



# The child's right to family life when living in public care: how to facilitate contact that preserves, strengthens, and develops family ties

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## ABSTRACT

This study addresses children's right to family life when placed in public care and questions how the Child Welfare Service and the Child Welfare Tribunal understand and facilitate this right within a Norwegian context. Based on a thematic analysis of 18 interviews, factors that have the potential to contribute to and challenge the strengthening and development of ties are presented. The implications of these factors for practice are discussed in light of the value of family life, the double role of foster parents, and the use of discretion when balancing children's right to family life and their need for protection.

## 1. Introduction

This study addresses the child's right to family life when placed in public care and questions how child welfare services (CWS) and the Child Welfare Tribunal (Tribunal) understand and facilitate this right within a Norwegian context. A child's right to family life is a human right that is protected both by international conventions and through Norwegian law. Norway was among the early adopters of the Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR). Both conventions are ratified and take precedence over any conflicting Norwegian legislation. The ratification also obligates Norway to adapt and adjust decisions from the European Court of Human Rights (ECtHR). This provides both CRC and ECHR a unique position as an everyday basis for working with and for children across countries, where the Norwegian context holds profound international relevance as the domestic child welfare practice is aligned with international human rights jurisprudence. The obligations the right to family life imposes on state authorities when a child is placed in public care are related to the conventions and the Norwegian Constitution's recognition of the family as society's basic unit and primary care base for children (Sørensen, 2016, p. 334). When placed in public care, a child's right to family life has two dimensions, as conventional rights stipulate that the child receives both care and protection. When a child's need for security is related to their family, their right to family life will also be affected. In this context, 'child' refers to anyone under 18, cf. CRC article 1.

It is a fundamental principle that a child has the right to grow up with their parents. This is upheld through numerous provisions of the CRC (e. g., article 3(2), 8(1), 7, 8, 9, 10, 14(2), 16, 18, 19, 27 & 40(2)) which demand protection of the child-parent relationship unless this goes against the best interests of the child (cf. article 3). Following CRC article 3(2), CWS is obligated to ensure the child 'such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her' when a child is in public care. The right to family life of a child placed in public care is stated in CRC articles 9 and 16. Both provisions resemble ECHR article 8. CRC article 16 coincides with ECHR article 8(1) and maintains the right to protection from arbitrary or illegal interference in the child's family life. The term 'family' is here to be interpreted broadly to include biological, adoptive, or foster parents, but also extended family or community members where applicable (Committee on the Rights of Children (CtRC), 2013).

Preventing family separation and preserving family unity are essential components of the child protection system and are based on the rights provided by CRC Article 9. As such, CRC article 9(1) corresponds with ECHR article 8(2) and states that a child may only be separated from his or her parents if 'such separation is necessary for the best interests of the child'. Such separation may be necessary in cases involving abuse or neglect of the child by the parents. However, CRC article 9(3) states the obligation of CWS to facilitate for the child and his or her parents 'to maintain personal relations and direct contact regularly,

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except if it is contrary to the child's best interests'. It is not a prerequisite for the child and parents to live together to establish that family life exists or that the family relation has the right to protection. When separation becomes necessary, this article obligates decision-makers (e.g., CWS; Tribunal) to ensure that the child maintains a connection and a relationship with his or her parents and 'any persons with whom the child has had strong personal relationships', unless this is contrary to the child's best interests (CtRC, 2013). In general, this article means, on the one hand, that family relationships are to be maintained unless the parents are found 'particularly unfit' and, on the other hand, that parents cannot demand contact that will harm the child's health and development (Strand Lobben v. Norway, 2019). CtRC (2013) highlights the necessity of understanding a child's best interests as both flexible and adaptable, and the emphasis in assessments must be on identifying possible solutions based on individual circumstances.

Over the past few years, the ECtHR has convicted Norway of violating children's and parents' right to family life through several judgments, primarily due to what is defined as a 'strict limitation of contact rights' after a care order is issued. A recurring theme in the judgments is that Norway prematurely decides that a care order will be long-term and, in doing so, automatically determines that contact with the biological family is not in the best interests of the child. The ECtHR (2022) emphasises that family reunification cannot normally be expected to be sufficiently supported if there are intervals of weeks, or as much as months, between each contact session. A fundamental element of safeguarding the right to family life is facilitating contact with attention to contexts that contribute to 'mutual enjoyment' for both the child and their parents. The ECtHR further specified this fundamental right in the recent judgment *K.O and V.M v. Norway* (2019) as an obligation to facilitate contact to the extent possible without exposing the child to undue hardship to preserve, strengthen, and develop family ties, thus enhancing the prospect of family reunification in the future and facilitating contact aimed only at upholding a child's cognitive and intellectual understanding of who his or her parents are, is not following the child's right to maintain family life when living in public care. Based on this judgment, the Norwegian Supreme Court (2020) stated that as a general rule, it is in the best interests of a child living in public care to maintain contact with their parents, strengthening and developing ties between the child and the parent during the placement.

### 1.1. Strengthening and developing family ties

To facilitate the strengthening and development of family ties between a child and their parents when a child is placed in public care, it is necessary to clarify further the meaning of the terms 'strengthening' and 'development' and 'family ties'. According to ECtHR (2022), the personal ties between two persons underscore the existence of 'family life' that should be protected by ECHR Article 8. Such personal ties within the context of family life are what ECtHR (2022) refers to as 'family ties'. Family life does not end when a child is moved to public care. Following Article 8, ECtHR asserts that domestic authorities must facilitate contact between parents and children to the extent possible without subjecting the child to 'undue hardship'. This aims to strengthen and develop family ties, thereby enhancing the prospects of potentially reunifying the family in the future (e.g., *K.O and V.M v. Norway*, 2019). Although ECtHR (2022) indicates that the terms 'strengthening' and 'development' of family ties relate to the quality of contact to the possible extent of reunification, there is limited knowledge on how to perceive such 'strengthening' and positive 'development' of family ties while the child is living in public care (Stang et al., 2023; Aamodt & Sommerfeldt, 2022). Six previous studies (Aamodt & Sommerfeldt, 2022; Chartier & Blavier, 2023; Fossum et al., 2018; McWey & Cui, 2021; Poitras et al., 2021; Ruiz-Romero et al., 2022), whereas two reviews (Poitras et al., 2021; Ruiz-Romero et al., 2022), explore visitation frequency and its impact on child development. Among these, Aamodt and Sommerfeldt (2022) also consider decision-making factors in contact regulation. The

studies collectively suggest that while parental contact and visit frequency are linked to the child's attachment to biological parents (Chartier & Blavier, 2023; Poitras et al., 2021), they do not significantly affect the primary parental attachment or foster parent stress levels (Fossum et al., 2018). However, findings on the relationship between parental contact and overall child development are inconsistent (McWey & Cui, 2021; Poitras et al., 2021; Ruiz-Romero et al., 2022), often showing no clear correlation with the child's mental health or parental stress in stable foster situations (Fossum et al., 2018; Poitras et al., 2021). Notably, McWey and Cui (2021) report that increased contact with biological parents correlates with shorter public care stays and reduced mental health symptoms. Chartier and Blavier (2023) also found that the quality of the birth-parent-child relationship significantly impacts the child's psychological state. Though previous studies introduce some knowledge about which conditions may contribute to strengthening and developing ties between children and parents, the main focus of the studies is frequency rather than content and quality of contact. Therefore, this study aims to develop knowledge on this subject by addressing how CWS and the Tribunal facilitate contact to preserve, strengthen, and develop family ties for children in public care.

### 1.2. Professional discretion

Safeguarding and managing children's and parents' right to family life when the child is in public care is closely linked to CWS's and the Tribunal's use of discretion in the decision-making process when deciding what is in the child's best interest. According to Molander et al. (2012), discretion has both a structural and an epistemic aspect. On the one hand, discretion is described as an 'opportunity concept'. It designates a space where CWS and the Tribunal have the autonomy to judge, decide, and act according to their judgment. On the other hand, it is an 'exercise-concept', which refers to the kind of reasoning that results in conclusions about what to do under conditions of indeterminacy. According to Molander et al. (2012), the distinction between discretionary space and discretionary reasoning is crucial in any discussion about the validity of professional discretion in a decision-making process. The rules of discretion are often unclear, which raises the need for specialised theoretical knowledge that is expected to be managed within a defined professional area. However, professional discretion in professional gatekeepers' discretionary assessments (e.g., CWS) and legal assessments (e.g., the Tribunal) is rarely discussed. Therefore, this study explores the use of professional discretion by both CWS and the Tribunal when assessing a child's right to family life. Both ECHR and CRC demand discretionary assessments to ensure what Molander (2013) describes as necessary flexibility and adaption to individual needs. Different professionals are expected to evaluate contact rights differently due to the nature of discretion (Molander, 2016). Within this context, Zacka (2017) highlights the moral aspects of exercising discretion and how decision-makers can become morally disposed to standardise arguments within their reasoning. By 'moral disposition', Zacka (2017) refers to the tendency to adopt a particular position in assessing discretion-based questions, which affects the outcome and interpretation of the case.

## 2. Method

This study is based on 18 interviews with professionals attending child welfare contact regulation assessments. Twelve informants worked as caseworkers in CWS at the time of the interview, representing seven different middle-sized municipalities. Before a care order is issued, CWS submits its assessment of necessary regulation of parent-child contact to the Child Welfare Tribunal. Six of the informants worked as Tribunal chairpersons at the Tribunal. The Tribunal is a court-like administrative body operating under the principles of the Norwegian court system (Magnussen & Skivenes, 2015) with the authority to issue care orders and regulate parent-child contact when issuing a care order. After the

tribunal issues the care order, caseworkers are responsible for ongoing assessments in collaboration with their work affiliation. There were ten Tribunal regions at the time of interviews, and the Tribunal chairs represented different Tribunal affiliations, so the selection comprised six out of ten regions. The informants were recruited by formal inquiry to their head office. An inclusion criterion for the informants from CWS was that their daily work had to include contact with families with a child in public care.

The informants included in this study had varying professional backgrounds. Of the twelve child welfare workers, nine had a bachelor's degree in child welfare, while the other three had bachelor's degrees in social work, social pedagogy, or social nursing. Their professional experience in CWS varied from 1 year to 24 years, with a median of professional practice of 11 years. Six child welfare workers have a relatively wide variety of further education, and one has a master's degree in social work. In addition, eight child welfare workers stated that they had other professional experience from working with vulnerable groups in society before their employment in CWS. While several child welfare workers reported experience from legal proceedings, ranging from 1 to 50 cases, with a median of 13, one of the participants reported no experience.

All Tribunal chairs had a law degree. None of the participants in this study had additional education. They had varying professional experience as Tribunal chairs, from 1 year to 14 years, with a median of 6.5 years. All Tribunal chairs stated that they had professional experience before taking up the position of Tribunal chairperson. However, only one had professional experience in child and family law. Other experiences were related to the area of criminal law or with supervisory authorities.

### 2.1. Data collection and analysis

All interviews were performed based on a semi-structured interview guide to ensure consistency across interviews while allowing flexibility for in-depth exploration. The interview guide included carefully crafted reflection questions to elicit in-depth insights on strengthening and developing family ties after a care order is issued.

Inspired by Braun and Clarke (2006), an inductive thematic-analytic approach to the transcribed interviews. After repeatedly reading through the transcribed material, we generated initial codes. Subsequently, we sorted the coded material based on potential thematic affinities across the individual interviews. This was followed by re-evaluating the material's thematic affinities based on the coded extracts from the individual and transcribed interviews. This process led to the following two overarching themes that form the basis for the presentation of the research findings: (1) factors that contribute to strengthening and developing ties and (2) factors that challenge the strengthening and development of ties.

### 2.2. Ethical consideration

This study has been registered and was approved in advance by SIKT (formerly NSD; ref. nos. 712499 and 268705), who found it to be in line with the research ethics guidelines for the social sciences, humanities, law, and theology given by the National Research Ethics Committee for the Social Sciences and the Humanities (NESH). The project's informants make decisions that affect a particularly vulnerable group in society. However, the interviews focused on administrative processes and frameworks for decision-making processes, and the focus of the interviews was the informants' role and use of professional discretion when making assessments rather than individual cases and family relationships. Consequently, there are no aspects of the interview's content or execution that led to the disclosure of sensitive information.

## 3. Findings

The thematic analysis identified two overarching themes that represent how CWS and the Tribunal understand and practice contact regulation in the context of strengthening and developing family ties for children living in public care:

- 1) factors that contribute to the strengthening and development of ties
- 2) factors that challenge the strengthening and development of ties

### 3.1. Factors that contribute to the strengthening and development of ties

According to both international conventions and Norwegian law, a child in public care generally has the right to maintain family ties and, if possible, further strengthen and develop these ties while living in public care. This places several demands on professionals regarding assessing visitation rights first decided by the Tribunal and how CWS facilitates the visitation framework after the care order is issued. The thematic-analytic approach identified three subthemes related to factors that contribute to the strengthening and development of ties: (1) repairing parent-child relations, (2) external framework conditions and visitation content, and (3) guidance and regular meetings.

### 3.2. Repairing parent-child relations

The first perspective is that children and parents need to be able to repair the relationship between them as an essential element in strengthening family ties:

[...] It is about being able to repair; the parents participate in conversations with the child to understand what happened before the care transfer. Visits with new and positive experiences are a good way for emotional repair [to happen]. Moreover, it will then strengthen the child's understanding ... of the situation, and [their] self-esteem, which supports the child positively in their development [...].

The repair work is described here as 'getting to know each other again'. It is about allowing the child to get to know their parents again in a safe environment. A framework is created by making the child feel secure, contributing to the development of ties. It is about meeting each other and, through these meetings, 'knowing who you are and how you feel':

[...] It is often better if parents tell them themselves than if the child gets information from others. And vice versa. It could be, for example, that parents are allowed to join and visit the foster home where the children live or meet the foster family. I have excellent experience with it. Moreover, it is about simply – yes, valuing the biology of it all.

[...] I often talk about that with the foster parents, that you talk about biological parents, the network there, naturally; it conveys that this is part of the child's development, and it is their extended family [...].

In addition to knowing how others feel, biological ties are explicitly highlighted as something positive for the child. Strengthening and developing ties is, on the one hand, about creating situations where biological parents can visit the child in the foster home and parents themselves could inform the child about their life situation. On the other hand, it is about creating space so that the child can tell his or her story to his biological parents in a safe environment. It is about 'facilitating for them to regain family time'. Coinciding with findings presented within the studies of both Chartier and Blavier (2023) and Poitras et al. (2021), several of the informants believed that contact between children and parents should 'build on the biological ties that are already there, and

the connection and attachment they already have'. However, active communication from parents can also be about making 'the child as robust as possible to bear being together', 'giving the child permission to grieve, and permission to be sad'. In this way, cooperation between parents and foster parents is highlighted as essential in strengthening and developing family ties between children and parents and children and foster parents.

It is, however, not always in the child's best interest for their biological parents to have visitation rights. When parents do not have visitation rights, or when visits are strictly regulated, all the informants agree that talking positively about the biological parents with the child promotes the strengthening and development of the relationship. As they describe it, both CWS and the foster home are responsible for presenting the parents neutrally'. Such communication actualises another factor, namely the importance of CWS clarifying expectations for the foster parents, including their responsibility to arrange 'pictures' and 'photo albums' and to allow the child to talk about their biological parents. At the same time, foster parents are responsible for involving the parents in the child's life. This can be accomplished by actively talking to the child about them and sharing their everyday life with the parents. For the very youngest children, this entails:

'[...] starting very early, talking about having lain in this and that belly [...]

That you do it naturally.'

One of the informants gives a detailed description of how digital tools can be used as support in situations where there is no contact, for example, by letting the child 'meet' their parents using Facetime or arranging phone calls.

One of the informants described the assessment process as finding a balance between 'pushing the child a little, and maybe also pushing the foster parents a little' to successfully create a space that makes it possible to value biological ties to a greater extent. In addition, repair work was described as a process that involves various persons and not just something that happens in the contact between the child and their parents:

[...]we other adults, i.e., the professionals and the foster parents, have a positive collaboration with the biological parents [...]. The fact that the foster parents positively talk about the family. You help the child to process their feelings about their biological parents.

[...] First, [the goal] is to create the best possible social conditions for the children. Unhappy associations, whether frequent or rare, do not create anything - bad associations will not develop or strengthen ties. So, I believe arranging for quality time together and a good experience for the children is essential. And for the parents too.

As the quote illustrates, foster parents are highlighted as essential participants in the work to strengthen and develop ties between children in public care and their biological parents. When foster parents can accommodate the child's reactions and help them reflect on and reason about their feelings after visitations, they may be reassured and equipped for positive contact with their parents. According to several informants, the primary repair work does not necessarily occur in the meeting between the child and their parents. This work is more likely to start before the visitation and continue for some time after it has ended. Focusing on biological ties and positive interactions during visitation hours also contributes to biological parents gaining a greater understanding and acceptance of their child's life in foster care. Conversely, this comprises a positive developmental process for both children and parents.

Planning the content and framework of the visitation in consultation with members of biological parents' support systems is another perspective that was introduced in the empirical material. This way of planning is seen as including the parents' support system when assessing their needs. According to one of the informants, in some situations, individuals in the parents' support network can contribute to the assessment by offering to attend the visitation with the parent as their support

person.

### 3.3. External framework conditions and visitation content

The external framework conditions and the content of the visitation are two other main factors that the thematic analysis identified as affecting a positive development process. Visits must be cheerful for the child and the parents; they are not something that 'just needs to be done'. One of the informants elaborated on this: '[...] it is the child welfare service's responsibility to arrange and support both child and parents so that they have a positive visitation experience.' Another informant suggested visiting the parents' home after placement to explore 'positive factors and experiences shared by the child and parent, that can be built upon' as a starting point for identifying how to establish a context that strengthens and develops the family ties.

Framework conditions emerged in the interviews as a multifaceted concept, which could include practical facilitation such as 'facilitating driving' to ensure that both child and parents arrive on time and are prepared for the visitation as planned. According to the CWS informants, long-distance travel may affect the quality of the visitation. Regarding the content of the visitation, one informant elaborated that '[...] anything is possible in a way; it is only the imagination that stops us as to what we can do and arrange [...]', while another noted that '[...] the content of the visitation hours needs to be planned wisely and thoroughly.'

However, several of the informants believe there are ongoing practices related to practical care that have the potential to strengthen and develop ties between children and parents during the visit:

[...] ties are strengthened when the parent comforts the child if he or she gets sad ... or when the parent supports the child in numerous daily activities such as eating, going to the toilet, all those things.

As the quote illustrates, strengthening ties may be about encouraging the parents to support the child's emotional and practical needs during the visitation. The selected quote exemplifies what Molander (2013) describes as CWS's epistemic exercise of discretion. A crucial aspect of exercising discretion is to justify one's action choices. As seen in the quote, the interpretation of strengthening and developing ties is justified by specific action choices such as comforting, supporting, and aiding in daily activities. By recognising the parental role, Case workers are more likely to support the parent in having an active role during the visitation. As a Tribunal informant stated, they recognise that one aspect of the parental role is to '[...] contribute to the development of the emotional ties and thereby help the child and parent to be confident enough to become better acquainted [and get] closer and closer.'

This presupposes that the parent is assigned to carry out manageable care tasks and receives support in the areas where it is necessary without having their capability or interest questioned. One of the Tribunal informants pointed out that the Tribunal 'has the power to increase or reduce the extent and duration [of visitation] but have no influence on the quality'. In the premises for the visitation assessment, they can pinpoint suggestions for how the visitation may be improved by adjusting the content. It is, however, CWS' responsibility to ensure that the child and parents have:

[...] a place to meet that is pleasant and that makes it possible to attend activities together. In this way, the number of meetings will be significant, but the number of meetings in itself is not enough to develop and strengthen ties. Here, the content of the meeting will be of greater importance.

The same informant elaborates on the significance of frequency when focusing on how visitations may contribute to the strengthening and developing family ties. Coincided with findings from the study of Poitras et al. (2021) and Ruize-Romero et al. (2022), informants within this study argue that while a high frequency of visits may be argued to provide a framework for positive development, this is of greater

importance for younger children. The visitation frequency should align with the child's developmental phase, namely 'how capable they are of having an image of a person without that person being there'.

### 3.4. Guidance and regular meetings

A final theme that emerges across the interviews is how guidance and regular meetings between CWS and parents may contribute to 'strengthening' family ties between children in public care and their parents. As both the Tribunal and CWS informants emphasise, a prerequisite for any intervention is that it directs the focus towards what the parents are 'good at'. Another essential element emphasised is the importance of CWS showing the parent 'recognition and confirmation' in their contact both in and outside the visitation context. As the informants put it, 'it is about being aware of the power you have when working within the CWS' and providing 'guidance for both the parents and the foster parents.' One of the Tribunal informants elaborated:

[...] It is about how and where to talk about different themes but still have the time to talk about what is on the parents' minds. There are some things parents may share with the child, and sometimes they need some guidance on how to do this in a manner that supports the child emotionally.'

Then, there are conversations where both the parents and CWS must 'dare to address what is difficult' to support the parent in accommodating the child when contact is re-established. Another informant pointed out that this may be easier for 'those parents with the same understanding of the problem as the CWS'. However, it becomes more complicated when parents disagree with CWS about what has happened. The Tribunal informants called for parental guidance to help the parent to '[...] acknowledge the child's experiences, even if you thought something else happened. Such an approach will not depend on the parent's agreement but will require a solid conversation between the parent and CWS.'

### 3.5. Factors that challenge the strengthening and development of ties

The thematic-analytic approach identified four subthemes related to factors that challenge the strengthening and development of ties: (1) the presence of worrying and troublesome factors, (2) foster parents' lack of inclusion, (3) non-appearance or cancellation of agreed visitations, and (4) high conflict cases.

### 3.6. The presence of worrying and troublesome factors

Both Tribunal and CWS informants had experienced situations that made it professionally challenging to facilitate contact that strengthens and develops family ties:

Sometimes, the lack of ties makes it necessary to limit contact temporarily. The lack of attachment between the child and their parents, the lack of safety in each other's company, and perhaps the presence of rather worrying and troublesome factors such as violence and various other things.

Correspondingly, some of the informants expressed that 'especially children who have been exposed to violence and abuse, but also children with mentally ill parents,' may have had experiences with their parents before removal from their care that 'potentially reactivate the child'. Focusing on the child's right to protection, several informants reiterated the need to regulate contact to protect the child from undue hardship. They did, however, state that this does not mean that there should not be a focus on strengthening and developing the family ties between children and parents. It was emphasised that in such cases, the child's right to have the opportunity to strengthen and develop family ties is 'in the parent's interests rather than the child's best interests', and visitation is thus postponed. Later, if the child's situation is assessed to be somewhat

different, case workers are open to refocusing on (reestablishing) family ties.

Some Tribunal informants elaborated on this subject by highlighting the necessity of understating contact regulation about assessments of 'whether or not it is in the child's best interests to strengthen and develop ties'. In cases where contact is strictly regulated, 'this is to be understood by CWS not to strengthen or develop the child's family ties'. In such cases, the assessment will further elaborate on the elements that validate the necessity of such regulation. However, such strict regulation has the potential to reinforce the child's feelings of fear or insecurity regarding their relationship with their parents, not only due to previous experiences but also possibly as a result of strict regulation of contact rights, leading to irregular or rare contact for a while after the child's move to public care. According to the Tribunal informants, such emotional stress adds complexity to the job of facilitating contact without exposing the child to undue hardship and figuring out how to strengthen or develop family ties that appear unhealthy or damaged:

[...] Then suddenly, there is a problem that needs treatment outside the visitation rights framework, where the child and parents potentially need family therapy or hands-on emotional sorting activities that focus on identifying, recognising, and overcoming barriers that might affect the parent-child contact negatively.

As this quote illustrates, the strict regulation of contact rights after a care order is issued has two dimensions: it places limitations on family life for both child and parents, and it creates difficulties when it comes to resuming family life in a way that does not expose the child to undue hardship. When weighing the necessity of contact regulation, the Tribunal's decision relies heavily on external child development expertise, for instance, CWS' assessment of what the child needs regarding protection at the time of the decision. The assessment may also be based on the testimony of a child development expert who has given an opinion on the matter [...] based on observation of the child's behaviour'. When CWS argues for the necessity of severely limiting contact, it will, as one of the Tribunal informants put it, 'often say something [like] right now these ties should not be strengthened or developed'. It is a matter of interpreting what the child's reactions may mean and what protection the child needs. At the same time, another of the Tribunal informants argued that facilitating contact to strengthen and develop ties in these cases starts with '...recreating the attachment that should have existed between the child and [their] parents'. In this context, facilitating contact that strengthens and develops ties may positively support the child's development. Both CWS and Tribunal informants noted that foster parents' vested interest and the child's attachment to the foster parents may represent a dilemma:

[...] they [the foster parents] are significant sources of information when assessments regarding contact regulation are made, and ... a potential vested interest of having the child within their care may affect their understanding of what is in the child's best interests.

Several Tribunal informants pointed out that they include foster parents' potential vested interests in their assessment when deciding how much weight foster parents' statements are given in the decision-making process. In some families, children are taken into care very early, and thus, their primary attachment is to their foster parents. Thus, according to previous research, the child's attachment when living in public care is linked to the quality and frequency of parental contact and not the movement in itself (Chartier & Blavier, 2023; Poitras et al., 2021). In this way, it may be argued that the child's attachment is closely connected to CWS's use of discretion when regulating contact and visitation rights (Molander, 2013). Nevertheless, working toward strengthening and developing family ties between these children and the biological parents is demanding for CWS as they believe '[...] [the foster parents] are the child's family at this point, and not the biological parents.' As the quote indicates, what is defined as the value of family life for the child and what is considered in the child's best interest appear

closely related to CWS' perspective on what represents family after a care order is issued. Within this context, CWS' weighting of psychological parents over biological parents may represent a factor that poses a challenge to the child's right to strengthen and develop family ties.

### 3.7. Foster parents' lack of inclusion

Another theme that was highlighted as a possible challenge to the strengthening and development of ties between children and parents is foster parents' potential lack of acceptance and inclusion of the biological family. As one of the informants clarified, this is not about foster parents talking down to parents or setting boundaries for what topics can be discussed but about how the child senses tension and negative emotions. These might be emotions based on information about the neglect the child has experienced. Nevertheless, the child's right to family life is at risk of being negatively affected by foster parents' dismissive attitude towards the value of contact. In such situations, the child is at risk of emotional neglect or of experiencing insecurity as they '[...] are expected to keep their feelings of loss and mourning to themselves, and the [existence of] feelings of both anger and love towards their parents is not recognised (...).'

Several of the informants expressed concern about how foster parents represent a potential obstacle to strengthening and developing family ties between the child and their biological parents. This can be due to misunderstandings or under-communication about what foster parents mandate, which can lead people to become foster parents on the wrong terms – expecting the child to have little or no contact with not only their biological parents but also other family members. According to the informants, this misunderstanding affects collaboration with both the biological family and CWS, as the foster parents are obligated to facilitate contact. However, '[...] when CWS is unsure, and both the foster parents and the parents feel the situation is unsafe, this affects the child ... and what we see is an unsafe child with possible resistance towards contact.' As the quote illustrates, several of the informants believe that foster parents with negative attitudes about child and parent contact represent an increased risk of emotional distress for the child, which poses a potential risk factor for the child's development rather than a way of strengthening ties during contact.

### 3.8. Non-appearance or cancellation of agreed visitations

A third theme addresses how parents' non-appearance or cancellation of agreed visitations causes potential emotional stress for the child, affecting the possibility of strengthening and developing ties through contact. Regardless of the reason for cancellation, the situation creates 'disappointment for the child and a potential experience of rejection'. Similarly, it is highlighted that '[...] lack of awareness from parents during visitation might contribute to emotional stress and disappointment for the child, which in turn develop into resistance to contact'. CWS is concerned that frequent contact in cases where CWS has determined parents to have 'cognitive disabilities affecting their awareness or mental illness' will have a negative effect on the child's development. This is despite previous research showing no clear correlation with the child's mental health or parental stress in stable foster situations (Fossum et al., 2018; Poitras et al., 2021). Negative experiences from contact when the child is in public care are interpreted by several of the informants in close relation to the possibility of developing resistance to 'wanting to have any contact with the parents. Such resistance can develop as a result of 'neglect [children] have experienced while living with the parents' but may also be a result of a child 'being out of poverty while staying in the foster home [and thus] rejecting their parents to ensure continued placement'.

### 3.9. High conflict cases

The last factor highlighted in the interviews as challenging for

strengthening and developing ties when a child is in public care is 'high conflict cases'. By 'high conflict', several informants referred to cases where there was a disagreement between the parents and CWS regarding the necessity of public care. The legal process in which cases are constantly tied up in the legal system was described as constituting '[...] a burden for both the child and foster parents [...] and ... a hindrance to strengthening and developing ties'. For the child, this unclear situation can lead to the child becoming emotionally dysregulated and, therefore, incapable of participating in strengthening and developing family ties concerning both their biological parents and their foster parents. In these cases, CWS expressed an 'increased concern regarding parents involving the child in the legal proceedings and their fight against CWS', which results in strict contact regulation to ensure the child's safety. The necessity of strict contact regulation also actualises the necessity of supervised visitations and the use of visitation houses. At the same time, both the supervised visitation and visitation houses are highlighted as an obstacle to the strengthening and development of ties 'due to the density of people, but also because the supervisor represents an unknown third party for the child'. According to the informants in this study, a known way to handle this situation is by using the foster parents as supervisors '[...] giving them a role as both protectors and bridge-builders, where they have to set boundaries and assess transgressive behaviour based on their discretion.'

## 4. Discussion

This study draws attention to overarching themes that are actualised when assessing the regulation of contact rights and how to strengthen and develop family ties after a care order is issued. According to ECtHR (e.g., *K.O and V.M v. Norway*, 2019), contact rights generally, and visitation rights specifically, are highly relevant for the strengthening and developing ties when a child is in public care. This study identifies factors that contribute to and challenge strengthening and development processes. Focusing on how to facilitate the strengthening and development of ties, this study identifies some issues that merit further discussion.

First, there is the question of understanding the value of family ties for a child removed from their parent's care by the state. Being placed in foster care expands a child's family, which introduces the child's right to strengthen and develop family ties both within the foster family and with the biological family. A child's right to family life does not cease when they are moved to public care, where the right to family life as a protected interest has great and often decisive importance for the human rights durability of the CWS intervention, of which a care order is an example (Sørensen, 2016). However, provisions on family life are formulated in somewhat different ways, which may affect how it is administered. ECHR Article 8 includes a negative obligation not to intervene in family life and a positive obligation to respect family life. However, the negative obligation, which deals with the duty to protect the child, is most often highlighted in connection with a care order. The positive obligation to (continue to) respect family life after a care order is issued concerns, for example, how arrangements are made to maintain 'mutual enjoyment' between the child and their parents. One form of strengthening and developing ties occurs through contact regulation and physical contact. However, as this study has shown, several other factors may positively impact the development of ties between a child and their parents while living in public care. First, children and parents need support to repair their relationship after the removal. Based on the findings of this study, such support involves providing both recognition and confirmation of their contact, but also about sharing information during the placement that facilitates an understanding of both shared and new life experiences. Second, the strengthening and developing ties between the child and parents are closely related to the quality of contact after the child is moved to public care. Recognising the value of positive experiences imposes on both CWS and foster parents an obligation to purposefully include the child's family life before public care

as an essential part of the child's and the foster family's life. In contrast, the child lives in public care. Third, focusing on biological ties and positive interactions between the child and his or her family that accrued before the child entered public care may contribute to a greater understanding and acceptance of the necessity of living in public care for the child, the parents, and other close relatives. At the same time, this has the potential to be a positive developmental process for both the child and their parents.

Second, based on this study, a significant part of strengthening and developing ties when a child is placed in public care involves facilitating discussions between the child and their parents about shared experiences and why the child is in public care. However, concerns about parents involving their children in legal proceedings and their fight against the CWS prohibit both child and parent from engaging in a mutual conversation and 'talking about the case'. In this way, the child's understanding of previous experiences is based on information mainly from CWS or their foster parents. However, findings in this study show that the child's need extends beyond CWS' knowledge and assessments of the case and challenges what Zacha (2017) describe as the risk of being morally disposed to standardised arguments and understandings of what regulation is in the best interest of children in general. Understanding how to strengthen and develop ties demands understanding the value of a shared history between parent and child individually, including positive and negative experiences. Not allowing children and parents to talk freely has the potential to create an impression that parents who expose children to neglect have exclusively caused the child harm. In this context, findings from this study challenge the understanding of the value of mutual respect for different experiences rather than the necessity of agreement. Working to strengthen and develop ties does not presuppose agreement about previous experiences. However, it presupposes a willingness to collaborate on the part of CWS, the foster parents, and the child's parents. While recognising that both CWS and the Tribunal operate within a complex field where there are rarely well-defined problems that can be met with standardised solutions (Sletten & Ellingsen, 2020), defining what is in the best interests of the child often involves uncertainty and demonstrating professional discretion means having to reconcile, integrate or choose between conflicting values (Molander, 2016).

Third, findings within this study argue that the child's new family life results from professional discretion (Molander, 2016) and that the study actualises some areas with potentially conflicting goals. Even though the child has the right to parental contact that strengthens and develops family ties when living in public care, the child also has the right to protection. As indicated by the findings within this study, the perception that the child needs protection appears to form both CWW and foster parents' understanding of the child's forms of expression. This perception potentially leads to an increased risk for the development of what Zacha (2017) identifies as the formation of standardised arguments in professional discretionary reasoning. With CWW finding themselves without the necessary framework conditions to work on strengthening the family ties of children in foster care, the role of foster parents' perception and understanding appears of significant value for how CWW assesses the child's best interest. However, it might be argued that foster parents have conflicting goals when understanding what is in the child's best interest, balancing the obligations of being a public home with their own need for private- and family life. The conflicting goals underscore the complexity of their role in CWS, balancing a dual responsibility that can create dilemmas in deciding what is truly in the child's best interest. This dichotomy calls for a supportive framework and clear guidelines to support the foster parents in their caregiving practice, ensuring the well-being of the foster child, foster parents, and both family lives.

While this study has provided new insights into the factors that contribute to and challenge the strengthening and development processes, it does have some limitations. Although the number of informants and their characteristics might limit the generalizability of our

findings, the study still identifies phenomena relevant for further exploration in the context of strengthening family ties for children in public care. Another aspect to consider is the perspective from which the study is written. All informants are professionals within the child welfare authority. Consequently, the experiences and viewpoints of children and parents, who may have different perspectives on what strengthens and develops family ties, might not be fully represented.

Based on the findings in this study, there is a need for further research on how to facilitate the strengthening and development of family ties for children in public care in general, with a specific emphasis on the role of foster parents. There has been a recent proposal in Norway to transfer both the authority and the responsibility to facilitate a child's right to family life after a care order from CWS to foster parents (Ministry of Children and Families, 2023). Because foster parents are highlighted in this study as a factor that has the potential to both strengthen and challenge or hinder a child's right to maintain personal contact with their biological parents and develop family ties, this transfer of responsibility constitutes a potential risk to the child's right to family life in favour of foster parents' self-interest and protection of their own family life.

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The study was performed in accordance with the National Research Ethics Committee for the Social Sciences and Humanities (NESH).

## CRedit authorship contribution statement

**Tina Gerds-Andresen:** Conceptualization, Data curation, Writing – original draft, Writing – review & editing, Formal analysis, Methodology, Supervision, Project administration. **Marie Valen-Sendstad Andersen:** Data curation, Writing – original draft, Formal analysis. **Heidi Aarum Hansen:** Conceptualization, Data curation, Writing – original draft, Writing – review & editing, Formal analysis, Methodology, Supervision, Project administration.

## Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

## Data availability

Data will be made available on request.

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