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GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Eighth Sitting

Thursday 14 March 2013

(Afternoon)

CONTENTS

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Monday 18 March 2013

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

The Committee consisted of the following Members:

Chairs: † Mr Christopher Chope, Mr Dai Havard

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

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

† attended the Committee

Public Bill Committee

Thursday 14 March 2013

(Afternoon)

[Mr Christopher Chope *in the Chair*]

Children and Families Bill

Clause 10

Family mediation information and assessment meetings

Amendment proposed (this day): 20, in clause 10, page 8, line 34, at end insert—

'"approved mediator" means a mediator who satisfies such training and quality assurance standards as the Lord Chancellor may by regulations specify;'.—*(Lisa Nandy.)*

2 pm

Question again proposed, That the amendment be made.

The Chair: I remind the Committee that with this we are discussing amendment 21, in clause 10, page 8, line 36, after 'held', insert 'with an approved mediator'.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): It is a delight to see you back in the Chair for this afternoon's proceedings, Mr Chope.

Before I address the amendment tabled by the hon. Member for Wigan, I will clarify for the Committee a point that came up in our discussion on amendment 19 this morning on when the rules will be available—this is relevant to clause 10. The hon. Lady asked how the Family Procedure Rule Committee would take account of the operation of current mediation, information and assessment meeting exemptions when drafting the rules on exemptions under the clause. As I indicated earlier, we intend that the MIAM provision will come into effect as soon as possible following Royal Assent. The FPRC would need to have drafted the rules by early 2014, or by autumn this year if, as we anticipate, it intends to consult on them. The FPRC would then take into account the current MIAM exemptions and their operation through consultation. Although whether or not to consult is the FPRC's decision, I would, given the importance of the matter, expect my officials to be asked for a view. I will ask them to stress the desirability of consulting. I hope that is helpful to the Committee.

In amendments 20 and 21, the hon. Lady raises the important issue of the training qualifications that mediators should have if they conduct a MIAM. I thank her for raising that—the Government share her view that only trained family mediators should carry out a MIAM. That is why we recently asked the president of the family division to revise the existing pre-application protocol from April this year to make it explicit that the family mediator conducting the MIAM must be approved by the Family Mediation Council. That means that they must adhere to the code of practice of the FMC and the agreed minimum requirements for conducting MIAMs. Within the code of practice there are clear requirements regarding identification of risk of significant harm to children and screening for domestic abuse. The Government have said we will evaluate the impact of the changes in the light of the changes to legal aid. Clearly, MIAMS will be an element of that review.

On children's views, we do not think that the MIAM is the place where children's views should be part of the process. That part of the process is simply about the parents deciding whether to mediate. However, although mediation in itself is not part of the clause, the views of children can be taken into account. Training is provided to mediators to enable them to engage with children and understand their wishes and feelings.

On the move to a statutory MIAM, we propose to invite the Family Procedure Rule Committee to reflect that change in the rules is to be made under clause 10(2)(b). I hope that that provides assurance to hon. Members that we are already taking steps to ensure that. I therefore ask the hon. Lady to withdraw the amendment.

Lisa Nandy (Wigan) (Lab): I am grateful to the Minister for those remarks, and in particular for his assurances on the rules and the fact that there will, we hope, be consultation on them. The one point I would emphasise is the importance of understanding the views of children in relation to whether mediation should go ahead: they might have particularly strong views, which might differ from those of their parents, on whether mediation is appropriate. Indeed, given that children are often very conflicted during such cases, they might have reasons for why mediation is or is not appropriate of which they do not wish their parents to be aware. I urge him to consider that point further, but, in the light of his assurances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 10 ordered to stand part of the Bill.

Clause 11

Welfare of the child: parental involvement

Lisa Nandy: I beg to move amendment 23, in clause 11, page 9, line 17, at end insert—

'(2B) "Involvement" means any kind of direct or indirect involvement that promotes the welfare of the child, but shall not be taken to mean any particular division of a child's time.'.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

New clause 13—*Welfare of the child - quality of parental relationship*—

'Section 1 of the Children Act 1989 (welfare of the child) is amended by the addition at the end of subsection (3) of the following paragraph:

"(h) the quality of the relationship that the child has with each of his parents, both currently and in the foreseeable future.".'.

Lisa Nandy: We welcome the substantial revisions to the wording of the clause, in particular the use of "involvement" rather than "shared parenting", which we believe could help to minimise the harm the clause might cause, but we are still concerned about how the provision will work in practice. I hope the Committee will bear with me as I intend to take a little time to outline why.

As with much of the Bill, we do not disagree with the Government's stated intention. We believe it is critical to most children that they have a good relationship with their mum and their dad. We know that it is usually also very important to both parents. When it is safe and consistent with the child's welfare, we believe that that should be supported through law, policy and practice as fully as possible. However, we also believe that the change to legislation is misguided, in part because it is designed to tackle the wrong problem. As the National Society for the Prevention of Cruelty to Children and the Children's Legal Centre have made clear, in the past 20 years, a succession of research has demonstrated that there is no systemic bias in the court system.

The most recent research—by the universities of Oxford and Sussex—found that the planned change "is not evidence based". They interviewed 398 young people whose parents had separated in their childhood and found that it was rare for a young person to say that the parent they lived with had tried to undermine their relationship with the other parent. There was no evidence that children resist contact primarily because their resident parent pressures them to do so. They felt very strongly that a clear demonstration of commitment from the parent they did not live with was much more important than the amount and type of contact they had with them.

The message is that promoting ongoing contact is not about legislation; it is about quality of relationships, especially the quality of those relationships before parents separated. In the vast majority of cases that come to court, the courts agree contact. In 2010, only 300 out of 95,460 applications for child contact were refused. That is just 0.3% of all the cases that came to the courts. Of those, as the NSPCC points out, most were related to cases where there were serious child welfare concerns. Non-resident fathers are just as likely as resident mothers to get the court orders they seek. Roughly equal numbers of mothers and fathers report that the courts are biased against them.

As a result, the NSPCC says it is concerned that the proposed changes might be based on perceived rather than actual bias and, as such, could inadvertently raise barriers to the best contact arrangements for children. The Committee ought to take that seriously because the Minister's comments seem to support it. In evidence to the Select Committee on Justice, he said:

> "The intention, as I say, is to deal with the sense that there is an in-built bias towards one parent or another within the current system, to get more confidence into that system with those who come into contact with it".

Surely a law that works in practice and in principle should not be changed in response to a perceived bias that does not, as it turns out, have a basis in fact. Unless the law is broken, I do not understand why the Government would seek to fix it. I have not heard Ministers say that the current law is broken and I do not believe it is. A wide coalition of organisations, from Action for Children to Resolution, says unequivocally that the Children Act 1989 already supports the encouragement of parental involvement where it is safe and in the child's best interests. Furthermore, countries such as Australia, where there is a statutory presumption of contact, have just as many children who lose contact as England and Wales. The real problem and injustice for parents come when contact decisions are not enforced.

Tackling that is difficult. Ministers have floated and tried a number of ways, including penalties for non-compliance such as revoking driving licences or passports. It seems to me that none of those means much to parents who strongly believe, whether it is the case or not, that they are acting in their children's best interests in defying the court.

I can see why, as a result of that situation, a Government would, out of frustration, resort to trying to deal with it through changes to the law. However, in my view, and in the view of many organisations, the measure could have serious, unintended negative consequences for children, which I shall set out for the Committee.

Charlie Elphicke (Dover) (Con): The hon. Lady's amendment 23 states:

> "'Involvement' means any kind of direct or indirect involvement that promotes the welfare of the child".

What is indirect involvement?

Lisa Nandy: That is a very good question. In fact, that was the purpose of my tabling the amendment. If the hon. Gentleman will permit me, I will discuss that later. The key point is that not defining "parental involvement" is problematic—I will say more about that in a moment.

I wanted to set out some of the serious, unintended, negative consequences that the wording might have for children. The first is a practical consideration. There are significant concerns that the measure will lead to a presumption among parents of equal time. The evaluation of similar changes in Australia found that many parents did not understand the difference between shared parental responsibility and shared care time. I want to be fair to the Minister here. The evaluation states:

> "This misunderstanding is due, at least in part, to the way in which the link between equal shared parental responsibility and care time is expressed in the legislation."

That is one reason why I welcome the substantial revisions that have been made to the clause—it does not use the term "shared parenting", which caused so much confusion.

Mr Robert Buckland (South Swindon) (Con): I am grateful to the hon. Lady for referring to that. That matter concerned the Justice Committee, of which I was a member. Submissions were made by me and other colleagues. We wanted the title of the clause to be changed so that there was no misunderstanding or misapprehension on the part of those involved in proceedings that the law was being changed to allow for a presumption of shared parenting. Does she agree that that change has signalled the Government's clear intention that nobody wants to go down that road?

Lisa Nandy: I am grateful to the hon. Gentleman for making that point, with which I agree. I pay tribute to the work that the Justice Committee did in its thorough

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report, which has been extremely helpful to me in preparing to scrutinise the legislation. The Children's Legal Centre made the point that there have already been media reports in this country, prompted by the initial wording of the clause, that it would mean equal time. The CLC pointed to headlines in the *Daily Mail* and other newspapers that gave parents the strong impression that the measure means equal time.

To return to the point about the programme implemented in Australia and the changes to legislation there, it is right to point out to the Committee that the evaluation showed that the misunderstanding was due at least in part—but only in part—to how the provision was expressed in legislation. Many of the organisations that I have spoken to still have significant concerns about the clause and believe that it ought to be deleted from the Bill altogether, so it is important that we look at some of the unintended consequences it might have.

In the words of the Australian evaluation:

"This confusion has resulted in disillusionment among some fathers, who find that the law does not provide for 50-50 'custody'",

which can sometimes

"make it challenging to achieve child-focused arrangements in cases in which an equal or shared care-time arrangement"

is made. I welcome the change to the wording, but as I said earlier, that is why the charities believe the risk remains. I agree with them.

The problem is that where the wording is misunderstood, it can result in more court action, with parents' rights pitted against children. That is obviously devastating for the children involved, and also works strongly against the Government's intention, which we support, to speed up the amount of time it takes to get cases through the courts.

Jessica Lee (Erewash) (Con): I know what the hon. Lady is saying, and of course we all share the concern about children's rights, needs and interests being properly represented. However, in the courts there are also judges who will have a full understanding of the intention of any drafting and how that should be interpreted, so we have the reassurance that the court process, from the judicial point of view, will create a barrier against any misunderstanding.

2.15 pm

Lisa Nandy: I will make two quick points, and I will not labour them because I will return to them. First, not all cases will be dealt with in the courts. There are real risks about what will happen outside the courts if a message is sent to parents that there should be equal time arrangements. I am concerned, given the vulnerability of some of the parents we are talking about—mothers in particular—that there is the potential for the clause to be used as a means of coercion to achieve something that is not in the child's best interest.

Secondly, I have seen in practice how the child's best interest, the welfare paramountcy principle, is key in ensuring that the child remains at the centre of the decision making for everyone involved in the court process—the lawyer representing the parents, the local authority, the guardian and others. Although the Minister has been at pains to say that the measure is not about parents' rights, I am concerned that we seek to write into legislation something that could be wrongly interpreted as being so. I will return to that point because I think it is extremely important.

Charlie Elphicke: I put it to the hon. Lady that she is quite wrong. Too often at the moment it is about parents' rights, not the rights of the child, as we heard in evidence last week. She is entirely wrong to paint it as though it is not about children's rights; that is precisely what this measure is about. We heard about parents battling away, sinking their children's futures in a sea of their acrimony. It is right that children have the right to know both their parents.

Lisa Nandy: I am a little disappointed by the hon. Gentleman's tone. This is an extremely emotive subject, and we should not seek to portray either side as being against children, or try to paint a scenario as one way or another. When he says that I am quite wrong, he is saying that the NSPCC, the Children's Commissioner for England, Action for Children, the Children's Legal Centre, the Magistrates Association, Nagalro, which represents children's guardians, and a host of other organisations are also quite wrong. Their concerns deserve to be heard, and I am determined that the Committee hears them.

Charlie Elphicke: The central issue that came out of the Norgrove report was a misunderstanding of the idea that children seeing both their parents means that there has to be an equality of time. Everybody understands that that is not what the Government intend. That is the way the Australian system went, but nobody intends the system here to go that way. A relationship is not about time, but about knowing, and having access to the guidance and love, of both parents.

Lisa Nandy: I agree with the hon. Gentleman. Although I do not find the tone in which he is expressing his view helpful, I find what he is saying helpful. He referred to David Norgrove, and the recommendation that he said came out of the Norgrove report. In fact, David Norgrove explicitly recommended that the law should not be changed in this way. He said:

"The law cannot state a presumption of any kind without incurring unacceptable risk of damage to children."

We ought to debate and take seriously that view, not seek to portray people who say that as taking one side or another, or being for or against the interests of children or parents. It is in the interests of children and the vast majority of parents that we resolve this issue. That is why I am determined that the Committee hears the concerns of the sizeable opposition and understands the sound basis on which that opposition exists.

Lucy Powell (Manchester Central) (Lab/Co-op): Many organisations are against this measure coming into law in this way because under current law the mother and father, as long as they are both on the child's birth certificate, have equal rights to have an equal say in how the child is brought up—on schooling and all the other parental decisions that affect the child. That does not equate to the amount of time that they have with the child. It is absolutely clear in law that when both

parents are on the birth certificate, they have equal say in the child's upbringing. That needs to be stated on the record so that there is no misunderstanding and so that a missing part of the law is clarified.

Lisa Nandy: I am grateful to my hon. Friend. The view of many of the organisations that I referred to is that this measure is not necessary, and that it might actively do harm to and work against the interests not just of children—the most important people in this scenario—but of parents.

Bill Esterson (Sefton Central) (Lab): My hon. Friend is absolutely right. David Norgrove made a crucial point when he gave evidence to us last week, which the hon. Member for Dover will undoubtedly have read as well. He said that the key thing about greater involvement of both parents in the lives of children is that it has to be where it is safe for the child. That is why he said that in his view, having looked at Australia and Sweden, the risks were too great.

Lisa Nandy: I am grateful to my hon. Friend. I also think that David Norgrove was making a broader point. It is not simply that it needs to be written into the Bill that parental involvement must be where it is safe and consistent with the child's welfare, as the Minister has done—I am glad that he has because it is a step forward—but that the evidence from Australia was that problems and allegations of abuse were less likely to surface as a result of the law being changed in this way. I will say a little bit more about that as we proceed.

The Minister has been at pains to say that this is not about parents' rights. The explanatory notes say that. But as I said earlier, the media coverage of this has already given that impression very strongly. It concerns me that parents may still believe that, despite the Minister trying to rectify the situation. Amendment 23 therefore seeks to define what is meant by parental involvement to try to minimise the harm that will be done by the clause. We want to ensure that if Ministers are determined to press ahead with this change to the law—we sincerely hope that they are not—parental involvement will be defined so as to make it explicit to parents that this is not about an equal division of time and, as the Minister said, will not be about parents' rights.

As I said to the hon. Member for Erewash—*[Interruption.]* I will get hate mail from her constituents for mispronouncing Erewash. My apologies to them. We believe this is particularly important as 90% of cases are decided by parents themselves without resort to the courts. We think this change in the law is particularly risky where there is little guidance and especially where there is an imbalance of power between the two parents. I have seen for myself how easily that can occur and how profoundly it can affect the well-being of children where one parent has the wherewithal, the skills or the knowledge, or simply the attitude that enables them to railroad through something that is not in the best interest of children.

Jessica Lee: I hear the hon. Lady's argument, but a counter-argument is that up to now in court it can be all or nothing for parents. It has been residence or contact without an acknowledgment in the court order that there is a role for both parents. The proposed change takes the sting out of the debate between the parents and can reassure both of them that they are involved. More importantly, the child has that reassurance that they have the right to the involvement of both their parents.

Lisa Nandy: I would start by referring the hon. Lady back to the point that I made at the beginning. It is only in 0.3% of cases that contact is refused and the NSPCC says that that is usually where there are significant child welfare concerns. It is the role of the judge to reassure parents about that. The other critical role in all of this is played by the lawyer. I have seen for myself how important it is to have lawyers who can help parents reach the point where they accept that a determination by the judge is in the best interests of their child. That is critical for the parents. It is also critical for the child that the parent has had an opportunity to come to terms with that decision and accept it. That is one of the reasons why I am particularly concerned about clause 11 in relation to the loss of legal aid.

In relation to taking the sting out of feeling that there is a winner and loser—I accept that that happens quite a lot—clause 12, which is about child arrangement orders, will actually be far more effective in helping to take the sting out of those arrangements by removing the idea that the parent with residence is the winner and the parent with contact is the loser. The NSPCC, with which I concur, says that it is concerned that

"abusive and manipulative parents may seek to use the new changes as a bargaining tool to pressurise the other parent into agreeing with contact arrangements that are unsuitable or dangerous."

As I just said, there will be no legal aid from April, which means the loss of an important safeguard for the many parents who will be litigants in person and for those trying to resolve such issues out of court.

The clause, however, has a more fundamental problem. Like the NSPCC, Action for Children, the Magistrates' Association, the Children's Commissioner, the Coram Children's Legal Centre, Nagalro and a host of other organisations, we believe that it dilutes the paramountcy principle, which is that the welfare of the child is the paramount consideration that should be determined for individual children in individual cases.

Mr Buckland: May I caution the hon. Lady? It is clear from the evidence, which I know she has looked through carefully, that nobody at any stage, whether they be High Court judges or other witnesses, has suggested that this particular clause would in any way derogate from the presumption of the child's interests being paramount. The measure is a guide for judges to help them to reinforce what they would already regard as good practice. If the hon. Lady is in any doubt about that, the evidence of Mr Justice Ryder more or less confirms that view.

Lisa Nandy: I am grateful to the hon. Gentleman, but I do not agree with him at all. In fact, a host of organisations have said that the proposal should not dilute the welfare paramountcy principle—it still remains in legislation and ought to be the paramount consideration—but they say that it does by seeking to prescribe what is in individual children's best interests. It sadly cannot

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be assumed in every case that it is in a child's best interests that the involvement of both parents would further their welfare.

Lucy Powell: I remind the Committee that in evidence last week David Norgrove said:

"We felt in the end that the right thing to do was to keep the clarity of the paramountcy of the interests of the child. There is no evidence that courts are biased against fathers, and we decided not to use legislation to drive change in this area, as it could result in more dissatisfied fathers and potential damage to children." —[*Official Report, Children and Families Public Bill Committee,* 5 March 2013; c. 28, Q67.]

Lisa Nandy: That is extremely helpful. As I was saying to the hon. Gentleman, the organisations believe that, as it is worded, clause 11 requires the court to presume that the involvement of both parents will further the child's welfare without requiring the courts to make a determination of whether that is in fact the case.

Gavin Barwell (Croydon Central) (Con): I am not sure that the hon. Lady's argument is backed up by the wording of the clause. She just said that we cannot presume in every single case that the involvement of both parents will be in the child's interests, and I think every member of the Committee would agree. However, the clause actually says that there should be a presumption "unless the contrary is shown".

In other words, unless there is evidence that the involvement of both parents would not be in the child's interests, that should be the presumption. Does the hon. Lady actually disagree with that statement?

Lisa Nandy: Did the hon. Member for South Swindon want to make the same point?

Mr Buckland: I did, but I want to develop it in another way. The evidence of Mr Justice Ryder was instructive. He described the clause as an imperative clause that enjoined courts to look at good practice, rather than as something that would fundamentally interfere with the paramountcy principle.

Lisa Nandy: I am grateful to the hon. Gentleman, and I hope that if the Government decide to press ahead with the proposal, that will be case. I fear, however, that it will not.

In answer to the point of the hon. Member for Croydon Central that the presumption should be made unless there is evidence to the contrary, I completely agree. That is how the clause is worded, but what concerns me is that the presumption will be rebutted only when there is some evidence that the involvement of a parent will put the child at risk of harm, which is exactly the situation that he outlined. That is serious. The Woman's Trust charity is deeply concerned about what that will mean for children whose mothers—or potentially fathers, because they too suffer domestic violence—are suffering domestic violence. A 2010 report on similar reforms that were trialled in Australia found very strongly that there was an increased reluctance by mothers to disclose abuse, with many feeling that if there was a legal presumption of shared contact, there was little point in disclosing violence. That is what concerns me. I agree with him about the way that the clause is worded, but that causes me more concern, not less.

2.30 pm

I hope that the Minister will at least say that he intends to monitor the impact of this measure if he decides to press ahead in the face of quite overwhelming expert opposition. I say that to him as someone who worked for nearly a decade for two young people and children's organisations before I was elected. I have not seen charities so unanimously say on many occasions, about a piece of children's legislation originating from the children's Department, that a clause should be deleted in its entirety. I hope that he will take that seriously and, at the very least, agree to monitor the impact, as they did in Australia. However, I hope that he will think again. Quite simply, I believe that it is wrong for Members of the House to prescribe in primary legislation what is in individual children's best interests—children we will never meet, never talk to and whose circumstances we will never understand. Children who have been through this process have reached very different conclusions about their feelings towards their parents.

On Tuesday night, I had an online chat with some of the young people from the NSPCC's N-Spire project. It was quite a scary experience, especially considering how proficient they are with social media and how often I had to ask them what a hashtag and various other things were. During the course of that conversation, I asked them for their views on this clause. They said almost exactly what the Children's Commissioner for England and some other organisations said, which is that they were generally very much in favour of a presumption of parental involvement, but they did not want to see that written into legislation. They thought that the balance was wrong and that it had to be down to the individual.

For some of them, parental involvement and contact had been exactly the right thing; for others, it had been extremely distressing and they did not want anything to do with it. They felt very strongly that the law as it stands is right and that the welfare of the child is paramount, full stop, and that there is no need to change that situation, particularly if it gives the impression that parents' rights are balanced with children's. One young person said that she thought that parents have too many rights. I am not saying that we agree with that, because sometimes parents can come out of the process feeling very disempowered as well, but I am particularly concerned about the situation of the child.

Bill Esterson: Just to back up what my hon. Friend says, on the same subject, Professor Hamilton said:

"We are very concerned that a presumption as set out in clause 11 is likely to conflict with the paramountcy of the best interests of the child. While the explanatory memorandum says that the paramountcy principle will still trump the presumption, that is not clear in the Bill, and that is of great concern to us."—[*Official Report, Children and Families Public Bill Committee,* 5 March 2013; c. 29, Q68.]

Lisa Nandy: That is absolutely right, and is echoed by so many other organisations. Setting out why clause 11 should be removed, a coalition of seven organisations, including NCAS and Nagalro said:

"children benefit from the ability of the courts to take account of and give due weight to a range of factors in deciding what is in their best interests. It is critical that this determination occurs on a case by case basis according to each individual child's circumstances and needs, guided by the child's best interests and welfare above all other factors."

The Children's Legal Centre also believes that it will take considerable amounts of litigation to understand how this interacts with the welfare paramountcy principle. That is an important point, because I cannot emphasise enough to the Minister how difficult it is to get right this sort of legislation, which relates to very emotive, difficult issues about children, their lives, families and futures.

Section 1 of the Children Act 1989 is unusual in that it has lasted for several decades with strong support from all sides. In practice, it focuses the minds of parents, of children's advocates, of social workers and of the court on children's needs. It is incredibly important. That is why we agree with David Norgrove that

"the child's welfare should be the court's paramount consideration as required by the Children Act 1989. No change should be made that might compromise this principle. Accordingly, no legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents. For that reason and taking account of further evidence we also do not recommend a change canvassed in our interim report that legislation might state the importance to the child of a meaningful relationship with both parents after their separation where this is safe. While true, and indeed a principle that guides court decisions, we have concluded that this would do more harm than good."

That is why we have tabled new clause 13, which would remove the presumption in favour of parental involvement. If the Government still intend to make changes to practice, they should move that provision to the welfare checklist, so that it can be considered alongside the other provisions about a child, such as their wishes and feelings and those of their family, in the making of a decision.

Lucy Powell: On that point, further to the comments of my hon. Friend the Member for Sefton Central, Professor Hamilton said:

"We are also concerned that there is no definition of "involvement" in the Bill,"

which causes even more worry about how the Bill will be interpreted. She continued:

"We do not see the need for a provision of this nature in the Bill at all, but if the Government were absolutely committed to having some provision on the subject, we would prefer to see it contained in the welfare checklist".—[*Official Report, Children and Families Public Bill Committee,* 5 March 2013; c. 29, Q68.]

Lisa Nandy: I am grateful to my hon. Friend for that contribution. As ever, the Children's Legal Centre has articulated better than I can why we believe it is important, if the Government are determined to press ahead with the measure, to define parental involvement so that parents understand that it is not about equal time.

Charlie Elphicke: Will the hon. Lady enlighten the Committee about what she means by indirect involvement?

Lisa Nandy: Often, instead of face-to-face involvement, children who have gone into care have some kind of letterbox contact with their parents. The hon. Gentleman may know about that, and I know that the hon. Member for Erewash does.

Jessica Lee: Just to clarify, indirect contact is interpreted as anything other than face-to-face contact. Historically, that has been letters and cards, but it now includes the use, if appropriate, of social media such as text messages, Facebook and so on.

Lisa Nandy: I am grateful to the hon. Lady, who has been involved in the sector for a long time and has a great deal of expertise, as her intervention demonstrated. I am grateful to the hon. Member for Dover for raising such an important point. As I have said, it is becoming increasingly hard to regulate a child's contact with their parents or other family members, so it is extremely important for parents to understand the scope, level and type of contact that is envisaged.

Lucy Powell: In that context, would indirect involvement not also extend to the involvement that someone might have in a child's schooling, via parents' evenings or negotiations with the other parent? Although they might not be in discussion with the child, that person would have an indirect involvement in the child's well-being and schooling.

Lisa Nandy: That is very helpful. Emily, one of the young people to whom I chatted on Tuesday evening, said on the subject of the time limit for going to court, "That is a good point, because I know the longer you have to wait the more stressful and anxious it is for you. It's like every day you are waiting for something that you know is going to be so hard and it's always in the back of your mind. But I also think it is important that things aren't rushed and that you get support, because I know without the help I got I would never have been able to do it." She went on to say that contact arrangements with her parents and family had been problematic.

Other young people came forward with very different ideas about the sort of the contact that they wanted with their parents and how important it was to them that their voices were heard, their individual circumstances were taken into account, as well as their ability and capacity to cope with what was happening to them, the pace at which that was happening and that the decisions made about their lives were made on the basis of them as individuals with their own circumstances, not on the basis of prescription in law made by people—such as this Committee—who simply do not know them and will never meet them. That is why we have tabled new clause 13, which would put this measure into the welfare checklist.

We agree with the Government that parental involvement is incredibly important, both to mums and dads and to children, in the majority of cases. New clause 13, however, would allow the court to consider, for young people like Emily, whether parental involvement is in the child's interest and, if so, what type of involvement there should be. That would enable the Government to send the signal that they want on the importance of involving both parents in a child's life without actively doing harm to children.

Charlie Elphicke: I would be grateful for your guidance, Mr Chope. The amendment moved on the clause concerns the clause's whole purpose. Would this be the right moment to have a wide-ranging debate on the amendment and on clause stand part?

The Chair: I indicated at the beginning of the debate that the amendment was grouped with clause stand part and the new clause, so that would be in order.

Charlie Elphicke: I am grateful for your guidance, Mr Chope. I welcome the inclusion of this clause, tabled by the Government, in the Bill. Despite what the hon. Member for Wigan said, there has been substantial concern for many years about whether children have the right and ability to know, and have a relationship with, both of their parents—or any form of contact. There have been claims that the right of the child to have the guidance of both parents as a matter of principle has not been followed quite as it could be. While I would have liked to have seen stronger language in clause 11 than the concept of involvement, it is nevertheless a step forward because it sends an important signal to the courts and all those involved in family matters that greater efforts should be taken to ensure that children can have a relationship, with the guidance and mentorship that that entails, with both of their parents.

Lisa Nandy: Will the hon. Gentleman set out the evidence on which the assertion that there has been a long-standing problem is based?

Charlie Elphicke: I will do that, but allow me first to set out some of the evidence we heard last week. I asked Dr Morgan, the Children's Rights Director of England—I believe the hon. Lady was present to hear this—this question:

"Leaving aside issues of risk…would you think the starting point is that children should have the right to know and have a relationship with both their parents?"

To that, he said:

"Two counts for one piece of evidence. First count, yes, that is part of the area of right that children have raised—that they would like, subject to the harm issue, to have the right of contact with birth parents, and that does mean both of them."—

Dr Morgan is therefore saying that that is what children want to have. He continues:

"Secondly, we specifically asked children, in relation to the policy developing for this Bill, whether they were in favour of both parents remaining involved in their lives, should parents separate. The bit of evidence is that the vast majority said yes, they would. But the third point is that they put a caveat in. They said, 'if the child wishes.' Remember, we were talking about contact earlier—having the child's wish as well as the parents'. Their concern is that if it is only the parents' wish, but not the child's wish, then that should not automatically go forward. So the child's wish is critical in there. So yes, with that caveat from the children, with that evidence of having asked them."—[*Official Report, Children and Families Public Bill Committee,* 7 March 2013; c. 115-6, Q242.]

I then asked Dr Morgan whether he thought that children are properly listened to or their voices are too often ignored. He said:

"First, generally and in most contexts, including court and care contexts, children are saying that their voices are not sufficiently listened to at the moment and not sufficiently weighed with those of adults and professionals.

Secondly, in relation specifically to court processes, children told us that they felt that their voices were not currently sufficiently heard in court processes.

Thirdly, children made the significant suggestion, which was accepted by the Government at the time, when we were asking them about the family justice review proposals, originally, and they were giving their verdict on those, that not only should the child's view be better represented…but that it would be a good thing if, after any court decision, there could be a follow-up, including the child's views".—[*Official Report, Children and Families Public Bill Committee,* 7 March 2013; c. 116, Q243.]

2.45 pm

Dr Morgan was saying that children do think it is important to have known both their both parents and have a relationship with them. Secondly, they did not feel that the voice of the child was sufficiently listened to under the existing arrangements. The move in the legislation is welcome because it helps further what children say they want to see.

We then heard evidence from Sarah Jackson, the chief executive of Working Families. I asked whether it is important to have both parents involved in the child's life and what should happen after family breakdown.

Lucy Powell: I thank the hon. Gentleman for his reprise of last week's evidence and his questioning, which I have before me. However, would he answer the question asked earlier by my hon. Friend the Member for Wigan? I do not think we are in dispute about whether children would want to spend time with both their parents and have them involved. That is what we all want and I think the whole Committee would support that endeavour. The question is: what is the evidence that that is not being delivered through current legislation? I remind him again of David Norgrove's—

The Chair: Order. I remind the hon. Lady that this is an intervention.

Charlie Elphicke: The case proposed by the hon. Lady and the Opposition is built on the idea that there is no problem, that it all works swimmingly, that there is no need to change the law and that they are all in favour of the child knowing both parents and having a relationship with them. I fail to understand the Opposition's problem with a provision that says there should be an involvement of children in the lives of their parents. I do not understand the difficulty with the clause.

Bill Esterson: I hope we can enlighten the hon. Gentleman. David Norgrove last week made it clear that his interim report was minded to go down the route the Government have followed. However, as he looked at it further he realised there were dangers and risks. That is borne out by other witnesses last week. I ask the hon. Gentleman to look at the evidence presented to us last week, not previously, because that final evidence is crucial. That gives him the answer to his question.

Charlie Elphicke: I thank the hon. Gentleman for that intervention. The point I seek to make is simply that for too long there has been too strong a sense that children do not get to see both their parents following breakdown. We know that there are about 3 million

children who live apart from a parent and around 1 million have no contact with a parent three years after separation.

I do not think it is good enough to sit here and say, "Well, that is the fault of the lazy parent who could not be bothered to keep contact with their kid." I do not accept that there are 1 million parents in this country who after family breakdown are not interested, do not want to know and walk away from their child. I think there is a more substantial problem. I have had masses of correspondence since I raised the matter from people saying they do not have the ability to know their children as they should.

It is often said that it is about fathers' rights and fathers not being able to see their children. It is not. Sometimes fathers are the parent with residence and they block the mother from seeing the child. There are cases like that. Mrs A had two boys. After the marriage broke down, her ex-husband began alienating the children against her. There were 46 hearings between 2000 and 2006. They finally managed to achieve a shared residence order but, by that time, the damage had been done and the children were so alienated that they did not have a relationship with their mother at all.

It is important that the process moves more quickly than in the past and that there is a greater sense that children should be able to continue to know both their parents following a breakdown and continue to have that relationship. In that particular case, they would have had a much more profitable relationship if things had not gone that way.

Another case concerns a soldier with a six-year-old daughter who lives with her mother. He was going to be posted to Afghanistan. Court proceedings started, and contact was occurring until January 2011, when there was a hearing. The soldier was being deployed at the end of March that year. That was raised at the January hearing, and a specific order for him to see his child before he went on service was requested of the court. The judge said that that was unreasonable, and that the soldier should wait until October 2011 before asking the court to resume proceedings; in other words, he should wait until he came back from Afghanistan.

Some time has elapsed since then, and the soldier has written to me again. He said:

"You may well remember me…I was a serving solider in Afghan…denied access to my daughter…I have since came back from my tour safe and sound and have been back now since Oct 2011 yet I still have minimal access to my daughter."

He has been to court four times since his return, yet it seems impossible for him to find out whether he will have any ability to see his daughter. People say there is not a problem, yet anecdotal cases keep coming forward. We cannot simply say there is no problem.

We know that the number of court applications has been rising strongly since 2005, and that 1 million children do not have any contact with the parent without residence. It is not good enough for us simply to deny that there is any issue when our surgeries are so often full of cases where children do not get to see both their parents, and their parents come to see us to say how concerned, hurt and upset they are, because they want to have that relationship with their child, and to be able give their child guidance and mentorship.

The gentle nudge in this legislation—and it is a gentle nudge; indeed, it is gentler than I would like—is a really positive step forward. It will send the message to judges, and to all involved in the separation process, that they should ensure wherever possible that both parents can continue to have some involvement in their child's life, so that the child can have their guidance, mentorship, love and affection. All the evidence shows that children do better in those circumstances.

Lisa Nandy: I am very sympathetic to the father's situation in the case that the hon. Gentleman outlined, although of course I do not know what the mother's take on it was, and it would be interesting to hear the other side. However, will he address the central concern, which is not whether children in general are better off having an ongoing relationship with both parents? We all agree with that, and the vast majority of the country does as well. The problem that I outlined was that, for a whole host of reasons that I set out at length, the clause will not only fail to deal with that problem, but will potentially cause real harm to the child. Will he deal with the concern that, whatever the problem is perceived to be, the clause is the wrong way to tackle it?

Charlie Elphicke: First of all, I take issue with the hon. Lady's starting point. She says that she would be interested to hear what the mother says—to hear the other side. That is the problem with the whole situation: it always seems to be mothers set against fathers, and talk of "the other side" and who is right in each case. We should be starting with the child. I urge the hon. Lady to reflect on the idea that we should not be talking about the mother being "the other side"; our starting point should be the child, and the child's basic right to know and have a relationship with both their parents. It is important that that should be our starting point; then we should ask questions about whether it will be harmful for the child if they know and continue to have a relationship with both their parents. That is the fundamental point.

Things seem to have gone too far in the direction of not being able to have a relationship with both parents. All too often, we see cases where there are problems; I would like that nudge towards involvement by both parents in the life of the child, so that the child can draw on both parents, and both parents can take part in the child's life. We all know of many cases where that ideal simply cannot be achieved.

A constituent of mine, Mrs A of Wootton, wrote to me and said that

"Each time a visit is due"

there was

"a great deal of hassle—never being able to give a precise date etc. and twice"

one party has

"prevented the visit completely. Every time"

the parties go

"to Court to ask that they serve notice"

in respect of the contact order. One of the parents

"has been in front of several different judges and every one has refused to do anything at all—just shrugging their shoulders, treating"

them

"like a criminal, not even looking at the paper work and evidence. They just say there is nothing they can do."

[Charlie Elphicke]

It is important to send the message that it is important to put our children first. It is important that children are able to see and know both parents, and that they get the chance for mentorship and guidance. I take issue with the Norgrove report. In my view, stage one of the report came to about the right position. The final report came about after a visit by the Norgrove review team to Australia. In that country, there had been difficulty, because there was full shared parenting, and the idea that that meant some kind of equal division of time had gripped the Australian system.

A relationship is not about an equal division of time. To know someone is not about an equal division of time. A relationship is a matter of quality, not quantity. That is why we need the idea of involvement—of knowing and having a relationship with someone. It is important, because in too many cases, there is no contact or involvement at all, and the child is denied having someone to turn to for guidance, mentorship, and all the things that children who have grown up with access to, and knowing, both parents take for granted. My central point is that we should not see this as being about mechanistically allocating an amount of time.

Norgrove went off course and lost sight of the importance of the concept of a relationship, which includes knowledge of, and being able to turn to, both parents as children grow up. Both parents provide different sorts of guidance and mentorship, and the child might want to talk to each parent about different sorts of things.

We know from our constituency surgeries that there is a problem, and we know that there is a problem with the Child Support Agency. We should not be in denial about it. We should not take a Panglossian view. We should not stick our heads in the sand. It is time to send a message to the court system and to all those involved in family breakdown. We need to send a clear message that the system needs to make greater efforts to deal with the concerns held by so many people, not just because that is important to parents, but because there are 1 million children in this country who do not know their mums or dads. They have a right to that knowledge, that relationship, and the extra life chances that all the evidence says we get when we know, have guidance from, and can turn to both parents.

Mr Buckland: It is a pleasure to serve under your chairmanship, Mr Chope. I will be brief, because a lot of the general issues have been outlined already. I pay tribute to my hon. Friend the Member for Dover, who has been assiduous not only in raising the concerns of the people he represents, but in dealing more generally with a perceived problem. We must remember that the vast majority of arrangements—nine out of 10—between parents who separate or divorce are not conducted through the courts. A small number of cases have to be determined by the courts. It is important that the Bill sends a clear message, not only to people who use the full-blown court system, but to those who come to arrangements privately—frankly, that is a preferable way to go about things—that the involvement of both parents is key, subject to certain caveats and cautions, for the welfare of the child.

3 pm

I think Opposition Members are rightly concerned that proposed new section 1(2A) of the Children Act 1989 will interfere with the presumption of the paramountcy of the welfare of the child. Well, I have read the Keeling schedule, which was helpfully prepared by the Bill team, and I do not think that it will. I accept that the wording of proposed new subsection (2A) is somewhat different from that of the welfare checklist, with which we are all familiar, but after a quick reading of the 1989 Act as amended, no court would conclude that the provision conflicted with, or had equal weight with, the paramount consideration of the welfare of the child.

The problem in Australia was that the Australian legislation set up two competing presumptions. In that legislation, the two primary considerations when determining the best interests of the child are:

"the benefit to children of meaningful relationships with both parents"

and

"the need to protect children from…harm".

Problems arose because the Australian legislation did not create a hierarchy. The vast body of evidence generated by the Australian case must be looked at in the light of the essential and important difference between the proposals before us and the Australian legislation. Any other reading of that example is fraught with danger.

A body of evidence was obtained in the run-up to the amendment of the law in Australia, which included a lot of evidence about tensions and pressures that would be created by those competing presumptions, and by the assumption that "meaningful relationships" meant shared time. A lot of evidence was gathered relating to not only court-ordered shared time, but shared time arrangements made outside court. It is important to remember that that body of evidence, which caused concern, did not just relate to shared parenting as a result of orders of the court, so we have to put these arguments in proper perspective.

I am grateful to the hon. Member for Wigan for generously allowing me a number of interventions on the question of the legal effect of proposed new section 1(2A) of the Children Act 1989. In evidence to the Justice Committee late last year, when asked about the draft clause, Mr Justice Ryder, High Court judge in the family division, said:

"The draft clause could be construed not to be a presumption. If one looks at welfare as an overarching principle, it is the presumption. The draft clause, as written"—

that clause is identical to the one before us—

"is what the Court of Appeal used to politely refer to as an imperative—for example, that children are best brought up by their birth families."

He went on to say:

"Imperatives are important. Children are, in general terms, subject to welfare argument, best brought up by their birth families".

He gives an example, and then says:

"This is a similar imperative; it is not likely to change practice, but it might highlight what the judges already believe is good practice."

I suppose that prompts the question, why table the clause at all? What effect will it have on proceedings? We have yet to see the effect. Nobody in this debate, from the Minister down, can look into a crystal ball and

predict precisely what effect it will have. Our important duty as legislators is to set out clearly for the courts, which are to apply the provisions, the fact that, far from interfering with the presumption and paramountcy principle, all the clause does is "nudge" the courts, to use a word used by my hon. Friend the Member for Dover, towards considering the involvement of both parents in the upbringing of their child. Is that such a huge step?

Lisa Nandy: In that case, does the hon. Gentleman depart from the opinion and judgment of the Justice Committee, of which he was a Member when the draft clause was considered? It said:

"There is a danger that the introduction of a second presumption will take the attention of the Court, but equally importantly the attention of parents…away from determining what is in the child's best interests and on to double rebuttal on the grounds of harm."

Mr Buckland: I am grateful to the hon. Lady, who rightly challenges me on that. I am no longer a member of that Committee. However, the wording was careful. It said there was a danger. I accept there is a danger. As I said, the job of legislators and Ministers is to make it abundantly clear in all their statements in support of amendments that that is not the intention of the legislation. The courts still have, as part of their hierarchy, the paramountcy principle, the welfare checklist and this new rebuttable presumption. That could obviously be rebutted where the evidence suggests that contact with one or other of the parents could be inimical to the welfare or safety of the child.

The Justice Committee looked closely at the clause, and I accept that it had concerns. One concern was about the definition of involvement. The hon. Lady's amendment does its manful—or womanful—best to try to define involvement. However, there is a danger in doing that. I think we would all understand the ordinary definition of involvement. However, when one starts to define it, one ends up creating definitions and pitfalls that I can see fettering the discretion of courts. None of us wants to see that happen. It is just the sort of problem that the definitions used in Australia led to. The words "meaningful relationships" led to an assumption of 50:50 parenting.

I understand the spirit in which amendment 23 was tabled, but its wording does not take us any further, and it is in danger of fettering an important discretion that the court has to apply from case to case. In a nutshell, while I understand and respect the concerns outlined by the Opposition, and I look forward to the Minister's response, I believe that the Government have moved sufficiently from their original position to satisfy me that the proposal will not lead to the mischief feared by many here and elsewhere. It will allow judges proper leeway to make decisions in the best interests of a child, based on the evidence before them.

The Chair: Before I call the Minister, if my researches in "Dod's" are correct, I think it is the hon. Member for Dover's birthday, in which case, I congratulate him. I hope that he will not detain us too long.

Mr Timpson: In the spirit of the reference you just made, Mr Chope, I will endeavour to continue a well judged and constructive debate. We have all been getting on extremely well, and I hope this is not the moment when we all fall out, although I accept that this is a more emotive and contentious clause. The debate is not new to the House, however: I took the time to look back at *Hansard*, as we often do late at night when waiting to vote, and I discovered a debate on this very issue back in 2006. The Conservative party, then in opposition, was pushing this proposal, but it was rejected by the then Labour Government, and the Labour Opposition continue to reject it now. In fact, it was the subject of a Conservative party manifesto commitment in 2005. The problem has persisted and has continued to be debated throughout that period, and here we are in 2013, going through the same process.

The clause has generated a lot of interest, but at its heart is a philosophy that I think we all share. My predecessor, my hon. Friend the Member for East Worthing and Shoreham (Tim Loughton), worked hard to try to understand the issue by engaging with a large number of organisations and individuals on both sides on the argument. It may be helpful if I quote what he said on Second Reading, that

"a child does best when both parents have as much involvement in the childhood of that child as possible, subject to the welfare provisions, which absolutely still stay paramount in the Bill."—[*Official Report*, 25 February 2013; Vol. 559, c. 67.]

In an intervention later, he stated:

"The provision has nothing to do with giving rights to parents; it is about the responsibilities of parents and the rights that children should have."—[*Official Report*, 25 February 2013; Vol. 559, c. 76.]

The hon. Member for Wigan has uttered on several occasions the well worn adage that the clause is about children's rights, not parents' rights. I continued to consider the matter as the provision underwent pre-legislative scrutiny, and that adage has been at the centre of my thinking.

The pre-legislative scrutiny process was extremely helpful. I am sure that you will be heartened to hear that, Mr Chope, as one who holds the accountability of Government to Parliament dear to his heart. It resulted in some changes to the clause, particularly, as my hon. Friend the Member for South Swindon articulated, in relation to the clause heading, which demonstrates the perception of what the clause is designed to do. I believe that was a useful exercise, but the clause's primary purpose is to help to ensure that children are able to maintain a relationship with both their parents after family separation. We heard from my hon. Friend the Member for Dover, who proposed a private Member's Bill that touched on this issue, that too many children are not able, for whatever reason, to maintain a relationship with both parents when they separate.

We can argue about how we effect change in society and how we change attitudes and behaviours, and we have indulged in a little bit of nudge theory in our debate. Much of this is about perception and a lack of confidence that is articulated by many people. As a Minister, I receive huge amounts of correspondence from colleagues across the political spectrum, quite rightly advocating the views of their constituents and ensuring that they are heard in this place. That has reinforced my view, built up in my practice in the family courts and my work as an Opposition Back Bencher, talking to organisations and the people who raised the

[Mr Timpson]

issue with me, that we need to look at how can address the concern that has existed for some considerable time and persists to this day. That is what the clause does.

Charlie Elphicke: In terms of the nudge theory, the clause is not only about the parents who want to know their children, but is a push for those who have not been as engaged as they should have been and have not taken the interest that they should have taken to get in touch with those 1 million children and get involved in their lives. That is why it is important not just for the desperate parents, but for those parents who are a bit cavalier and have not been as good as they could have been.

3.15 pm

Mr Timpson: My hon. Friend emphasises the important point made by my hon. Friend the Member for East Worthing and Shoreham that this is about the responsibilities of parents as well as the rights of children. Both though the Bill and through non-legislative means, there are ways to encourage parents at the beginning of any process where their own relationship has fallen apart to think about the child, rather than worry about their personal battle.

That view lies behind the clause and other aspects of the Bill; it is important that we do not look at the clause in isolation. The hon. Lady acknowledged that other measures in the Bill complement what we are trying to achieve through the clause, such as the increase in use of MIAMs and potentially mediation, and the child arrangements orders that will replace residence and contact orders, which can lead to a sense of winners and losers that is divisive and not centred on the child. We are also trying to improve enforcement, not necessarily through more draconian measures but by improving the way that courts deal with enforcement, ensuring that where contact can continue, it does so in a meaningful way and that parents understand their responsibilities, as my hon. Friend the Member for Dover highlighted, in fulfilling their role as parents for their child or children.

The perception of bias in the family courts is an issue for parents, and it can lead to proceedings becoming more adversarial. Our aim is to keep more cases out of the courts. We want more cases to be agreed amicably, in the interests of the children, and that is what the clause is about. It amends the Children Act 1989 to place a duty on the courts in cases where there are disputes about children's care to presume that the involvement of both parents in the child's life will further the child's welfare, provided that this involvement is safe. That last caveat, which was strengthened by the pre-legislative scrutiny, is a key feature of the clause.

We recognise that the court should already take account of the importance of a child's relationship with both parents, but there is currently no legislative statement to that effect. We want to reinforce by way of statute the expectation that both parents should be involved in a child's life, unless the child is at risk of harm or it is not in the child's best interests. We have been asked where our evidence is. We consulted on the provision, and 52% of respondents supported our plan to legislate.

Lisa Nandy: Given that the Minister is determined to send a message about what he has carefully described as a "perception of bias", not an actual bias, in the court system, will he consider accepting our amendment, which would put that consideration into the welfare checklist, so that it can be considered alongside a range of factors in a child's life and so that decisions are taken on the basis of an individual child?

Mr Timpson: I was going to come on to that point later in my speech, but as the hon. Lady has raised it I will deal with it now.

New clause 13 would insert an additional factor into the welfare checklist: it would require the court to have regard to quality of the relationship that the child has with each of the parents when making certain decisions, including decisions about contested applications for section 8 orders. Unlike clause 11, the new clause would not apply to decisions regarding the award or removal of parental responsibility, but it would apply to a wider range of cases, including care and supervision cases. There are consequences to what she proposes in the new clause that are over and above the intention of clause 11 on parental involvement. I have already set out some of the reasons why we want the clause to stand part of the Bill.

In the consultation on parental involvement, one of the four options that people could choose was an addition to the welfare checklist. I am sure that the hon. Lady in her assiduous way has taken time to consider the findings of that consultation. The welfare checklist was the preferred option of less than a quarter of those who responded, whereas just over half chose the approach of a presumption, which we have adopted in the Bill. The amendment does not recognise the benefits of the involvement of both parents in a child's life, and although I would not suggest that the hon. Lady simply plucked it out of thin and air and that her proposal has no support, it was not by a long stretch the preferred option in the consultation.

Clause 11 will not entitle parents to an equal or prescribed share of the child's time, nor will it create a statutory right to see their child. It focuses on the needs of children. As I said on Second Reading, page 21 of the explanatory notes set out in clear terms that this is not about time; rather, as my hon. Friend the Member for Dover said, this is about the quality of a child's involvement with both parents. I hesitate to say this to the hon. Lady, who has to articulate her case for opposing the clause, but if we are to avoid giving the impression that the clause is about time, there has to come a point where we stop talking about time and equality of time, as that only reinforces the impression that that is what the clause is about. It can become a self-fulfilling prophecy. The media will continue to use those phrases to describe possible deficiencies in the clause.

As Minister, I have made it abundantly clear that this is not about the equality of time. That point was made on a number of occasions by eminent Members on Second Reading. I hope that we can have a frank debate about this issue without having to refer back continually to what was done in Australia which, as we have learned, was not a helpful way of resolving issues. If we concentrate on the question of time, we will not always put the child's interests at the heart of any decision.

Charlie Elphicke: I do not know whether my hon. Friend agrees, but I feel that, too often in this debate, the issue of time and the Australian experience is used as an excuse to do nothing by those who are quite happy with the status quo and do not want any kind of nudge at all. I therefore urge him to press on and give this positive nudge—this positive message—to all involved and give children the ability to have both their parents fully involved in their lives.

Mr Timpson: My hon. Friend gives me a way to flag up that we have considered the experience in Australia. When drafting the clause, we were mindful of the unintended consequences that arose from some of the subtle changes the Australians made.

As my hon. Friend the Member for South Swindon pointed out, the Australian legislation is very different from the Children Act 1989 because it requires the court to look at two primary considerations when determining what is in the child's best interests: the benefit to the child of having a meaningful relationship with both parents and the need to protect the child from harm, abuse, neglect or violence. Our clause does not require the court to balance those two factors. It states explicitly that the presumption cannot apply to a parent who cannot be safely involved in a child's life—an important caveat—and a child's welfare remains the paramount consideration.

I heard what the hon. Lady said about the paramountcy principle. I have had to argue many section 8 cases, and the paramountcy principle was relevant in every single case, including those in which the judges were balancing a number of different factors, criteria and considerations. For example, in a case in which an application has been made to remove a child from the jurisdiction, the judges have to take a huge amount of case law into account. Even in such circumstances—this goes to the heart of what my hon. Friend the Member for South Swindon said, and what Mr Justice Ryder said, about the imperative that the clause creates—and despite there being many other factors and considerations for a judge to take into account, not least those in the welfare checklist, the overarching duty to consider welfare as the paramount consideration pertains throughout the whole process. The clause does nothing to change that.

Lisa Nandy: Has the Minister assessed what impact the clause might have on cases that are resolved out of court? I mentioned the concern about the message that it may send to parents who are resolving cases out of court. In Australia, a similar measure gave rise to the perception that there was no point in disclosing abuse, because the father or mother would be entitled to 50% of the time, or would be entitled to contact, anyway.

Mr Timpson: I am sorry that the hon. Lady has—perhaps inadvertently—reinforced an impression that I pleaded with her not to create by talking about 50:50 time. The clause is absolutely not about 50:50 time. As my hon. Friend the Member for South Swindon articulated extremely well, we are talking not only about cases that are in court but about many more cases—*[Interruption.]* If the hon. Lady could listen carefully to what I am trying to say, it would be helpful. In cases that are out of court or pre-court, a perception that a court will deal with it in a particular way may colour the judgment and the decisions that are made before the process starts. The public must have confidence in how family courts work and how they reach decisions, not least because the way in which family courts are perceived has a knock-on effect on decisions that are made out of court.

We must also remember that in most cases that go to court involving an application for a section 8 order, whether a contact order, a residence order, parental responsibility, a specific issue order or a prohibited steps order, the outcome is a consent order rather than a decision by the judge. Many such consent orders are based on the current perception of how the courts will make decisions in individual cases. Just because some form of contact has been agreed in a consent order, that does not necessarily mean that that is based on a view of how the courts are dealing with cases; it may well be based on the perception that we are trying to address.

Amendment 23 is designed to make explicit the fact that involvement does not mean a particular division of a child's time. To clarify, involvement includes indirect involvement. Clause 11 works in such a way that it is not necessary to define the meaning of the involvement that a parent may have with their child, because the presumption in clause 11 stands if any form of involvement can take place without risk of harm to the child and if the involvement will further the child's welfare.

We have used the word "involvement" in clause 11 as the simplest, most neutral means of expressing the full spectrum of ways in which a child can have a relationship with their parents, and our debate has demonstrated how difficult it is to try to define precisely what involvement means. If we try to do that, as my hon. Friend the Member for South Swindon said, we are in danger of fettering discretion. Section 8 orders provide no strict definition of contact; they give a wider definition that is not as detailed and prescribed as the one proposed in amendment 23. The courts will use their discretion in each case to make decisions about the type and level of involvement following consideration of all the evidence. Ultimately, the involvement a parent may have in their child's life will be determined by the welfare principle in section 1 of the 1989 Act and, where the decision is about contested section 8 orders, the facts in the welfare checklist in that Act.

Turning quickly to new clause 13, we have already touched on the insertion of an additional factor into the welfare checklist, so I am not going to trouble the Committee by repeating those arguments. However, it is clear from the response to the consultation that the presumption we have put into the clause, subject to the pre-legislative scrutiny and the changes we have made, is the most preferred option for those who have been consulted. For the reasons I have set out, new clause 13 would not achieve the intention of clause 11.

For all those reasons, and having listened very carefully to both the Justice Committee and all Members who have spoken, I ask Opposition Members to withdraw their amendments and commend the clause to the Committee.

3.30 pm

Lisa Nandy: I am grateful to the Minister for taking time to respond, and for the tone he adopted for the bulk of his response, which was markedly different to

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the tone of some of the debate. Given how emotive this subject is and how much more agreement there is between us than would be apparent from the tone of some of the remarks, that was extremely important. It is apparent that we are all very much of the opinion that it is the child's right to have parents involved in their lives when they wish to be and when it is safe and consistent with their welfare.

However, it is unworthy of the Minister, who has such a commitment to children, to suggest that the problem of the perception of shared time has been created by children's organisations and others who are seeking to tackle it. The problem has been created by his own Government, who, by his own admission, are seeking to tackle a perception rather than an actual problem.

Mr Timpson: This is the first time so far in the Committee that I have intervened on the hon. Lady, and I am not doing so lightly. I want to respond to what she has just said. First, there is a problem, which we are seeking to address. Secondly, this is not about saying that those organisations are peddling something that is not true. I am saying simply that, by continuing to talk about the division of time rather than the quality of relationship, the hon. Lady is reinforcing the perception that that is what the measure is about. I am trying to reinforce the view and the understanding that that is not what it is about. I know she understands that, and I hope she appreciates why I am trying to do that.

Lisa Nandy: Of course, I accept the Minister has done an awful lot to try to reinforce the impression that this is not about a perception and should not be about shared time. However, it is a little unfortunate that his Government—I say "his Government", but I know he was not the Minister at the time—have managed to get themselves into this position in the first place. A law that is largely seen as fit for purpose is being amended, creating all sorts of false impressions outside the House, which, as many children's organisations have warned, might well be unhelpful to children, and the Government are seeking to cast the responsibility for that back on to either the Opposition or those organisations. It is unfortunate that he has got himself into this position, or been put into it. I hope that somehow, during the passage of the Bill, we can help him to get out of it.

Nobody is arguing, as the hon. Member for Dover said, that things are going swimmingly. When parents separate, it is always a very difficult experience for all involved, particularly the child. There are real problems concerning children's ongoing relationships with their parents. I talked about one such problem—how we can better enforce decisions made in the courts—when I spoke to amendment 23, which is in my name and that of my hon. Friend the Member for Washington and Sunderland West. I am sorry the Minister did not see fit to address it in his response, but I hope we can continue to debate the subject over the course of the Committee. I would be very glad to hear what he has to say.

Mr Timpson: I do not know whether the hon. Lady has had sight of the interim research findings on the enforcement of court orders for child contact by Professor Liz Trinder, Alison Macleod, Julia Pearce and Hilary Woodward from the university of Exeter and Joan Hunt from Oxford university, which I believe have been published today—I do not know whether the report has been made available to the Committee. It is an interim report, but nevertheless has some veracity. They conclude that the Government's decision not to introduce further new sanctions is consistent with their interim findings on the enforcement work they have researched. They also conclude that the Government's proposal to develop an enforcement-specific case assessment and intervention pathway is a positive step forward. I appreciate that the hon. Lady has not had time to familiarise herself with their findings, but they demonstrate that we have taken a mature approach to resolving the problem of enforcement that will provide children with the most appropriate arrangement, and keep them in the right place, from the point of view of both their rights and parents' responsibilities.

Lisa Nandy: Unfortunately, the documents to which the Minister refers have not been made available to the Committee, along with so many other pertinent documents and regulations. I am sure they will be forthcoming, and I look forward to having the opportunity to scrutinise them properly, as he has already done. I also welcome what I believe I heard him say in his brief intervention, namely that the Government are taking an evidence-based approach to sanctions, which have been problematic, and basing their decisions on the individual needs of every child. In fact, that is exactly what I and the organisations I have mentioned have been arguing for in relation to the clause.

Gavin Barwell: I want to take the hon. Lady back to what she was saying just before the Minister intervened. Those remarks struck a slightly different tone, and I agree with them more than I agreed with what she said when moving the amendment. Will she clarify the Opposition's position? Is it that there is only a problem of perception and that the law is actually working fine, or is it—I understood her to have said this just now—that there is a problem with how the law is working? Does she believe that the problem can be dealt with through more effective enforcement rather than by changing the wording of the law?

Lisa Nandy: The Government's position is that there is a perception problem. Our position, as I set out in my opening remarks, is that the problem that the Government ought to seek to tackle and to make their priority is not the wording of the law but the enforcement of decisions that are made in court. I am grateful to the Minister for addressing that when invited to do so. Our view is that the problem is very real, and tricky to resolve. I welcome what the Minister has just said, but I also believe our time would be better spent considering those difficult problems rather than tinkering with bits of law that have been proven to work.

Lucy Powell: I am sorry to interrupt my hon. Friend, who has been very generous with her time. Were we not also seeking to clarify whether primary legislation will resolve the problem—perceived or otherwise—identified by the Government, and whether the unintended consequences of such primary legislation would defeat any perceived resolution?

Lisa Nandy: I am grateful to my hon. Friend for reiterating that point—we have been trying to make that point and to get the Government to focus on it.

I was about to respond to the hon. Member for Croydon Central by saying that I am somewhat reassured by some of what the Minister has said. He has reiterated today that the issue is not equal time, but I do not accept that it is not the purpose of the Committee to scrutinise unintended consequences of the Bill. It was right to point out that the equal time perception is one of those unintended consequences, but I am grateful to him, as ever, for making his point strongly.

Charlie Elphicke: I struggle with one thing that the hon. Lady is saying. What could be an unintended consequence of the concept that the involvement of a parent in the life of a child, as a matter of principle, should further the child's welfare?

Lisa Nandy: I am struggling a little with that, as I am with a great deal of what the hon. Gentleman said in his contribution. I refer him to the comments I made at length in my introductory remarks, when I explained that point. In particular, I refer him to the view of the NSPCC and many other organisations that the clause dilutes the welfare paramountcy principle by writing into primary legislation what is presumed to be in the interests of a child and requiring a rebuttal of that presumption in a court of law, as I said in exchanges with the hon. Member for South Swindon and other Government Members. The Opposition are deeply concerned about the implications of that for individual children. We believe that the welfare of a child must remain the paramount consideration; that every case must be looked at individually on its merits; and that every child must be listened to, so we can see what is in their best interests.

The Minister and I agree on another point. He clarified that, in his view, the Bill is not about adults' rights. I am grateful to him for putting clearly on the record what he has said to me in private, and I agree that we should not seek to make children's legislation about the rights of adults—it should be about the rights of children, and I am grateful that he made that point strongly. I am also grateful to him for making the point that, in his view, as in mine and those of many other organisations, the paramountcy principle ought to remain the overriding consideration. Notwithstanding some of the practical problems that the clause will create in reality, I am glad he took the opportunity to reiterate that the paramountcy of the welfare of the child will remain the overriding consideration for the courts when they make decisions.

I raised a number of concerns that were not addressed, including people resolving matters out of court, and undisclosed abuse and domestic violence. However, I have watched the Minister's approach since he came into office, and have seen how substantially the wording of the clause has changed over that time. Given that he has put assurances on the record, and although I share the view of many of the organisations I have mentioned that the clause is largely unnecessary and potentially unhelpful, I am prepared to withdraw the amendment to allow the Committee to give the matter further consideration as the Bill progresses through Parliament.

Annette Brooke (Mid Dorset and North Poole) (LD): The Minister gave me a flashback to 2006. I probably remember it imperfectly, but I recall the debate about paramountcy. It was argued that there could not be two conflicting first-liners, as it were. The Minister has been very clear on that today. When I sat on the Opposition Benches, I argued for an insertion into the welfare checklist, with the wording that was used at the time. It was rejected by the Government because it was seen as a threat. I am not convinced, having been thoroughly demolished many years ago, that the alternative would work. It is more important to get the words right in the Bill. We must all reflect to ensure that the words are absolutely right.

Lisa Nandy: I am extremely grateful to the hon. Lady for her intervention. I pay tribute to her because when she debated the matter in 2006, some members of this Committee—including me—watched from outside with admiration as she made a complex case about individual children's lives. I know she will continue to champion the rights of children as the Bill progresses. Her point illustrates where we are with the clause. We do not disagree on what we want to achieve for children in principle, but there is an emotional debate on how we get there in practice.

Obviously, it is incredibly important that we get this right. The Minister has shown he recognises that by moving some considerable distance. I and many others have outstanding concerns, and the issue deserves a much lengthier debate than we are able to give it today. I shall withdraw the amendment not because I am happy with the current situation or how the clause is drafted, but on the basis that I should like to give us an opportunity to consider the measure further and get it right for children. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 11 ordered to stand part of the Bill.

Clause 12

Child arrangements orders

Lisa Nandy: I beg to move amendment 24, in clause 12, page 9, leave out lines 38 to 41, and insert—

'(a) with whom a child is to—

(i) live,

(ii) spend time, or

(iii) otherwise have contact; and

(b) when, with any person, a child is to—

(i) live,

(ii) spend time, or

(iii) otherwise have contact.'.

The Chair: With this it will be convenient to discuss amendment 25, in clause 12, page 9, line 42, at end add—

'(5) "Rights of custody" under the Hague Convention are determined by an order made under subsection (3)(a)(i).'.

3.45 pm

Lisa Nandy: The Minister will be relieved, after the previous discussion, to hear that we very much support the clause. I have seen for myself that parents who have managed to reach an agreement in court on the complex

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detail of contact arrangements can come undone by the labels "contact" and "residence", and the feeling that one side is the winner and the other the loser. I appreciate that there are strong arguments in favour of shared residence orders, but I am equally mindful of Resolution's point that the term "child arrangements order" more accurately and rightly focuses minds on the fact that it is about the paramountcy of the welfare of the child. I share the practical concerns that have been expressed about the fact that the order is being introduced at a time when legal aid is being removed from the majority of parents in private law cases. I hope the Minister will tell us how he intends to ensure that parents understand the implications of the new order.

The purpose of my amendment is to allay concerns expressed by the Justice Committee, the Family Law Bar Association, the Children's Commissioner for England and others. It relates particularly to rights of custody, which, as the Minister knows, are an essential concept in The Hague convention. They are particularly important in cases of child kidnapping. The Hague convention sets out the right to determine a child's place of residence, which, as the Government have made clear—I am grateful to them for that—is an aspect of parental responsibility unchanged by the child arrangements order. While I accept that, I share the concerns highlighted by the Justice Committee, which said that while that is technically correct, in practice there are several problems; it outlined a few of them, which it is worth reiterating for the Committee.

First, courts in foreign jurisdictions do not practise in English; this increases the room for misinterpretation. Secondly, there will be a lag while legal textbooks catch up with what has changed and what has not. Thirdly, there are people outside the courts, such as port officials and the police, who need to understand the provisions. National courts can ask foreign courts to make a determination under article 15 of The Hague convention, but in reality, that is expensive.

There would be a particular problem if both parents had a child arrangements order, and the parent with whom the child did not ordinarily live was able successfully to convince a foreign court that they both had the same rights. The child arrangements order purposefully seeks to merge residence and contact. I understand why, and I support that in principle, but I do not think that the implicit meaning will be immediately clear. It risks leaving confusion, with parents going through appeal processes and children suffering anguish because of prolonged separation. Given the Government's efforts to speed up decisions about children, we should avoid that at all costs. Amendment 24 seeks to ensure that things are immediately clear outside the UK's jurisdiction. I am not wedded to the wording, but I ask the Government to pay heed to the concerns expressed by legal practitioners and others, and to clarify the situation.

Mr Timpson: Clause 12 provides for new child arrangements orders to replace existing contact and residence orders. The family justice review panel said that the change would encourage parents to focus on their child's needs, rather than their own perceived rights and entitlements in respect of the child. That very much echoes the debate we have had.

We welcome that recommendation from the panel. The intention behind the child arrangements order is to move away from language that reinforces the perception that one parent is more important than the other. However, in terms of content, it allows the court, as now, to set out clearly with whom a child lives, spends time or has other types of contact.

The Government believe that the clause should be drafted in the simplest terms to achieve its objective. While amendment 24 would not change the scope of the order, it would focus attention more on the various distinct elements of the order. It would, therefore, risk undermining the policy objective of reducing the perceived hierarchy of different types of order. There are similarities to the effort to define "involvement" and to the potential pitfalls there.

Amendment 25 seeks to ensure that the new order is enforceable internationally. However, from an international perspective, it is the content of an order that matters. It should be clear from the content of a particular child arrangements order whether it regulates living arrangements, contact arrangements, or both. The 1980 Hague convention allows for the return of children who are wrongfully removed to any contracting state in breach of a person's rights of custody.

Rights of custody are a key concept under the convention and include the right to determine a child's place of residence. Other states will look at what rights in our law amount to rights of custody. The specific content of relevant decisions and orders, such as child arrangements orders, that specify with whom a child is to live will provide evidence as to whether a person has rights of custody. However, the question of whether something is evidence of rights of custody is a question for international law, and it would not be appropriate to try to dictate the meaning of an international legal concept of that kind in our own law. The existing definition of a residence order does not include a reference to international treaties. It would be inappropriate to include such a reference in the definition of a child arrangements order.

I am glad that the hon. Member for Wigan generally welcomes the clause, and of her efforts to try to defuse the conflict, which I have seen at first hand, that the labels "residence" and "contact" may create. There was an attempt to address that in the past when the terms were "custody" and "access".

Removing the emphasis on parents in the orders, and moving the focus clearly to the child and the arrangements that should be in place for them, is the right approach. Clearly, there will be a period of adjustment as the new orders are introduced, but we will ensure that parents are aware of the changes. We will look closely at how we can promote a clear understanding, in the different stages of the pre-court dispute resolution process, of the various avenues through which parents access information, including our new online hub for separated parents.

I had the privilege of meeting the Family Justice Board and the Youth Justice Board to see their excellent work. In the reforms to create a single family court, they are well placed to look at the issue and to be confident that information is available to parents and children, so that they have a clear understanding of what a child arrangements order is. The change is a positive step that

will remove unnecessary conflict both inside and outside the family court system. I therefore urge the Opposition to withdraw their amendment.

Lisa Nandy: I am grateful to the Minister for setting out the steps that will be taken to ensure that parents understand the new child arrangements order; that was at the root of many of my concerns. I do not think we have resolved the disagreements about international jurisdiction. If there is a period of confusion before foreign courts become more au fait with the new arrangements, there could be harmful consequences for children.

Mr Timpson: Let me provide the hon. Lady with additional reassurance. When Lord McNally—the Justice Minister—and I appeared before the Justice Committee in the pre-legislative scrutiny process, we gave evidence on how information, through the Ministry of Justice, would be disseminated to other states, so that there is a clear understanding of the implications of our legislative changes. Those efforts will continue to be made, so that there is a clear sense of the direction of travel in our jurisdiction when other states' jurisdictions come into contact with ours.

Lisa Nandy: I thank the Minister for that assurance. I had seen that in the Justice Committee's evidence, but it is absolutely worth reiterating. I am still not sure that we have resolved the difference of opinion between some in the legal profession and the Minister. We ought to continue to discuss that as the Bill progresses through Parliament. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 13

Control of expert evidence, and of assessments, in children proceedings

Lisa Nandy: I beg to move amendment 26, in clause 13, page 10, line 14, leave out subsection (5).

The Chair: With this it will be convenient to discuss the following:

Amendment 27, in clause 13, page 10, line 15, at end insert—

'(5A) The court shall raise with the parties at the first hearing the issue of whether the use of expert evidence is likely to be necessary in the proceedings and shall have particular regard to setting a timetable for consideration of applications for permission to put expert evidence before the court.'.

New clause 14—*Arrangements for the provision of evidence by staff of a local authority or of an authorised applicant in children proceedings*—

'(1) The Secretary of State must make arrangements to support a person who is instructed to provide evidence for use in children proceedings if they are a member of the staff of a local authority or of an authorised applicant under section 13(8)(a)(i).

(2) The arrangements described in subsection (1) may include—

(a) training prior to the proceedings,

(b) coaching whilst at court,

(c) designated facilities at court to enable preparation for the proceedings, and

(d) any other arrangements the Secretary of State believes will enable members of the staff of a local authority or of an authorised applicant to provide evidence in the proceedings.'.

Lisa Nandy: We understand why the Government are concerned about the overuse of expert evidence, which can be costly, in terms of both money and, more importantly, time; children cannot afford to wait unduly for decisions about their future. Given the evidence presented by David Norgrove in his report, we agree with the Children's Commissioner that, in general, the measure is likely to work in the interests of children. As with all laws, however, there will be exceptions, and I want some assurances from the Minister that the test will not be applied too strictly, and that when the need arises, expert evidence can be sought by practitioners involved in the case. That is the purpose of amendment 26.

The Justice Committee raised concerns that the test is already being applied too strictly, and while that does not convince me that the thrust of the clause is therefore misguided, I am sure that it is not the Government's intention to withhold evidence that is needed. In the light of that concern, will the Government commit to monitoring the impact of the clause by looking particularly at the number of successful appeals against decisions to refuse expert evidence, to see how the measure is playing out in practice?

I am of the opinion that experts can be extremely important. Research by Dr Julia Brophy, whom the Minister has mentioned, found that independent social worker reports do not simply duplicate social workers' ethics. She also found that there were very few late reports where lateness was not case-driven. Amendment 27 is designed to ensure that such considerations are thought about early in the case, notwithstanding the need to commission some experts because of matters that arise during the course of proceedings. It could help to reduce delay further if we ensured that, if experts are needed, they are, as far as possible, commissioned early. As that is in line with what the Minister is trying to do, I hope that he will give the matter serious consideration.

As the Minister knows, the number of expert reports has increased significantly over the past 30 years. In evidence to the Justice Committee, members of the judiciary said that they suspected it was because society and social work as a profession have become more risk-averse. That points to my central concern about the clause, which is the additional emphasis that the restriction of expert reports will place on social workers at a time when social work is already under significant pressure.

Nearly eight in 10 social workers say that their case loads are unmanageable and, as we heard in oral evidence, children's services are reeling from cuts of up to 50%. In some parts of children's social work, burn-out and turnover are high, and there is a shortage of experienced social workers in many areas of the country. It is urgent that we tackle the matter, not just through the Munro reforms, which we largely support, but through fairer resourcing decisions from central Government and, specifically, training and support for social workers who are required to give evidence in court. The Justice Committee said:

"Taking the evidence together, it appears that where social workers have received training and pre-proceedings work is of high quality, the number of expert reports required will most likely reduce".

[Lisa Nandy]

In fact, evidence from the tri-borough work currently being done supports that assertion, and I think the evidence supports that. We owe it to a demoralised and overworked profession to ensure that it has the support that it needs to do its extremely important and challenging job, and we owe it to the children to ensure that we do not let down the people whose job it is to guard their interests.

Without additional support to enable the social work profession to give good-quality evidence in court, the clause's greatest strength will potentially become its greatest weakness. We hope that the Minister will support new clause 14, which is vital to ensure that efforts to reach the right decision for more children more quickly succeed.

Mr Timpson: Clause 13 will strengthen the court's control of the use of expert evidence in children's proceedings and ensure that it is not overused or misused. It is a vital step in tackling unnecessary delays in public law proceedings—delays that can have a detrimental impact on children's welfare. The clause has been widely welcomed by the judiciary, the Magistrates Association and others.

I am clear that expert evidence will continue to be needed in some cases where specialist expertise is required and cannot be obtained from another source. From memory, the president of the family division mentioned examples of such cases in his evidence to the Committee. Certainly, I can remember that from cases that I have been instructed in—non-accidental injury cases, cases involving foetal alcohol syndrome, cases of complex disability, and cases of particular forms of abuse, sexual abuse especially. In cases where the judge considers that specialist expertise is appropriate and necessary, it is important that it is still available, so that a case can be dealt with justly.

4 pm

However, commissioning an expert should not be, as it has been too often in the past, a matter of routine. Clause 13 will redress that imbalance. We need to get away from the vicious circle that has developed, whereby the judiciary have lost confidence in the evidence supplied to them by social workers and therefore deem it necessary to rely on further evidence from independent social workers and other experts, such as child psychologists; that has, in turn, made social workers feel even less confident about their ability to convince a judge of the veracity of their expert evidence, which has led judges to be even more sceptical of their abilities. Clause 13 seeks to redress that not in isolation, but in parallel with the excellent work done by Mr Justice Ryder and others on the Family Justice Board, both to improve the monitoring of public law cases and to look at where expert evidence is being used when required, and where it makes a material difference without causing unnecessary delay. I am pleased to note that, following pre-legislative scrutiny of the Bill, the Justice Committee concluded that clause 13 was "a proportionate response".

Amendment 26 appears to stem from a recommendation made by the Justice Committee. In its report following pre-legislative scrutiny, it suggested that clause 13(5) was the same as clause 13(2). In our response to that report, we explained that the two subsections are not the same; subsection (2) sets out the sanction for contravening the prohibition on instructing an expert without permission, whereas subsection (5) sets out the prohibition on putting expert evidence before the court without permission. The former relates to obtaining expert evidence, and the latter relates to putting evidence before the court.

There will be cases in which a fresh expert is not instructed, and a party or parties wish to introduce an existing expert as evidence—for example, an expert from earlier proceedings—or expert assessments commissioned by a local authority during the pre-proceeding stage of the case. It is right that they have the ability to do that, because we do not want unnecessary duplication of evidence. In effect, the amendment would remove the court's duty to give permission for any expert evidence to be put before the court. The permission requirement is necessary to enable the court to control the expert evidence that goes before it, and for the effective management of a care proceedings case.

Amendment 27 seeks in part to avoid unnecessary delay by placing a positive duty on the court to consider the need for expert evidence at the earliest opportunity. It is the Government's view that parties are too ready to request permission to instruct multiple experts as a matter of routine, partly because of the vicious cycle I referred to a moment ago. That is why the family procedure rules make it clear that parties who wish to instruct an expert or put expert evidence before the court must approach the court to seek permission at the earliest opportunity. The court is under a duty to manage cases actively, which specifically includes identifying the issues at an early stage and deciding promptly which issues need full investigation. The public law outline made efforts to try to cultivate that sort of practice. We need to go further in improving early case management. The signs from the work that Mr Justice Ryder and others are doing is encouraging, and the case monitoring system is proving to be, in its infancy, a strong way of changing the emphasis, so that there is much more case management earlier in the process.

The court already has extensive case management powers, including powers to give directions on the issues on which it requires evidence, including expert evidence. Given the safeguards and duties on the court that are already in place, I am not persuaded that it is necessary to place in the Bill a further duty on the court to consider the need for expert evidence. As the hon. Lady said, the tri-borough pilot has demonstrated that the overall length of care proceedings, which can in part be fuelled by the use of expert evidence and further reports throughout the duration of the case, can be significantly reduced, enabling the courts to deal with cases justly and make a final order more swiftly. That pilot has included the existing duties on the court to achieve that welcome improvement.

New clause 14 would introduce a new duty to put in place support and training arrangements for local authority staff, NSPCC staff and other persons authorised to bring care proceedings under section 31 of the Children Act 1989. It is clear that high-quality evidence, including assessments, from local authorities is essential to more timely care proceedings, and I commend the hon. Lady for highlighting the importance of support and training for staff within local authorities to ensure that.

In a previous debate, we had a wider discussion about the role of social workers and the potential added pressure on them to provide more and higher-quality reports for the court by the pre-proceedings stage. I sought to reassure the hon. Lady about the measures that the Government are undertaking to improve social work training through the launch of the College of Social Work; an investment of £130 million in social work reform through the social work improvement fund and the "Step up to social work" programme; the assessed and supported year in employment; the new entry routes that we are looking into for social work, particularly Frontline; the review of current arrangements for social work training that Sir Martin Narey has just begun; and the impending creation of the office of the chief social worker, who will be an important standard bearer for social workers and who will support and challenge the profession, as well as provide proactive and expert advice to Ministers on a range of social work issues to try to help raise the status of the profession. There is some good news: retention rates for social workers are improving as many of those who are newly qualified are choosing to stay in the profession, but we need more of them to do so, because we do not want to lose the expertise they gain from what we hope will be improved training in future.

Lisa Nandy: I am grateful for what the Minister has outlined. Will the reforms specifically consider training and support for social workers who are required to give evidence in court?

Mr Timpson: My understanding is that part of the work being done, both through the many measures that I have just described and through the Family Justice Board, is looking at how to improve training for social workers who appear in court. I remember, when I was at the Bar, holding a session with local social workers in a mock trial scenario, to test them and give them a dry run of what it would be like to give evidence in court, because that can be an extremely pressurised and nerve-racking part of what is an extremely important element of their work. In addition, we are working with others, including the College of Social Work, to ensure that court-related work is factored into the curriculum guidance for social worker training. I hope that that provides the hon. Lady with some reassurance.

I was struck, as I am sure were other hon. Members, by the evidence from the president of the family division. He said:

> "When I say "expert", I mean expert with a capital E, because, in my book, social workers are experts. In just the same way, CAFCASS officers are experts. What has gone wrong with the system is that we have at least two experts in every care case—a social worker and a guardian—and yet we have grown up with the culture of believing that they are not really experts and we therefore need experts with a capital E. Much of the time we do not."—[*Official Report, Children and Families Bill Public Bill Committee,* 5 March 2013; c. 33, Q74.]

To help at national level, we are working in close collaboration with the Association of Directors of Children's Services and others to ensure that the necessary training and support can be accessed by all who need it. As well as the work that the College of Social Work is undertaking, the Children's Improvement Board initiated a programme of work last year to help to build capacity and strengthen social workers' skills in care proceedings and court-related work.

Jessica Lee: Does the Minister agree that the words of the president—his point that there are already two experts in the case—are extremely significant? Of course there will be exceptions and good reasons why additional experts will be required from time to time, but will his comments set a marker?

Mr Timpson: My hon. Friend is absolutely right. She will know from her own practice that the matter needs to be tackled, and I know that the president of the family division is right behind the reforms that we are introducing. I look forward to his playing a full and active role in delivering what we all want to be achieved.

Lisa Nandy: Will that work with the Association of Directors of Children's Services extend to ensuring that the social worker involved in the case is the one who can attend court and give evidence? A crucial problem with children's services being so overstretched is that it is often not possible for the social worker who has a really deep knowledge of the case, the family and, crucially, the child to give evidence. Will the Minister tell us what he is doing, perhaps with the ADCS, to tackle that?

Mr Timpson: The hon. Lady is right to raise that issue. One factor in delays in care proceedings can be a change of social worker close to the point when the case comes to court. The new social worker does not have in-depth knowledge of the case to draw from and sometimes, as a consequence, it takes them longer to get to grips with writing a report for the court. That can cause delay. Developments in Hackney—for example, performing social work in social work units that hold a case collectively and manage it all the way through to its conclusion—may offer an innovative way to deal with that problem.

I mentioned the Children's Improvement Board. Following awareness-raising events last summer, eight regional training seminars for local authorities are now being rolled out to demonstrate the importance of a public law case being conducted efficiently and without delay, to highlight the excellent practice in areas where the system is working, some of which I have mentioned, and to encourage others to replicate that themselves. A programme of follow-on training for local authorities is planned in the coming operational year. I am sure that the hon. Lady is pleased to hear that.

Those and other initiatives need to be considered in the context of the wider work that the Government have under way to strengthen social work skills. Working with professionals and lending support from the centre where that is appropriate is the right way forward. I urge the hon. Lady to withdraw the amendment.

Lisa Nandy: I am grateful to the Minister for making that clear. As I said at the outset, we support the thrust of what the Government are trying to achieve. As with so much of the Bill, our concerns are prompted more by what will happen in practice.

I am somewhat reassured by the Minister's remarks about training and support available to social workers. I agree with the hon. Member for Erewash that they are experts and should be regarded as such. She is right that they should set the benchmark. Many social workers already do that and it is something they should be proud of. I am grateful to the Minister for telling us what he is doing to emphasise the role of social workers.

[Lisa Nandy]

Having seen what happens on the ground, I believe we need to do more to support social workers in this difficult, complex and important area of their work.

On the basis of what I have heard today, and given that I expect that we will continue to discuss this matter during the passage of the Bill and beyond, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 13 ordered to stand part of the Bill.

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

4.13 pm

Adjourned till Tuesday 19 March at twenty-five minutes past Nine o'clock.