HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

PRE-LEGISLATIVE SCRUTINY OF THE CHILDREN AND FAMILIES BILL

WEDNESDAY 7 NOVEMBER 2012

NAOMI ANGELL, JANET BAZLEY QC and MARTHA COVER

JANE ROBEY and COLIN ANDERSON

DR JUDITH FREEDMAN and ANN HAIGH

Evidence heard in Public Questions 1 - 60

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Oral Evidence

Taken before the Justice Committee

on Wednesday 7 November 2012

Members present:

Sir Alan Beith (Chair)
Mr Robert Buckland
Jeremy Corbyn
Nick de Bois
Mr Elfyn Llwyd
Yasmin Qureshi

Examination of Witnesses

Witnesses: **Naomi Angell**, Co-Chair, Family Law Committee, Law Society, **Janet Bazley QC**, Family Law Bar Association, and **Martha Cover**, Co-Chair, Association of Lawyers for Children, gave evidence.

Chair: Welcome, Ms Angell, Ms Bazley and Ms Cover. Before we start, we have to declare our interests.

Yasmin Qureshi: As a former barrister, I have done some family law work.

Mr Llwyd: I have also done family law work as a solicitor and barrister.

Mr Buckland: It is a long time since I have done family court work, but I am a barrister who conducted many criminal cases before the election, and I am a recorder of the Crown court sitting in Croydon.

Nick de Bois: I am currently going through the mediation process.

Chair: We greatly welcome your help in looking at these draft clauses of an important Bill which, although technical in appearance, will have a very significant impact on the lives of many children. I ask Mr Corbyn to open the questioning.

Q1 Jeremy Corbyn: Thanks for coming here this morning. May I start with a question about mediation? Do you think that the filtering out of domestic abuse cases from the MIAM process denies many parents the opportunity of receiving benefits of family mediation?

Janet Bazley: Yes. One problem is the fact that it doesn't involve the respondent to the application at all. Immediately, you have a position where the applicant—if it's the wife—might say, "He won't come," and he hasn't got the opportunity to have any input into it. Also, if the final arbiter is the court officer, there is a risk that somebody without appropriate training and understanding will cut off access to the process without knowing sufficient or being able to identify sufficiently whether there is an issue that makes mediation or the court process appropriate. That seems to us to be a problem.

Naomi Angell: One of the other problems is that the compulsory consideration of mediation is shifted to much later in the process. Parties who are able to access legal representation and advice right from the start will hear about mediation and alternative dispute resolution right at the beginning, when parties aren't too polarised. If access is shifted

to just before an application is issued, the risk is that the parties are very likely to be much more polarised when mediation has less chance of success. This will particularly be the case for parties who were entitled to legal help, who will not now be under the legal help reforms. They will be put at a disadvantage in accessing and being able to benefit from mediation.

Martha Cover: I would like to add to that, picking up on Naomi's point about the lack of legal help. The unrepresented woman who comes to the court desk and fills in her own application form often does not tick the "Harm" box on the form that says, "Are you a victim of harm?" Research carried out for the Family Justice Review demonstrated that, in a third of the cases that it looked at, that box was not ticked by the unrepresented woman, even where there was a conviction, or a caution for violence or for some other harm to a child. That is very worrying.

Q2 Jeremy Corbyn: Do you think it would be better if CAFCASS was involved at the very beginning, and if so, in what way?

Martha Cover: I know that CAFCASS carries out safeguarding checks, but that is only once the process has begun—once the application is on foot. The Association of Lawyers for Children absolutely shares Janet's and Naomi's concerns that the court staff should be the ones who decide whether you have access to a court. Our concern is that CAFCASS is already overburdened in representing children in court proceedings. If the resources were made available, it would be a very good thing for a trained person to be able to see the applicant, to make sure that domestic violence was being properly picked up.

Naomi Angell: It would also have the advantage of enabling the voice of the child to be heard at an earlier stage than would happen otherwise. Currently in the MIAM process—the mediation and information advice sessions—it will be heard only if it is reported by the parents. That is fine if the parents are in agreement and have decided what is best for their children, but if they are not, there is a real risk of the voice of the child not being heard.

Q3 Jeremy Corbyn: This question is for all of you. How would you ensure that the voice of the child is heard—and at what stage and what age?

Janet Bazley: The court has determined that nine and above is the age when the child might come to a formal conciliation meeting, and that seems to work quite well. That might provide an opportunity for some similar process where the child might have a chance to give some views to a CAFCASS officer. As Martha says, the real issue is whether the resources are going to be there for that to happen, but that might be one way of doing it. It is better to see the child in the child's environment, but that has more implications for scarce resources.

Q4 Chair: Are you talking about the potential involvement of the child in the MIAM process—the mediation meetings, I would prefer to call it? You are asking the child's opinion on whether there should be mediation.

Janet Bazley: No; on what the child wants out of the whole process if there is going to be an application. What the child wants out of the whole process should be fed into the MIAM process so that there is an understanding of the child's perspective. That is particularly important with an older child, who might have very definite views.

Q5 Jeremy Corbyn: Who should provide information on behalf of the child?

Janet Bazley: That is difficult. Unless you use CAFCASS, there is no obvious way of doing it.

Q6 Jeremy Corbyn: Is it your point that CAFCASS is under-resourced to deal with these issues? Is that essentially the point that you are making?

Janet Bazley: Yes. There is a huge problem, particularly in public law cases, that it has not got the time or the resources to attend court, not even to hear important evidence in fact-finding hearings. That gives us concerns about whether it will be able to stretch itself further in order to be involved in this process.

Q7 Yasmin Qureshi: I have a particular bugbear in relation to care cases and the issue of children's wishes. As I see it, under the current proposals there is no proper procedure for allowing children to have their opinion or to say what their opinions are, is there, as far as I can work out from the current proposed legislation?

Janet Bazley: No. In the MIAM process, yes.

Martha Cover: Do you mean pre-proceedings?

Yasmin Qureshi: Yes.

Martha Cover: No, there isn't any.

Janet Bazley: No, that is a real concern.

Naomi Angell: What a skilled mediator will hopefully do in the MIAM process is to help the parents to focus on the child's position, with there being another person in the room other than just the mother and father. It depends on the skills of a mediator in what isn't mediation. MIAM is not mediation; it is just an assessment process.

Janet Bazley: You might have polarised parents. The mother with whom the child is living may say, "This child is adamant that it doesn't want to see the father," but that may not be the case at all. It creates a difficulty immediately if you don't have someone to speak for the child or to feed in the child's views.

Q8 Nick de Bois: I have a quick follow-up question on the point about CAFCASS having the difficulty of meeting its obligations. Are you able to quantify that at all?

Janet Bazley: No. Family lawyers just have anecdotal experience of the fact that, when you are in a fact-finding hearing, where the evidence of the parents, in particular, is crucial to the court's determination and feeds into the welfare decision, one would normally expect the CAFCASS officer to be sitting and hearing the parents to be able to form their own assessment, which would then feed into their further work. They think that, too, but the reality is that they can't do it because the funding isn't there and they are overstretched.

Q9 Chair: Are you talking about public law or private law cases?

Janet Bazley: I am talking mainly about public law cases, but it applies equally to both. I am currently in a private law fact-finding, and CAFCASS is in there for the child, but our CAFCASS officer has been able to hear only part of the evidence.

Q10 Chair: Surely the point is that CAFCASS has difficulty meeting its public law responsibilities and doesn't really have spare resources to extend far into the private law area.

Janet Bazley: Yes, that is the concern.

Naomi Angell: Public law is always going to come first, because of the human rights aspects of it—quite rightly.

Martha Cover: As far as we are aware, the Association of Lawyers for Children is very supportive of there being the key performance indicator for CAFCASS that guardians will actually meet the child in public law proceedings. However, that is not always the case, which seems extraordinary. We are really down to the bare bones, before we even talk about being able to sit in court and hear evidence.

Q11 Chair: It is therefore unrealistic, is it not, to suggest that CAFCASS could provide a significant supplement to this process?

Janet Bazley: That is as things are.

Naomi Angell: I represent children in care proceedings as a solicitor. I have been doing cases now for a long time, and I have seen the case loads of guardians increase exponentially. There used to be probably about eight; now there are 25 or 26 and more. Inevitably, they cannot give the time that they were able to do to each individual case.

Q12 Chair: Let us follow up on a couple of points with you, Ms Angell, from the Law Society standpoint. You have been quite critical of—indeed, you have challenged—the Government's statement that the proposals will put privately funded persons in the same position that recipients of legal aid have been in since 1997, in terms of having to attend a MIAM meeting unless specific exemptions apply.

Naomi Angell: I would say immediately that I am not a mediation specialist. The Law Society would be very happy to give additional evidence to the Committee. We have some really experienced specialists on our committee. I will try and help the Committee to the extent that I am able to. The difficulty is that the changed law will require—this will be mandatory—only that the applicant attends, whereas under the previous code there was an expectation that both parties should attend. So this will make a change.

Q13 Chair: You refer to first and third gaps in the process.

Naomi Angell: We have probably covered certainly the first gap.

Q14 Chair: What was the third gap?

Naomi Angell: The third gap is a somewhat technical one.

Q15 Chair: I am reassured that you find it difficult as well.

Naomi Angell: I find it rather technical as well. I would prefer that we submitted some information about it, but I want to inform you correctly and it would be more helpful if we could do that in supplementary written evidence.

Q16 Chair: That is fine. There is one other point. Witnesses have suggested that, where court officers decide that the MIAM process has not been complied with, the final decision should rest with a judge. Is that going to cause delay in the family courts?

Naomi Angell: One would hope that it wouldn't, but it is going to require training. A lot of this is going to be dealt with in amendments to the family procedure rules. The devil is going to be in the detail, and we are going to have to scrutinise those rules very carefully because they will not be in primary legislation.

There needs to be consistency of approach and practice, and that will depend on the amount of detail given in the family procedure rules and also on good training of the court officers. However, there is real concern regarding people being asked about sensitive matters at court counters through glass panels. That will inevitably be necessary if there is to be proper screening of whether MIAM is suitable or not, if it is going to be done by the court. Yes, I suppose there is the risk of delay if there is a refusal and then it has to go to the judge.

Janet Bazley: There is a risk of delay if you don't have a process whereby it can be referred to a judge, because you might embark on the wrong process. You might cut off access to the court and so you have to have mediation, and then further down the line you find out that that is the wrong decision. You then back out of the mediation process and into court. Or it might be the other way around, and you find yourself in a court process where mediation might have been helpful. For example, there might even be some cases where there has been violence within the past two years that would still be suitable for mediation. These are complex decisions and one needs judicial oversight of them.

Q17 Nick de Bois: Is there a danger, looking at cases where there is no question of domestic violence, though—because of the possibility that a judge might look at a case where mediation hasn't taken place, view that as unwise and send the people back to mediation—that this becomes a little bit of a tick-box exercise that people go through just so that they can prevent any kick-back at a later stage by a court?

Janet Bazley: There is a risk of that, but that is why the FLBA thinks that it is very important that both the applicant and the respondent are there, so that it's not easy to say, "Oh well, he won't come," or there is some reason why mediation can't take place. That is why the interview or the meeting has to be conducted in a way that is best likely to succeed and people can't get round it as a sort of tick-box exercise. I don't think the fact that you have the possibility of referring it to a judge should encourage people to see it as a tick-box process. It is the process itself that matters.

Q18 Mr Llwyd: I would like to ask you about child arrangement orders. I am afraid that I am of the vintage that used to use words like "custody" and "access", which are long gone. We then had residence and contact, and parental responsibility. Witnesses have suggested to us that the introduction of child arrangement orders and the removal of residence and contact may risk creating confusion and possible delay, particularly in cross-jurisdictional cases. Do you agree that this could be a cause for real concern? If so, could you provide an example of where you see it happening in practice?

Janet Bazley: The most obvious example is in Hague convention child abduction cases, because it relies on which parent has rights of custody. One has to be very careful under a child arrangements order to define what it means. If the order says that arrangement is that the child is to live with a person, what does that mean in terms of rights of custody? Does it mean that that person has the right to dictate where the child lives, in which case that person has rights of custody? If not, there is going to be an issue about whether that amounts to rights of custody. There are potential problems there unless there is further definition.

One could get round that by having a provision that says, "If you have a child arrangements order under which the child is to live with a certain person, that person has rights of custody for Hague convention purposes." You could deal with it, but if it is just left as rather vague language, it could be problematic.

Q19 Mr Llwyd: The problem with that, if I understand this draft Bill correctly, is that it is to do away with the concept of winners and losers, as it were.

Janet Bazley: Yes.

Q20 Mr Llwyd: Then that reintroduces that element in a way, does it not?

Janet Bazley: Yes. As we said in our written evidence, the FLBA has some doubt that you will do away with the winners and losers by changing the language. If the child arrangements order says that the child will live with one person and, as the legislation provides, will have contact with or will see the other person, the parent is going to think, "Well, I've won because I have the child living with me." Parents who see it as winners and losers will always have that perception.

A good family lawyer will encourage people not to look at the label, or may encourage, under the current regime, parents to agree a shared parenting order, even if it is not a 50:50 split, so that you avoid the perception of winners and losers. I have done many cases, even relocation cases, where you have a shared residence order just to avoid the perception that one has lost and the other has won, and to focus on the child.

Martha Cover: The ALC's view is that the shared residence order is a better way of getting away from the winners and losers aspect, but when you have parents sitting outside court adding up on their calculators the number of hours per year that they will have with their child under one permutation or another, attaching these labels, in our view, won't assist a great deal in practice. The shared residence order, in terms of the status of the parents, is better in a way because the child arrangements order is still about with whom the child will live, and with whom the child will have contact or otherwise spend time. In a sense, when you look at what it means, it is reinforcing the difference.

Naomi Angell: This is where the Law Society differs slightly. As it supports the new terminology, I feel that it is more likely to focus the court and the parents on the practical arrangements for caring for the child and for the co-operative parenting of that child, as the language is more neutral than residence and contact orders.

Solicitor mediators and others experienced in advising parents in a non-adversarial manner spend a great deal of time trying to prevent disputes going to court. They see that as their job rather than anything else, and the neutrality of the language helps enormously. The terminology of child arrangements orders will help to focus parents on their parenting time and on co-operative parenting, it is hoped, rather than on winners and losers. It is felt that child assessment orders will be more reflective of a positive parenting style. This will help the 90% of parents who don't end up in court but are assisted in reaching solutions with their legal advisers. It is going to make little difference to the 10% of intractable cases, which will always be there.

On the shared parenting point and making it clear for foreign jurisdictions, it is going to depend on its clarity of wording of the child assessment order and the detail in defining that order.

Q21 Mr Llwyd: Surely that is quite crucial, is it not, because at the end of the day we are still going to end up with one parent having—I wouldn't say the upper hand, because that is not the kind of language that I should use—the residence of the child, with the other parent feeling subservient in some way or another? That is bound to happen, is it not?

Naomi Angell: Yes.

Q22 Mr Llwyd: Otherwise, what other definition can there be? If you are going to comply with reasonable language for the purposes of the Hague convention, doesn't that have to be the way forward? It cannot be neutral, can it?

Naomi Angell: My colleagues do a lot of this work, and they attempt right from the beginning to steer away from contact and residence and to bring much more neutrality into helping their clients reach agreement, and they really feel that this will assist them.

Q23 Mr Llwyd: In terms of what you said about mediation, I fully follow that argument, and using neutral language in mediation has to be the way forward. You are absolutely right on that. On the cross-jurisdictional point, there seems to be a problem, and we need to concentrate on it.

Naomi Angell: The moment that you define the person with whom the child is to live as the person with rights of custody, they will have the perception that they are the winner anyway.

Mr Llwyd: That is right.

Q24 Jeremy Corbyn: Following Elfyn's point on foreign jurisdictions, in my experience, if one parent is given some residence in a foreign jurisdiction and the relationship between the parents is poor or another partner appears on the scene, the reality is that there is

no further contact, other than e-mails and letters or occasional visits—and sometimes the visits prove to be illusory and simply don't happen.

The other point is that if both parents live in social housing and one has to leave, with the minority of residence time on a shared parenting order, the reality is that their housing situation is so bad, if they get any housing at all from the public authorities, that the contact with that parent—usually the father—just disappears altogether. I realise that this is difficult to put into legislation, but it is very damaging to the child whose perception is that there are winners and losers in this and that the father is the loser.

Martha Cover: I completely agree with that. The court is not going to order staying in contact with a father who is living in a hostel or in lodgings. That is the sad reality.

The majority of those who had public funding for these cases were, of course, on the poverty line, because you have to be to get legal aid in the first place. So the great majority of these cases are children who in many respects are on the edge of care anyway. It is not just domestic violence; it is child abuse, alcoholism and mental health issues. Those crop up again and again in so-called private law disputes in this population. It is very worrying that they don't have access even to legal help to steer them in the right direction.

Q25 Yasmin Qureshi: I want to explore time limits. Many cases that involve care and supervision proceedings have until now—they probably still do—taken an awfully long time. It has been estimated by the Family Justice Review group that, on average, it takes about 56 weeks to complete. That is certainly true from in my experience of the few cases that I have done.

You will not know what we have heard from other speakers on this topic, but could I briefly mention a couple of points made by other groups and invite your observations on those aspects? One is obviously about the time limit. There is a suggestion now to have a 26-week period for care and supervision proceedings. It has been suggested by some that that is a good idea, but then there is the question of the feasibility of it working. It has also been mentioned that the problem with this working is that the Legal Services Commission is taking too long to decide whether it is going to fund cases. We have also heard from people who have said that, for the 26 weeks to be achieved, the local authorities must be ready and able to do things properly. The suggestion is that they have neither the resources nor sufficient knowledge to be able to do these things properly. The NSPCC says that it is concerned about the current capability of and resources available to the social care work force to perform an enhanced court role. The organisation Nagalro says that local authorities lack the capacity to provide reliable high-quality assessments ready for the start of cases.

I want to explore these three different aspects. First, to what extent do you think the Legal Services Commission's decision on the funding of experts causes delay to the process?

Martha Cover: It is a relatively new problem, in the sense that the Legal Services Commission is now refusing to grant prior authority for the instruction of experts, even when the court has considered it very carefully in accordance with the new rules, and the judge has said, "I am satisfied that I have to have this expert. I can't decide this case properly without one. This is a properly qualified person. I know their identity, how much they are going to cost, and I know how many hours it should take. I have considered it all, and I have decided that I need this expert."

In our experience, judges do not appoint experts willy-nilly, but the Legal Services Commission still refuses to agree to their fees or their funding. The President of the Family Division has had to make a very clear observation about that in a recent case. He said that it seemed odd that a decision taken by a judge could effectively be undermined by an administrative agency that says, "We are not paying." That is a serious problem, but we are still grappling with it, with help and some guidance that the President has given.

Moving on to the general position of 26 weeks, the Association of Lawyers for Children is very concerned that this is impracticable at the moment. We know from data that is already coming back from the case management system implemented under Mr Justice Ryder's programme that only about 30% of cases nationwide are capable at the moment of being decided within 26 weeks. That is not because judges are unduly sitting there twiddling their thumbs or wringing their hands about a problem that they can't solve. We know from the CAFCASS study *Three weeks in November*—that was November 2011—that in all cases, where there was delay within the proceedings, the guardians identified that it was caused by local authority practices and procedures in two thirds of those cases; that was overwhelmingly the most common cause.

We are not sitting here to criticise social workers, believe me, because we have nothing but sympathy for the social workers on the ground, who are running around desperately trying to do far too many cases and who are often not properly supervised or trained. It is not them that we have any argument with at all. But it is simply not feasible to do these cases within 26 weeks at the moment. It can be a target, but it can never be a deadline—well, it could maybe at some point in the future, when Professor Munro's reforms of social work have been brought about, but it can't be at the moment. To try to direct magistrates and judges to have a deadline is, in our view, potentially an unlawful interference with judicial discretion, and it is potentially an unlawful interference with the rights of the children and their parents to refer a child.

Q26 Chair: If you don't have some kind of pressure, such as a deadline, do you not create a situation in which the passage of time changes the terms on which the court can makes its final decision, as it tends in one direction rather than another? In other words, a situation exists for a longer period of time and reaches a point where the court says—it may not say it publicly, but it is in the court's mind—that had it been deciding the issue a year ago it might have been in the interests of the child to do this, but a year later it is no longer in the child's interests because it has spent so much time away from the family.

Martha Cover: I understand that point. Delay is a bad thing; there is no doubt about it, but the fact is that, when these cases come to court, nationwide every study has shown that all applications for care orders result in only 50% of cases ending up with a care order being made. In 50% of cases, the court is presented by the local authority with a situation that is undoubtedly serious; there is no doubt about that. But sufficient attempts to analyse the problem—a concerted programme to put in a package of support to see whether you can effect change—simply have not been made, even when the local authority has known about this family and been involved with them for years. Again, it is because it is overwhelmed.

When it comes to court and the judge says, "I can't make a decision on this evidence", a process of assessment begins, but the result is that, however long it takes, only 50% of those cases end up with a care order. The other 50% go for residence orders or special guardianship orders. That is the judge, the guardian and the lawyers at work, and sometimes an expert as well.

If asked, most social workers would say that they find it extremely helpful to have this process, because they not only have the judge sharing with them the responsibility in decision making on the case and holding the reins on it, but also they can get the resources that they have needed all along to get the family properly assessed.

Janet Bazley: May I add something? The FLBA is also most concerned about an absolute 26 weeks and then eight-week extensions. A large proportion of parties involved in care proceedings have learning difficulties or mental health difficulties. Often, very specialist assessments are needed in order to have a fair process to understand whether they can be receptive to work being done with them to effect change and to be able to parent their

children. Those assessments take some time, so delay can be purposeful and it may be necessary in order to have a just and fair process.

Sometimes a very specialist expert report is needed. I shall quickly give you an example. I had a case of identical twins where one child died in circumstances that were unexplained. Both children had skeletal surveys done, and it was said that there were fractures in the same places—metatarsal fractures at the end of the long bones. The court directed a bone pathologist to do a very specialist exercise, and he discovered from sections of the bones of the dead child that these were not in fact fractures. The court was embarking on a process of taking away the other child from the family—the young parents would not have been able to parent a future child, based on fractures that were almost diagnostic of abuse—when the expert report, which took three months to obtain, made it clear that there were no fractures and that, if the deceased child didn't have fractures, the identical twin didn't have fractures. The appearance was caused by a congenital bone defect. Those are the sort of examples where delay is very necessary.

Another problem with 26 weeks and then coming back for eight-week slots is that one can't timetable a case to a final hearing beyond 26 weeks. If you discover two or three months into the process that it is not possible to conclude it within 26 weeks, unless you can timetable it beyond that stage, you will lose your slot in the queue and build in further delay. Likewise, if you have to come back every eight weeks for an extension, there are further hearings, because the judge is going to have to sanction a further eight weeks, and then maybe another eight weeks. You will be increasing the judicial process and the burden on judges.

Another problem is whether you can ensure judicial continuity so that the same judge case manages the case; otherwise, in a difficult case, there is an awful lot of reading to do. Judges have limited time, and the risk is that wrong decisions will be made because you are not able to get in front of the judge who has managed the case so far. If there are deadlines like this, we are going to need to have a hearing to permit the time limit to be extended, and you may have a judge who doesn't know anything about the case. Although we all agree as family lawyers that delay is inimical to child welfare unless it is purposeful, one must not ignore those cases that make it purposeful to have delay, and, in the long run, it is necessary to do justice.

Chair: We need to move on another area. I was going to move on to Mr Buckland, unless there is another point you wish to raise.

Q27 Yasmin Qureshi: In some respects, Ms Bazley, you have answered my second question. You mentioned the time period. Does it allow enough flexibility for parents to change their behaviour so that they could keep their children?

Janet Bazley: That was Martha's point about effecting change. Sometimes, you need to have a programme that might involve a bit of time in a residential unit followed by an assessment of how the parents can put into practice in the community what they may have learned in the assessment unit. In many cases, 26 weeks is not going to be long enough if there is to be a real chance for parents to parent their children with support and help.

Naomi Angell: I have a couple of examples. A woman who has been subjected to domestic violence, and who has been able to make the break from a violent partner needs time to get her life together and show that she can make the changes and move on. Twenty-six weeks would probably be inadequate for that. You also have learning disabled parents. A large proportion of parents involved in care proceedings have a learning disability, and everything will take longer. To be able to deal justly with them, such cases deserve longer.

I wish to make an additional point on the 26 weeks because I appreciate that the Committee has limited time and needs to move on. My feeling is that the focus should be on the child's timetable as early as possible and there should be early identification of those

cases that cannot fit into the 26 weeks. I share Janet's view that the two-month extensions and the 26 weeks could end up being a distraction and a diversion, with increasing litigation, when the focus should be on the child's timetable.

Chair: Thank you very much.

Q28 Mr Buckland: Developing another theme relating to delay is in proposed new clause 5, which relates to section 31A care plans. It is back to the future in many ways and a return to concentrating on permanence provisions—not preventing the court from looking at the wider picture but trying to refocus the court on permanence provisions as opposed to encouraging a line-by-line scrutiny approach. Some groups, notably those associated with local government solicitors, support the change, but your groups have various concerns. Would you elaborate on them, please?

Martha Cover: The ALC's view of this is that the other aspects of the care plan are not simply about, "Is the child going home?", "Is the child going to remain in long-term foster care?", "Is the child going to be adopted?", or "Is the child going to live with its grandmother under a special guardianship order?" Those are very typical outcomes, and 50% of cases end up with no care order, so another outcome is residence, special guardianship to a relative or back home.

The problem is that a lot of other aspects of the care plan are interdependent. In other words, the plan will work only if support is available to the family member and if the guardian and the social worker, and indeed an expert, if there is one, agree: "Yes, the grandmother can manage and this is the best placement because she can take all three children. There is a strong attachment, and she can keep a relationship with the mother, which is important, but also manage the mother; it is the best placement for the children, but she needs support."; "This child needs a statement of special educational needs because we have discovered within these proceedings that he is on the autistic spectrum disorder, which nobody picked up before"; "This child might need therapy"; or, "Grandmother might simply need some financial support or practical support to manage, and it will only work if that is in place, so how can I, as a judge, decide that this placement is right for the children if I am being told that it will not work unless?"

That may be one reason why local authorities really don't like judges delving into the details of care plans. They have to allocate their resources for every child in need in their area, but the judge must focus on the individual needs of the child in front of him. That is a tension, but it is a check and a balance on the power of the local authority simply to put a child under a care order and do what they see fit. That is the bulwark that the legislation has put in place.

Janet Bazley: The FLBA completely agrees with that. One of the real problems is that so many of these children are traumatised in some way and need therapy. Very often the local CAMHS has an enormous waiting list and in order to support a placement it may be necessary to provide some form of counselling or therapy for the child that the local authority may need to pay for. Because of their scarce resources, they don't want to sign up to that.

One of the functions of the judge is to say, "I would like to see a care plan that sets out what you are going to provide to this child by way of therapy and sign up to paying." Judges sometimes reject care plans on the basis that they don't provide the assurance to the court that the child will receive the support and therapy that it needs and that the person with care will similarly have the benefit of access to someone to assist with problems that there are likely to be as the child is placed with them. That is a significant issue.

The other issue of concern is that permanency plans don't include contact arrangements, not even on whether there is to be contact or what type of contact. That is very important not just for parents but also for siblings when children aren't placed together. There is section 34(11), which requires the judge to look at contact, so there is a tension there. There

is also section 26 of the Adoption and Children Act, under which the court may make a contact order. The risk is that, if the judge is discouraged from looking at things outside the permanency plan, such as contact, the court of its own motion will make a contact order, building in further litigation, or a party will obtain or seek a contact order—and there will be a battle over that—or a sibling may seek the permission of the court to apply for a contact order. There are risks that you are building in further delay and further litigation by encouraging the judge only to look at permanency provisions.

Naomi Angell: On the issue of contact orders, I certainly support what my colleague said. There is another point. In the Government's response to the Family Justice Review, contact was going to be included in the permanence provisions that would be considered by the judge, even on a reduction of the scrutiny of the care plan, but this has not been included in the draft legislation. This is a particular concern now, because the Government have removed the duty on the local authority to put before their adoption panel the best interests decision—whether adoption is in the best interests of the child—and it is now being left to the court.

The reasons for this were concern about duplication and that it would be another cause of delay. However, the adoption panel did consider contact, and it made quite detailed recommendations about what contact it considered to be in the best interests of the child. If that has now been removed and it is not going to be considered by the court, a very significant safeguard has been taken away from the child.

The independent reviewing officer is seen as the major safeguard or safety net for the child once a care order has been made. There are real concerns about the ability of the independent reviewing officers to provide that safety net effectively, both because of question marks about the independence of the management—currently, management by the very local authorities that are supposed to be operating the care plan—and also about the case loads of the independent reviewing officers, which prevents them from being effective guardians of the child within the care system.

Q29 Mr Buckland: Very briefly, you are right to say that the current definition of the permanency provisions is quite restrictive. However, proposed clause 5(3)(c) says that the Secretary of State may alter that by regulation. It could be argued, using a well-worn phrase, that it is a living document that can be altered with experience. Does that give you any reassurance?

Janet Bazley: I would much rather see it as (d) and (3)(b).

Naomi Angell: The risk, again, is of satellite litigation, which should always be avoided.

Janet Bazley: I agree. Sibling contact is so important if children are not placed together that it needs to be given some priority.

Chair: May I thank the three of you very much for your help this morning? It is much appreciated.

Examination of Witnesses

Witnesses: **Jane Robey**, Chief Executive Officer, National Family Mediation, and **Colin Anderson**, Director, College of Mediation, gave evidence.

Q30 Chair: Ms Robey from National Family Mediation and Mr Anderson from the College of Mediation, welcome. We are very grateful to you for coming to help us this morning with our pre-legislative scrutiny of draft clauses of the Children and Families Bill.

We will start with an issue that we were talking to the previous witnesses about: is screening for domestic abuse. Some witnesses have suggested that the new system inevitably puts the mediator in a false quasi-judicial role in identifying cases where there may be welfare concerns. Does the design of the system place too much or inappropriate responsibility on the mediator in that respect?

Jane Robey: The MIAM is a mediation information and assessment meeting, and it is designed to tell people what is involved in mediation. In order to help people decide whether or not mediation is right for them, mediators have to consider welfare and safety issues, and all mediators are trained to assess those risks. It is not a quasi-judicial role; it is an assessment meeting to see whether or not mediation is suitable—nothing more.

I have brought with me a copy of a National Family Mediation intake record, which shows the kind of information that mediators have to collect in order to consider whether mediation is suitable. I don't know whether that will help you.

Q31 Chair: We are happy to use that as part of the written support for the oral evidence that you are giving.

Jane Robey: I shall leave it with you. I would disagree that it is a quasi-legal role. Our main concern is that the proposed MIAM comes so much later in proceedings, especially next year once legal aid is withdrawn. Legal aid is the trigger for an assessment for both public funding eligibility and assessment for suitability for mediation. A MIAM next year will happen when people want to make an application to court, but you do not know how many months people will have been washing around in the system before they actually make an application to court. Our concern is that they are coming much later on, and the arguments are likely to be much more entrenched and much more difficult to resolve.

Q32 Chair: How could you make it come earlier? Obviously, seeking financial support for legal advice and legal aid might come relatively early in the process, but you pull that trigger and the meeting happens. How can you bring it into a situation where, if you like, nobody but the parties knows that it is heading towards a possible future court hearing?

Jane Robey: Our research shows that something like 83% of people go to a lawyer first before they do anything else. As for private cases, which is what they will all be as of next year for legal help, I don't know how you compel private practitioners to make a referral to mediation before things progress any further. That might be something that you could think about, but I don't know how you do it. It is private business.

Q33 Chair: Within the mediation meeting itself, how much time would there be to consider the domestic abuse issue? It's only a matter of a few minutes, I would imagine.

Jane Robey: No. A fair proportion of the intake meeting is taken over by addressing security concerns. People who come to intake meetings are in a fragile state anyway, so they are feeling vulnerable. Mediators have to be able to assess that people can participate equally, and that involves a fairly detailed discussion about how they are going to participate equally. We call it power balancing so that we can see that people can participate equally.

Colin Anderson: May I add to that point? The issue around the length of time that it takes to screen for domestic abuse depends on what you are being told. You would gauge it on the answers that you received to your initial questions. In lots of cases, it may be only three or four minutes because there isn't an issue to discuss in any depth. However, if you are receiving information that requires further exploration, you would need more time to do that.

I can give an extreme example. I am a practising mediator and I did a mediation information assessment meeting maybe two or three months ago. A child protection concern was mentioned to me, and I had probably spent about three and a half hours on that

assessment by the time I had contacted the local authority, filled in the relevant referral forms and so on. The length of time depends. That is exceptional.

Q34 Chair: You say that you contacted the local authority.
Colin Anderson: Absolutely, yes.

Q35 Chair: That was the next point that I wanted to pursue. Do you see it as part of your role, if the issue comes up, to contact the safeguarding board or CAFCASS?
Jane Robey: It is an absolute requirement.
Colin Anderson: It is part of every FMC membership organisation's code of practice that it should make that referral. I don't think they would contact CAFCASS, and certainly not the local safeguarding children's board, but they would contact the local authority children's service department, usually the duty team, and follow it up in writing with a proper referral.

Q36 Chair: Does this not change the nature of what you are doing—from attempting to engage in a process with the parties to get them to move forward to one in which you question what the parties are telling you, and perhaps verifying or failing to verify that as a result of your inquiries?
Colin Anderson: In the situation that I have described, the safety of the child obviously has to be the highest priority. The child has to be our paramount concern. In those circumstances, you would have taken the course of action that I did. Every mediator that I work with would have done that under the same circumstances.

Q37 Chair: Does the situation arise in which you have to go back to the parties and say, "We have checked with the local authority, which has investigated this thoroughly, and we find that they came to the conclusion that there had not been any domestic violence or abuse of the children"?
Jane Robey: When there had not been any?
Chair: Yes.
Jane Robey: Yes. There are lots of unproved allegations, aren't there? With the safety of local authority decision making, mediation could proceed. Even in cases where there has been child protection or domestic violence, mediation can proceed. It is often conducted with those organisations in the background. There may be child protection concerns, but I have conducted mediations with parents where you reach an agreement and share that agreement with the social services, who then decide whether it is safe for the children.
Colin Anderson: Coming back to the MIAMs, you would be looking for a proportionate response to the information that you are being given. It could be three or four minutes, if the response that you are receiving is, absolutely, that there has been a problem and that there is nothing to look at. On the other hand, if there are issues, you might need to explore it further to look at the number and seriousness of the incidents and the person's view of that—how they feel now, given the arena in which mediation has to take place.

Q38 Chair: Given the increasing importance that would attach to mediation in private family law cases, do we not need a system of regulation—perhaps a complaints mechanism and a national standards structure—for the entire mediation profession?
Jane Robey: There is already a regulatory system in place, which came in over 13 years ago when legal aid was introduced. You have two quality benchmarks. There is the Family Mediation Council, which brings together the member organisations that provide mediation. The council has a code of practice for mediators and a constitution. The Legal

Services Commission contract for delivering family mediation requires those deliverers to meet the mediation quality mark standard. Within that, there are policies and procedures to cover every aspect of service delivery. That includes a complaints procedure.

In National Family Mediation, you would have a local complaints procedure that would go first to the manager of that service; it might then go as a second stage to the management committee of that service. If there was no satisfaction there, it would come to the national office of NFM, and ultimately it would go to the FMC.

Colin Anderson: The situation that Ms Robey has explained is very similar across the other membership organisations. There is a similar complaints policy in force.

There is an issue of regulation in respect of the separation of the functions of the FMC. In terms of what McEldowney recommended for future developments for mediation, I think that the FMC needs to have an arm's length regulation element to it so that there is a clear assessment of mediators' conduct against agreed standards.

Q39 Chair: Does the regulatory system that you have been describing apply beyond the legal aid area? That was the issue I was really raising.

Jane Robey: No. That is the problem. The areas where you can be confident of the quality standard of mediation delivery are those that are contracted to deliver for the Legal Services Commission. It is the private mediators and the private providers who are coming in to the market delivering MIAMs that are probably of most concern.

Q40 Chair: There is a gap.

Jane Robey: There is a gap there.

Colin Anderson: There are lots of people who undertake private mediation who are members of a membership organisation, but there is nothing to stop someone setting up and not being a member of a membership organisation, and that is a real concern. I know that you are aware of that from your report last year.

Jane Robey: You will also have seen the Family Justice Review. Sir David Norgrove recommended as a baseline that LSC and FMC competence assessment should be the minimum standard for practising mediators, and we would definitely like to see that as the starting point.

Q41 Yasmin Qureshi: I want to carry on discussing the MIAM. As it currently stands, anyone who applies for legal services funding, whether claimant or respondent, has to attend the MIAM mediation, but, as we understand it, the Government have not made it compulsory for the respondent to attend this particular mediation session. Many of the witnesses that we have heard from in the past have said that this is wrong. What is your position on this? Do you think that compulsory attendance for the respondent is a good idea and would work in practice?

Jane Robey: Working with the MoJ over the course of the last year, I know that there are difficulties about engaging with the respondent causing delay in cases, but I absolutely agree that both parties should be compelled to attend a MIAM. I wonder whether one way of achieving that would be through contact directions under the Children and Adoption Act. Because of the constitutional issues about causing delay to somebody who needs to move something forward, the applicant, once in the court arena, the judge has the power to adjourn the case for a MIAM for both parties, but judges are not using that facility at all, anywhere. That, I think, might get around the issues that the MoJ is concerned about, such as causing unnecessary delay for children and applicants in what might be seen as emergency proceedings or whatever, but once in the court arena the court does have the ability to do something about it.

Q42 Chair: If it was known that the court was likely to do this—

Jane Robey: Then you would go before you got to court and get it out of the way maybe.

Q43 Yasmin Qureshi: When an applicant has attended a MIAM, and both parties subsequently engage in mediation to agree a settlement, which is then breached, would you expect the parties to be required to go through the MIAM process again before applying to the court?

Jane Robey: That would depend on the length of time before the agreement was reached. One of the things to remember is that agreements reached in mediation are not legally binding. Perhaps a good mechanism might be to introduce some kind of administrative process whereby the parties could have their agreement made into a consent order, which would give them more confidence in the agreement that they had reached and a backstop if it went wrong.

In our experience of delivering mediation, when agreements are reached, they depend very much on the composition of the family, the age of the children and the circumstances of both parents, but our data show that agreements tend to hold for about two years. It is not that they are necessarily breached; it is that family circumstances change and they then need another mechanism to negotiate a new agreement. These people are more likely to come back to mediation. If you are talking about quick breakdowns after agreement, which is a possibility given the late arrival into mediation and the hardened views, perhaps the time scales should be linked to LSC eligibility, which is three months. There is also the anomaly that the FM1 form stands for four months. Maybe those two need bringing together to be three months rather than three and four months. Possibly, people whose agreements break down very quickly need access to the court to have some kind of oversight. It would depend very much on each case, I think.

Q44 Yasmin Qureshi: What is the average cost of a MIAM, for privately funded parties, and the work that is carried out? What work does the fee include? What do people expect to get from this?

Colin Anderson: Are you talking specifically about the MIAM and just the MIAM?

Q45 Yasmin Qureshi: Yes. For example, what would be the average cost of a privately funded MIAM?

Colin Anderson: The FMC has a guideline of £87 for the MIAM, plus VAT. A lot of services have taken the view for practical purposes that it should be £100 inclusive of VAT if they are VAT-registered. The cost is usually in the region of £80 to £87 excluding VAT.

Q46 Yasmin Qureshi: Are there enough mediators to satisfy demand for MIAM services if provisions are brought into force?

Jane Robey: Yes. That is the short answer. Yes, there is plenty of capacity. There was an anxiety when the pre-application protocol came in that we would be swamped with referrals and wouldn't be able cope, but 18 months on there is capacity.

Q47 Yasmin Qureshi: Going back on the question of fees, you said that it is £100 including VAT. Is that for the whole session or per hour?

Colin Anderson: That is for the MIAM session. The MIAM session is distinct from mediation itself. Mediation in most cases doesn't begin on the same day, because you usually see the parties on separate days. It is purely for the MIAM.

The cost of mediation itself varies. The Legal Services Commission has a range of set fees. The average in the north-east—it may be different in other parts of the country—is around £90 per hour.

Jane Robey: It varies according to provider. As National Family Mediation is the only charity that provides mediation, our rates are a lot lower than those of private providers, especially the legal providers, who tend to charge at legal rates. A lot of NFM services provide the MIAM assessment meeting for free in the hope that they will convert people to mediation.

Chair: Thank you both very much indeed. We are very grateful to you for your help.

Examination of Witnesses

Witnesses: **Dr Judith Freedman**, Convenor of Consortium of Expert Witnesses to the Family Courts, and **Ann Haigh**, Chair, Nagalro, gave evidence.

Chair: Ms Haigh and Dr Freedman, good morning and welcome to our session. We are grateful to you for your help in our pre-legislative scrutiny of clauses in the Children and Families Bill. We would now like, with your help, to turn to expert witnesses. Ms Haigh, you are the chair of Nagalro; I can never remember what the word stands for but I know what it is about. Dr Freedman, you are from the Consortium of Expert Witnesses to the Family Courts. I shall ask Mr Llwyd to start.

Q48 Mr Llwyd: Good morning. Draft clause 3(6) says that the court may give permission for expert witnesses to be involved, provided that "the expert evidence is necessary to assist the court to resolve the proceedings justly". Several witnesses have told us that, in effect, judges are already applying that test and refusing to allow expert evidence. Without discussing individual ongoing cases, has this led to an increase in appeals against refusal?

Dr Freedman: It may help if I start by telling you something about the impact that this is having and then go on to the question of appeals.

Our anecdotal evidence is that anything up to 70% of requests for expert assessments in care proceedings have been refused because, even before the legislation came into effect, judges have begun applying the new test. This leaves the question of who is assessing risk. Who is assessing damage to the children? We don't know, but I know that it is not us clinicians, even though we are the people who have the expertise to address these questions.

Three weeks in November, the CAFCASS report that has already been referred to this morning, showed that 51% of parents in care proceedings have mental ill health, and approximately 60% have drug and alcohol abuse problems and/or are victims of domestic violence. As we all know, the public are becoming increasingly aware of the wide extent of child sexual abuse.

Assessing these problems is not work that a social worker can do. No matter how well trained they are, they are not trained to be mental health assessors and they are not trained to be paediatricians. Psychiatrists, as you probably know, treat patients in the NHS and elsewhere. Lately, we hear that courts have been asking these psychiatrists, who are called treating psychiatrists, to provide reports on their patients, but they do not have the necessary information and don't know how to put the needs of the child first, because the child is not their patient, so the reports that they give will be skewed.

Judges are telling us that they can't order reports because reaching funding agreement causes delay, and you have already heard about that this morning. It is the LSC, not the

experts, that is causing delay, and it has become significantly worse in the last year. Because of the antiquated system whereby experts cannot apply directly to the LSC, solicitors tell us that they don't want to apply for expert reports because they fear that they will be trapped financially as the middleman, holding the contract with the LSC and the expert witness, rather than the LSC holding the contract directly with the expert witness. This Committee recommended that change over a year ago, but the LSC has made no such move since then.

The changes have been made without regard to any research on the impact and without listening to what expert witnesses say about how we go about doing our work. Experts can save money and time by helping families to reach permanent solutions to their problems, rather than the court quickly operating on a misperception of what the problem is, which will only lead to it not being permanently resolved.

The Government also said that they could get experts in London cheap because of competition. In fact, London clinicians, both in the NHS and in private practice, can no longer afford to work for the rates that the LSC is offering to practitioners in London. We can't keep our offices going at that rate, and our expertise is now being lost to children and families. Once disbanded, NHS court teams will no longer exist.

That is a prelude to your question about appeals. We were told that the Committee wanted to know about appeals, and we have done our best. We are not the people who bring appeals, but we have done our best to scour what solicitors and barristers were able to tell us on short notice. As best we know, no appeals are presently being launched, but it is a question that is being actively considered in advocates' rooms across the land. Barristers and solicitors are unhappy with not being allowed to get the expert reports that they want for their families, and they are actively considering launching appeals. I don't think it will be long before an appeal is actually launched.

Q49 Mr Llwyd: Ms Haigh, do you want to add anything to that?

Ann Haigh: Yes, thank you. We need to consider the contribution of the independent social work expert separately from that of other expert evidence, as it is treated very differently by the Legal Services Commission. It wasn't included in its review of expert witnesses generally, and it does not include it in its list of expert witness categories.

Our members, following the research of Juliet Brophy in an academic study of their contribution, have pointed out the value for children that they bring to the decision making of the courts and how in fact they could contribute to the minimalisation of delay because they could work in a concentrated way, bringing great expertise in a number of areas that, sadly, is often not present in the social services commission. However, because of funding and organisational difficulties in the system, ISWs are effectively being locked out of the family justice system, and this scarce resource isn't really being deployed.

I can give you an example of a case that has finished, which really looks at the contribution that the Legal Services Commission is making to delay. I was appointed in this case as a children's guardian to a child who I believed had foetal alcohol syndrome. The case went to court, and the court felt that it was important to have a particular expert with expertise in this area. The Legal Services Commission turned down this referral, but that was appealed by the solicitor acting for the child. It was turned down again, and a referral was then made to a higher court. It was again felt that it was necessary, and the child was seen by the expert paediatrician. She was found to have a very severe case. The case is now concluded. In her placement, the child has started school, but with a great deal of support that came from having an adequate and appropriate diagnosis. If that had not taken place, this child may well have been excluded.

Looking at the issue of delay, there was a three-month delay because of issues with the Legal Services Commission. My concerns are that the 26-week duration for hearings may

well exercise people in pushing to get the appropriate information in order to make the right decision for the child. We need to look in some situations at the totality, because there are sometimes unforeseen consequences of some decisions having a great effect on others.

We know from our members that a great number of requests are being turned down, but it is likely as things continue that there will be requests. Applications will be on the ground that there was not sufficient evidence to make a decision—

Q50 Chair: There will be appeals.

Ann Haigh: Yes, because the information wasn't there or what was there wasn't adequate. I have great respect for the recommendations of Professor Munro, but it will take time before they take effect, and we are going to have the degree of expertise necessary for social services going forward.

Q51 Mr Llwyd: The likelihood is that it will drive a coach and horses through the 26 weeks, won't it?

Ann Haigh: Looking at the clauses for the 26 weeks, I think that every child is individual. The word is "exceptional". Looking at my little girl, who needed to have that expert, would she have been seen as exceptional? I would say that she would and we need to look at the child's needs when looking at the duration of the hearing. Of course it should be short and there shouldn't be delays, but we have to keep the child in focus when making those decisions.

Q52 Mr Llwyd: You have already referred to Dr Brophy's research. We are aware of that, and we are grateful to you for your view on it.

You will be aware of the CAFCASS report *Three weeks in November*. It was suggested in that report that in 10% of cases the requirement for expert reports and independent assessments was indeed a cause of delay, with guardians highlighting five particular problems, including the need for a multiplicity of experts. Do you agree that change to the system is necessary to avoid duplication and/or multiple experts?

Dr Freedman: The 10% includes various problems that should not be placed at the door of an expert witness or an ISW. For example, we will be told that we are going to be instructed and we have already offered a time scale for preparation of a report. Two months later, we receive the letter of instruction, which will have been held up by arguments. Three months later, we receive the financial authority to go ahead with the report. There is no way that we can then hold to our original time estimate, which has often already passed anyway. When the box is ticked, the complaint will be that it was the expert witness that delayed the report, but it wasn't. Expert witnesses and ISWs do not delay reports.

Ann Haigh: I would support that. One of the things that can help is judicial control in looking at what is going to go forward in the letter to the expert witness. There are ways that that can be dealt with rather than putting the blame on the practitioners.

Q53 Mr Llwyd: In effect, if the 26-week limit or whatever you call it is to be anything other than an aspiration, the Legal Services Commission had better pull up its socks and get on with it. We have heard several times today of delays being laid at its door. It is very damaging in this particular field, is it not?

Dr Freedman: Yes.

Ann Haigh: It is very damaging to children. It is very unfortunate that we don't know how it has made that decision, who has made it and on what grounds. It is regrettable.

Q54 Mr Llwyd: Exactly; that is interesting. Does it have extraneous experts to advise it? How can it reach a qualitative decision on such an application unless it has experts to advise it? I don't know; I'm asking.

Dr Freedman: As far as we know, it doesn't. It gives as reasons only one word, and it is always the same word: "excessive". It is repeated in paperwork time after time. Even following President Wall's request in his judgment of last May that it should give reasons, it still has not given reasons. We can only assume that it is working to some set of guidelines that it does not release about how much money it is going to spend, and that's it.

Mr Llwyd: What you have said is useful, and no doubt the Committee may well pursue that with the Legal Services Commission.

Q55 Chair: I should explain that the Legal Services Commission has within the last week given us commentary on some of the criticisms that have been made of it. That is written evidence to us, and it will be published on our website in the next few days. We will obviously take it into account, but we will do that alongside your evidence and other evidence that we have received about it.

Dr Freedman: Thank you. May I add that the LSC has tried to solve its difficulties by announcing that, as of 1 October, it will no longer grant prior authority?

Chair: Mr Llwyd is coming to that point.

Q56 Mr Llwyd: I didn't want to cut you short, but it is something that does concern us. We are aware of it, but the commission says, doesn't it, that experts can still undertake the work, but they must justify it later on assessment? How realistic is that? Are experts going to do the work in the hope that they will be properly remunerated at the end of the day? What do you think the effect of this will be?

Dr Freedman: It is a bit like saying to you, with respect, that, although you have done a month's work here as a Member of Parliament, we will decide at the end of the month whether we are going to pay you the wages that you thought you were going to get. Are people going to work for that?

Q57 Mr Llwyd: It is a bit like that with IPSA now anyway.

Dr Freedman: Are people going to work for that? They might for a little while, but, if they begin to find that the LSC is not paying them, they are going to drop out of the work.

Q58 Mr Llwyd: In days of old, there was a system under which practitioners and lawyers put in their bills to the legal aid authority, but they were very often taxed by the court and the court would assess whether they were reasonable or not. That is fine, but in this case the LSC will decide on its own measures, of which we have little knowledge, whether bills are reasonable. Is it conceivable that a person of your qualifications would do the work in the vain hope that they will be paid a decent rate for it? People aren't going to do that, are they? As a result, there will be fewer experts out there willing to do this work.

Ann Haigh: Indeed. There is a real danger of losing people with experience because of that. Already, we have heard from members who thought that they were going to be paid particular amounts, and the Legal Services Commission has come back and said that, no, it is not going to have as much as had been agreed earlier.

People have to weigh up whether they are going to continue to do work that they really believe in and love. A lot of our members were managers in social services or CAFCASS and have decided that they wanted to use their expertise for children in the latter part of their professional careers, but putting on all these pressures at the end will make

people weigh it up and think, "Is it really going to be worth while?" The country can't afford to lose these people with that expertise that is available for children.

Q59 Mr Llwyd: That again will obviously impact on the 26 weeks, won't it?

Dr Freedman: It is important that you should recognise that we are already out of pocket by this stage, because it takes so long to come to an agreement about paying bills. By that point, we will have paid out of pocket for our travel expenses, and they can be considerable. I have a case going on at the moment where just my fares are estimated to be £1,000, and I am out of pocket until somebody decides if and when they are going to pay me. We will have paid our office staff, most of us will have paid VAT, and we will have paid income tax on money that we may never get.

Q60 Mr Llwyd: May ask you one final question on this issue? The LSC has observed that since the introduction of codified rates in October 2011, there has been a general increase in the number of hours requested. Do you agree that this increase has occurred? If so, why has it happened?

Ann Haigh: I am unable to comment in relation to its figures, because obviously one doesn't have scrutiny of all the people undertaking the work. One possibility is that, because it is so difficult to get agreement to do a piece of work, it may be the more complex cases where it has been seen that they really should have an expert and it has gone forward from the court. A number of variables could be influencing that.

Dr Freedman: Like Ann, I don't have access to how many hours my members request for reports. They don't tell me that they are increasing the number of hours, and I haven't increased the number of my hours. It would help us with transparency in the LSC if it would publish this data so that we could actually see what is happening.

Chair: Thank you very much indeed. We are grateful to you both for your expert assistance in this matter. As I say, the LSC response will be published and available on our website in a matter of days. Thank you very much indeed.