

## **Written evidence from Cathy Ashley, Chief Executive, Family Rights Group et al (COV0200)**

### **Background**

This submission concerns the infringement of parents' and children' human rights when children and parents are involved in child protection processes, care proceedings and when children are in care under voluntary arrangements. The infringements are to Article 6 and Article 8 of the Human Rights Act 1998. The situations we describe are also infringements of Article 9 of the United Nations Convention on the Rights of the Child.

The signatories to this submission are academics carrying out research in the area of children and families social care, practitioners providing direct support to parents and children in care proceedings, or providing support and advocacy to families, or working with social care and family justice professionals to improve practice and a parent with direct experience of the system who provides support to other parents.

The information set out below is derived from our direct practice experience, from research we have been carrying out during the lockdown imposed since 23 March 2020, and from discussions and presentations at online meetings and forums involving a wide range of professionals working in this area and parents or wider family members with direct experience.

### **Contact**

The legislative framework for England and Wales places a duty on local authorities to promote contact between children who are in care (whether under an order or voluntarily) and their families and friends providing this is in the interests of the welfare of the children (schedule 2, para 15 Children Act 1989 and section 95 Social Work and Wellbeing (Wales) Act 2014). When a child is under a care order, local authorities must allow reasonable contact between the child and their parents and wider family unless this is not in the interests of the child's welfare (section 34 Children Act 1989). The law and statutory guidance which applies to both England and Wales emphasises the importance of contact for children in most cases. The legislative framework is in line with Article 8, which is a qualified right.

If a child has been removed from home as a result of an interim care order, there is commonly very regular contact between the child and his or her parents, whether or *not* the local authority is planning that the child should return home. Once a final care order is made, contact may reduce somewhat, but will typically continue given consistent research evidence that birth family ties remain very important for children in care. If the child is placed for adoption the amount of contact is usually reduced. It is common practice for children who are adopted to have 'letter box' contact once or twice a year with their parents, and sometimes other family members. This means no physical contact and as a

result it is also common practice for the local authority to arrange for the parents, and sometimes other family members such as siblings and grandparents to have a last visit with the child, in order to be able to say goodbye.

Shortly after the Government introduced lockdown on 23 March it published guidance on the 'stay at home' rules which included '*Where parents or someone with parental responsibility do not live in the same household, children under 18 can be moved between their parents' homes to continue existing arrangements for access and contact.*'<sup>1</sup> This guidance related to private family law cases (divorce and separation) but no similar guidance was given about the situation where children were in the care system. Nearly two weeks later, on 3 April Government guidance to local authorities on children's social care was issued. This stated: '*It may not be possible, or appropriate, for the usual face to face contact to happen at this time and keeping in touch will, for the most part, need to take place virtually.*' On 6 May the guidance was updated and another sentence was added immediately after this previous one as follows: '*Where face to face contact is not possible, we would encourage social workers and other professionals to reassure children that this position is temporary and will be reviewed as soon as it possible to do so.*' Then on 15 July a further paragraph was added to the guidance: '*We recognise that some young children may not be able to benefit from virtual contact with their family, because of their age or other communication challenges. In these circumstances, local authorities should work with families to identify ways to have safe face-to-face interactions, whilst still adhering to social distancing guidance.*'<sup>2</sup>

It is only in July that guidance is suggesting local authorities should work to find ways of ensuring face to face contact. Following lockdown and until very recently, many local authorities took a risk averse response and were not prepared to facilitate physical contact between children in care and their families. The Nuffield Family Justice Observatory commissioned a rapid research review<sup>3</sup> of contact post lockdown which showed that contact was occurring only through digital means such as phone calls, skype, WhatsApp, Zoom. For older children and some disabled children this system was working relatively well but children missed the physical contact with their families. For babies and young children and some other disabled children digital contact was inappropriate and often upsetting for the children and for their families.

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<sup>1</sup> <https://www.gov.uk/government/publications/full-guidance-on-staying-at-home-and-away-from-others/full-guidance-on-staying-at-home-and-away-from-others>

<sup>2</sup> Coronavirus (Covid 19): Guidance for Children's Social Care Services, 3 April 2020, 6 May 2020, 15 July 2020 <https://www.gov.uk/government/publications/coronavirus-covid-19-guidance-for-childrens-social-care-services/coronavirus-covid-19-guidance-for-local-authorities-on-childrens-social-care>

<sup>3</sup> Neil E, Copson R, Sorensen P (2020) Contact during lockdown: how are children and their birth families keeping in touch <https://www.nuffieldfjo.org.uk/coronavirus-family-justice-system/managing-family-contact>

We argue that there are three circumstances where the denial of physical contact is an infringement of the Article 8 rights of the child and their parents and wider family and may also be an infringement of Article 6:

1. When babies or very young children are removed through care proceedings. Decisions to remove babies are always fraught and painful but in normal circumstances regular contact between the mother and child would be organised. Since lockdown we are aware of many cases where there has been no physical contact, only videos sent to mothers by social workers or foster carers and calls with the foster carer. We know of some mothers who have not held their babies for over four months. This affects not only the baby's ability to form an attachment to their parents but also affects the parents' ability to bond with their baby. We know from case law and practice that the longer this continues the less likely it is that the parents will be able to recover the care of their child at the end of proceedings. It was acknowledged by the President of the Family Division in a question and answer session with the Association of Lawyers for Children, that such separation, without contact, was likely to have an impact on the outcome of the case and thus on the future of the child and parents.

We are aware that some local authorities have been proactive in supporting physical contact using PPE and other measures, throughout lockdown. While we recognise that local authorities needed to consider risk it is our view that local authority wide decisions to stop physical contact are disproportionate when weighing up the potential risk of infection against the real risk of making it impossible for the child to be reunited with their family (infringement of Article 8 and potentially of Article 6) .

2. When farewell visits between children being placed for adoption and their birth families have not gone ahead. We know from research and practice how important these visits are for the birth family and how photos, videos and cards from these visits are treasured by birth family members and provide the adopted child with an important part of his or her history in the future. We know from direct experience the pain the banning of such visits has had on birth families. Again, we argue this is a disproportionate response.
3. Some care cases were finishing just at the start of lockdown or finished early on. We are aware of cases where a decision had been made to return the child home to parents, or to place the child with relatives but the plans have not been put into effect because of the refusal to allow contact between the child and parents or relatives. Delay in finalising these moves to permanent placements is detrimental to children's welfare and denying the family the opportunity to begin to rebuild their lives.

### **Pre-birth assessment**

In some cases, local authorities start child protection processes before a baby is born, because of concerns about the parents, which may be that they have had previous children removed or that they have chronic and complex mental health or substance misuse problems. In such cases pre-birth assessments are carried out to test out whether a parent has the capacity to parent and/or has changed their lifestyle. In many such cases the local authority starts care proceedings as soon as the child is born and then uses the 26 weeks of the care proceedings to continue to assess the parents. We know that face to face contact between parents and social workers in the pre-birth period is often not happening because of local authority concerns about Covid, so that the assessment process is being carried out entirely online. Post birth, if the baby has not been able to stay with the parent in a mother and baby residential or foster home (placements which are not available in some areas), the assessment will continue but a combination of no physical contact with their baby and the lack of contact between social workers and the parents, makes the assessment process will be extremely limited. We argue that this is an infringement of both Article 6 and Article 8.

### **An alternative approach**

In our view the government should have considered the impact on children in care and their families. It should have provided guidance to local authorities explicitly advising against a presumption that face to face contact was not going to happen and it should have challenged such practice when it became aware of it. It should have provided local authorities and their partners, including health, with challenge and suggestions for good practice in maintaining contact.

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