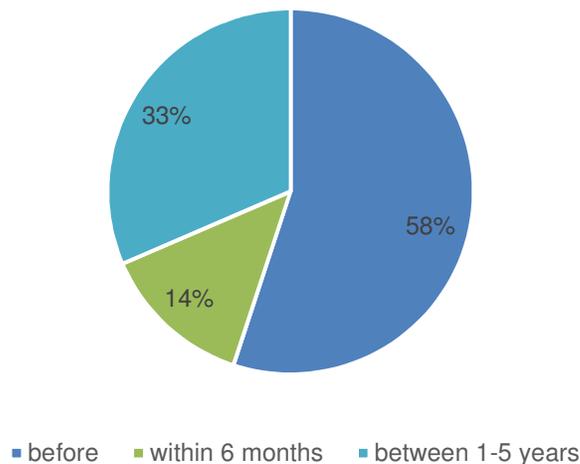
**Figure 15 Proportion of adopted respondents by when contact should be established**



N=42

Figure 15 shows that in line with all respondents, 60% of adopted respondents stated they would like contact to be established before adoption. However, 14% of these respondents stated that contact should only be as necessary, with an additional 12% indicating contact between 1 and 5 years.

**Figure 16 Proportion of respondents (relatives of an adopted child) by when contact should be established**

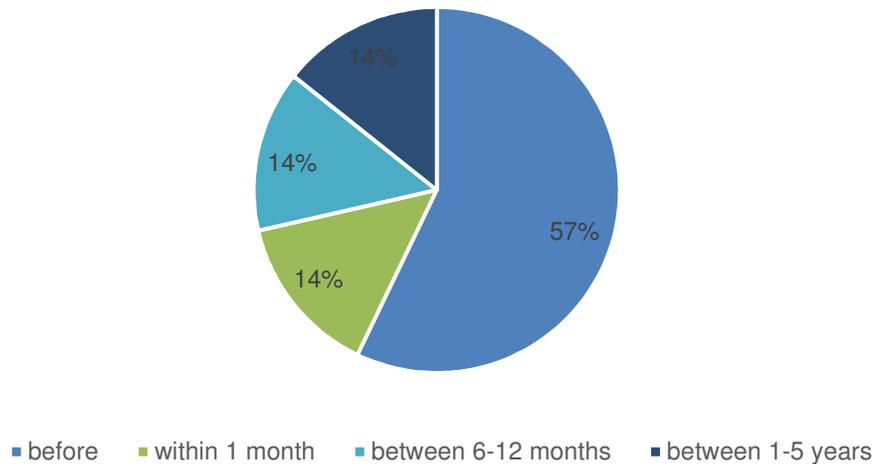


N=12

Figure 16 shows that relatives of an adopted child (birth parent, adoptive parent or relative of an adopted child) again preferred contact to be established before

adoption (at 58% of these respondents) but unlike other respondents, these respondents expressed only two other preferences, with 14% wanting contact to be established within 6 months and 33% between 1 and 5 years.

**Figure 17 Proportion of respondents (social worker/paid staff members) by When contact should be established**



N=7

Figure 17 shows that again, 57% respondents describing themselves as social workers or paid staff members wanted contact to be established before adoption. 28% wanted contacted to be established within the first year while an additional 14% wanted contact to be established with 1 to 5 years.

### Voluntary Contact Arrangements: Next Steps

Finally, Section 5 of the survey asked all respondents questions regarding the circumstances and methods that the State might support voluntary contact arrangements in respect of an adopted child under 18. Respondents were also asked if they felt that people in Ireland generally were aware of current informal contact arrangements.

82% of respondents (N=99) felt that people in Ireland are not generally aware of current informal contact arrangements. An additional 12% (N=14) didn't know.

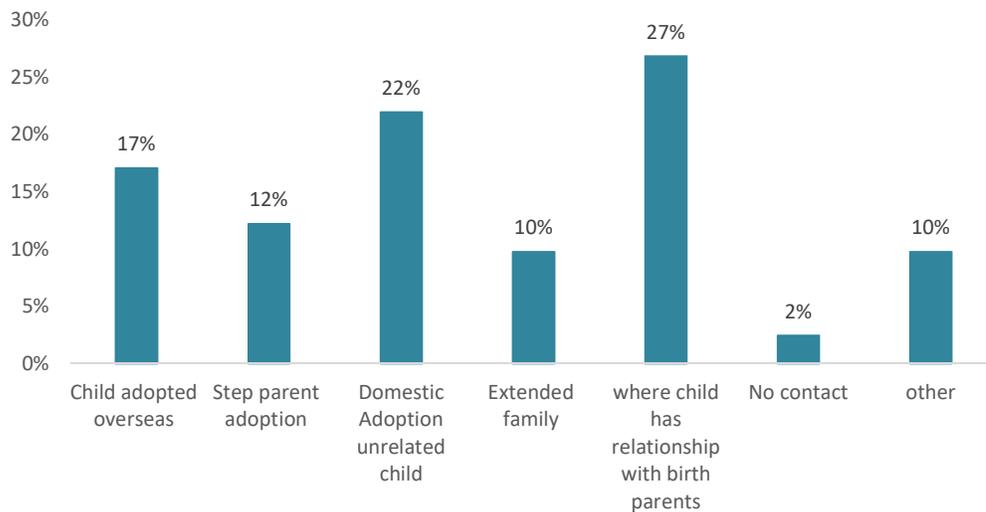
### Circumstances for which the State should make provision to support voluntary contact arrangements

Respondents (valid N=120) were asked for the circumstances under which the State should make provision to support voluntary contact arrangements. 83% of

respondents indicated provision for all types of adoption (collating all responses 'for all adoptions' including where multiple types were also chosen).

21 respondents cited other combinations of, or single specific circumstances for which the State should make provision. These 21 respondents gave a total of 41 responses in respect of these circumstances. Figure 18 shows the prevalence of the most commonly cited circumstances as a proportion of all specific circumstances.

**Figure 18 Specific circumstances under which State should make provision for voluntary contact (proportion of all responses)**



N =

Figure 18 shows that the most prevalent specific circumstance for which the State should make provision for voluntary contact arrangements is where the child has an existing relationship with the birth parents. The second most prevalent circumstance is where there is a domestic adoption of an unrelated child.

No respondent indicated that there wasn't a need for formal provisions, while one respondent indicated there should be no contact. 4 respondents reported 'other' (unspecified) circumstances for which the State should make provision.

### **Who should be involved?**

Respondents were then asked who should be involved in a voluntary contact arrangement that the State may provide for:

- Birth and adoptive parents
- Birth, adoptive parents and adopted child under 18
- Adopted child and birth parents

- Adopted child and any birth and/or adoptive family member he/she chooses
- A social worker/counsellor to facilitate contact
- No contact
- Other

Of those who answered this question (n=120) most respondents selected multiple combinations of individuals. 21% of all respondents (n=25) indicated that birth and adoptive parents only should be involved, the most prevalent single response by all respondents. The next most prevalent single response, at 16% of all respondents (n=19) was birth and adoptive parents and child under 18, adopted child and any family member and social worker. An additional 14% of respondents (n=17) indicated involvement between the adopted child, any birth/adoptive family member and a social worker. 8% of respondents indicated involvement between birth and adoptive parents and an adopted child under 18; and an adopted child and any family member. The remaining respondents chose a variety of combinations of individuals who should be involved.

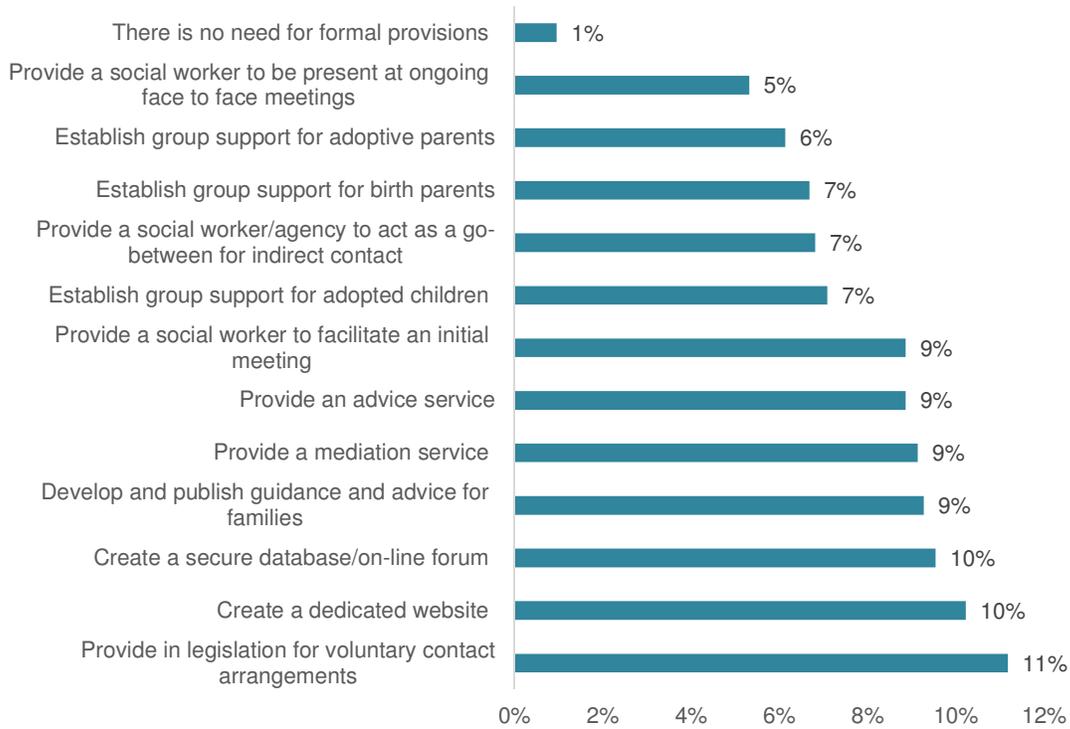
In total, 58% of respondents indicated that a social worker/counsellor should be involved in voluntary contact arrangements along with other individuals (across several different combinations of individuals and methods of contact). Of these respondents, 64% indicated involvement between the adopted child, birth and adoptive family members and a social worker/counsellor.

### **How the State could support voluntary contact arrangements**

95% of respondents (n=115) answered the question on how the state could support voluntary contact arrangements between birth and adoptive families. They were given several options and were able to select multiple answers to the question. In total, the 115 respondents gave 734 responses, i.e. on average just over 6 potential forms of State support were cited by each respondent.

Figure 19 shows the potential forms of State support cited by respondents as a proportion of all their responses. 11% (n=82) of all responses cited legislation was needed for voluntary contact arrangements. Only 1% of responses cited 'no need for formal provisions'. As might be expected, no clear pattern emerges from Figure 19 to indicate a definitive preference in respect of the form of State support.

**Figure 19 Prevalence of potential forms of State supports (proportion of all responses)**



N= 734 responses by 115 respondents.

However, by grouping together related forms of State support, some patterns do emerge. Taking all responses together, the most prevalent form of State support cited is the provision of a social worker, at 21% of all responses (n=154), to facilitate an initial meeting; to act as a go-between for indirect contact; to be present at ongoing face-to-face meetings. 20% of all responses (n=145) related specifically to State support for voluntary contact arrangements through a dedicated website, secure database or on-line forum. 18% of all responses (n=132) cite State support for a mediation or advice service. Responses citing group supports for adopted children, adoptive or birth parents were relatively low compared to these other forms of State support; for example, only 7% of all responses (n=52) cited group support for adopted children.

## Conclusions

Within the context of the limitations and caveats, and profile of survey respondents referenced at the start of the report, some tentative conclusions can be drawn from survey results in respect of the three key research questions posed by the Adoption Policy Unit:

1. What is the degree to which informal post-adoption contact arrangements (direct and indirect) are already taking place in Ireland?
2. What are the views of the public and stakeholders in relation to the desirability or otherwise of post-adoption contact?
3. What are the views of the public and stakeholders in relation to the need for the State to support post-adoption contact and what forms, if any, those supports should take?

### **Interpretation of results: Limitations and Caveats**

To contextualise these conclusions, the following points should be kept in mind:

- The sample was self-selecting and it was not possible to design or construct an optimum sample.
- The open nature of the survey informed the type and nature of the questions. This meant 1) many respondents did not respond to questions, as they were not relevant to them; 2) respondents may have responded differently to the questions based on their personal experiences and history.
- The achieved sample (n=121) was largely made of adopted respondents (40%), members of the public (21%) and 'other' (12%).
- This made it difficult to disaggregate results by category of respondents, other than adopted and members of the public. Where results by other categories of respondents are presented, interpretation of results should bear in mind the sample size is very small (generally under 10 respondents).
- Over half of all respondents are aged 45 to 64. Two-thirds of adopted respondents are aged 45 to 64. The age ranges for members of the public were more evenly distributed but they had fewer respondents aged 55 and over (than adopted respondents).
- Likewise, the vast majority of respondents are female. For adopted respondents there are no males in three of the six age ranges. Older adopted respondents (aged 65 to 74) are equally split between male and female respondents.
- Reports of first-hand experience of adoption are counterintuitive. While 16% of those answering this question reported *not* having first-hand experience, at least some of these respondents, by their own descriptions, would be expected to have first-hand experience.

### **Existing informal contact arrangements and outcomes and impacts**

While a number of survey questions sought to probe the nature, scope, scale and involvement of individuals in existing informal contact arrangements, responses to most of these questions were quite low and could not therefore produce reliable results.

However, over three-quarters of respondents (76%) citing first-hand experience with adoption reported there had been no contact between birth and adoptive families in respect of adopted children under 18 years old. 11% of respondents reported contact after adoption, 6% both before and after and 3% before adoption.

Respondents citing first-hand experience of adoption reported that in most cases when informal contact was made it was wanted. Respondents also reported first-hand experience with different types of adoption. Nearly 60% of respondents had first-hand experience with infant adoption and 14% had experience with multiple/other forms of adoption.

A small number of respondents also answered questions in respect of the outcomes and impacts of contact on the adopted child, and on birth/adoptive families. The most prevalent positive impacts upon an adopted child were:

- He/she has ongoing relationships with members of their birth family
- He/she understands the reasons for his/her adoption
- He/she has a better understanding of his/her background and birth parents' circumstances

The most prevalent positive impact of contact for birth and/or adoptive families were:

- The birth and adoptive parents develop a relationship
- The adopted parents have a better understanding of the birth parents' life
- The adopted parents gain an appreciation of the adopted child's heritage
- The birth parents can see that the adopted child's life circumstances have been improved by being adopted.

A smaller number of respondents cited negative impacts, although the majority of these also cited that there was a significant benefit from the contact.

The least positive impacts on the adopted child cited were as follows:

- The adopted child's sense of security and belonging in the adoptive family is shaken (33%/ n=3)
- The adopted child questions the reasons for his/her adoption ( 22%/ n=2)
- The adopted child's expectations regarding contact are not met (22%/ n=2)
- Other - the problem is that contact is infrequent (11%/ n=1)

The least positive impact for families cited were:

- The birth parent(s) and the adoptive parent(s) find contact between them to be emotionally challenging (33%/ n=5)

- While the birth parent(s) and adopted child make contact, the birth family do not want contact with the adopted child (27%/ n=4)
- Contact arrangements as facilitated by a social worker/counsellor may not work (e.g. one or both families may not adhere to agreed arrangements) (20%/ n=3)
- The birth parent(s) and the adoptive parent(s) find contact between them physically difficult to maintain (e.g. it takes too much time; the families may be too far apart) (13%/ n=2)
- Other - the problem is that contact is infrequent (7%/ n=1)

### **Desired Contact Arrangements**

All respondents (n=66) reported that they would like to see some form of voluntary contact that involved some combination of the adopted child and/or members of the birth and/or adoptive families.

Of these respondents, nearly three-quarters indicated that they would like contact between the adopted child and all birth and adoptive family members (including grandparents). 60% of adopted respondents and 83% of adoptive parents also indicated these contact arrangements.

Conversely, a quarter of respondents (n=16) indicated that they would like contact between the adopted child and birth relatives only (suggesting no other contact between adoptive family members and birth family members). Over a third of adopted respondents indicated they would like contact between an adopted child and birth family members only.

A majority of respondents preferred direct or indirect contact through an agency as a means of initiating contact. 53% of adopted respondents first preferred direct or indirect contact through an agency. Looking at individual's responses across their three preferred methods of establishing contact, the most prevalent pattern was through establishing contact first through direct contact with the child, second through indirect contact with an agency and third through direct contact with parents.

Analyses of the ranked preferences and patterns of same across respondents suggest that the *sequence* for initiating contact is also important in considering voluntary contact arrangements.

For example, while few respondents cited a first preference for initiating contact through social media or other mechanisms, nearly a fifth cited these as their third preference. No respondents with a first preference for establishing indirect contact through an agency then preferred direct contact with a child, although two of these respondents did report direct contact with a child as their third preferred method of establishing contact. No respondents with a first preference for establishing direct

contact with a child or with a parent expressed a second preference for establishing indirect contact through an agency, although 6 respondents did express a third preference for such contact.

Examples of 'other' forms of initiating contact include a registry for adult adoptees with access to social workers; open records; and letters, cards, health updates and related information exchanges between birth and adopted families.

No clear patterns could be established in terms of the forms of desired contact, although attendance at birth family events was rated lower than other forms of contact.

Roughly 60% of all respondents and a similar proportion of adopted respondents, relatives of an adopted child and social workers/paid staff members indicated that they would like contact to be initiated before the adoption process. 10% of all respondents and 14% of adopted respondents indicated that contact should only be made as needed. Nearly three quarters of respondent describing themselves as relatives of an adopted child stated contact should be made within six months of adoption. 85% social workers/paid staff members indicated that contact should be made within a year of adoption.

### **Voluntary Contact Arrangements and State Support**

82% of respondents (N=99) felt that people in Ireland are not generally aware of current informal contact arrangements. An additional 12% (N=14) didn't know.

83% of all respondents indicated that the State should make provision to support voluntary contact arrangements for all types of adoption. 21 respondents cited other combinations of, or single specific circumstances, for which the State should make provision. The most prevalent specific circumstance for which the State should make provision for voluntary contact arrangements is where the child has an existing relationship with the birth parents. The second most prevalent circumstance is where there is a domestic adoption of an unrelated child.

No respondent indicated that there was no need for formal provisions, while one respondent indicated there should be no contact. Four respondents reported 'other' (unspecified) circumstances for which the State should make provision.

A fifth of respondents indicated that that birth and adoptive parents only should be involved in voluntary contact arrangements. 16% of respondents indicated that birth and adoptive parents, the adopted child under 18, any family member and a social worker should be involved in voluntary contact arrangements.

In total, 58% of respondents indicated that a social worker/counsellor should be involved in voluntary contact arrangements along with other individuals (across several different combinations of individuals and methods of contact). Of these respondents, 64% indicated involvement between the adopted child, birth and adoptive family members and a social worker/counsellor.

No clear pattern emerged from survey results about the single most important form of State support for voluntary contact arrangements. By a very slight margin, legislation was the most prevalent single form of State support. However, grouping similar forms of State support together produced some patterns.

Taking all responses together, the provision of a social worker in initiating or sustaining voluntary contact arrangements is the most frequently cited form of State support. State support for voluntary contact arrangements through a dedicated website, secure database or on-line forum is the second most frequently cited form of support. State support for a mediation or advice service is the third most frequently cited form of support. Results indicate that more intense forms of State support, such as group support for individuals (adopted children, adoptive parents, birth parents), are not needed for voluntary contact arrangements.