PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

First Sitting

Tuesday 5 March 2013

(Morning)

CONTENTS

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not later than

Saturday 9 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Mr Christopher Chope, Mr Dai Havard

† Barwell, Gavin *(Croydon Central)* (Con)
† Brooke, Annette *(Mid Dorset and North Poole)* (LD)
Buckland, Mr Robert *(South Swindon)* (Con)
Elphicke, Charlie *(Dover)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
† Glass, Pat *(North West Durham)* (Lab)
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
Jones, Graham *(Hyndburn)* (Lab)
† Leadsom, Andrea *(South Northamptonshire)* (Con)
† Lee, Jessica *(Erewash)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Nandy, Lisa *(Wigan)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Powell, Lucy *(Manchester Central)* (Lab/Co-op)
† Reed, Steve *(Croydon North)* (Lab)
† Sawford, Andy *(Corby)* (Lab/Co-op)
Simpson, David *(Upper Bann)* (DUP)
† Skidmore, Chris *(Kingswood)* (Con)
† Swinson, Jo *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Timpson, Mr Edward *(Parliamentary Under-Secretary of State for Education)*
† Whittaker, Craig *(Calder Valley)* (Con)

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† **attended the Committee**

Witnesses

Mr Edward Timpson, Parliamentary Under-Secretary of State for Education (children and families), Department for Education

Elizabeth Truss, Parliamentary Under-Secretary of State for Education (education and child care), Department for Education

Jo Swinson, Parliamentary Under-Secretary of State for Women and Equalities and Parliamentary Under-Secretary of State for Business, Innovation and Skills (employment relations and consumer affairs), Department for Business, Innovation and Skills

Professor Julie Selwyn, Child and Family Social Work, University of Bristol

Dr Carol Homden, Chief Executive, The Thomas Coram Foundation for Children (Coram)

Jeanne Kaniuk, Head of Adoption, The Thomas Coram Foundation for Children (Coram)

Kevin Williams, Chief Executive, TACT

David Norgrove, Family Justice Review Chair and Chair of Family Justice Board

Sir James Munby, Judiciary President of the Family Division

Professor Carolyn Hamilton, Director of International Programmes and Research, Children's Legal Centre

Public Bill Committee

Tuesday 5 March 2013

(Morning)

[Mr Christopher Chope *in the Chair*]

Children and Families Bill

8.55 am

The Chair: Before we begin our deliberations, let me say a few things. First, can we ensure that we are not interrupted by electronic devices? I shall hold it against someone personally if they allow our proceedings to be interrupted in that way. Next, my fellow Chairman and I will not normally accept starred amendments.

This morning, we will start by considering the programme motion on the amendment paper, on which debate is limited to half an hour. We will then proceed to a motion to report written evidence, followed by a motion to permit the Committee to deliberate in private before oral evidence sessions, both of which I hope we can take formally. Assuming the second of those motions is agreed, the Committee will move into private session. Once the Committee has deliberated—briefly, I hope—the witnesses and members of the public will be invited back into the room, and our oral evidence session will begin. If that is all agreed, we will hear oral evidence this morning.

I draw Members' attention to the fact that the Bill has had a pilot public reading, which was administered by the House of Commons under the authority of the Chairman of Ways and Means. Members of the public were invited to comment on the Bill via a web forum on the Parliament website, and more than 1,000 comments were received and published. On your behalf, I thank all those who responded to the invitation to join the forum. A summary of the comments has been sent to Members and will be made available to the public if the Committee agrees the necessary motion in a few moments. The Chairman of Ways and Means and, no doubt, the public will be interested to see the extent to which the public reading consultation informs the Committee's questions and deliberations.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 5 March) meet—

(a) at 2.00 pm on Tuesday 5 March;

(b) at 11.30 am and 2.00 pm on Thursday 7 March;

(c) at 9.25 am and 2.00 pm on Tuesday 12 March;

(d) at 11.30 am and 2.00 pm on Thursday 14 March;

(e) at 9.25 am and 2.00 pm on Tuesday 19 March;

(f) at 11.30 am and 2.00 pm on Thursday 21 March;

(g) at 9.25 am and 2.00 pm on Tuesday 16 April;

(h) at 11.30 am and 2.00 pm on Thursday 18 April; and

(i) at 9.25 am and 2.00 pm on Tuesday 23 April;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Date	*Time*	*Witness*
Tuesday 5 March	Until no later than 10.00 am	Department for Education; Department for Business, Innovation and Skills
Tuesday 5 March	Until no later than 10.45 am	The Thomas Coram Foundation for Children (Coram); Professor Julie Selwyn, Professor of Child and Family Social Work,University of Bristol; TACT
Tuesday 5 March	Until no later than 11.25 am	David Norgrove, Chair of Family Justice Review and Chair of Family Justice Board; Lord Justice Munby, President of the Family Division; Coram Children's Legal Centre
Tuesday 5 March	Until no later than 2.45 pm	Council for Disabled Children; Every Disabled Child Matters; Special Education Consortium
Tuesday 5 March	Until no later than 3.30 pm	Achievement for All; Independent Parental Special Education Advice; Institute of Education
Tuesday 5 March	Until no later than 4.15 pm	National Association for Special Educational Needs; The Communication Trust; Association of Educational Psychologists
Tuesday 5 March	Until no later than 5.15 pm	Association of Colleges; National Association of Head Teachers; David Bartram, Assistant Head, Lampton School, Hounslow
Tuesday 5 March	Until no later than 5.45 pm	Office of the Children's Commissioner
Thursday 7 March	Until no later than 12.15 pm	Ofsted; Daycare Trust and the Family and Parenting Institute; National Childminding Association
Thursday 7 March	Until no later than 1.00 pm	Dr Roger Morgan, Children's Rights Director of England; Children England
Thursday 7 March	Until no later than 2.45 pm	Working Families; Fawcett Society
Thursday 7 March	Until no later than 3.30 pm	Fatherhood Institute; Federation of Small Businesses
Thursday 7 March	Until no later than 4.15 pm	Association of Directors of Children's Services; Barnardo's

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 6; Schedule 1; Clauses 7 to 12; Schedule 2; Clauses 13 to 71; Schedule 3; Clauses 72 and 73; Schedule 4; Clauses 74 to 85; Schedule 5; Clause 86; Schedule 6; Clauses 87 to 96; Schedule 7; Clauses 97 to 104; new Clauses; new Schedules; Clauses 105 to 110; and remaining proceedings on the Bill; and

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 23 April.—*(Mr Timpson.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Mr Timpson.)*

The Chair: Copies of memorandums the Committee receives will be made available in the Committee room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Mr Timpson.)*

8.58 am

The Committee deliberated in private.

Examination of Witnesses

Mr Edward Timpson, Elizabeth Truss, and Jo Swinson gave evidence.

9.6 am

The Chair: I think everybody is familiar with our first three witnesses. Welcome to you all. Sharon, would you like to ask the first question?

Q1 Mrs Sharon Hodgson (Washington and Sunderland West) (Lab): First, I wanted to say how much I welcome the letter Minister Timpson sent round last night containing the very welcome news about the duty to be placed on health in regard to education, health and care plans. That was fantastic news. We were told that the NHS constitution was a barrier to placing duties on health to deliver what is in an EHC plan. Are you in a position yet to elaborate on that, and why it has perhaps suddenly been resolved?

Mr Timpson: I am delighted that the breakthrough we have made has been warmly welcomed. I think it is a significant step forward, and I am sure that many parents will be delighted to hear about the change we have made. In relation to the NHS constitution and where this fits in, it is important to say first of all that this has not suddenly happened overnight: it has been through a long period of discussion, both within my Department and the Department of Health and more widely, to understand the implications of any changes to the current arrangement.

It is right to say that, under the constitution, the administration of any medical intervention must be based on clinical need; that applies right across the health service. The duty requires clinical commissioning groups to provide the medical elements—the health elements—within the education, health and care plan, and for those to be in the plan, clearly there must have been an assessment of the clinical need for those health and medical interventions. So it fits in with the NHS constitution, but it places an additional duty to ensure that the provisions within the plan for health are provided, having been assessed as being a clinical need.

Q2 Mrs Hodgson: Will this help families with severely disabled children, who are often effectively trapped in the local authority in which they were born? Will it help make education, health and care plans more portable? Obviously the education needs were always portable, but what about health and perhaps social care needs? Will there still be issues around social care and the NHS constitution?

Mr Timpson: There are already statutory rights for assessment of need through social care and routes of redress if those services are not then provided. In relation to health, clearly where we have moved to is over and above current health provision through the statement process. Where that affects portability, we will come to the detail of that—we have not even published the clause dealing this element of the Bill. The intention is that this will be a huge step forward for the many parents and young people, whose requirement for an education, health and care plan—currently a statement—is a paramount part of ensuring that they reach their educational attainment.

Mrs Hodgson: Chair, I have one last question for Mr Timpson, but could I then come back to Elizabeth Truss?

The Chair: Yes, of course.

Q3 Mrs Hodgson: Will those in the school-based category, whatever it ends up being—those who were formerly School Action and School Action Plus—be counted as having an SEN, and therefore be tracked and reported on in the data that are published every year by virtue of the Special Educational Needs (Information) Act 2008?

Mr Timpson: The Lamb inquiry and the Ofsted report of 2010 clearly showed that the current two-category school-based SEN system was not working as well as it should; in particular, about 50% of children identified as requiring School Action would not, if they had been provided with the right support earlier, have fallen into that category. There are good and strong reasons and evidence for the changes that we are making. It is absolutely fundamental that it is understood that this does not change the definition of SEN. This in no way tries to remove children who have a genuine special educational need from the support that they will require in the school environment, or from additional support outside it, if the assessment is that that is required. That will still be at the heart of how we identify and support children with a special educational need, but the focus will be far more on the outcomes that we are looking to bring about, rather than the label that we give a child in the school system.

Q4 Mrs Hodgson: And the reporting, the Special Educational Needs (Information) Act 2008 requirement, and the annual publication? Will those children's outcomes be reported on?

Mr Timpson: My understanding is that this is what pertains at the moment, and I do not think that the Bill directly affects that system. Of course, the new Ofsted inspection regime, which started in September 2012, brings greater emphasis on tracking progress of children with SEN through schools, so that has a stronger component. There are also the new progression measures that are currently out for discussion. They will look more closely not just at those achieving five GCSEs at A to C, but also those at the lower end of attainment and how they are progressing and fulfilling their education potential throughout their schooling, so that those who have a special educational need are not being missed out as a consequence of the overall attainment of the school.

Q5 Andrea Leadsom (South Northamptonshire) (Con): Minister Truss, what assessment have the Government made of the value of home-based care, particularly for the under-twos, through the childminding system? What assessment have the Government made of the likely impact on the availability and quality of childminders of the reforms to allow the creation of childminder agencies?

Elizabeth Truss: The Government strongly support home-based care. We think it is particularly valuable for the youngest children. We also recognise its role in helping parents to go out to work, and the flexibility that home-based carers provide. Over the last few decades, one of the issues has been that the number of childminders has reduced significantly, by almost half. On the flexibility available to parents, some of the research work that the Department for Education has conducted indicates that parents working irregular hours, for example, find it harder to access childcare.

The idea behind childminder agencies is to make it easier, in terms of the bureaucratic hurdles, to become a childminder and receive good training, good peer support and good mentoring from other childminders or trainers within the organisation. When we looked at overseas examples—for example, France and the Netherlands—both have childminder agencies and both have higher numbers of childminders per head than we have here in Britain.

Q6 Andrea Leadsom: So the expectation is that the number of childminders will increase quite significantly?

Elizabeth Truss: Yes, the intention of the policy is to improve the availability, the quality assurance and the peer support for childminders.

Q7 Andrea Leadsom: Thank you. Minister Timpson, with regard to the tightening up of the time scales for adoption, what consideration has the Government given to providing support for families when their children are under consideration for adoption, perhaps under a stricter time scale than previously? What type of support will be given to those parents to enable them to become good enough parents and to take away the need for their children to be put up for adoption? Is there an intention to change the level of support available to families?

Mr Timpson: You are referring to the birth family?

Q8 Andrea Leadsom: Yes, absolutely.

Mr Timpson: It is important that any extra support needed by a family, who may be struggling with either basic parenting skills or other issues within their own lifestyle, is both identified early and dealt with through the proper targeted support that we know can be effective to ensure that the problem does not continue beyond where it needs to go. One of the ways to ensure that is to make agencies work more closely together and to have great emphasis on early help, and that is very much at the heart of the redrafting of the "Working Together" guidance, which will be coming out shortly.

I know that you are very much a proponent of early intervention. By ensuring that agencies are able to work more closely earlier, problems can be prevented from festering longer than they need to. We know from very protracted cases of neglect that if, rather than having individual interventions and then no taking no further action, agencies had worked collectively around the family, as we are now seeing in the troubled families programme, you can be effective in stopping the situation deteriorating to the point that there has to be some form of statutory intervention by the state.

Q9 Bill Esterson (Sefton Central) (Lab): Mr Timpson, you have given good assurance about what will happen to children moving from statements to the new plans, and in your comments about health services. Coming back to the point about children who are not statemented—there is a large number of such children in schools, whether or not they are on School Action or School Action Plus—those are the children about whom concern has been raised. You have touched on it a little, but can I bring you back to the question of resources and what happens to children who need services from outside school? Given the present funding climate and some of the longer-term problems, particularly with child and adolescent mental health services, how do you foresee those children receiving the support that they need, when they are not formally on a plan?

Mr Timpson: Clearly we need to provide the best possible service for all children who need it because of their special educational needs. You quite rightly point out that there is a large number of children who will, not either through assessment or otherwise, be eligible for an education, health and care plan. That is why we have looked carefully at the barriers that prevent access to all those other services that can make a difference to those children reaching their educational potential. The clear message from parents was that, in many cases, they were unable to find what services were on offer and what they were eligible to receive and, if they did not receive it or were not happy with the level of the service, how they would then be able to complain or seek redress. That is exactly why the local offer is set out to provide, in one place, with close development and close monitoring and consultation with parents and young people with SEN, exactly what they need in a transparent way, so they can access those services. More widely, through the duty to co-operate in the Bill and through setting out in clause 19 the key priorities for all agencies working with children with SEN, there is much more scope for a closer sharing of services and better collaboration.

We all know that we live in a more challenging economic climate, but the pathfinders in the local authorities piloting the changes show that, by having families right at the centre of decision making, the development of the local offer and personal budgets, and by seeking more effective services in terms of both cost and delivery, such as short breaks and travel, there can be a better and more efficient way of delivering those services.

Q10 Bill Esterson: You mentioned the local offer and the signposting it provides. As there will not be national standards, which is a concern raised by a lot of people, if the services are not there because of the financial constraints we have touched on, will that not be a real problem? We could end up with a patchy service across the country, with some families unable to access services even when the assessment suggests that they need them.

Mr Timpson: This goes to the common tension between national consistency and local determination. We have said the local offer needs to be developed locally, so it reflects the need in the area. Clearly because of demographic make-up and specific needs of children in an area, some parts of the country will need a different range of services than may be required in other parts. Through the code of practice and the regulations to follow, we are saying that there will be a common framework around the local offer, setting out what should be in it; but within that we will provide some flexibility to make the local determination, through consultation

and involvement of young people and parents, much more closely entwined with what is required in that local area.

Some conditions have low incidence and some have high incidence, and where there is low incidence, there will be practical reasons why that service will not be provided in every single local area, but through the common framework, there is a way for parents to be able to judge their local offer with one in either a neighbouring local authority or much more widely, and to challenge their local authority over why their provision does not necessarily match what they find elsewhere.

The Chair: At that, we will have Mr Skidmore.

Bill Esterson: Just one follow-up question, if you would not mind, Mr Chope.

The Chair: If you insist.

Q11 Bill Esterson: How far do you expect families to travel for services?

Mr Timpson: As I said, it will depend on the type of condition that requires some treatment. If a condition is extremely rare, although you want to avoid significant travel if at all possible, it would be unrealistic to expect there to be expertise and specialism locally in a condition which is extremely rare. With more common conditions, clearly there will be much more reason and pressure on local authorities through the local offer to provide that service to those in the local area who require it. From the economies of scale point of view, it would make more sense for them to do that.

Q12 Chris Skidmore (Kingswood) (Con): Following on from Mr Esterson's point about special educational needs, when do you expect to publish the first set of draft regulations associated with this part of the Bill? Do you have a timetable for releasing the drafts to the Committee as it progresses?

Mr Timpson: We are working towards publishing the indicative draft code of practice and regulations at the start of the clauses on special educational needs. At the moment, this is scheduled for 12 March, I think—a lot of dates are flying through my head. I cannot guarantee that this is the exact date and it depends on what progress we make in Committee, but we intend to publish them before we reach the clauses relevant to special educational needs, which start at clause 19.

Q13 Chris Skidmore: Some of the clauses are obviously dependent on ongoing pilots. I am particularly interested in the pilots for personal budgets for adoptive parents. How are those progressing?

Mr Timpson: Personal budgets for adoptive parents are still being discussed with those who are closely involved in adoption and who were linked with the adoption advisory group in the Department, and that includes wider consideration of how personal budgets can be effective in practice and what their ambit would be. It is intended to pilot the measure over a period of about two years, to ensure that we understand how they can be effective and improve support for adoptive parents and their children. We are still in a phase of determination of what works, but we are confident that many adoptive parents will welcome the measure and that it will be a valuable way to give them more control and choice in the support they receive, thus preventing unnecessary breakdown of adoptive placements in future.

Q14 Chris Skidmore: In terms of the proposal to allow prospective parents to have access to the adoption register, have you given much thought to how to monitor the effectiveness of that proposal? In particular, have you thought about what steps will prevent that resulting in intense competition for some children rather than others?

Mr Timpson: At the moment there is a restriction on which children prospective adoptive parents can have access to information. It should be clearly pointed out that they will not have direct access to the child; the register is intended simply to provide information about that child for them to consider. They would have a wider range of opportunity than they currently have. There will be some children in one part of the country where the local authority has been unable to find a match, but it has not necessarily looked outside its area to find another family that may be able to provide a stable loving home for that child. The aim is to provide greater opportunity for the child as well as the prospective adoptive parents.

The contract for the delivery of the adoption register is clear about monitoring carefully how the process manifests itself, to ensure we do not end up with some children getting a high level of interest and others not. The aim is to give every child on the register the best possible chance to be matched at the earliest opportunity.

Q15 Lucy Powell (Manchester Central) (Lab/Co-op): I have a couple of questions for Minister Swinson. The first is about the right to request flexible working. I very much welcome the extension of that to people other than parents. As we discussed recently, can you give some assurances that the new code of practice on dealing with that in a reasonable manner will be at least as robust as the current statutory framework for dealing with flexible leave requests?

Jo Swinson: I am very happy to do so. On Second Reading, I referred to a flowchart—I have some copies that might be helpful to the Committee—that demonstrates how the current procedure for handling a request in a statutory way can be very burdensome for business. The proposed replacement is a simple—two page—set of guidance, currently being consulted on by ACAS, setting out a common-sense way to handle requests. We estimate that that will significantly reduce the burden on business.

It is important to remember that the majority of requests for flexible working are dealt with informally, so this process is only needed for a small proportion of cases. We estimate that about 80% are dealt with informally, and the process is only needed where it cannot be done on an informal basis. Also, most requests for flexible working are granted, but there are some cases where that is not possible for the business—about four in five requests are granted, and three in five are granted without any further discussion or challenge. The new process will be there for those cases that cannot be dealt with informally, but the employer will have certainty that if they have followed that code—once that has been agreed, following consultation—they will have discharged their responsibility under the law, and that will make it easier for them.

It is also worth pointing out that many employers find that flexible working is exceedingly good for their business—it is good for reducing staff turnover and absenteeism and for increasing productivity. For those reasons, although we are extending the right to request to everyone, many employers who offer flexible working—because they have to, in terms of the right to request—to parents have extended that to all employees in any event, because they find it so successful.

Q16 Lucy Powell: Thank you. Turning to parental leave, as someone who is currently trying to persuade her husband to take some of his additional parental leave at the moment, do you think that the Bill goes far enough in lowering the barriers for fathers to take parental leave, particularly issues such as pay, workplace culture, and perhaps the idea that it is the mother's leave, which she is then granting to share with her partner, as opposed to an entitlement for them both, right from the off?

Jo Swinson: These are really useful issues to identify, and of those the culture is the biggest one that we have to address. There is a reason why the Government have decided to go ahead with the proposal as we have, where the maternity protections that women currently have are not being reduced at all. That was one of things that came out of the "Modern Workplaces" consultation that we responded to, but it is very important that the message is clear. This is about saying that the Government are not making assumptions about which parent is going to be the primary carer in any given family, and indeed, families may decide to split that leave absolutely equally. That is a choice that each family should make for themselves. The protections remain in place for maternity leave, but the cultural change is one that we hope the Bill will be a really important catalyst for.

Obviously, I think that change will take some time, as other countries have found. Culture change happens over time, but the Government will be undertaking a very comprehensive programme of engagement with businesses and the public to highlight the changes, so that as soon as they come in—indeed, in advance of their coming in, because parents will be thinking about this once they get the wonderful news that they are pregnant—they can be planning for the new system. The extra flexibility will really reduce one of those barriers, but the culture still absolutely needs to be addressed, not only by the Government, but hopefully by MPs across the House too.

Q17 Lucy Powell: Finally, can I press you on the issue of pay and paternity pay? Are there any plans to make paternity pay a bit more generous, or to look at how we can start that off in the public sector, or whatever? I think that most fathers say that pay is the barrier to taking even their current entitlement to paternity leave.

Jo Swinson: In terms of parental pay being based on maternity pay, I absolutely accept that for many individuals that is difficult, but obviously we are making these changes in the context of very difficult economic circumstances. I think we have the right balance between changing that culture and letting families make their own decisions, while not laying a large extra burden on either the taxpayer or businesses.

Q18 Craig Whittaker (Calder Valley) (Con): If I can continue in the same frame, Minister Swinson, I am sure lots of people will welcome the reduction in the bureaucracy around flexible working. You have mentioned culture a lot, but what I do not hear about is the needs of business. To what extent will businesses be scared of the final paragraph, which talks about a tribunal? Have you considered what will take precedence: the needs of the parent for flexible working or the needs of the business?

Jo Swinson: The flowchart that you have is what we are changing; we are getting rid of it because it is far too burdensome. A business has an absolute right to refuse a request for flexible working if that does not work for the needs of the business. We are making the procedure more straightforward, simpler and more streamlined so that it is easier and so that businesses have more confidence in doing so, because there will be many occasions when flexible working does not work for the employer. This is not an absolute right to flexible working; it is a right to request in order to encourage discussions to take place. The right already exists for parents, so it is not an extension for parents; it is an extension to other employees.

Q19 Craig Whittaker: Minister Timpson, may I ask you about the proposals to give Ministers powers to order or direct local authorities to outsource adoption services from other local authorities, or indeed voluntary adoption agencies? What is the aim of that move and how do you think it will affect the current ethos in local authorities?

Mr Timpson: First, it is worth remembering that it is an enabling power, not something that is necessarily going to be used. That is because we are still working closely with local authorities and voluntary adoption agencies to deal with the real problem of having more than 4,500 children in care with a plan for adoption who have not been matched or moved on into their adoptive placement, with an additional 600 a year going on top of that. In the current system, local authorities—all 152 of them—plus about 30 voluntary adoption agencies individually recruit adopters, without any real incentive for them to recruit over and above what they need within their own area. We have a system that prevents latent capacity from being released to enable the recruitment of adopters to meet the number of children whose plan is for adoption.

That is why we have provided local authorities and voluntary adoption agencies with significant funding in the next financial year—up to £151 million—to try to change the way they work so that they collaborate more and move into consortiums, which do exist and are successful, including up in the north-west in Wigan, Warrington and St Helens. We are working towards doing that, but if we do not make progress, my sole focus is on the children whose plan is for adoption and how we can improve the prospects of their moving into their adoptive placement. The power will enable, if necessary, where local authorities are not delivering, a move to outsourcing that role on a mutual basis or to a voluntary adoption agency. Although such agencies currently provide only 20% of all adoptive parents through their assessments, we know they have the capacity and the ability to grow further and take a greater role in providing the number of adopters that we need.

Q20 Lisa Nandy (Wigan) (Lab): It is estimated that an extra 9,000 foster carers are needed. Obviously, the vast majority of children who are in the care system are

in foster care. Why is there nothing in the Bill to improve support for foster carers and to encourage more foster carers to come forward?

Mr Timpson: Not everything requires legislation for progress to be made. Through funding that the Department has made available and the support that we are providing for foster carers through additional training, we are working through non-legislative means to improve the recruitment of foster carers. To suggest that we are not doing something because it is not in the Bill is not an accurate reflection of the work that is going on.

Q21 Lisa Nandy: Perhaps it would help if I go through one obvious example of a glaring omission in relation to foster care. Clause 5 places a duty on local authorities to provide information about post-adoption support. Why have you decided not to extend that duty to providing information to prospective foster carers as well?

Mr Timpson: Foster carers have a strong connection and relationship with the local authority; when you become an adoptive parent, after a period of time you do not have that same relationship. We still create channels of information and guidance to foster carers outside their relationship with children's services—for instance, through Fosterline, which I know you will be familiar with. It is available and we are continuing to fund it so that foster carers have access to the information and guidance that we know they value. Again, there are non-legislative means of ensuring that they get the support we believe is necessary, and we believe that that balance is appropriate.

Q22 Lisa Nandy: Perhaps we can continue to discuss that over the next few months.

I want to ask you about the 26-week time limit. The House of Commons Library has told me that it cannot find any precedent for setting out prescribed time limits in primary legislation. Professor Eileen Munro said that the emphasis should be on timeliness and not on time limits to promote a change in social work culture. A host of children's organisations have raised concerns that the time limit will work against the best interests of individual children. How do you plan to ensure that social work culture and the Munro reforms are protected and that children's best interests are not undermined by the measure?

Mr Timpson: There is a lot in your question, so I will try to disaggregate it. The comparison between Munro and the 26-week time limit is not a direct and correct comparison. Eileen Munro was talking about the assessment process that follows a child being identified as in need or as needing protection being driven not purely by time scales, but more by better quality assessment and better analysis of the information around the family, so that the support and intervention made is the most effective.

The time limit is about court proceedings. We know that there is a huge delay—it was recognised by David Norgrove's report, and in the subsequent Family Justice Board work being carried out to try to reduce that delay. Some courts were dealing with care cases within 17 weeks, while other courts were taking 89 weeks on average, and we have heard of cases taking five years. That is not in the best interests of the child.

The necessary work is already being carried out through Mr Justice Ryder's work with the care monitoring system and the training of the judiciary and court staff to try to bring down those durations. Since last October or November, we have already seen a significant reduction from the average of 56 weeks to about 47 weeks, showing that there was unnecessary delay in care proceedings. When the cases involved a child, for whom every month of their life is 2% of their overall childhood, we cannot afford to do that.

Part of that work is making sure that we improve the confidence that judges have in social workers and the evidence that they provide to the court. The Bill moves us away from overreliance on expert witnesses, so that social workers are regarded more as experts when they give evidence, and so that the court has improved confidence in the evidence they provide. Part of that evidence must be having a greater emphasis on up-front work, prior to the application for a care order being made, so that once cases reach court, decisions can be made more quickly than currently.

Q23 Lisa Nandy: That is very helpful; thank you. Finally, has there been a child impact assessment for this Bill, and if not, why not?

Mr Timpson: I am not sure what you mean by a child impact assessment. The Office of the Children's Commissioner has done an impact assessment of the Bill. Everything that we have done in policy formulation has been set against the United Nations convention on the rights of the child. It is clear that the Bill fulfils many of the UNCRC ambitions, and we have been mindful of that as we progress the policy.

When we talk about impact assessments, it is important to say that we do not want what has happened in the past, which is that the policy has been developed and the impact assessment has been an afterthought; the impact assessment is then put around the policy development. What we have been trying to do is assess the impact as we develop the policy by involving a whole range of interested parties and young people through Roger Morgan, the children's rights director, the national scrutiny group and other forums to ensure that we fully integrate the views of children in the development of our policy. We have written to the Joint Committee on Human Rights about the UNCRC considerations, and they will be forwarded to the Committee today.

Q24 Lisa Nandy: So the assessment against the UNCRC that the Department has undertaken will be made available to this Committee?

Mr Timpson: There is evidence of the impact that policy development has on each of the areas of the Bill, which we will make available. The Office of the Children's Commissioner has done its own impact assessment, which I am sure the Committee members have been poring over.

Caroline Nokes (Romsey and Southampton North) (Con): I want to go back to young people with special educational needs and ask Minister Timpson whether he believes that the education, health and care plans will have sufficient flexibility for those between 16 and 25 who might fall in and out of college or find work placements and apprenticeships, and whether they will be able to act as a safety net. Such people might find themselves in

[Caroline Nokes]

work for a period of four or five years even, but then, at the age of 23 or 24, might find a need for those plans again.

Mr Timpson: One of the significant changes in the Bill is to make what is currently a statutory document—a statement, which will become an education, health and care plan—available to those who are not just of compulsory school age, up to 16, but beyond, so that there is a system from nought to 25. Those who want to continue in further education and are eligible for an education, health and care plan will see that continue. The pre-legislative scrutiny process was useful in pulling together a better understanding of how young people with a special educational need who are on a plan might move between education and some form of employment, which is an excellent outcome for them, and periods where they have to fall out, for whatever reason. To accommodate that, I was mindful of addressing those concerns. Where a young person who has been on a plan falls out of education but there is still a desire and a determination to return into education, they have the opportunity effectively to reignite that education, health and care plan. Local authorities should be mindful of the previous plan that was in place, in order to ensure that the young person gets the support he or she needs to get back into education.

Q25 Caroline Nokes: Is there any danger that 25 becomes the new cliff edge, instead of 16? What can be done to resolve that and make the transition from being a young person to an adult as easy as possible?

Mr Timpson: You are right to identify that we need to be clear about what the planning into adulthood will be, and that is not just from 18 but from 25 and beyond. That is one of the central themes that is being considered through the pathfinders—to see how we can, through early planning, think more long term about the outcomes that the young person is seeking to achieve. When the plan finishes, the support is in place to make that transition more smoothly. Obviously, the Care and Support Bill gives the opportunity, before a young person becomes an adult, to assess what their specific needs may be, so that there is a smoother transition. Similarly, because the education, health and care plan can continue beyond 18, it prevents that potential gap from opening up, which is one of the problems that parents have been concerned about for far too long. That is why we are seeking to address it.

Q26 Pat Glass (North West Durham) (Lab): I welcome the letter you sent yesterday. I think it will be a huge step forward, and it is something for which I have campaigned for 20 years, but it is going to be a seismic shock to the CCGs and to health services, so may I ask you a couple of questions on that and on the local offer? Will detailed guidance be issued on what constitutes a health need and on matters such as equipment and respite needs that may arise from a health need? The proposal is a move forward, but we need to think carefully, otherwise I can see lawyers making a lot of money out of this.

Mr Timpson: First, I am grateful for your support. I will carefully consider the details of how this is going to work in practice, so that there are no areas where it provides less clarity, not more. Once the clause is before the Committee, we will be in a position to debate some of those more intricate elements, but I am mindful of your points.

Q27 Pat Glass: Do you intend to change the role of the SEN tribunal to take account of this new statutory duty on health?

Mr Timpson: That is not the intention. The difficulty with having a tribunal that would effectively be making judgments on the performance of medical staff is that the discipline is very different from what the tribunal currently carries out. Through the NHS, there are already well established complaints procedures. One thing we are doing for children and young people with SEN who may have recourse to complain about the service they receive on the NHS through the NHS ombudsman is for the ombudsman in future to have regard to the SEN code of practice when considering such complaints.

Q28 Pat Glass: May I ask you about the local offer? I am seeing a very different picture across the country as local authorities prepare for that. Some have provided very detailed guidance right down to school level: "In this school, a child with dyslexia can expect this." Others are simply putting together a directory of existing services. Is it just down to the parent to take a judgment and to challenge? Or will organisations such as the Department for Education and Ofsted be looking to have a role?

Mr Timpson: The local offer is not only about schools; it is about all services across health and social care, too. There has been a misconception that the offer is just about schools, but it is not. As I said before, through the code of practice and regulations, we will set out the common framework for local offers. We have also made it clear in the legislation that there will be a duty on local authorities to consult parents and young people, both individually and through groups such as parent and carer forums and parent partnerships, which can play an important role in the consultative process on developing the local offer and in the review of that local offer in time. Local authorities have a duty to consult young people and parents as part of that process, because this should not be a static document; it should closely reflect the local situation. That is why we have ensured that those provisions are in the Bill.

The Chair: I am going to stop you there, Pat, because at least three more people want to get in.

Q29 Annette Brooke (Mid Dorset and North Poole) (LD): Minister Truss, as a consequence of changes in the Bill, how do you envisage the local authority role changing?

Elizabeth Truss: There are two different aspects to which the local authority role may change as a consequence of this Bill. First, on the subject of sufficiency, we are moving some of the costly and bureaucratic exercises for local authorities and assessing sufficiency. However, we are not removing their duty to determine sufficiency, so they will continue to have that as a consequence of the Bill.

In terms of childminder agencies, we are enabling local authorities who already run effective childminder networks to convert those to childminder agencies. The overall tone of our reforms, which are outside this Bill

and which we announced in "More great childcare" is that we want local authorities to focus particularly on ensuring that disadvantaged and vulnerable children are able to access child care and early intervention services.

At the same time, we are increasing the role of Ofsted in quality assessment—I know that Sir Michael Wilshaw is one of the witnesses to the Committee later on. In particular, Ofsted is recruiting more HMIs in the early years and having a more regional base, so that it can also be involved in quality improvement of child care services, both of nurseries and childminder agencies. We see local authorities very much as part of the delivery of the services, but we particularly want local authorities to focus on the most disadvantaged. For example, on the new two-year-old offer that commences this September and is ramped up the following September, we see a critical role for local authorities in reaching out to those parents to ensure that those two-year-olds are able to access places in high-quality child care.

Q30 Andy Sawford (Corby) (Lab/Co-op): Minister Truss, given the importance of schedule 4, on childminder agencies, why was there no pre-legislative scrutiny?

Elizabeth Truss: The point about schedule 4 is that it is an enabling provision: it enables Ofsted to inspect childminder agencies, rather than inspecting every individual childminder, although it will still have powers to inspect individual childminders and will be inspecting them on a sampling basis. We are going to have consultation when we launch the framework for childminder agencies, which is a piece of regulation and will be subject to full consultation We are launching that towards the end of this month, so that will be people's opportunity to say how they would like childminder agencies to work.

Q31 Steve Reed (Croydon North) (Lab): I would like to ask a little more about time limits for care placements. The council that I was leading until November was rated outstanding for all children's services, including adoption, and had one of the fastest placement times. They were very worried that a 26-week time limit would seriously compromise the placement of children with complex needs, because it would put speed over appropriateness of placement—

The Chair: Shall we let the Minister respond, otherwise you may be timed out?

Q32 Steve Reed: I just want to know what reassurance the Minister can offer.

Mr Timpson: Any case that can be completed within 26 weeks must be so, but only if it can be completed justly; that is what the legislation says. There will be some cases that cannot be completed within the 26 weeks, because of particular circumstances, one of which may be that a child has particularly complex needs. If the judge decides—the discretion of the judge is unfettered in any case—that the case cannot be completed within the 26-week time limit, an extension is possible. The Family Procedure Rule Committee will look at how we can set out some specific circumstances in which there could be an extension, initially of eight weeks over the 26. What would some of those circumstances be? In a lot of care cases, there are parallel criminal proceedings which are ongoing, and it may be that the care case cannot be completed until the criminal proceedings have been completed. There will always be cases that cannot be completed justly within 26 weeks, and the court will always have the best interests of the child as its paramount consideration. That is very clear, and remains clear.

Q33 Steve Reed: Can I ask how you will guarantee the quality of the social work, given that the majority of social workers now have case loads above the recommended level because of the size of cuts in local authority budgets?

The Chair: I am afraid we do not have time for the answer to that question, because we have reached 10 o'clock. I thank the Ministers for giving their evidence, and I am sure that the Minister will be more than willing to write to you with an answer to your question, Mr Reed.

Mr Timpson: I will do that.

Examination of Witnesses

Professor Julie Selwyn, Dr Carol Homden, Jeanne Kaniuk and Kevin Williams gave evidence.

10.1 am

The Chair: If everyone is sitting comfortably, I invite the witnesses to introduce themselves briefly, starting with Professor Selwyn.

Professor Selwyn: Good morning, I am Professor Julie Selwyn. I am director of the Hadley Centre for Adoption and Foster Care Studies at the university of Bristol. I have spent 20 years researching adoption, and 20 years in practice as a social worker as well.

Dr Homden: Good morning. I am Carol Homden, and I am the chief executive of the Thomas Coram Foundation, known as Coram. I have been participating in the expert group and the implementation group.

Jeanne Kaniuk: I am Jeanne Kaniuk. I am the head of the Coram adoption service. I have held the role for some 33 years.

Kevin Williams: I am Kevin Williams, chief executive at the Adolescent and Children's Trust, or TACT. I am a qualified social worker, and have practised at local authority social work for over 30 years.

Q34 Lisa Nandy: The Bill places a requirement on local authorities to consider a fostering-for-adoption placement. I ask the panel whether they have any concerns about that, particularly in terms of what the practical implications of those fostering-for-adoption placements could be.

Jeanne Kaniuk: I think we welcome anything that will promote continuity for children in their placements. There is a lot of consensus around that. The main thrust of this is very much in the direction we would like to see. There are concerns that the way the clause has been framed may lead to some confusion as to the importance of the wider context. The issues raised in section 22C of the Children Act 1989 puts this in the context of looking at the other potential placements for children, and the importance of looking at whether

there are any family members, relatives or connected people. I think some clarity around that would be very reassuring to the field, because obviously if children can safely be raised within their own wider family network, that would be everybody's choice. Because of the way that clause has been drafted, there is some confusion as to whether that remains the intention. I believe it does, but I think there is uncertainty about that. We entirely agree with the intention.

Q35 Lisa Nandy: Kevin, can I ask you in particular about whether you think that clause allows the views of children to be taken into account? Also, there is a wider question about whether you have any concerns about the Bill itself?

Kevin Williams: I agree with what my colleague said. Certainly, I think clauses 1 and 6 need to be seen together. We also have some concerns around the duty to place a child on the register at an early stage. Our own view is that the best time for a child to be placed in a foster-to-adopt home is after the agency decision maker has made their decision that adoption is in the best interests of the child. We believe that this gives enough time for social workers and others to assess other forms of permanence that may be appropriate.

We also believe that placing children at an earlier stage would be a significant risk to both the potential adopters and the children if an alternative placement was identified early on. I think it is about improving the speed with which we make placements—trying to reduce the number of placements that children have, but trying to get that right, so that we do not end up with more disruption for children as a result of being too fast and too speedy.

Dr Homden: I would add, however, that the long-established practice of concurrent planning shows quite clearly that it is perfectly possible to have a fully transparent placement process that fulfils the interests and rights of birth parents, while ensuring continuity of care for the child, at the earliest possible moment. The evidence of its effectiveness is full and substantial. It is already possible.

Q36 Lisa Nandy: Could you just tell us how many concurrent planning placements Coram has placed children into?

Jeanne Kaniuk: Something like 67 at the moment.

Q37 Lisa Nandy: Over what time scale is that?

Jeanne Kaniuk: We started in 1999 and there have been fluctuations over that period.

Q38 Lisa Nandy: So it is quite an intensive process.

Jeanne Kaniuk: It is an intensive process, yes.

Q39 Lisa Nandy: That is very helpful.

Professor Selwyn: I want to add to your question about children's views. One thing we need to remember is that we are often talking about very young children. They are often infants and most are placed under the age of two. Taking those very young children's views into account is quite difficult.

All the evidence, I think, shows that it is really important that we get children into their permanent placements as quickly as possible and that it is better that adults bear the risk than the children—rather than children moving between placements. We know from Harriet Ward's research that even very small children, once they enter foster care, often have multiple placements before they end up with their adoptive parents.

Q40 Lisa Nandy: I think there is quite a bit of consensus on that. I suppose the question is that if you place children into unsuitable placements, there is a risk that that placement then breaks down. We obviously have to get that right.

Professor Selwyn: But these are approved adopters. I understand that the intention for the foster-adopt model is for children to be placed with approved adopters.

Dr Homden: It is also important to note that, over the 12-year history of concurrent planning and multiple projects in the UK, there has not been a single breakdown so far.

Q41 Lisa Nandy: No, but also to note how small the numbers have been over such a long time scale.

On the clause that removes due consideration of ethnicity from primary legislation, do you think the evidence supports the Government's view that due consideration of ethnicity, religious persuasion and cultural heritage is causing delays in the adoption system? Are there any other factors that might contribute to delays for black and minority ethnic children being placed?

Professor Selwyn: There is some evidence that supports that view. There is some evidence of individual poor practice. We did a study looking at the pathways to permanence for black and minority ethnic children. The managers in those services said there was no same-race policy, but individual social workers believed there was. We found that there was a lot of anxiety about placing children with very mixed and complex ethnicities. Social workers were confused about how to make assessments—there is some evidence.

There are also other things that may be involved in the delays, including the age of children. We found that black children particularly were entering the care system at older ages and therefore that it was much more difficult to find a permanent placement. There is also a lack of minority ethnic adopters coming forward.

Some of the concerns about removing that from the legislation are fears that maybe there will be less of an emphasis in local authorities on recruiting the variety and the range of adoptive parents that we need to meet the waiting children.

Lisa Nandy: Thank you.

Q42 Gavin Barwell (Croydon Central) (Con): I want to pick up on the issue that Lisa just asked about. Professor Selwyn, I believe you have done some research into the different experiences of children who have different ethnicity from their adoptive parents. Will you talk the Committee through the key issues for local authorities, for parents and for children, in matching and supporting those placements?

Professor Selwyn: That is a complicated question. We did two pieces of research. One was a case file study, so it looked at what had happened to those children when the decision was for adoption. We found that local

authorities were much quicker at changing the decision away from adoption for minority ethnic children than they were for white children. They looked harder and longer for families for white children than they did for minority ethnic children, so the decision was changed faster.

It was particularly difficult to find adoptive parents for children from Asian and black backgrounds—any possible match. The adoptive parents had more choice, particularly if they were Asian. There were a lot of very young babies in the system, so Asian parents were able to choose much younger children. We found that no Asian child who had had an adoption decision over the age of two was placed in our local authorities in our sample. There were a great number of minority ethnic children for whom no families were found and the decision was changed away from adoption. There are some major challenges for local authorities in recruiting adoptive parents from specific communities, and we know that the message is not getting out to those communities that adoptive parents are needed.

Q43 Bill Esterson: Can I ask about the recruitment of adopters and foster carers? Should there be anything in the Bill about those issues, given the Government's desire to speed up the process? Is that an issue? Is there anything you would like to see covered in the legislation?

Jeanne Kaniuk: I do not know that it is a matter for legislation. There is a lot in train to encourage recruitment, and we have initiatives such as the "First4Adoption" gateway and so forth. I do not know that it is a matter for actual legislation, but there are messages that need to get out and initiatives.

Dr Homden: There is also—clearly—the need for particular support to concurrently assessed foster carers and adopters in bearing the risks that they may carry in concurrent planning or foster-to-adopt. It is very important that the level of support and skill is in place to enable that to happen. Much progress is being made in the advancement of concurrent planning development by local authorities at the present time. Again, that is not a matter for legislation; it is a matter for practice development and support.

Kevin Williams: Certainly, we have some concerns that the Bill is a missed opportunity to think about post-adoption support. That is not just post-adoption support during the early years of adoption. Our experience is that post-adoption support is required throughout the life of the child and the life of the placement, particularly at the onset of adolescence. We see a number of placement disruptions occurring or adoptive families experiencing difficulties as adopted children become adolescent. These are children with very complex needs from poor early life histories.

Q44 Bill Esterson: What would you like to see? Is there anything specific?

Kevin Williams: We believe that a specific clause that addresses the issue of post-adoption support throughout the duration of the placement will assist in both recruitment and retention of adopters and foster carers.

Q45 Bill Esterson: Do you mean as a right to both adopters and foster carers?

Kevin Williams: As a right.

Q46 Bill Esterson: That is helpful. The Bill majors on adoption and has relatively little about foster care, as we discussed in the previous sitting. Is there something on foster care in addition to what you just said, Kevin, that you would like to see?

Kevin Williams: Certainly, we would like to see a push within foster care for foster care as a permanent option for children. We would like local authorities to be given a power to make permanent placements in foster care for children. In Scotland, there is the permanence order, which I understand is difficult in the English legislative framework, but we would like to see a similar order that would empower foster carers to take on a full-time, permanent legal responsibility. That could be something along the lines of special guardianship, but the difficulty with special guardianship and residence orders is the loss of support—both the financial support that is awarded to foster carers, and the ongoing practical support. We think that the Bill is a missed opportunity to secure permanence for children, not just through adoption, but through other legal means.

Q47 Bill Esterson: Are there issues around contact with birth families that come out of that?

Kevin Williams: I certainly think that foster carers are much more able, because of their history, to manage contact between birth families and children in the care system.

Q48 The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): Can I take you back to fostering for adoption? It is possible and has been taking place, albeit on a limited basis, in some local authorities. For instance, I visited east Sussex, where I met a couple who had gone through the process. Why do you think fostering for adoption has not been more widely used by local authorities?

Jeanne Kaniuk: I think it has been. It is an interesting point. I do not think we need legislative change to enable fostering for adoption. It happens on a case-by-case basis in lots of different local authorities. One important thing is promoting it and putting the idea in people's minds that they can look at early permanence in this kind of context. It is not something that received particular attention.

I think Carol is also right in pointing out the importance of the more formal structure that concurrent planning provides. It has provided transparent respect for the potential contribution of birth families. That is one of the difficulties with fostering for adoption; it is perceived in some places that people are uncertain about how they are properly dealt with.

Dr Homden: The advantage of introducing the duty to consider is that it places in the forefront of the mind the recognition that the welfare of the child is only promoted fully where there is continuity of care giving. That is all too easily lost in the practical arrangements that occur. Therefore, it is to be welcomed that there is a duty to consider. "Considering adoption", however, needs careful definition. The foster-to-adopt and concurrent planning opportunity is appropriate where the likelihood that an adoption decision will be the outcome is very high because of the known history of the family.

Professor Selwyn: I would not necessarily agree that many local authorities have been conducting foster-to-adopt placements. I think the evidence is that most children placed for adoption have already had three placements

before they get their adoptive families. There is not much evidence that that has been current practice. Why is that the case? I suggest that local authorities have been concerned that they might be seen as pre-empting the court decision and are afraid of what may happen when they get into the court arena.

Kevin Williams: I agree with the comments that have been made. I also think there is an issue for us in terms of our consultation with potential adopters. A number are concerned about forming early attachments to children that are then broken. Although I recognise the importance of the child over that of the adult, we should not underestimate the fact that it will be a complex situation for a number of adults. I think that it will work for a minority and that we will see some growth, but I do not anticipate large growth in the number of adopters coming forward in that way.

We would also like to see existing foster carers, particularly those with permanent placements, considered for adoption. There is a missing part of the Bill that could identify existing foster carers for children who are currently in foster placements converting to adoptive placements, but that will require support in the way that foster carers are currently supported, both financially and in a practical sense.

Q49 Mr Timpson: But that does not require primary legislation; there are plenty of foster carers who also adopt.

Kevin Williams: There are. The difficulty, I think, is the loss of existing support. The legislation is different for adoptive placements, in terms of the amount of support that will and can be offered.

Q50 Mr Timpson: But you can be a foster carer at the same time as being an adopter.

Kevin Williams: You can.

Q51 Mr Timpson: Can I ask about the role of adopters in the matching process? Professor Selwyn, I know you have done some work and research in that area. What benefits do you think there would be if adopters were more proactive in the matching process, and more generally in the whole process of adoption?

Professor Selwyn: When you say I have done some work on it, what we have done is a review of the literature. There has been very little work done on matching. There is a lot spoken about matching, but there is actually very little evidence that supports what factors may be important in matching. One thing that we do know is that it is often about the fit between the child and the adopter. There is a click, as Ian Sinclair calls it, between the adoptive family and the child—something fits between them, and that something is not easily determined by social workers using a matching form with various categories and tick boxes.

We also know, from looking at inter-country adoptions, where there is no official form of matching at all, that disruptions are small. If you look at Michael Rutter's study of the children who were adopted out of Romania with huge physical and mental health difficulties, there has not been one disruption in that group. These were children where adopters went to the Romanian orphanages and chose the children for themselves.

The evidence is showing that adopters should have a much greater role in being aware of the available children during their training and knowing which children are waiting. It will inform their knowledge and their understanding of adoption and more of their role in choosing which child they are matched with.

Mr Timpson: May I have one more?

The Chair: One quick one.

Q52 Mr Timpson: On the issue of adoption support, could you comment on the duty to inform in the Bill and on the development of the adoption passport and what benefit you think it will have?

Professor Selwyn: On the duty to inform, we have done a number of studies where adopters have said, "We were not told about the difficulties of the child. They were kept secret. The social worker downplayed the difficulties." When I have talked to social workers and looked at the case files, however, it is apparent that the adopter has been told about the difficulties but that they have not really been explained to them.

For example, the social worker might say, "The child has attachment difficulties." The consequences of that, however, and the reality of living with a child with that have not been explained to the adoptive parents. Or a child born with evidence of foetal alcohol difficulties: again, the prognosis and the outcome for that child have not been explained.

Another element of this is that when adopters are first getting a child, they are filled with optimism—they think, "We are going to make the difference to this child." They look at the evidence with rose-tinted glasses. They are not in a position to understand the information that they are getting. I agree that all information should be passed over, but that is not a one-off piece of practice; it is something that the workers need to go back to the adopters with, over time, and to revisit, explaining what the consequences really are.

Dr Homden: I just wanted to comment that the right to information—the duty to inform—is a powerful tool for adopters. Children are dynamic; their circumstances will change and there are all too many circumstances in which adopters are left uncertain about their entitlement to assessment. So this duty to inform is very important and linked to the notion of an adoption passport.

Clearly, it is important that we find improved ways of populating the consistency and nature of the support package across the country. The nature of adoption support should not be a postcode lottery for parents, no matter where they live, taking on the duty of care for our most vulnerable children. That is the experience. The duty to inform—the entitlement to information—is a powerful driver to equalisation and to the ability and authority of the adopter in the process of looking after a child.

Q53 Pat Glass: May I briefly come back to that point? I have been involved with a lot of children with behavioural issues, many of whom are adopted. Too many of them are in situations that have broken down. In every situation in which I have spoken to parents, they have said that it was lack of information and lack of support, so that they were not prepared for when the challenges came. Do you see that as an important part linked to the lifelong support?

Witnesses: Yes.

Q54 Pat Glass: Thank you. I want to ask briefly about clause 7. The Education Committee has recently carried out a very detailed investigation into child protection. One of the biggest issues to come out of that was that neglect is neglected. For far too long, children are left in very neglectful and damaging situations while the adults sort out the adults' problems. Do you see any danger that the balance between the needs of the child and the needs of the adult will be tipped in favour of the needs of the adult?

Dr Homden: The simple answer is yes. The needs of the child, the welfare of the child, should be paramount but the decision-making process, which is often elongated, will impact on the welfare of the child negatively, even if the child is technically safe. The child's other experiences in terms of multiple placements or the level of contact may continue to be harmful.

This is a very difficult balance and it is a worthy intention of the Bill to strike an improved balance, particularly in respect of the understanding of the time scale of the child. It is extremely important that the rights of the adults are fully respected, but that does not mean that the child should bear the consequences of risk. I refer again to concurrent planning, which could be used in far more cases than it historically has been used, and precisely provides evidence of the way in which that balance can be struck. It depends on and requires the earliest proper assessment of whether parents are able to change in the time scale of the child.

The time scale of the child must be paramount to us at all times because they do not get back their opportunities for brain development or health and well-being which will be the determinants of their future lives.

Q55 Andrea Leadsom: Dr Homden, specifically, but also all the panel, can you confirm for the record that you agree that the attachment needs of a baby are absolutely paramount? We go round and round about attachment needs and the number of placements and so on, but the fundamental point is, is it not, that if you are securely attached by age two then your emotional resilience largely remains for the rest of your life.

The converse is the case. If you are moved from pillar to post, including from birth parents to foster placement and back again multiple times, it will have a profound impact on your whole mental health for the rest of your life. You are all nodding, but would any of you like to comment on that?

Jeanne Kaniuk: There is a lot of research evidence, including longitudinal studies that go right into people's adult years, that would confirm that. Those early years are absolutely crucial as is continuity of care, with an attuned adult who is responsive to the baby's needs. Continuity of the right adult is essential to the baby's development.

Q56 Andrea Leadsom: With that in mind, where social services already have concerns about a pregnant woman—perhaps she has had other children taken away or has issues with drugs, alcohol or domestic violence and so on— is sufficient support provided to enable that pregnant woman to become sufficiently attuned? It goes to the issue not just of resources—we all know social workers are overworked—but is there the level of parent-infant psychotherapy, the kind of support to enable mums to really change their approach if they could access it?

Jeanne Kaniuk: Those kinds of programmes would be extremely intensive and the kind of difficulties we are talking about are often deeply embedded with quite different time scales for turning those around. It can happen. Some mothers we have worked with have turned things around. Our research shows that unless someone has started that process well before the birth the chances of their being able to achieve the change in the baby's time scale are extremely slim. Realistically, not a lot of those kinds of programmes, the really intensive programmes, are available.

Dr Homden: The evidence that we have published—we shall be publishing further from concurrent planning—features precisely these profiles of women who have had extremely difficult lives, often coming from care themselves, and there is a very high level of drug and alcohol misuse.

I believe that I am right in saying that 65% of the children who have gone through concurrent planning were placed directly from hospital. That is where the local authorities have identified risk pre-birth and undertaken the appropriate and sufficient assessment. The question then is whether there is sufficient support for these women, not only to address the very complex issues of loss that they may be experiencing at that time, but to assist them to come to terms with the issues in their lives such that there are not multiple future children.

The evidence from the family drug and alcohol court pilot, for example, and from concurrent planning itself, shows that this is an arena to which we need to give considerably more attention. Even with the extremely high levels of support available in some of these programmes, we must recognise that it is still an extraordinarily uphill struggle to make this change in the time scale of the child, and the child must not continue to bear the risk or the consequences.

Q57 Andrea Leadsom: I completely agree with that; I just want us to expand on it. I chair the all-party group on Sure Start children's centres, and there is a strong link between this issue and the 125,000 most troubled families. Very often, there are multiple children of a very troubled mum who go on to become extremely costly to society. I would be grateful for your comments on whether the Bill should be doing more to address the issue of a mum who has multiple births and whose children are taken away one after the other because of the problems that ensue.

Professor Selwyn: I would suggest that the issue needs much more attention. You can look at, for example, Elaine Farmer's work on reunification. Of the children who were reunified with their families in her sample, more than half were back in the care system within two years because the reunifications broke down.

Most of those children and families did not get any additional support. They were not part of the very specialised programmes that Jeanne was talking about. The whole area of reunification, support for families and support for other kinds of family—kinship families and children placed under special guardianship orders—needs a separate piece of work.

Kevin Williams: Once a child is brought into the care system, the focus is on that child, and that is absolutely right for that child, but we are concerned that there is often a lack of focus on the parents in terms of thinking about future children. Although we have to focus the work on the individual children, a continued focus on, in particular, mothers whose children have been removed is something that there should be an emphasis on in social work practice to ensure that the time frame for turnaround can assist with other children who may be part of that family. We think that there is a real lost opportunity there. Often, because of resources, families are not supported post-placement, whether that be for adoption or entering the care system.

The Chair: We have 10 minutes left, and at least four people want to come in.

Q58 Lucy Powell: I will be very quick then, Chair. I just want to go back to the point about kinship carers and extended family. I wholeheartedly agree with you that there are worries that the Bill perhaps supersedes some of the earlier guidance on that. Could you be a little more explicit about what you would like to see in the Bill to ensure that avenues of extended family fostering and then adoption continue?

Professor Selwyn: I would recommend that the Committee look at the evidence submitted by BAAF and its suggestions for changes in the wording of the Bill. I support those changes.

Dr Homden: There is no reason why the primacy of section 22C, which remains in the Children Act, should not be explicit in the drafting of the clause, to give fuller assurance on this matter. There is no intention in the Bill, as I understand it, to diminish in any way, shape or form the impact of section 22C of the Children Act.

Q59 Lucy Powell: Following on from that, do you see any other barriers in the Bill, in terms of the fostering-to-adopt model, perhaps putting off some extended family members if they cannot meet the requirements for adoption early on?

Jeanne Kaniuk: If you have the link back to section 22C, which confirms the primacy of looking first at the extended family, that will be very reassuring.

Dr Homden: There is a technical matter that it is important to clarify: it is not local authority foster carers, but approved foster carers. Concurrent planning is currently operated and has substantially been operated by an independent fostering agency, a voluntary adoption agency, and we would appreciate it greatly if we could clarify the fact that it is approved foster carers, not local authority foster carers, if there is a distinction.

Q60 Chris Skidmore: Does the panel welcome the Government's proposals to put so-called virtual heads on a statutory footing in every local authority? Will that make a difference to the educational achievements of looked-after children?

Professor Selwyn: This is not really my area of expertise. David Berridge, who is a colleague of mine, has done research in this area. He is very supportive of the principle; he feels that it will make a difference in schools and that the evidence would support that.

Jeanne Kaniuk: Again, this is not something I am expert in, but I do know that one of the major concerns of adoptive families is finding sufficient support for their children once they reach school age, because so many of our children struggle at school. The point about needing more effective support for adoptive parents, and about that affecting recruitment and healthy adoptions, is important. I welcome the proposal in principle, but I do not know if it is particularly the right solution.

Kevin Williams: We would certainly support it in principle. We recognise that virtual heads should have a role in relation to not only children in the care system, but those who are in adoptive placements. We would also welcome the transference of the power to look at the pupil premium away from individual schools and to the virtual head, should virtual heads be established. We think there would be a greater possibility to emphasise the use of the pupil premium for looked-after children if it was with the virtual head, rather than individual schools.

Q61 Andy Sawford: My question is to Kevin. Do you think some would-be adopters could be deterred by having to become foster parents before they adopt?

Kevin Williams: Our experience with our adopters is that a small group of them would find that a useful approach. But we would be concerned that it would not produce the large numbers of adopters that are needed. As I said, if more emphasis was placed on post-adoption support, that would help much more with adoption recruitment.

Professor Selwyn: Just to clarify, I do not think there is any intention that adopters will have to be foster carers first.

Dr Homden: I think we can absolutely expect that the majority of adopters will continue through the process as it currently is. But what is to be welcomed is the opportunity for us to speak about the possibility of concurrent assessment earlier in the process. In that way, we broaden the opportunities and choice for children, and we encourage adopters to consider the range of needs that they can support and the level of risk that they are able to take. Overall, this will lead to a greater continuum of care available to the children we have in the system.

Q62 Steve Reed: If social work case loads are going up, and time scales are being shortened, will the quality of placements suffer?

Kevin Williams: The quality of support to placements may suffer as a result of the work load going up and time frames coming down.

Jeanne Kaniuk: There is a challenge in looking at how one deploys resources; there is a real issue, and, whatever we do, there are problems. Just avoiding the fact that there are more children coming into the system who need different solutions is not going to solve anything. We are being challenged to review how we deploy resources.

I think there is a great problem in the way that most children's care is organised. There are so many changes of social worker as the child progresses through the system; there is no continuity of social work. We have been talking about continuity of carer—of adopter—but there is no continuity in terms of the professional

person who sees the child through the whole process, and I think we lose quite a lot of momentum along the way. This is a whole other ball game, but there might be a really serious look at how we organise the resources we have to get the maximum value for the children.

Q63 Steve Reed: Is that partly a function of turnover because of high case loads?

Jeanne Kaniuk: No, it is the way it is structured. I absolutely think it is a problem.

Dr Homden: It is a structural matter, and we need to recognise that there is a huge and unacceptable variation in performance across the range of authorities. Any particular organisation or authority can have a challenge at a particular time, but we have a systemic range that is very large indeed. There is learning, and there are important practice principles, that we should apply. Indeed, if we were able to uplift performance to the average in the case of the less efficient and effective organisations, we would close the gap.

Kevin Williams: TACT is one of a number of organisations that have been involved in the care inquiry. One of the outcomes of the care inquiry from young people was their need for consistent social workers and for their relationship with a social worker to continue throughout their time in care.

Q64 Craig Whittaker: I just wanted to go back to the point about post-adoption support; in fact, I think the point is about support in general, whether that is post-adoption support, support for fostering or whatever.

I wanted to touch base on that in particular, because 50% of children who go back to their parents actually return to the care system. I am sure I also read recently that 50% of children who return to their parents continue to suffer the same level of abuse or neglect. Kevin mentioned earlier that the Bill does not address that issue. Do we need legislation for that to happen?

Dr Homden: Again, there is huge variation in the nature of post-adoption support—or, indeed, foster care support—available. There is not, as I understand it, anything to prevent any particular decision, or indeed a structural and systemic approach, by any particular local authority. They are clearly making their judgments on the basis of the critical choices and the range of pressures that they face locally. As you rightly say, those are local decisions with local determinants as opposed to matters of legal framework.

Q65 Craig Whittaker: For absolute clarity, are you saying, Carol, that we do not need legislation for that to happen?

Dr Homden: The introduction of the duty to provide information and of the systemic provisions for entitlement of access to education and to adoption leave, for example, are entirely right and proper and are much to be welcomed. There is more to be done in the arena of the interface between children in care and adoptive children and special educational or health needs. Those issues are being addressed and there are measures in place. There is the continuing matter of local choice and discretion. That is the way in which our system is structured.

Professor Selwyn: I do not agree with that. The evidence is that when there is a policy intervention and a policy push, it focuses local authorities' minds. We have seen that the numbers of children being adopted are increasing, without the Bill even being in place. So there is an impact before that. The policy intervention and the focus on adoption have done a great deal in terms of making local authorities look at their practices. I would suggest that we need a similar look at practice in relation to reunification, foster care and kinship care.

Kevin Williams: I agree with the latter point. Our concern is that, with the increase in the number of adoptions, going forward, if those families find themselves in difficulty at a later stage, they will often be reluctant to come forward for support, help and guidance. A policy shift that actually gives an emphasis to lifelong post-adoption support would be most welcome.

The Chair: Thank you very much for your help. We now move on to the next panel of witnesses.

Examination of Witnesses

David Norgrove, Sir James Munby and Professor Carolyn Hamilton gave evidence.

10.45 am

Q66 The Chair: Good morning. If our witnesses are comfortable, I ask them to introduce themselves briefly.

David Norgrove: I am David Norgrove. I chaired the family justice review, and I now chair the Family Justice Board, which was created by the Government to drive forward the process of reform.

Sir James Munby: I am James Munby, president of the family division.

Professor Hamilton: I am Professor Carolyn Hamilton and I am director of Coram Children's Legal Centre. We are heading up the consortium of children's organisations in relation to shared parenting.

Q67 Lisa Nandy: Thanks very much to you all for coming and giving evidence to us. I wanted to start by asking you about clause 11, which is on parental involvement. Most of the stakeholders who have briefed us in advance of the Bill have said that there is no need for legislation on this. Is there, and why or why not?

David Norgrove: We have looked at this very carefully and very much agree with the Government that there should be greater involvement of both parents in the lives of children, where it is safe for the child. In our interim report we were heading in the direction that the legislation proposes. Having looked further at the Australian evidence and, to some degree, the Swedish evidence, we decided that the risks were too great. In Australia, as I think the Committee knows—the legislative context is a bit different—it drove courts into decision making that damaged children, and Australia has now stepped back from that, as has Sweden. We felt in the end that the right thing to do was to keep the clarity of the paramountcy of the interests of the child. There is no evidence that courts are biased against fathers, and we decided not to use legislation to drive change in this area, as it could result in more dissatisfied fathers and potential damage to children.

Q68 Lisa Nandy: Does anyone want to add anything?

Professor Hamilton: The children's consortium has considered this at length and is very much of the opinion that legislation is not the way to encourage

co-operative parenting and more involvement of parents in children's lives. We are very concerned that a presumption as set out in clause 11 is likely to conflict with the paramountcy of the best interests of the child. While the explanatory memorandum says that the paramountcy principle will still trump the presumption, that is not clear in the Bill, and that is of great concern to us.

We are also concerned that there is no definition of "involvement" in the Bill. We do not see the need for a provision of this nature in the Bill at all, but if the Government were absolutely committed to having some provision on the subject, we would prefer to see it contained in the welfare checklist, and not to see it sit as a separate presumption. We are well aware of the evidence to say that the public see this as shared parenting and incorporating a concept of time-sharing. We would want to resist that, so that any decision is made in the best interests of the individual child.

Q69 Lisa Nandy: That is very helpful. May I ask you about another point in the Bill that is proving a little controversial—the 26-week time limit? Perhaps you can help us to consider that by talking us through the sort of case where 26 weeks would not be enough time. How likely is it that we will come across cases like that, where there will be a need for an extension that goes beyond the eight weeks? I would be interested in your thoughts on that, and on what you think the potential impact on individual children might be.

David Norgrove: Well, I guess we originated the idea of the 26-week time limit. It came from a recognition that the current length of cases is far too great, even at 47 weeks. We began to think about what would be an appropriate time. At one extreme, you have the time that we are currently taking, and at the other, I guess, the time scales that were envisaged at the time of the Children Act 1989, which was that a normal case would take 8 weeks and an exceptional case 12 weeks.

Why 26 weeks? There is no science to that number; it was more a sense of what would be a feasible time scale, given a well-prepared social work assessment and resources aligned and directed in the appropriate way by the judge. Working though that, we came out with 26 weeks—six months—which is still a very long time in the life of a young child.

How many cases will fall within each category? It was 13% at under 26 weeks when we produced our final report in November 2011. If you extrapolate the most recent figures, we are currently running at something over 30%. In the tri-borough project, the latest figures suggest close to 70% being achieved in under 26 weeks. The evidence so far, therefore, is encouraging. Which cases will fall outside that? It is easy to say "complex cases", but perhaps I should hand over to the president to talk about that aspect.

Sir James Munby: My views are very much the same. The fact is that, currently, care cases take far too long. As David has said, they take much, much longer than the architects of the Act envisaged. We have a major cultural problem and, in my view, care cases must take a much shorter time.

My approach—I have been visiting many parts of the country to spread this message—is that, save for what I describe as a small group of exceptional cases, care cases can, must, and will, if I have my way, be concluded in 26 weeks, maximum. As David said, the figures show that that is achievable; tri-borough shows that it is achievable. The delays in many parts of the country are coming down very rapidly and there are already parts of the country that are achieving 26 weeks and less. It is therefore entirely attainable—it is not a target, but a maximum—and I am quite convinced that it can be done without prejudice to the welfare of children, or to a fair and just system.

If you ask what the small group of exceptional cases is, it is difficult to define; you recognise them when you see them. There will inevitably be—although I hope that, with improved procedures, much less frequently than at present—a very small number of cases where something goes wrong, and there is a complete change in the nature of the case that drives what would apparently have been a 26-week case at the outset into something that is different.

There will occasionally—though we must make sure that it happens much less frequently—be problems caused by some family carer who only emerges at a late stage in the process. The solution to that problem is to change the procedures in such a way as to ensure that, as far as possible, such people emerge much earlier. That said, there will be a small number of cases of which one will be able to say, at the outset, "This case, of its very nature, is going to take more than 26 weeks." As David says, they will inevitably be cases of considerable complexity, and I suspect that they will be cases that involve serious allegations of sexual abuse or non-accidental injury, where a full range of investigations of the kind that are currently undertaken will continue to be necessary, but we have to wait to see Parliament's ultimate decision as to the precise statutory test for the exclusion. My approach is that it has to be for a small number of—for want of a better word—exceptional cases.

Q70 Lisa Nandy: Professor Hamilton, do you want to add anything to that?

Professor Hamilton: I just wanted to add that Coram Children's Legal Centre represents children who have children in care cases and, in some cases, one of the concerns for us is the lack of resources. Perhaps picking up on David Norgrove's point, this process would work acceptably, provided that there are resources available for these children. Too fast a process for these children could result in them losing their babies very quickly, without consideration or an opportunity to assess whether they are capable of looking after the child with support.

Q71 Lisa Nandy: Could I just ask one final, quick question? In April, there will be huge changes to entitlement to legal aid; do you think that will have any impact on the issues that the Bill seeks to address?

David Norgrove: The loss of legal aid applies only in private law, not in public law, and yes, clearly there is a risk that if there are more litigants in person, that could cause delays in court and more use of court resources, and then impact on public law cases, but a lot of work is going on, both in Her Majesty's Courts and Tribunals Service and elsewhere, to try to support litigants in person.

Professor Hamilton: Could I just add one thing to that? The Solicitors Regulation Authority does not permit not-for-profit organisations such as mine to take

cases and charge people, so we cannot even take cases for people who fall outside the scope of legal aid now and charge them a minimal cost. We have to provide services absolutely free. I do not think that we will be able to do that, so we are not going to be able to help this group of people as we had hoped to. I understand that the SRA is currently looking at that, but for us, it is a big barrier to being able to assist people, particularly in private law disputes. That is particularly important when you look at clause 11, where evidence needs to be produced by one of the parties of potential harm to the child. The person wishing to do that will not be able to benefit from cheap, easily accessible legal advice.

Q72 The Chair: Does the president of the family division wish to say anything about what Lord Neuberger has already said on this?

Sir James Munby: I have read what his lordship said, and I see no particular reason to disagree with anything he said. Coming back to the specific question that we are concerned with today, everybody who is involved in the family justice system is necessarily very concerned about what will happen in four weeks' time, when legal aid effectively withdraws from private law proceedings. We are, I am afraid, unprepared for that. When I say "we", I am not talking about the judges; I am talking about the entire family justice system. We are prepared for the changes to public law that are being phased in over the next 12 months, but we are desperately unprepared for what is going to hit us in four weeks' time.

I confess that I was not aware of this issue before. It is no part of my function to advocate on behalf of particular organisations, but it seems to me that the withdrawal of legal aid means that litigants in person will be increasingly dependent on the good work of third-sector organisations, voluntary organisations, personal support units and similar bodies. If professional rules stand in the way of such bodies providing those essential services, that is something that I should have thought needs to be looked at very carefully.

Q73 Jessica Lee (Erewash) (Con): First, I remind the Committee of my interest as a family law barrister. It is in the Register of Members' Financial Interests.

May I return to care proceedings to start with? Thank you for reminding us of the 26-week guideline that is set out, and why we are working to that. There are so many cogs in the wheel that can cause cases to be delayed; there is court availability, expert availability, Children and Family Court Advisory and Support Service officers, time to file reports, and so on. Is there one particular aspect in the complex world of care proceedings that either the president or Mr Norgrove could identify that is more troublesome and perhaps needs the most attention as we seek to reduce the time that these proceedings take?

Sir James Munby: I am firmly of the view that there is no single thing, the solving of which would provide an overall solution. We will achieve the reduction, but only if every component part in the system plays its part. If one follows the life of a care case through, the first and most vital thing is the local authority delivering its material—not merely on time, but the right kind of material on day one. If that does not happen, the entire timetable is thrown out.

Following the chronological sequence, the next thing is that CAFCASS has to be able to deliver, and it can only deliver if the local authority has delivered. Assuming that the local authority has delivered, CAFCASS must again deliver, so that by the first hearing in a care case, the court has a grasp of what the case is about, has an analysis of what the case is about, and is able—this moves on to the third feature—at that very early stage to embark on the timetabling of the case, the giving of directions for the case, and adopting a robust, vigorous style of case management.

That is down to the judges, and as part of that process, the judges have to implement the new arrangements in relation to experts. They are already in force, although it is proposed that they are backed up in the Bill. As you probably know, with effect from 31 January this year, the rule in relation to experts has been changed. Hitherto the test for an expert was whether he was reasonably required. The test is now significantly steeper: is the expert necessary? That needs to be robustly enforced by judges. Some experts will no longer be required at all. Robust case management also requires that those experts who are needed have to deliver their reports more promptly and in a shorter and more focused fashion.

Another important part of the system—at this point I look metaphorically at you and your professional colleagues—is to require those acting for parents to adopt a more robust approach with their clients at an early stage. If the local authority has not delivered, then I entirely understand that advocates cannot answer questions that otherwise the judge would want to put, such as "Do you admit what is said by the local authority, or do you dispute it?" On the other hand, if the local authority has delivered stuff in the right form at the outset, there is no reason why, as robust judicial case management, the parents' legal advisers should not be required at the first hearing to be subject to an order requiring them—for example, by the end of the first week of proceedings—to have said yea or nay to whether they agree or disagree with the local authority case.

I could go on, but the point is, in a sense, that if at any of those stages the relevant agency is not delivering, the timetable will be thrown off target. All that said, I have confidence that the judges believe in case management and will manage them robustly. The two great problems—and there are two rather than one—are the need to ensure that the local authority in the first instance, and CAFCASS in the second instance, deliver on time. If they do that, we will achieve 26 weeks. If they do not, we will not.

Q74 Jessica Lee: Following on from that, the guidelines on experts have been in place from 31 January and have been adopted and implemented with the new test. Has the panel confidence that this has set the right benchmark when courts consider the use of experts?

Sir James Munby: I must be careful in what I say. I gave a judgment two months ago before the rules had changed. I drew attention to the change and made it clear that the test of necessity was significantly tougher than the old one and set the bar significantly higher. I went on to say that I was not in a position in that case—because we had not had the point argued in front of us—to say exactly what the word "necessary" meant. That remains the position. The reality is that whatever the word means, it will set the bar significantly higher,

and that is the message that I am assiduously promoting both to the judiciary and to practitioners. In the final analysis, it is a message that I hope will be enforced by the Court of Appeal.

David Norgrove: It is worth saying that one of the purposes of all this is to put greater pressure and ability on local authorities to deliver proper assessments in the first place, backed up, where appropriate, by the use of experts whose work does not have to be repeated during the court process. That plays to an earlier question about resources. We came to believe that there was substantial waste of resources in the system through overlapping and repetitive processes and excessive numbers of hearings. It is encouraging that in the first year of the tri-borough project the number of hearings halved and the number of expert report commissions dropped substantially. That releases resources to be spent more appropriately on the children and families.

Sir James Munby: There is no doubt that historically one of the reasons why the system has become so dependent on experts is that there is a lack of confidence—whether it is justified or not is another matter—in the quality of local authority evidence. The solution to that problem is to improve the quality of local authority evidence, and to not continue our dependence on experts. One of the problems is that, partly as a result of previous initiatives, local authorities have become obsessed with filing enormously voluminous materials, which are far too long—that is not their fault—and are also narrative and historical, rather than analytical. One of the things I want to do is to send out a clear message that local authority materials can be much shorter than hitherto, and should be more focused on analysis than narrative. If local authority practitioners can be confident that they can focus on what matters, rather than the vast, historical penumbra—if they can focus on analysis, rather than history and narrative—that of itself will go a significant way to giving them confidence and improving the quality of their output. That will, in turn, lead to a decreased feeling among legal practitioners and judges that we need expert evidence.

When I say "expert", I mean expert with a capital E, because, in my book, social workers are experts. In just the same way, CAFCASS officers are experts. What has gone wrong with the system is that we have at least two experts in every care case—a social worker and a guardian—and yet we have grown up with the culture of believing that they are not really experts and we therefore need experts with a capital E. Much of the time we do not.

Q75 Jessica Lee: I have one final question. Professor Hamilton, thank you for your opening statement, particularly on the issue of shared parenting. You have already answered a question on that issue, and your view is clear. I want to put a point to you. You are perhaps less averse to a clause in, or an addition to, the welfare checklist. I took your opening statement to mean that you would be less troubled about welfare checklists being changed to include a statement about the involvement of parents, or shared parenting. You concluded that there might be considerable amounts of litigation involved, even if it is in the welfare checklist. May I suggest to you that the welfare checklist might be the least problematic way to achieve a change? Would you accept that?

Professor Hamilton: I would accept that, provided at some point there is a definition of the term "involvement". In the explanatory notes, it is clear that it can be direct, indirect or supervised contact. That is not clear on the face of the Bill. The real concern is not one of parental involvement; we all want to encourage parental involvement. I do not know whether you listened to the "Today" programme the other day, but there is a perception that parental involvement means shared time—a 50:50 cut. We very much want to get rid of that in the public perception.

Q76 Jessica Lee: If there is a change that uses the phrase "involvement", the counter-argument is that that deals not just with the rights of parents, but their responsibilities. The focus could then move away from a definition of time, which is not what anybody seeks to change.

Professor Hamilton: I think we would be happy with more involvement. The real issue is not the small number of people who want 50:50 in the courts, but the parents who do not have contact with their children at all, post separation. Our main concern, which you can see from the oral statement, is that there be no time element attached to involvement—that it still be about the paramountcy of the child and based on the particular individual child, not a standardised process.

Q77 Pat Glass: Going back to the time scales, in general, I support them. In terms of SEN statements, a 26-week limit means that most are now produced within that time as opposed to some taking up to five years, as was the case in 1995. However, the 26-weeks within the SEN statement limit are clearly broken down. For example, there are six weeks for the local authority, four weeks for parents to submit their evidence and four weeks for experts. At the very least, that identified those people who were not delivering, which in the case of SEN were the medics. Is there any argument for breaking down the 26 weeks so that it is not just an overall catch-all but says, "Within this period, this will happen"?

David Norgrove: That does happen now, although it is not on the face of legislation, through a mixture of the public law outline, which sets out the judicial expectations around this, and also increasingly a kind of service level agreement between each of the agencies. Driven by the president and others, there are a series of expectation documents in preparation, which are in effect service level agreements that will set out the roles of the different agencies and what the rest of the system can expect in terms of time scales of deliveries.

Q78 Pat Glass: If that is not happening now—you have said that too many cases are taking too long—is there an argument for including that in statutory guidance at least?

Sir James Munby: I believe that the key to this, at the end of the day, is robust judicial case management in cases where at the first hearing, because both the local authority and CAFCASS have delivered, the judge is able to understand what the case is about and timetable the case at that stage right through to the end. If one has a culture where, as it were, the local authority has six weeks, then the parents have four weeks, and then at that point you start thinking about experts, you are already over the 26 weeks.

You have got, for example, to identify the need for experts and give directions for experts right at the beginning, so that when the expert says, "I cannot even open the papers for two months," it does not matter because other things are going on. I think that the idea of sequential staging would be unhelpful. It would impose a straightjacket when different cases require different techniques. In any event, it goes against the fundamental principle, which is the single most important thing to make 26 weeks achievable: at a much earlier stage in the case than is currently so, everybody must be able to get a grip on it because everybody knows what the case is about.

The problem at present is that the local authority does not deliver and the first hearing is simply used to give initial directions, which are very much along the form of what you have just been describing. Then you come back to the case management conference, which is supposed to be what its name would describe. Even at that stage, proper directions are not being given, so at the issues resolution hearing, one is still trying to get the case into shape. If one is trying to get the case into shape at that stage, all hope of meeting 26 weeks has gone. We have got to be able to identify what the case and the issues are about, what experts we need, what experts we do not need, what assessments we need and what assessments we do not need right at the beginning, because a lot of these things take time and the sequential process means that the time for stage Y does not begin until stage X has concluded. One actually has to put a lot of these things in parallel.

Q79 Mr Timpson: We are going to do the quick fire round now. David Norgrove, as chair of the Family Justice Board, you are clearly working very closely with Mr Justice Ryder and his efforts to try to tackle the huge delay that we find in the family court system. You mentioned the tri-borough project that is currently going on in London, where we have seen the length of time that care cases take within that pilot level out at about 24 weeks—they will not tell me whether it has moved from that figure more recently. Is there any evidence from those cases that have been completed within 24 weeks in the tri-borough that the quality of decision making or the idea that the child's welfare is the paramount consideration has been affected by the time scales in which the cases were completed?

David Norgrove: I would say certainly not. Judging from meetings with the team that is running the tri-borough project, who, helpfully, include all the different agencies—CAFCASS, Her Majesty's Courts and Tribunals Service, the judiciary and the local authorities—they are all sitting down, working together and discussing the progress of cases. They also have post-case reviews, sitting down and thinking about what went right and what went wrong. They would say certainly not. What they would say is that they are not doing anything differently from before, but they are doing it better and quicker.

The time that they were taking was not usually in the interests of the child. Very often, the case was running on and nothing was happening; they were waiting for a report from an expert witness. So the child was sitting there in a foster placement, not knowing their future. What they have done is ensure higher quality, that the local authority knows what it wants and prepares a good assessment for the court, and that the process is managed appropriately from then on, particularly, as the president says, driven by the judge. They are clear that they have seen no detriment to the children or the families in speeding things up.

Q80 Mr Timpson: From the evidence that you have seen elsewhere in the family circuit of other courts and their capacity to make this change, are you confident that the experience of the tri-borough project can be replicated across the system?

David Norgrove: We have a long way to go still, but the numbers are encouraging. What is particularly useful is that this is now being driven at local level. The 46 local family justice boards have on them representatives from each of the agencies, and they are working in the same way as we are at the national level.

I am sure that there will be areas of the country that lag behind, and we will need to focus on them. At the moment, however, we are focusing on the areas that are substantial and that will be make the major difference—for example London, Manchester and Liverpool—and those areas of the country that are least well-performing. I think we will get there in terms of the average, but, as I said, there will still be some lagging.

Q81 Mr Timpson: But you are clear, from your recommendations in your review, that the 26-week time limit is an important one to set, bearing it in mind that the public law outline that was tried before did not have the same statutory basis or bring about the changes that we are now seeing.

David Norgrove: I think you can already see the effect of making those recommendations. In many ways, I felt that we could have published a report that just had blank pages in it. Getting focus on to the family justice system has itself made a difference, but the emphasis on 26 weeks is now clearly coming through.

Q82 Mr Timpson: Just on that point, could I ask the president of the family division, on your travels around the care centres, has there been any dissent from judges with whom you have had the opportunity to discuss the 26-week timetable, that they do not believe that they will complete the vast majority of cases before them justly within the 26-week limit?

Sir James Munby: No, my view is precisely the same as David Norgrove's. I am embarked, as you know, on a programme of visiting every care centre in the country. When I do that, I meet all the players in the system—judges, court staff, CAFCASS, local authorities, magistrates, legal advisers and the legal professions. I have covered only a certain part of the country so far, because I have been in office for less than two months.

I have heard many questions, and concerns and worries. The one thing that has been conspicuous by its complete absence is any suggestion from judges in those areas where the time limits are already tumbling rapidly that that is producing unfairness or injustice. I am confident that if there were any such concerns, they would have been articulated.

The fact is that the tri-borough is only the most visible of a whole range of initiatives going on all around the country. There are places that I have been to where delays are falling at an astonishing rate, and about 26 weeks is already being achieved or is in sight of

being achieved. There is no suggestion at all from anybody whom I have talked to in those places—whether judges, CAFCASS, local authorities or anybody else—that that has in any way compromised the welfare of children or the fairness of the process.

Q83 Mr Timpson: Finally, Professor Hamilton, you have spoken about the parental involvement clause—I will ask you a question about that in a moment—but there are a number of other elements in the Bill that are trying to tackle the same issue of reducing unnecessary conflict between parents and to focus people's minds and attention, particularly those of parents, on the child rather than their own personal difficulties. We see that through the mediation, information and assessment meetings, the child arrangements orders and efforts to try to improve enforcement where things go wrong. Do you support those measures and the overarching principle in the Bill of trying to reduce conflict between parents within the family system—and doing so before they even get there, which is one of the problems that needs to be addressed?

Professor Hamilton: Absolutely. We see the reduction in conflict as being extremely important in all forms and at all stages.

Q84 Mr Timpson: Thank you very much. On the parental involvement clause, questioning earlier and some of the evidence that you submitted referred back to the Australian experience, and was about not moving to a situation in which the involvement that a parent has in their child's life and vice versa is about time rather than quality. We have also been explicit in the explanatory notes that this is not about time. Do you accept that? Are the explanatory notes clear that that is exactly the position we are proposing—hence, why we made it so explicit?

Professor Hamilton: We do accept and are very pleased that there appears to have been a move from the consultation paper to the clause that is now in the Bill and that many of the issues we raised have been addressed. Yes, we accept that the explanatory notes make it clear that this is not a time issue and that the presumption does not override the best interests of the child. However, if the clause remains in the Bill, we would like to see that added to the Bill, so that the Bill is clear that there is no time element, that it does not indicate 50:50 and that the best interests principle is still paramount.

The Chair: There are no more questions, so it only remains for me to thank our panel for their expertise—with a capital e. We are indebted to them for that, and for giving up their valuable time.

Ordered, That further consideration be now adjourned. *—(Anne Milton.)*

11.22 am

Adjourned till this day at Two o'clock.