

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### CHILDREN AND FAMILIES BILL

*Fourth Sitting*

*Thursday 7 March 2013*

*(Afternoon)*

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#### CONTENTS

Written evidence reported to the House.  
Examination of witnesses.  
Adjourned till Tuesday 12 March at twenty-five minutes past Nine  
o'clock.

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**The Committee consisted of the following Members:**

*Chairs:* MR CHRISTOPHER CHOPE, † MR DAI HAVARD

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

**Witnesses**

Sarah Jackson, Chief Executive, Working Families

Ceri Goodard, Chief Executive, Fawcett Society

Kathy Jones, Joint Chief Executive, Fatherhood Institute

Michael Mealing, Chairman Employment Law Policy Unit, Federation of Small Businesses

Debbie Jones, President and Director Of Children's Services Lambeth, Association of Directors of Children's Services

Andrew Webb, Vice-President and Director of Children's Services Stockport, Association of Directors of Children's Services

Janet Grauberg, Director of Strategy, Barnardo's

## Public Bill Committee

Thursday 7 March 2013

(Afternoon)

[MR DAI HAVARD *in the Chair*]

### Children and Families Bill

#### Written evidence to be reported to the House

CF 13 Barnardo's

2 pm

*The Committee deliberated in private.*

#### Examination of Witnesses

*Sarah Jackson and Ceri Goodard gave evidence.*

2.2 pm

**The Chair:** Good afternoon. I ask everyone in the room to put their electronic devices on to silent mode, so that we have no disturbances.

I welcome the first group of witnesses. This afternoon's sitting may be somewhat disrupted, as we are expecting votes. If we have to vote, we will suspend the sitting and reconvene. I encourage my colleagues to ask nice, snappy questions, and you may want to think about how you answer so that we make the best use of the time, but I am sure that we will struggle through together.

**Q254 Lisa Nandy (Wigan) (Lab):** Thanks to both of you for coming to give evidence today. I will start with a question about the fathers' leave envisaged in the Bill. The Government initially proposed a fathers' quota to encourage more fathers to take leave, but later said that they would not extend paternity leave and pay until the economy had improved, which it shows no sign of doing at the moment. Do you have any international evidence about the impact of a fathers' quota on the take-up of leave? Does it help? Does it matter?

**Sarah Jackson:** Yes, we do. What we know internationally is that leave for fathers is best taken up if it is labelled for fathers, so it should be for the father only. It should be easy for the father to decide when he takes it. It also needs to be paid properly. You really need all three of those elements combined to make it effective. I am sure that we can find some chapter and verse and citation for you, if you would like us to send that to you later.

**Ceri Goodard:** I have just a couple of additional statistics. In Sweden, which offers all the features that Sarah mentions, you have a take-up of eight out of 10 fathers, as opposed to the projected 8% of fathers under this legislation as it stands. I would say that Fawcett very much welcomes the provision there at the moment for the Government to extend paternity leave at a later date—it is good that they have left that door open. However, there is clearly a difference between 8% and 80%. The evidence is overwhelming.

**Sarah Jackson:** It is also important to say that there is evidence that you get greater engagement from fathers if they have time to care for the child when the mother is not there. That is why it is quite important that the leave is not necessarily tied to the first few weeks of the child's life, but that the father has the ability to take it at any time during the child's first year.

**Q255 Lisa Nandy:** That is interesting, thank you. Do you think that the Bill is clear enough on the Government's plans for legal protections currently afforded to women on maternity leave?

**Sarah Jackson:** Are you thinking about the right to return?

**Lisa Nandy:** Yes.

**Sarah Jackson:** We know that will be dealt with in regulations. We will seek assurances that whatever is put in place is as good as what is currently in place, for both men and women; that is not absolutely clear at the moment.

**Ceri Goodard:** I concur. Fawcett's position is exactly the same. We would be hugely concerned about any regression of maternity rights. We want to see parity for men and women in the parental leave system, and that is not clear at the moment.

**Sarah Jackson:** Also, we have some concerns about regulation 10, which, as you know, is the regulation that protects a woman who is pregnant or on maternity leave from redundancy. That provision is in the regulations, but there has been a change in wording from "should" to "may". Obviously, we would like it to remain the case that a woman who is pregnant or on maternity leave should be offered suitable alternative vacancies, not that she may be. It is important not to lose that.

**Q256 Lisa Nandy:** That is helpful, thank you. I have one last question about the Bill provisions about time off for antenatal appointments. They seem a little complicated, and I wondered whether you could say something about the practical implications of the current drafting.

**Sarah Jackson:** It is astonishing how much is on the face of the Bill that you would expect to see in regulations. Looking at the antenatal stuff, we absolutely support it in principle. Getting fathers engaged early on is clearly a good idea; it encourages strong early bonds, and you do need legislative rights to support that. We run a helpline for working parents, and we get frequent calls from mothers who are told that they cannot take time off for antenatal appointments. Once they are able to say to their employer, "It's the law," the employer tends to back down.

The Bill is unnecessarily complex. We would prefer wording around reasonableness, rather than prescriptive stuff. First of all, we do not like the limit to two appointments, because some pregnancies are very complicated. A woman may have to go to multiple challenging appointments. It seems unreasonable for an employer to say to the father, "You can't go along, too." We also do not like the time limits—interestingly, neither do our employer members. One of our employers said that six and half hours for an appointment is nonsense, because everyone will take the maximum, whereas actually, if you live and work near your local hospital, you could pop in and out and be back in an hour or so.

Let me give you a couple of examples. We had a caller recently from the highlands. She had several hours' travel time between her appointments, because she lived somewhere remote and had a complicated pregnancy, and she had to have hospital appointments, rather than home appointments. That would have put her husband in a very challenging position if he had been limited to a six-and-a-half-hour appointment. Another caller went in for an emergency appointment, and the doctor decided to keep her in overnight for tests. At that point, the question is: when is the end of the appointment? At the end of six and a half hours, does the husband have to go back to work? Should he phone the employer, saying, "Now I'd like some time off to care for a dependant"? It would be much better if this was left to regulations, so that it is easy to amend later. It would be a lot more effective if the provision said "Ideally, two appointments, but a reasonable number of appointments and a reasonable amount of time."

**The Chair:** For your information, it would appear that the business of the House has moved on, as has the magical mystery tour of when we vote in the House of Commons. It does not look as though we will have a Division until 4 o'clock, so this sitting should run normally, hopefully. I call Lucy Powell.

**Q257 Lucy Powell (Manchester Central) (Lab/Co-op):** Thank you, Mr Havard. Following on from Lisa's questions, at the heart of the Bill is the issue of getting the balance right between ensuring that the mother is not put under any undue pressure not to take her full maternity rights and trying to engage the father in taking some time off. Do you think that the Bill strikes that balance in terms of the paternity-maternity relationship?

**Ceri Goodard:** I think this is certainly a much better position than what was originally proposed. You mention balance; I think what is at the heart of the Bill is choice. You want to design a Bill that maximises choice because there is such a diversity of families.

We were very concerned about the original proposals, which would have cut women's maternity leave at 18 weeks with it reverting to parental leave thereafter. The position now is a good balance between what is still the reality out there in terms of concerns around discrimination—or it may just be the default that employers assume that women's maternity leave finishes at 18 months—and some very good aspirations in the Bill that we very much support, about nudging forward cultural beliefs about what men and women can take respectively. The position now is much better than that which was proposed.

Ironically, it is a situation where the Government initially perhaps proposed something that was a bit more advanced than the culture that we have in business at the moment. They perhaps assumed a reality that we do not yet have, which is good because we like that aspiration, but we must be mindful that, even before the recession, we had an average of 30,000 cases a year of maternity discrimination. There is a good check and balance at the moment. It allows for the outcome that many want, which is shared parental leave should the woman choose. In reality, it should be whether the family chooses—I do not know how helpful it is to pit men's and women's rights against each other here. However,

it does not dictate in the way that my colleague mentioned earlier in terms of antenatal care, so it is certainly better than the original proposal.

**Sarah Jackson:** We welcome the Bill because it supports culture change and gives some families more choice about who works and who cares and when they do that. It encourages more flexible working across the piece. I was very struck by the comments some of our employers who looked at the initial proposals to reduce maternity leave to 18 weeks and then make everything shareable. They could see where that was trying to get to, but they said that the important thing is that it is not a zero-sum game and not about taking away from women to give to men. We actually have to consolidate what is there for women. It is really important to ensure that women have as much paid time off at the time of the birth of a child as possible, because that, from the employer's point of view, increases the return to work rate and the retention in work rate. The employers did not want to see an either/or situation.

That is why I am so pleased that what has actually come forward in the Bill is something that allows couples to sit down and say, "How are we going to use the whole of the first year?" It does not send any negative messages to the less far-thinking employers about demanding that a woman should come back quickly, but it does give plenty of scope for men to take more time off should they choose. It is really important that the Bill enables you, when the economy improves, to increase the number of weeks and the pay for men, because we have to see how we can create the culture change and the legislative framework that will really support fathers to be far more engaged in family life.

**Q258 Lucy Powell:** Absolutely. I am currently trying to persuade my husband to take some of his paternity leave, but I do not think that I am going to succeed. I absolutely feel that the feminist movement needs male pioneers as well. Do you think that giving the right to the birth mother as the primary carer will really enable that? It is almost her leave to share under the Bill. Do you think that that is the right balance to strike?

**Sarah Jackson:** In an ideal world, men and women would each have equal and independent rights. In the world we live in, that is not financially or culturally affordable right now. Where you have got to with the Bill is an opportunity for couples, particularly younger couples—it has to be said that new parents are all getting younger as I get older—to have a conversation, while the woman is still pregnant, about the fact that there is a whole year of leave that can be shared. I recognise that, legislatively, it is her leave and she can keep it if she wants, but I believe that it opens up the possibility for a conversation that was not there before. It is a much better form of shared leave than the current additional paternity leave.

**Q259 Lucy Powell:** A final question from me, Chair, on the flexible working part of the Bill. Are you happy with that, as drafted, or do you think that could be strengthened in any way? If so, how?

**Ceri Goodard:** We really welcome what is there is there to start with, particularly when it comes to issues such as equal pay. We had three asks of Government at

the beginning, one of which was flexible working and one of which was parental leave, so two out of three ain't bad. That said, we think it could go further.

We think it would be much better in terms of gender equality if you had a day-one right to request flexible working. We need to emphasise that it is to request flexible working. What that would mean in practical terms is that companies would be able to advertise jobs, where they wanted to, as flexible. That could have huge benefits for women, particularly at the moment when we are seeing a 25-year high in women's unemployment and we are also seeing significant levels of underemployment, so there is already significant competition for what part-time jobs there are. We are also seeing a big shift in the labour market where women are being asked to move into the private sector, which traditionally does not have as many part-time and flexible working opportunities. It is a real shame to miss the opportunity to bring in the option for companies to advertise flexible working, or for women to request it, at a time when it is going to become really important. You have got to look at it in the bigger context. I emphasise the point that we are talking about the right to request, and no more than that. I do not think that that is an unreasonable thing to ask of employers.

**Q260 Charlie Elphicke (Dover) (Con):** I completely agree that the battle for feminism needs male pioneers, as a husband in a joint working family bringing up children. For between 56% and 66% of joint working couples with children, both earners are at work, depending on the age of the child in, so in the overwhelming majority of couples with children, both parents are in the workplace. Do you not think that, given that that has been the case for quite a while, it is a real scandal that it has taken so long to bring a lot of these provisions such as flexible leave into the parliamentary legislative process?

**Sarah Jackson:** Given that we have been campaigning for this for 30 years, yes. It is great to be here today talking about it. The fact that it has taken us so long illustrates the fact that we are trying to promote and support a deep-rooted cultural change. It is generally true that legislation lags behind the way people live their lives, and I think that is true of this legislation, in terms of both the flexible working and the way that people would like to share the leave that they take in the first year of a child's life.

**Ceri Goodard:** I certainly agree. In broad terms, we have seen this massive increase of women in the labour market over the past 30 or 40 years, so that women are now slightly nudging over 50% of those in the labour market, yet our workplaces—including Parliament, I might add—have completely not kept up with that reality. My understanding of the Bill is that it is a balance between reflecting that reality and allowing that choice, whether it is in family life or in businesses, a number of which work with Working Families and are already reflecting this reality in their business practice. It does have a kind of nudge—I hate to use that term—element to it, and I think that aspiration is really to be welcomed. It is still not as radical as we would like, but that is a big shift to be recognised.

The possibility of transferring parental leave could be very significant in challenging things such as what we call the motherhood penalty, which is a kind of

discrimination against women who have children, or even women who might have children, which is just ridiculous. We really need to challenge the assumption that it is only women who will be looking after children in the home, but not to force that situation. I will come back to the point on choice, and I hope very much that this will facilitate greater choice.

**Q261 Charlie Elphicke:** It has also been said that both parents—mums and dads—are more engaged in bringing up children than ever before. What is your understanding of the evidence on that?

**Sarah Jackson:** That it is true. It must partly be to do with labour-saving devices, and it is partly to do with the change in attitudes among young men and women about their roles in life and in the family. We can see that men are spending more time with their children than they used to, and women spend more time with children than they used to, so there is something rather good going on.

The problem is that there is also something rather bad going on, which is that when we survey parents they are feeling enormously stressed. I think that, culturally, there is now an assumption or expectation that you should be the best that you possibly can: you should be the best hands-on mother or parent; you should be successful in your career; you should probably be down the gym as well; you should be cooking five-course meals and you should be highly cultured. People are just feeling incredibly stressed by it all.

There is something very important for us to grasp here, which comes back to the flexible working part of the legislation. Rather than talk about balance, let us talk about the integration of work and life outside work. All the research that we are doing shows that where people have good work-life integration, their well-being is a lot greater and they have better mental and physical health; and, in the business world, employees who have greater well-being are more productive. You can see that there is a straight business argument that goes from flexibility through to good integration to well-being to performance. That is the business win. The family win is also important because the survey work that we do with parents shows that where people are happy with their work-life fit, they are happier at home as well as more productive at work, their health indices are better, they have stronger relationships within the family, and they are able to put more time into their children—they can do the homework and do the conversation.

We are all so terribly driven by the terrible notion, as Penny Leach once said, of “quality time”. Quality time is not a good measure of time with your family. You should make your business your children's business, basically. They are part of your life, and let us not beat ourselves up with some *Hello!* magazine ideal of perfection.

**Ceri Goodard:** The only thing that I would add to that—[*Interruption.*].

**Sarah Jackson:** That was not very eloquent, was it?

**Ceri Goodard:** No, it was very eloquent. The only thing I would add to that is that, yes, there is evidence that both parents are spending more time with their children. There is also evidence—I am sure that you will hear this from the Fatherhood Institute later—that

fathers would like to spend more time than they are able to with their children, but both parents—mothers and fathers as well—feel that they have less and less choice, actually, between work and family than perhaps they did. That is why we would encourage the implementation of the flexible working provisions in the Bill. Until we challenge the notion that work must be done in a certain way, there will still be the detrimental influence on business, which Sarah has alluded to, but also the detrimental impact on families. In a time of austerity, that would probably lead to greater costs for the state in the long term.

**Q262 Charlie Elphicke:** The stress that you speak of sometimes causes families to break down: increasing divorce and separation is a fact of life in recent times. Given the social change that has taken place, do you not think that it is important for children to continue to know and have relationships with both their parents, absent the risk of harm issue?

**Sarah Jackson:** Yes, it is, and that is why it is good if both parents are able to access flexible working. In my ideal world, when there is a child in the family, why do we not have each partner in the couple working a two-thirds week, so that you have got plenty of family and couple time together? We did some research jointly with One Plus One, the relationships charity, which we published last year, where we looked at the impact of work and work organisation on couple relationships. There is a very clear correlation: when work is bad, stress goes home and damages family relationships and couple relationships; then, what is important for the employer is to understand that the stress in the couple relationship comes back into the workplace and you end up with a vicious downward spiral of work performance. If you can get work well designed so that you have that magic work-life integration going well, the quality of the couple relationships will spiral back up and so will the person's performance at work.

**Q263 Bill Esterson (Sefton Central) (Lab):** As a father who would like to spend more time with his children, I can certainly relate to the discussion. You have quite rightly welcomed the move to more flexible working. One concern that has been put by some who lobbied us is how, when considering a request for flexible leave, the wording “in a reasonable manner” may be interpreted by some employers. Does that concern you?

**Ceri Goodard:** I think we will both have things to say on that. We have some concerns about the suggested move from a statutory code to regulations and how employers will respond to that. If the idea behind that is to reduce red tape, you need not end up shooting yourself in the foot. If you do not have clear guidance on what that actually looks like, you could end up with all manner of confusion, more red tape and more challenges. We both belong to small organisations, and it is really good to have a clear, reasonable process between the employer and the employee for when they should ask and when they can expect an answer. So, yes, we do have some concerns about the move from a statutory code. If it is going to move into a code of guidance, it should be absolutely clear. Particularly for smaller businesses, there needs to be simple, accessible guidance. Often, there are fears about such things because people do not understand and fear red tape.

**Sarah Jackson:** We have some concerns about a code of practice because, as the right to request is currently set up, it is in the Bill and the process is very clear: parents and carers can hold employers to account under the current procedure and require a response to a request within a very precise timetable. We fear that “in a reasonable manner” will allow employers more leeway to prevaricate and generally to stall.

Our employer members have mixed views about the change. Many have managed very well with the current procedure. Many do not find the procedure burdensome in any way; it is clear and they like that. They worry that “reasonable” behaviour is something that will be easier for a staff member to contest in a tribunal.

I chair a working group in the Department for Work and Pensions on promoting non-legislative ways of promoting flexible working. That involves many private sector employer groups, and we have been acting as an advisory group to ACAS on drafting both the code and the non-statutory guidance.

The draft code is very good, and it is very clear about the need for discussions and the need for appeals at appropriate points. We must ensure that the code and the non-statutory guidance are there for employers and that we really promote them. There is no mention of the code in the Bill, so I seek assurances that the ACAS statutory code will indeed be a statutory code, because it provides necessary guidance for employers and necessary protection for employees.

Looking at the Bill at the moment, the provision on appeals is quite woolly. As ACAS drafted it, the code states:

“If you reject the request you should allow your employee to appeal the decision.”

But the Bill states:

“If an employer allows an employee to appeal a decision to reject an application”.

We need some consistency between what the Bill says and what the code is going to say. We really need strong guidance to ensure that employers know where that code is, what it says, what it means and that it is supported by the non-statutory guidance.

**Bill Esterson:** Thanks very much. Chair, it would be very helpful if we could have a copy of that code.

**The Chair:** I think Ministers are scribbling as you speak.

**Q264 Bill Esterson:** I have one final question. Going back to the point about shared parental leave, is there anything about adoptive parents that needs teasing out? I am thinking in particular about the issue of children settling in and building relaxed, stable relationships. Is that something to which either of you has given any thought?

**Sarah Jackson:** There is a point about the pre-adoptive meetings. The primary adopter is able to take leave—paid leave, I believe. The secondary adopter is in the same position as the father would be, so leave is unpaid. There is a general point about fathers and eligibility for leave that also applies to secondary adopters: although primary adopters and mothers have day-one rights to leave, fathers and secondary adopters do not. It does

seem extraordinary that you have to earn your right to two weeks' paternity leave as a father, but you do not have to earn your right to adoptive leave or maternity leave, and yet it is only two weeks' paternity leave.

**Ceri Goodard:** The only thing I would add to that is that Fawcett entirely concurs with what you say. It is not an area of particular specialism, but I personally know a number of couples who have adopted. The reality is that it is hugely important to recognise that it is not one of you adopting; it is two of you.

We are often talking about quite vulnerable children going from fostering to adoption. If it is just about saving a bit of cash on a Bill by having a primary and a secondary adopter, that would be a shame, because this is a hugely valuable social thing that they are doing, and it is in the best interests of the child, without a doubt, to have both parents involved as soon as possible. However, as I say, this is not an area of in-depth policy expertise for Fawcett, but I would concur with all my colleague's points.

**Bill Esterson:** That is helpful. Thank you.

**Q265 Andrea Leadsom** (South Northamptonshire) (Con): Ceri, I want to press you more on your comment about what you called the motherhood penalty. Specifically, I wondered whether both of you had comments regarding private sector small businesses. Do you have evidence that they welcome or are fearful of the rights to shared parental leave? Obviously, they are often cited as being very badly treated by the prospect of shared parental leave. On the other side of the coin, does it finally solve a problem that we know is a reality for some women—because they are recently married and in their 20s, they are not going to get a job, because the employer thinks they might be off to have a baby?

**Ceri Goodard:** To step back and be clear, the motherhood penalty is just a term we use, but it combines discrimination and a loss of income based on actually having a child—women's time out and loss of earnings. Interestingly, when we were looking at how the Bill may tackle that, we looked at some research—I think it was from Sweden, but I can check—that showed that there was an increase of 7% a year in a woman's income for every month that a father took. It has a massive impact on the gender pay gap, so I suppose there would be a decrease in the motherhood penalty.

You also mentioned that there is still evidence of significant discrimination against women, particularly in straitened economic times, because they may leave and have children. I hope that the Bill will start to challenge the assumption that it will automatically be the woman going off on leave. In terms of specific evidence on how business is responding to that, I refer to my colleague, who works more closely with business.

**Sarah Jackson:** Many small and medium-sized enterprises are extremely flexible in their approach already. As long as they have an understanding of the human resources and employment legislation, have access to good, solid guidance, and have clarity about how to put things into practice, you will not find a lot of resistance there. Certainly, that is the case with the small employers who work with us, but they would say that anyway, I guess.

The importance is in the clarity and simplicity. It comes back to my point about the code and the guidance on flexible working, and any guidance that is produced

to support shared parental leave. It will not be very difficult; it will be much simpler to apply than APL. I hope that there will be a real communications push behind the new shared leave, because that will allay many fears for small business owners.

There is still a neanderthal tendency among some business owners, large and small. I remember when APL was introduced, somebody said in the press that it was a terrible idea because it meant that valuable workers would be away from the workplace. The implication was that women, who were already away from the workplace, were not valuable workers, but that the menfolk who kept the workplace fires burning were.

I think there will be a gentle but sustained change in the cultural assumptions. It will be harder for employers to make assumptions: "She will take a year off, and he will be away for two weeks." The very practical thing we are doing at Working Families to track this is running an annual benchmark of best employer practice around flexibility and parental support and leave. This year we are introducing an SME-specific benchmark. Over the next few years, we will be able to track that, see what is going on, and report back to you, if you wish.

**Andrea Leadsom:** Thank you.

**Q266 The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Jo Swinson):** Thank you for the campaigning that you have done on this over the past 30 years. Ceri said that at the heart of this was choice, and maximum flexibility for families to work out what works for them. What are your predictions for patterns, in terms of how families will tend to use this shared parental leave?

**Ceri Goodard:** I think it is too early to tell. The Government have projected that there will probably be only 8% take-up, based on international comparators. Clearly, it will be incredibly important to monitor the implementation of this, to see what the impact will be and how it is taken up. One thing that we have recommended, in addition to that, is that the Government does an inquiry, in tandem with that, on levels of maternity discrimination in the workplace.

On the shifts in the labour market that I referred to earlier—this perhaps relates to some of the questions about how this will practically roll out in businesses, and what support they need—in work that we have done on equal pay, often the barrier for SMEs is that when legislation has come out, there has not been the guidance and support from Government to go with it. Quite often, it seems to the business like red tape or something additional that they have to do, but the reality is that we need a pincer movement, changing the practice of business in line with the legislation that is produced.

It is too early for the Fawcett Society to tell on the evidence, but all our evidence on the barriers to women's equality suggests that really high-potential women see a lack of flexible working, which means that they cannot go back into the workplace. There are very high percentages of maternity discrimination—30,000 cases a year. One would hopefully extrapolate from that that you would see a reduction where you remove some of those legal barriers and give people opportunities. To suggest anything more than that would be a bit premature.

**Sarah Jackson:** I think that there is a thread of an indication coming out of some of the workplaces where men can earn less than women, and workplaces that employ couples in which she is the primary career earner. We are beginning to see patterns of take-up of APL that I suspect will be taken up more readily once it is transferable parental leave. Given that we know that in almost 50% of couples they are earning the same, or she is earning more, that gives us an indication of change.

There is also a point about lower-paid workers, and this is where I want to talk about something that has been dropped from the Bill. Modern workplaces originally talked about creating a situation where women could come back to work part-time. Part of the week would be pay pro-rated, and part of the week they would be at home with their statutory maternity pay pro-rated. Employers were very keen on that, because it would allow a phased return to work, especially for women on low pay. I was talking to one particular high street employer, who said that one of the impacts of the recession has been that their low-paid women are taking much shorter maternity leave, which has an impact on their ability to stay in work in a healthy way and not take time off sick, as well as on their long-term retention. If at any stage we can get back to that model that allows a part-time, phased return, that would be particularly important for low-paid families, in terms of women's retention in the work force.

**Q267 Jo Swinson:** Some employers' groups have suggested that it would be a problem if people requested a week-on, week-off pattern, and split leave like that. What is your assessment of the likelihood of those types of patterns being commonplace?

**Sarah Jackson:** Our members are not very keen on blocks, because they cannot see how it would be possible to plan their work force needs around somebody taking two weeks off, coming back for three weeks and then going off for a week. It would also be quite difficult for families, because it may be that I have managed to negotiate a blocky sort of pattern with my employer, but then my partner's employer has to agree to the mirror image set of blocks. It is rather a strange proposal in the Bill, and not one that we think will have much impact on anybody, really.

**Q268 Jo Swinson:** Do you think that people will be requesting that type of pattern?

**Sarah Jackson:** There may be a few very high-powered women in the City who would like to come back to work for 3 weeks to work on a deal and then leave again. I suspect that what will happen then is that the nanny will take over.

**Ceri Goodard:** Evidence-wise, and somewhat related to that, we were asked earlier about our concerns about the cut-off at 18 weeks. If we look at where maternity leave initially came from, it was around health and safety—the mother's health, the child's health and the optimum. I do not want to judge women or families that choose to do it differently, but I think the reality for a lot of birth mothers is that there is a period of time that evidence has shown is good for the mother and the child. Fundamentally, that is where maternity leave rights came from in the first place; it was to protect that very important part of life. That is another reason, the

evidence would suggest, that people taking blocks in that way would actually mitigate against the mother's and the child's health. I suspect, given how strong the evidence was that women did not want to do that in the first place, that that would be the case.

Let me correct the record for my policy team who are at the back of the room. You talked about potential future evidence, and I mentioned research from Sweden. Their institute for labour market policy research suggested that women's future earnings could increase by an average of 7% for every month—not every year—that the partner takes leave. So I think that the evidence has been modelled that we could see such an increase here in the UK, or an equivalent increase, as we see more men taking leave. Again, I think that would need to be further extrapolated.

**Q269 Jo Swinson:** On take-up, Ceri, you talked about the 8% figure. The change in legislation, as Sarah was saying, is moving after what society is already changing. The cultural impact is not purely an issue of legislation. What do you think needs to be done, working in tandem with couples who are expecting a baby and employers, to change the culture, so that take-up can grow as this policy is rolled out?

**Sarah Jackson:** The Government spending some money on a really good, sustained communications programme—not six weeks of posters saying, "Hey, dads, take your paternity leave". Let's have something that is integrated across Government. I would want to see Ministerial announcements, the PM backing it, and several years-worth of drip, drip, drip. Let's put it out through all the maternity guidance that mothers get, make sure that health visitors are promoting it, and that it is going out through all the Government websites.

If you want to change something, and you are serious about it, then it is like selling anything. Go and talk to the people in the private sector; if they are launching a new product, they really think through the communication campaign, and they make sure it is sustained, because otherwise people forget incredibly quickly. We see examples of that in the workplace. I will have members saying, "We know we've got a policy of special leave if you have a child who's sick, and yet we keep finding people who don't know about it." That is because although it is sitting there, in the employee handbook, it is not being sold, resold and resold.

**Ceri Goodard:** I would agree on the points about the private sector. I think one of the most powerful things that Government or the public sector can do is lead by example. It is very important to work with the private sector, so peer-to-peer is always really going to encourage it. If companies are doing this, or there are senior men taking up this opportunity, promoting it, and just showing that it can be done, that is so powerful. That is true for the public sector as well. For all of that, though, you cannot get away from the figures, and it will have a limited impact unless there is financial investment behind it. It is just not a realistic financial option for most average working families with two parents—particularly, say, for paternity leave—unless you are prepared to pay a decent amount of paternity pay, or parental leave pay. If, as we know, the Government have made provision for further secondary legislation, you might well consider actually saying that in your communications strategy—that this is the beginning.

**The Chair:** Order. I am afraid I have to stop you there. Thank you very much for your information and help. I am sure the points about supplementary information that can be provided have been noted. I call the next set of witnesses.

### Examination of Witnesses

*Kathy Jones and Michael Mealing gave evidence.*

2.46 pm

**The Chair:** Good afternoon. I notice that you have been sitting at the back of the room, so you have seen how our proceedings work, you know what to expect, and you know where the clocks are. Thank you for coming and participating.

**Q270 Lisa Nandy:** Thank you both very much for coming and giving evidence to us. We have just had a session in which we talked quite a bit about the situation of fathers. There is broad consensus across the Committee, and from the witnesses, that fathers would like to spend more time with their children. Does the Bill deliver the sort of cultural change that we were promised, and if not, what needs to be added to the Bill to make that happen?

**Kathy Jones:** The Bill delivers what is promised to a certain proportion of mothers and fathers, but it excludes about 50% of mothers and fathers, who will not fulfil the criteria to take leave. That is disappointing for us. The consultation document on modern workplaces had some very promising ideas about flexible working and share of leave that have been diminished in the process of putting together the Bill.

**Q271 Lisa Nandy:** Could you expand on the proportion of mothers and fathers who will not fulfil the criteria? Who are those people, and what will the implications be of them being excluded?

**Kathy Jones:** Those are the people who will not have been in work for long enough to fulfil the criteria to take leave. That is about 50% of mother and fathers.

**Q272 Lisa Nandy:** Does your organisation have concerns about antenatal appointments? I asked about them in the previous session; I do not know if you heard. One feature of antenatal appointments—this is linked to some of the groups that you mentioned—is that the right to time off for antenatal appointments is a right to unpaid time off. Will that prevent lower-paid families from taking up the provision?

**Kathy Jones:** Very much so. Lower-paid families are vulnerable when it comes to all these things, so there is an issue about the fact that the time off is not paid. There is also an issue about the right to request, and therefore the right to refuse. A further issue would be amending the Bill so that people can request a reasonable amount of time off, rather than a stipulated six hours.

**Q273 Lisa Nandy:** Michael, can I ask you something on that point in particular?

**Michael Mealing:** On the point of reasonable time?

**Lisa Nandy:** Yes. What is the view of the federation on that?

**Michael Mealing:** I should emphasise that I am giving evidence this afternoon on behalf of small business; legislation frequently does not differentiate between large and small businesses, but our view is that within the small business community, conditions are very different. We certainly believe that the majority of our members, and small businesses in the wider world, are reasonable, but if one is to have a regulated framework, it is often sensible to postulate maximums or minimums. I do not think that we would have a strong view; members would have varying views on that point.

**Q274 Lisa Nandy:** That is really helpful, thank you. With the Chair's permission, I will ask one more question. Kathy, in the submission that we received from the Fatherhood Institute, the point was made that the UK is possibly in breach of equalities legislation in Europe. The briefing did not go into detail, so can you say more about that, in relation to the amount of maternity and paternity leave that we currently have?

**Kathy Jones:** Yes. I think that European legislation is likely to argue that the way that maternity and paternity leave are divided places an unfair burden of care on the mother's shoulders.

**Q275 Charlie Elphicke:** May I ask Ms Jones about the evidence about the father's role, and the effect of keen participation by a father on children's life chances, as against the outcomes for children who do not have the input of both parents?

**Kathy Jones:** Children do exceptionally well when their fathers are engaged with them early on, particularly educationally. Having fathers who are involved in their care and are committed to their education and learning is a predictor of long-term success for children in all sorts of ways: emotional success; quality of future relationships; and educational attainment. That early opportunity for a strong attachment between fathers and their children is crucial to getting this Bill right. Fathers who are attached early to their children are less likely to separate. We know how much separation costs the state and families in this country. Nearly one in two families separate. Fathers have a crucial role to play; most mothers know that as well as the fathers.

**Q276 Charlie Elphicke:** Of course, sometimes separation and family breakdown happens. Where it does, what is your approach to clause 11, which makes provision for parental involvement? Do you welcome the provision that after separation the child should have access to both parents?

**Kathy Jones:** Absolutely. Of course we do. Again, where we build in that early support, whereby fathers are engaged early, are present at the birth and are involved, and take parental leave, separation is less likely to happen. If it does happen—in Sweden, for example, fathers have access to a good amount of paternity leave, so when separation does occur, there is far more ongoing contact between fathers and their children, because that attachment has taken place.

**Q277 Charlie Elphicke:** Mr Mealing, on the provisions on flexible leave, and what you would probably see as business costs in relation to maternity and paternity

provision, how do you weigh the improvement you might get in staff retention against the business cost of the kind of provisions that we are discussing?

**Michael Mealing:** I think the best approach to that rather difficult equation is in current practice. Certainly the majority of the small businesses already look at flexible working as a business asset. Our organisation commissioned some research by the Westminster Business School last year, which demonstrated how flexibly small employers tend to behave. The Chancellor of the Exchequer recently quoted from that report: nine out of 10 new jobs have been generated for people in disadvantaged situations by small business. We see a picture whereby flexibility, where it is practical within a business, is obviously the right way to go. One sees more and more imaginative patterns of work developing all the time.

**Q278 Lucy Powell:** Kathy, I will come to you first. Have you done any of your own research on the likely take-up of the parental leave offer for fathers under the terms outlined in the Bill? I think the Government estimate that it is between 2% and 8% of eligible fathers. Would you concur with that figure?

**Kathy Jones:** Yes, that is in line with what we would expect. It would be closer to 2% than to 8%.

**Q279 Lucy Powell:** Closer to 2%?

**Kathy Jones:** Yes, partly because of the number of fathers who are excluded from uptake, as they do not fulfil the primary conditions. Sarah Jackson talked about the importance of campaigning, communicating to people what the offer is, and helping them to think about how to use this offer in a way that is helpful. That will be really important.

**Q280 Lucy Powell:** How big a factor is pay in this context?

**Kathy Jones:** We think it is huge. Again, for poorer families, low-income families, and more vulnerable families, it is a huge issue at this point in a very austere climate.

**Q281 Lucy Powell:** Have you got any suggestions about how that might be overcome? Obviously, we are not in a scenario where there is lots of money—in fact, far from it. How might we be able to look at some creative ways to support fathers in doing that?

**Kathy Jones:** In the long term? Remuneration—that is our aspiration in the longer-term, as the economy improves. In the short term, the idea that was in “Modern Workplaces” about mothers and fathers being able to return to work part-time, and to do that flexibly so they can box and cox, will mean that both fathers and mothers can spend part of the week earning, and part of the week at home, perhaps in receipt of some pay. That is a perfect model. It is not present in the current Bill, but we think that is a good solution.

**Q282 Lucy Powell:** Michael, what is your view? We heard in a previous session a suggestion from business—possibly even more from small business—about the opportunity for returning parents to share their statutory maternity pay with some part-time work, so there is a phased integration back into work. What is the view of your members?

**Michael Mealing:** Broadly speaking, the idea of shared maternity and paternity leave is welcomed by our members. We feel it will help transparency, because there is always a problem with how honest people are about what they intend to do. It will hopefully provide a simpler way of organising this type of absence from work. In terms of whether the Bill will have a cultural impact, our view is that other things, such as the availability of affordable child care, will have much more effect.

**Q283 Andy Sawford (Corby) (Lab/Co-op):** I want to ask a little more about the people you feel will be helped by the measures in the Bill, and those who will not. Could you describe that to us, in terms of the types of people? I have been looking at your briefing. Could you suggest any specific amendments that could help to extend this measure to improve the lives of more parents? That question is to Kathy, in particular.

**Kathy Jones:** Having a right to care that is based on the individual work records of mothers and fathers is our ideal, rather than the father’s entitlement being dependent on the mother’s work record. That should increase the number of fathers who can access paternity leave.

**Q284 Andy Sawford:** Have you got any figures or research on how many more?

**Kathy Jones:** I have not got figures, but I will come back to you.

**Q285 Andy Sawford:** I would be interested to know how many more fathers would be included because of that.

**Kathy Jones:** Many more. We expect the figure to be significantly higher, because so many are excluded by the criteria being dependent on the mother’s work record. But I will come back to you.

**Q286 Andy Sawford:** Kathy, what is your view on the way clause 88 leaves it to the birth mother or the primary adopter to decide whether to share the parental leave? Should fathers have more of a say and more ability to influence whether they are able to take some of the shared parental leave?

**Kathy Jones:** Of course they should. What we know is that most couples are involved in these private negotiations all the time. There is no strange battle between men and women. Some 93% of couples live together or are cohabiting when a baby is born, 86% of fathers are present at the birth, and most mothers and fathers want the engagement of both parents. In countries where there is the opportunity to make choices about who earns and who cares, couples do that very effectively without the state intervening. We know that most mothers return to work by about 18 weeks, so the breast feeding issue is not highly pertinent. So yes, absolutely we do, and we know that most mothers will want and support that.

**Q287 Andy Sawford:** Finally, you described something that I as a parent understand—as will all other parents here—is a private negotiation between parents about parental responsibilities, paternity leave and other arrangements. That takes place in other countries. Is it

specified in law in other countries? Why would that be necessary? What could specifying in law that a father has a greater say achieve, or is it unnecessary?

**Kathy Jones:** That is a very good question. One of the things that we could specify in law is a daddy quota, a “daddy month”. In some countries, that is used very effectively. That was referred to in the “Modern Workplaces” consultation document. Often, that really gives impetus to fathers to take up that leave, and to be able to take it at any point during the first 50 weeks or so feels very important, so fathers can take that time. One of my colleagues talked about the importance of fathers having that exclusive time alone with their children, when they can bond and engage and when the mother has returned to work. In countries where there is a daddy quota, that has been very effective, particularly if we say, “Use it or lose it.”

**Q288 Andy Sawford:** On the daddy quota, you describe the provisions in this Bill as a compromise. You clearly contrast what you saw as a very welcome document, the “Modern Workplaces” consultation document, with provisions in this Bill. If we were to try to improve this Bill during the coming weeks, what specifically would you think from the recommendations in the “Modern Workplaces” consultation would make the most difference?

**Kathy Jones:** The daddy quota.

**Q289 Andy Sawford:** Specifically the daddy quota?

**Kathy Jones:** Specifically the daddy quota, but I think the other thing is talking to Her Majesty’s Revenue and Customs and getting HMRC to think about the implications of this, because I understand that it has really blocked the possibility of mothers and fathers having an individual—I am not explaining this very well—the possibility of mothers and fathers’ individual work records being taken into account when they apply for paternity and maternity leave. That would be a big one, and it was well expressed in the “Modern Workplaces” document.

**Andy Sawford:** Thank you.

**The Chair:** Just for the purposes of the record, I have agreed to the distribution to the Committee of the extended right to request flexible working code of practice. That is information on a subject that was discussed a little earlier, so that people have some of the information that they were requesting earlier, and we will take all the necessary detail later.

**Q290 Jo Swinson:** We had a discussion with the earlier witnesses about the culture and it would be helpful for us to understand, from the perspective of both of you, first, what are some of the barriers that dads might face in the workplace in taking additional paternity leave under the existing system, and what the barriers might be under the new system and how they might be overcome? Secondly, it would be helpful to hear an employer’s perspective about the cultural constraints that workplaces might have within them, and how they can be overcome.

**Michael Mealing:** As far as culture is concerned, as I say small business culture is very different. In fact, small business culture is much more akin to a family situation

than the culture in larger organisations and in the public sector. Of the 200,000 members of the Federation of Small Businesses, perhaps 150,000 or so actually employ people and the average number of people that they employ is seven. So you are looking at very small groups of people with very close personal relationships; employees see the owner-manager, or a decision maker, every day. That has led automatically to it being much easier for small businesses to take account of personal and family situations, and I think that we do it very successfully.

We do not feel that legislation—statutory rights—is necessarily the best way of achieving cultural change, and I may wish to add to that comment at a later date. As I say, however, our view is that the culture of the work force is changing, and successful businesses will need to accommodate that change. As someone said earlier, I think that legislation can often follow behind but when it tries to lead it is not always successful and you can have unexpected consequences.

**Q291 Jo Swinson:** Kathy?

**Kathy Jones:** I think the most successful businesses respond flexibly to the needs of both fathers and mothers. Some of the businesses that we have been involved with, such as British Telecom and Ford, have some really good policies that support people’s right to family life. One of the things we know from our research is that when fathers have a new baby they are highly likely to leave their job in order to find a better working arrangement so that they can provide better care, but very often that is not articulated in an exit interview, so there are lots of hidden things about fathers in the workplace where these issues are not discussed openly, but talked about within the family. That is one of the things we can send you some research about. We know that businesses do well when fathers and mothers are able to be involved in the care of their children.

**Q292 Jo Swinson:** If, as you say, at the moment they are not even able, when leaving an organisation, to say that this is one of the reasons why, that points to quite a cultural barrier in terms of dads in the workplace being able to talk about the flexibility they might need. Presumably, that is partly as a result of the reaction that they expect to receive, either from their employers or from co-workers. Other than through legislation, how can that be tackled?

**Kathy Jones:** Again, we go back to communication and back to a campaign. Sarah has said that we need this message to come out from the very top of Government that fathers should be involved in the lives of their children, that businesses should be flexible about that and that it is good for our economy. Economies do well when they are responsive to the needs of families to be involved in the work force and as care.

**Q293 Jo Swinson:** Michael, what effect will these changes have on the retention of talent in the workplace for your members?

**Michael Mealing:** We are broadly supportive of shared parental leave. As far as we can see, we have everything to gain from the maximum degree of flexibility and transparency. Our concern really is just the simplicity of the arrangements and whether they impose an

administrative cost, particularly on small businesses. There has been plenty of research to show that these changes impose greater costs on a small business because they do not have specialist departments. Many small businesses run their payroll manually, and it is the entrepreneur or his wife who does it on a weekend if that is the arrangement. We can certainly look forward with some enthusiasm to the greater simplicity and transparency. As I say, we do have concerns about the practicality and the nuts and bolts of how they should work, particularly if a failure to agree a particular pattern of shared leave can lead to an employment tribunal situation. That would be very regrettable indeed, and I argue it should not possibly happen.

**Q294 Jo Swinson:** Following on from that, as a final question that I was keen to put to you, what is most important for business? As you will know, we have a consultation at the moment on the administration of shared parental leave. I am sure that the FSB will submit a formal response to that. What do you think are the most important things that are needed to get that right, to make these policy changes work for business so that they have the support of the business community, rather than them ending up being perceived as an extra burden?

**Michael Mealing:** One thing that would be particularly difficult for a small business would be a requirement for small businesses to liaise with each other if the parents work for different organisations. We are not unaware that if it is entirely employee driven, there may be issues about eligibility, but again it is something that an individual employer, particularly a small one, cannot be expected to police. Other than that, a simple arrangement is based on dialogue and adequate notice. I should make the point that in all sorts of situations, ignoring the fact that employees in small businesses have the opportunity to discuss with their employers at the moment any change in arrangements which is desirable from a family point of view, it is just imposing a rigid statutory framework that can cause a problem. Certainly, if one looks at, for example, a business with three or four employees, for the employer to allow parents to take shared leave concurrently is obviously totally impracticable. Situations such as that need to be resolved in a straightforward fashion.

**The Chair:** Thank you very much. With your efficiency and a bit of discipline on our side, we have managed to win ourselves a bit of time. Thank you very much for your contribution. I believe our next witnesses are present. We will move onto them and finish completely at 4 o'clock, because we know we have a vote. That way we will hopefully have a consistent discussion without interruption. Thank you very much for your help. Could we have the next set of witnesses, please?

#### Examination of Witnesses

*Janet Grauberg, Debbie Jones and Andrew Webb gave evidence.*

3.10 pm

**The Chair:** We are having a bit of discussion because Andrew Webb is not with us currently. I was under the impression that all three witnesses were here, so I am

trying to have an open discussion now about whether we should proceed and he can join us later. Are you content with that?

**Debbie Jones:** That's okay. Andrew will join us, and when he joins us he can contribute. I suggest that you put your questions that relate to the youth justice reforms—if you have any—at the end, because I was going to ask Andrew to lead on that.

**The Chair:** Are people happy to proceed on that basis? Yes? Okay. You have confused us now by talking about youth justice; you mean family justice?

**Debbie Jones:** Yes, I mean family justice, sorry.

**The Chair:** It is obviously Thursday afternoon. If everyone is content then we will proceed on that basis. I believe this is being led by Sharon Hodgson.

**Q295 Mrs Sharon Hodgson (Washington and Sunderland West) (Lab):** Good afternoon. I have a couple of areas of questioning, with some questions on child care and then some on the reforms to SEN. On child care, switching from local authority network support and childminders to agencies seems like another way in which responsibility for the quality of education in that area has been stripped away from local authorities. Do you agree with this? Do you think this is a positive step, particularly when it comes to the early years? This question is probably more for the directors of children's services.

**Janet Grauberg:** Shall I start with some comments from Barnardo's point of view? I am Janet Grauberg from Barnardo's. Our view is that we broadly support the child care reforms proposed in the Bill. The childminder agencies are something that is worth looking at, as they could be a very effective way of reducing some of the burdens on childminders. However, we are also very interested in the other parts of the child care commission that is currently going on, such as whether there will be additional support, particularly for low-paid families or single mothers looking to work more. I think we need to take this particular reform in the wider context.

**Debbie Jones:** We would certainly support that. In principle, the notion of the agencies is a good one, but it will be horses for courses. It will not necessarily work in all areas, depending on where and how development has happened. Where it provides one point of access, particularly in those areas where there is not ease of access between the early years services, children's centres and so on, that would have to be a positive thing.

**Q296 Mrs Hodgson:** Can I ask about the three-yearly sufficiency report? Do you feel that it is a particularly onerous exercise? Do you support doing it? The LGA says that scrapping it will not save any money and that London councils actually want to keep it. What do you think is the majority view about the sufficiency report? *[Interruption.]*

**The Chair:** Thank you for being here, Mr Webb. We started without you, but it is not your fault; it is down to the ways and vagaries of how Parliament works. We have only just begun and were deferring questions about family justice in particular until you arrived. In any event, we have had one question only. Perhaps Sharon would like to ask the question again.

**Mrs Hodgson:** I do not know whether you heard it.

**Andrew Webb:** I heard, so it's fine.

**The Chair:** Okay. We are planning to proceed now and finish at 4 o'clock.

**Mrs Hodgson:** Who would like to answer? Do you know the answer?

**Debbie Jones:** To be honest, I do not want to mislead the Committee. We do not have all the detail here on issues relating to sufficiency. I am quite happy to respond to the question afterwards and send in something if that would be okay, because that would be more accurate from the association's perspective.

**The Chair:** If you are saying that you are concerned about the accuracy of it and you want to be accurate, you can send something in writing.

**Debbie Jones:** We would rather do so.

**The Chair:** That would be very helpful.

**Mrs Hodgson:** I will move on to special educational needs, which might be safer territory for the panel.

**Debbie Jones:** You will be on safer territory.

**Q297 Mrs Hodgson:** Is there anything that local authorities are currently concerned about with regard to part 3 on SEN, particularly in terms of new or increased statutory responsibilities? How do you think such concerns could be addressed in amendments?

**Debbie Jones:** We have several concerns about SEN, although we warmly welcome the introduction of the education, health and care plan. Our concerns relate to the possible unintended consequence that the ability continually to assess may result in a continual cycle of reassessment, which would not be helpful if parents and carers feel that they are not getting the answer that they want. Learning from the lessons of the pilots is one thing that is important on that front. The Committee will be aware that there has been a separation out of the link between the education, health and care plan and the issue of resources, which is potentially problematic and could contribute to a cycle of reassessment.

The other issue that we have picked up around SEN relates to personal budgets, which we of course support entirely. Interestingly, the kind of feedback that we are already getting from the pathfinders indicates that there is no universal or uniform support among parents and carers, because obviously what they do not want is additional bureaucracy. Learning from the experience in adult care will therefore be particularly important on that front.

**Andrew Webb:** The only thing that I would add to the point about resources is that if we are going to have a truly nought-to-25 single plan, the resourcing of all services cuts across any number of funding streams from mainstream schools through to higher education and into adult benefits. At the moment, it is not clear how that potential complexity will result in the smooth resourcing of the plan. Schools funding is outside the plan, yet the bulk of spend on children is in schools. How we address that has still to be worked through. I am not sure whether it is an issue for an amendment or something just to bear in mind.

The other concern that we have is that children who are physically disabled but do not have special educational needs are not covered in the Bill, which seems to be an omission. There ought to be a combined plan for all disabled children.

**Debbie Jones:** One thing that we do welcome is that the Government have signalled their intention to table an amendment to include a duty on the clinical commissioning groups to secure health services in relation to the education, health and care plan. We totally welcome that. I hope that we will subsequently have the same thing in relation to post-adoption support. Certainly from our perspective, the same kind of requirement would be extraordinarily helpful in relation to multi-agency support.

**Q298 Mrs Hodgson:** We have had evidence from the Association of Colleges with regard to post-16 funding in FE, which I understand will now be the responsibility of local authorities. There are major concerns about the size of that pool of money. Will the funding be enough, bearing in mind the raising of the participation age to 18 and the fact that, realistically, the majority of children in that group of young people who are not currently in education will probably have more special educational needs than the ones who chose to go into education before the participation age was raised? How are you addressing that? Are you looking at it? Is it a major concern? Are you working with the AOC on it?

**Debbie Jones:** There is a number of issues. The simple answer is yes, it is a major and critical concern for us, and it is one that we have taken up with the Education Funding Agency and the Department for Education. The money that has transferred is obviously based on lag numbers, and there is a number of queries about data. In relation to the raising of the participation age and the identification of need that colleagues have already expressed, immediately, before we even pass Go, there are likely to be significant difficulties. This area, the whole area of funding in general and the issue of the very complex arena of funding for pre-16 and post-16 are things that all agencies are particularly concerned about. We have made that clear to the Department for Education and to Ministers.

**Q299 Lisa Nandy:** I would like to ask you about some other aspects of the Bill. First, on the greater role that the Bill could give to social workers and independent reviewing officers, if we take the provisions—the slimming down of expert evidence in the family court system, for example, which will place greater weight on social work evidence, and the rebalancing of the court's focus on the permanent aspects of the care plan rather than potentially considering the entire plan—together with the points about social work caseloads, independent reviewing officer pressure and the measures in the Bill to speed up the process, I am concerned about two things. First, the quality of decision making could be compromised; secondly, the voice of the child could be lost. Do you share those concerns? If so, what do you think we ought to do during the passage of the Bill to ensure that decisions made about children remain in their best interests?

**Andrew Webb:** There are many elements to that question. I will try to come at it from the perspective of the child's journey, if that is helpful. The introduction of a 26-week

time limit brings the average down to the high teens, probably. That is undoubtedly a sharp turn-around time for court proceedings.

Effectively, what will have to happen is that before any case goes to court, a significantly greater amount of assessment, whether by a social worker or an expert, will need to be carried out by the local authority. It is a major shift in an area that, currently, is sometimes jointly funded from the middle of care proceedings through to the pre-proceeding stage.

The professional impact of the culture shift will be massive. There is absolutely no doubt about that, but it is the right thing to do because, going back to the detail of David Norgrove's analysis of the family justice system, the issue is well worth tackling. If we reduce the costs of looking after children while they are going through protracted care proceedings—fostering costs and so on—we can resource the sharp end of assessment. If we focus more on that, it ought to be much more child-centred. There is a concern about judgment instead of a concern about delay and drift. Is this family capable of responding to help to move them on as parents? Yes, it is concerning but it is the right thing to do. Professionally, the challenge is there to be taken.

**Q300 Lisa Nandy:** Are children's services ready?

**Andrew Webb:** The average time in court is coming down quite fast. As long as we are clear that cases that need to take longer can take longer, yes they are. The social work reforms that are coming through into the system now will all complement that as well and we have talked about the quality of social work. The taskforce and reform board's work, the new curriculum, is coming in this year. We have raised the quality of continuous professional development and the College of Social Work is coming on stream. So yes, all the right elements are there to support that. If the court stops scrutinising care plans to the same extent, who is going to scrutinise them? The independent reviewing officer can be identified there. There are work load pressures for IROs but they are variable across the country. That is for us to look at as local authorities, rather than for legislation to deal with.

**Q301 Lisa Nandy:** I suppose our concern is that politicians are about to spend the next few months deliberating over legislation that will have a very immediate impact on the lives of individual children that we will never meet. We must make sure that the variability around the country that you describe is eradicated. If we pass legislation that relies on it being eradicated and it is not, the impact on some children would be very dramatic indeed. But I suppose that we could continue to discuss this throughout the passage of the Bill.

**Janet Grauberg:** The point about the voice of the child is really important. Some of the organisations we have talked to—for example the Who Cares? Trust, which does a lot of work with young people in the care system—have expressed concern about whether the voices of older young people brought into the care system will be listened to within this time frame. That relates to one of our concerns at Barnardo's about the strict 26-week limit, the possibility of an exemptions regime and the exceptional cases arrangement. There is a range of circumstances in which a more flexible approach should be used.

**Q302 Lisa Nandy:** Does Barnardo's have a view about the point at which the views of the child ought to have been sought before a decision is made, either about permanence or placing them into a fostering for adoption arrangement?

**Janet Grauberg:** Each child is individual. The right point in the process will be about them, their siblings and their family relationships.

**Q303 Lisa Nandy:** But that would be before the decision is taken?

**Janet Grauberg:** To inform the decision.

**The Chair:** As we know, the world is changing around us all the time, particularly in Parliament. It now looks as though what was going to take place at 4 o'clock may come earlier. If it does, I will have to suspend the sitting for 15 minutes. If there is more than one vote, and there is likely to be more than one vote, we will have to suspend for another 10 minutes. That is where I am at the moment so revise your plans. However, we have a very small amount of time. I have seven people who wish to ask questions and the Minister is No. 8. We will try to make the best progress that we can among all of that.

**Q304 Charlie Elphicke:** I will just ask one question. Dr Roger Morgan, a child rights director in England, said earlier that his evidence showed that the voice of the child too often is not heard by people involved in the system. Is it not a real concern that, with 67,000 or so looked-after children, only 3,450 were adopted last year? Is not there a case for reform, considering that the number of adopters being recruited still remains pitifully small and the number of looked-after children seems ever to increase?

**Janet Grauberg:** I absolutely share Roger Morgan's concerns, widely expressed, about the shortage of adopters. Barnardo's has been on record, however, as being concerned about clause 3, which we do not think solves the problem as outlined, particularly the final part of that clause, which suggests that councils should be stripped of their powers to recruit, assess and approve adopters. The concern is about the system at the moment being effectively 152 systems, and nobody having the incentive to recruit more. The clause does not contain the answer to that, because it allows each council to outsource to small organisations; it does not create the incentive for economies of scale.

The limitation to a voluntary adoption agency, such as Barnardo's, means that a proper market that might operate in other places, such as independent fostering and children's homes, cannot exist; there are no incentives for private organisations to come in. There are also concerns about capacity within the voluntary sector.

Barnardo's has put a lot of resources into scaling up, in response to the challenge from the Minister and his predecessor. A lot of extra resources are going into improving capacity, but even so our calculation is that it would take 15 years to replace the capacity that is currently in the system.

We share the diagnosis. We do not agree with clause 3 as the answer to the problem.

**Debbie Jones:** To add to what Janet said, local authorities have been working closely with Government to create a much more streamlined system, both in terms of recruiting adopters, reducing bureaucracy and, through the introduction of the adoption gateway, providing a more accessible system and first response for adopters, ensuring that those adopters who get through the gateway know what they are doing and know what to prepare themselves and their families for, to avoid any unnecessary delay. The work that has been done so far on the streamlined form of assessment indicates that actually we are already releasing capacity within the current system that can be used.

We would support strongly the opportunity for the systems that have already been introduced to be given the time to bed in. We have referred, in a number of places, to that sword of Damocles, which we do not regard as helpful.

**Andrew Webb:** With respect to the numbers, yes, last year about 3,000 children were adopted from care. About the same number were made the subject of special guardianship orders, which is a form of permanence, which for them is a permanent solution. The high numbers of children in care comprise children across the entire age range, for many of whom a permanent solution is not the answer, because they entered care as teenagers and they need some therapeutic intervention, rather than a permanent replacement family. But we would support the view that there are far too many children awaiting adoption, for whom adopters have not yet been identified. That is a critical issue. We do not support the idea that adoption is a better form of permanence than, for example, an SGO for a child who has already been with a foster carer for some time and can be helped to stay there.

**Q305 Steve Reed (Croydon North) (Lab):** What will the implications be if EHC plans do not cover apprenticeships and custodial sentences?

**Debbie Jones:** Basically, that will mean that there is a significant proportion of young people with significant needs whose needs are, frankly, not addressed. Given that those young people with the most challenging needs often end up in custodial establishments—

3.35 pm

*Sitting suspended for a Division in the House.*

3.50 pm

*On resuming—*

**The Chair:** Apologies for the vagaries of the system here. I am informed that there will not be an additional vote at present. There may be votes later in the day, but we will have finished by then. If you agree with my proposition, we will start now and finish at our original end time of quarter past 4, so we have between now and 4.15 pm to complete our scheduled business. We were in the middle of you trying to answer a question from Mr Reed. I cannot remember what the question was; I hope you can.

**Q306 Steve Reed:** I was asking what the implications were if EHC plans did not cover apprenticeships and custodial sentences.

**Andrew Webb:** I was just going to come in on custodial sentences. What we know about the population of young people who enter custody is that a significant proportion of them have moderate learning difficulties. A majority have had really fractured schooling. There are those with emerging mental ill health, because that is the time in adolescence that some mental health problems first arise. Another thing we know about custody is that it does not stop offending effectively, because about three quarters of young people who are discharged from custody reoffend within a year.

It seems to us that there is an opportunity here to require public bodies generally to continue with that support through custody and beyond, which would pick up some of those issues. The resettlement offer to young people, particularly those post-16, once they come out of custody is not strong enough. This would be one lever to produce a bit more specialist support and help. The numbers are not huge, and they are dropping all the time. I have not done any sort of calculation on what the cost might be, but in principle we would prefer that they were included rather than excluded.

**Q307 Steve Reed:** So that is an area where you are pushing Government to amend the proposals. On post-adoption support, what measures are required to ensure that that support is deliverable, given the extreme long-term pressure on local authority budgets?

**Debbie Jones:** Post-adoption support is crucial. The issue about post-adoption support is that frequently, particularly if children are placed at a young age, the difficulties may emerge very much later. The issue of looking at ways of finding resources into the longer term is a significant one. If you are talking about a child who is placed at four and has few problems, you are having to predict what will happen when they are 14, 15 or 16. We want to ensure that these placements last, and adopters should have the same right of access to support.

There are two problems. The first is the way in which local authorities organise their finances, and committing that way into the distance is quite difficult. There are some innovative proposals around the use of social impact bonds, which provide us with some opportunity, but they still require different ways of being able to use funding and project funding. The most important point for us is that you are looking at, potentially, additional resource requirements, which currently we do not have. In a context in which, as everybody knows, overall, our resourcing is being variously reduced, certainly over this comprehensive spending review period and going forward, potentially, in the region of 45% or 50% in some cases, that issue is a crucial and critical one in an area that we recognise is a priority, but which is a priority that competes with other priorities.

**Andrew Webb:** I will add that, if it is a child whose needs appear to be well met in the early years of an adoption and they become more problematic later, the sort of intervention that is required is usually very specialist. An attachment disorder that manifests itself in really extreme behaviour in the early or mid-teens generally does not respond to the routine services that are available. So it is a question not only of how you keep the money sitting there to draw down over an extended period, but how you ensure that those specialist resources for family therapy or child and adolescent

psychiatry are actually there, because it goes beyond what is on offer in many places, and there is a sort of clinical priority waiting list approach to the services, which we would want to short-cut. How we find the money to do that and then hold it in a bank somewhere is a problem that we need to grapple with. I do not know what the answer is.

**Debbie Jones:** Also, as we said earlier, the opportunity—indeed, the necessity—to lever in support from other partners, particularly health partners going forward, is crucial. It relates as much to post-adoption support and children in care generally as it does to children with additional and special educational needs.

**Janet Grauberg:** That is our experience, too. We very much welcome the focus on post-adoption support. I think a bit of clarity is required on applicability to voluntary adoption agencies as well as local authorities in terms of where a personal budget might be spent, and we will be looking for that in the details. The area of health and mental health support is the area that, across the whole range of services, including post-adoption support, our services struggle to access. As Andrew says, there is concern about the implementation of these plans.

**Q308 Chris Skidmore (Kingswood) (Con):** Andrew, earlier you spoke about the nature of disability and disabilities not being included within the education, health and care plans. We know that 75% of children with disabilities are also registered as having a special educational need. What specific disabilities were you thinking are not included?

**Andrew Webb:** As I read it, the only children who are included are those who have special educational needs as in learning disability or difficulty. The analysis by the Every Disabled Child Matters group is quite clear on this. I support its view that, if you have a child who has a physical disability and additional needs as a consequence of that, but operates happily and readily within the normal spectrum of schooling, they would not be covered in the same way, and that is an omission. Why would they not have a combined plan?

**Q309 Chris Skidmore:** But if they have an educational need, it is already covered in the plan.

**Andrew Webb:** Well, it is a question of how broad the definition is. If a school has accommodated a physical disability, does that child no longer qualify for a health, care and education plan?

**Q310 Chris Skidmore:** Would you extend it to pupils with asthma or diabetes, or is that not so much of an issue for you?

**Andrew Webb:** Long-term health conditions and disability are not the same thing, so no, I would not—there is never a clear threshold, but children with health conditions that are well managed would not necessarily fall into the same group.

**Q311 Bill Esterson:** Coming back to the point about post-adoption support and adding it into the special educational needs services and the local offer, you mentioned, Debbie, the long-term implications of whether those services will be there. One of the submissions that

we had suggested that, if services were not available, parents or carers would be able to appeal in some way. How do you foresee that happening?

**Debbie Jones:** As I understand it, the current provision means that, if they are not happy with what is in their education, health and care plan, and if they do not feel it meets the needs of their child or young person, parents can request a further review. That is the process of appeal, if you like. Remember that there is no link to resources, so if they feel they are not getting what they want, they can ask for a further review and the local authority will be bound to institute that. The danger is that there will be a perpetual cycle of review that ends up not pleasing anyone. You are in a position of having raised expectation without being able to produce the resource. Actually, what you want to be able to do is to get it right, or near right, first time. That is the aim behind it. So I think there is a risk there.

**Janet Grauberg:** We are considering the data provisions of the Bill and the interpretation of them. Thinking back to the evidence you heard on Tuesday from Brian Lamb on School Action and School Action Plus, the really important issue is about creating a system that listens to the individual child's needs and responds to them. That is why it is difficult in legislation to define and draw the line. As we see the detail of the regulations, guidance and interpretation, it is really important to be challenging whether, taken as a whole, the system, the local offer, the EHCP for those who need it, School Action and School Action Plus, and whatever the new category is, are identifying the additional needs of a child or young person. That is what we will be doing at Barnardo's as time goes forward.

For example, Barnardo's does a lot of work with children who are struggling at school, and who might have additional needs that are not defined by SEN—they might be young carers, for example, which is something we might want to come back to. The critical thing is assessing whether, as a whole, the system is going to allow that flexibility in responding to an individual child's needs.

**Q312 Craig Whittaker (Calder Valley) (Con):** Can I ask about the statutory footing of the virtual school head? Will that make any more difference to looked-after children than what currently happens?

**Andrew Webb:** We are an authority that piloted the introduction of the virtual school head, and it made a difference. It gave prominence to the educational needs of children among the school community that was not there before. It was both practically and symbolically a very positive change, and it is now well embedded as part of our school improvement system. I would say that areas that do not have that will benefit from introducing it. Although there was a relatively small number of pilots, I am not aware of many authorities that have not already introduced the virtual school head.

**Janet Grauberg:** As we have already said, I think it is also about scope and whether the virtual school head, or virtual college head, might also be responsible for educational achievement up to 25 for those leaving care. That might be something the Committee will want to consider. There is much more to be done to support young people as they leave care and go on into training and employment support.

**Q313 Craig Whittaker:** So you think it is good but should be extended to 25. I have one final question. May I ask you about the adoption register and access for prospective adopters? Do you think that is a good idea or not?

**Debbie Jones:** Generally, we feel that it is a good idea. We have generally supported access to the register. It has not always been that straightforward on the child's side. The devil is in the detail in terms of creating an accessible system without creating unrealistic expectation. So it is the implementation that is going to be crucial there.

**Q314 Mr Robert Buckland (South Swindon) (Con):** This is for Ms Grauberg, essentially. I welcome your view as to the welcome news about the extension of the statutory duty to include clinical commissioning groups; it is something that I have been banging on about for ages and I am delighted that the Government have listened to me and others. What sort of impact do you think that that will have on the success of EHC plans?

**Janet Grauberg:** I think it is excellent news. I am very supportive of the move and I know that a lot of hard work has gone into securing it. The remaining question for me, beyond the scope question of who is eligible for an education, health and care plan, is about the route of redress: the access to the tribunal. I know that there are proposals to change the role of the NHS ombudsman to have regard to the SEN code of practice, which I think is very good. The objectives of the reforms are to make it easier for parents so that they can navigate the system and get the support that they need if there are complicated different routes of redress, when everything else has failed and there is a missing link in the system.

**Debbie Jones:** We certainly do very much welcome the amendment—we are very pleased that the Government have introduced it—but I think that providing a lever in terms of access to the plan is one thing; access to services as required by the plan is another thing altogether. That that is the critical issue for us, but this is a start.

**Q315 Lucy Powell:** This is a question for Barnardo's and Janet: given the provisions in the draft Care and Support Bill for adult carers, do you think that there is enough in this Bill that addresses the needs of young carers? If not, what would you like to see?

**Janet Grauberg:** This is a really good opportunity to replicate in the Children and Families Bill some of the good work that has gone into the Care and Support Bill for adults. It would be good to consolidate and simplify the law so that it is really clear about how any adult service coming into contact with a young person with caring responsibilities can identify that young person and make sure that they have an assessment. At the moment it is very responsive to the young person themselves coming forward for assessment. Many of them do not wish to do that and do not see themselves as requiring that. Then you need to put the right level of support around them. The heavy lifting of the work has been done in the Care and Support Bill and I think there is a real opportunity to put that here.

**Q316 The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson):** May I take us back to special educational needs? Debbie in particular has been talking about implementation of many of

these reforms, and clearly that is going to be a crucial element of their success. In relation to special educational needs, there is a lot of work going on in the pathfinders to test that implementation. Could you say from the ADCS's point of view how that learning is going? What benefits are you starting to see for parents and children, particularly those who are trying to see a better-integrated assessment process?

**Debbie Jones:** The pathfinders have been working closely together. If I were being honest, I would say that my authority is not one of the pathfinders. Interestingly, we are doing an awful lot of that integrated assessment work in advance of the pathfinders. I think the next challenge in terms of implementation is to see much broader learning rolled out from all aspects. We very much welcome the additional time that was given to allow the pathfinders to take the lessons learned. We now need to capitalise on that and probably speed up that learning. I actually think that, in addition to my own authority, an awful lot of work is probably happening elsewhere. The area from which we probably need to secure the most learning, in addition to the work being done around the education, health and care plans, is something that is not within the scope of the pathfinders as such. I am not referring to the personal budget side of things, but the way that the interfaces between the changes in the school system are impacting on services for SEN in general, particularly around inclusion and any impacts on that, which the association is particularly concerned about.

**Q317 Mr Timpson:** Does anyone else want to offer a view or share their experience?

**Andrew Webb:** We have a concern that, although it is good that we thoroughly explore what is going on with the pathfinders and learn from that, if we go sequentially through a process of implementing the changes only once the pathfinders have reported, a lot of the country will be feeling really quite frustrated. A lot of parents and children are seeing the single pathway from nought to 25—the passage from birth into adulthood—as a real opportunity to shape services. The specific issues around personal budgets and a single approach to funding will, I am sure, come up as issues in areas that are not pathfinders very quickly. People will want to develop that as a way forward. I know that because they are already telling me that it's not what they do.

**Q318 Mr Timpson:** So do you think it would be helpful if those local authorities that are not among the 31 that have pathfinders in their area could start to benefit from the experiences that pathfinders have gained so far, share that best practice and start to learn from it now, rather than wait?

**Andrew Webb:** Absolutely.

**Debbie Jones:** Absolutely.

**Janet Grauberg:** I think that our experience of delivering services across the UK is about how different it looks in every patch. The challenge for practitioners and those who are supporting parents in navigating the system—how the schools are organised, how the local health service is organised, how they are responding to these changes—is teasing all that out. This is never going to be one-size-fits-all; each council and system will need to interpret how to get the best for children and their families for their local

environment. That will change over time. The role of Barnardo's and other organisations is to help families navigate that most effectively, but it will be complex.

**Q319 Mr Timpson:** May I quickly move on to fostering for adoption? What experience do you have within ADCS and potentially Barnardo's of fostering for adoption, where it works well and what benefits you think it can bring for children in ensuring that they get the best possible outcomes?

**Debbie Jones:** We are very much in favour of fostering for adoption and, indeed, we have worked with colleagues on that development. However, there are two elements that concern us—I am speaking as a former social worker here. First of all, it will not be appropriate for all children, and we need to be careful that in our rush to speed up placement we do not sacrifice quality and timeliness of decision. By that I mean that not all fostering placements will be suitable; we are very mindful of that and it ties into Andrew's earlier comments on the work that is being done around that.

Also, one has to recognise that there is an element of risk for foster carers where the child is placed for adoption but it does not work out; one needs to plan for

and mitigate that particular risk. However, by and large, we see it as a positive move—indeed, in many places it is a practice that has happened in any event, so we are only building on good practice. The important point is that we do not sacrifice good, proper planning in relation to those placements.

**Andrew Webb:** I would stress that. Where the Bill talks about it being the norm, we need to be very careful about the children for whom it is right—

**The Chair:** I am afraid I have to stop you, Mr Webb. I am very grateful to you, as the last set of witnesses this afternoon, for your indulgence and co-operation, but the time for consideration has now come to its end, albeit in a strange and convoluted way. The Committee will reconvene on Tuesday next to consider the Bill line by line.

4.15 pm

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

*Adjourned till Tuesday 12 March at twenty-five past Nine o'clock.*

