HOUSE OF COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

CHILDREN AND FAMILIES BILL

TUESDAY 20 NOVEMBER 2012

HON MRS JUSTICE PAUFFLEY DBE and HON MR JUSTICE RYDER

CLARE CHAMBERLAIN, STEVE CROCKER, ANTHONY DOUGLAS CBE and BRUCE CLARK

PAUL APREDA and KEN SANDERSON

Evidence heard in Public Questions 61 - 119

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Oral Evidence

Taken before the Justice Committee

on Tuesday 20 November 2012

Members present:

Sir Alan Beith (Chair)
Steve Brine
Mr Robert Buckland
Rehman Chishti
Jeremy Corbyn
Mr Elfyn Llwyd
Seema Malhotra

Examination of Witnesses

Witnesses: **Hon Mrs Justice Pauffley DBE**, and **Hon Mr Justice Ryder**, Family Judiciary, gave evidence.

Q61 Chair: Mrs Justice Pauffley and Mr Justice Ryder, welcome. We are very glad to have your help in our pre-legislative scrutiny of the Children and Families Bill. We recognise that, when we have judges in front of the Committee, it is important that we protect the constitutional relationship between Parliament and the judiciary. That means that there are questions that it would be inappropriate for us to press you on, but I'm sure you can spot them if you find them heading your way and deflect them appropriately. I am going to ask Mr Llwyd to begin our questioning.

Q62 Mr Llwyd: Good morning. Mr Justice Ryder, we are aware of your report, "Judicial proposals for the modernisation of family justice", and in particular with regard to the 26-week limit. You will know, of course, that the family judiciary group has said that it needs to be recognised that "it will not be achievable to complete all cases within 26 weeks." What are the likely problems, and indeed the practicalities, that need to be resolved in order to operate the 26-week time limit? I ask in particular with regard to "Intensive training in case management and local inter-disciplinary training", which is mentioned in your submission.

Hon Mr Justice Ryder: Yes. We set out in written submissions the individual problems that face judges and all other professionals in trying to work to clear timetables. You rightly, if I may say so, identify my most immediate hurdle, which is training of the judiciary. We have a funded commitment for two sets of training. This December, all leadership judges—that is, designated family judges locally and Family Division liaison judges nationally—will receive training on work load prioritisation, work load progress through the courts, use of management information and, indeed, dealing with the whole spectrum of work in a family court—a new statutory family court—in a new, proactive way.

Skills training, however, is as important, if not more important, and that will be the training that all 600 publicly authorised circuit and district judges and part-time judges, together with magistrates' trainers, will receive. That will be in April and June of next year. That, to be effective, has to be cascaded down to every magistrate who will sit in the new family court. I would anticipate that will take to towards the end of 2013, using the same materials that will be used for the full-time judiciary.

The most interesting part for me will be getting those materials out to all the professionals involved in the justice system, so I need the Bar, specialist solicitors' groups, social work trainers, local authority social workers and CAFCASS to be involved in multi-disciplinary training at a local level. We have a plan, which we think is capable of achieving that on a non-residential basis, with those courses being delivered locally.

Q63 Mr Llwyd: Is there a danger, if there will be limited access to experts in family cases, that the 26-week period will be very difficult to achieve?

Hon Mr Justice Ryder: There are parts of the country where experts who judges believe are necessary to the conduct of a particular case can be in short supply. It is essential, therefore, in looking at the forthcoming necessity test, to consider whether that evidence can be given by anybody else—for example, those who are already witnesses within the proceedings. I acknowledge that that is a decision to be taken on the facts of each case by the individual judge, and there will be sticking points, but the unavailability of experts in the sense that you are referring to tends to be in the most complex cases—for example, radiologists at the level of international practice, where you are looking at really significant distinctions to be made in very fine medical contexts.

Sometimes the court does have to wait for those cases. They are the most complex and, like medical treatment cases, time sometimes is, if not a healer, then important in helping to make the welfare decision. Those cases will pass any exceptionality test in respect of the new clause that is proposed.

Q64 Mr Llwyd: What progress is currently being made in the implementation of your report, "Judicial proposals for the modernisation of family justice"?

Hon Mr Justice Ryder: We have a draft blueprint presented to the Family Business Authority—that is the sub-committee of the HMCTS main board—for how the new court is to be set up. We have a pilot for management information. That is the care monitoring system. We have a training plan, which I have just described in summary form. The Rules Committee has a one-year programme, which will begin at its next meeting and take us right through 2013, looking at 16 statutory instruments and other rule-and-practice direction changes.

The family court guide now has draft expectation documents—service level agreements, for want of another description—in relation to experts. We have materials in relation to social care from CAFCASS and the ADCS. We are talking to the LSC about a similar document, and to the Official Solicitor later this month. We have a sub-group of lawyers looking at their documentation, and the quality and content of that.

The first part of the research has been published for use in court, and skills training—that is the pathways—will be in draft by December.

Q65 Mr Llwyd: So, there is a lot going on?

Hon Mr Justice Ryder: There is an enormous amount going on. I think I could attend three or four boards per day were it not for some sitting commitments that we ought to honour.

Q66 Mr Llwyd: In your written evidence, you note that the changes to section 32 to introduce the 26-week period will remain qualified by the words "with a view to". Is it not the case that those words are themselves qualified by "in any event within 26 weeks"?

Hon Mr Justice Ryder: You won't, of course, expect me to give an interpretation that binds either myself or my colleagues for the future. Looking at the purpose of section 32, and indeed at the way in which the judicial report responded to David Norgrove's suggestions, which led to this clause, my personal view is that "with a view" is intended to qualify both subsections (i) and (ii) so that exceptionality is preserved. To interpret it in any other way means that welfare does not become the determinant factor in relation to case management, and that would breach section 1 of the Act.

Q67 Mr Llwyd: If I can take you back very briefly to the question of experts, in relation to the draft clause on the use of expert witnesses, a number of witnesses to this inquiry have said that judges are already applying "the necessary to assist the courts to resolve the proceedings justly test" and refusing to give permission for expert evidence. Is that something that you are aware of?

Hon Mr Justice Ryder: May I give an answer and then defer to Mrs Justice Pauffley who will have more experience on the ground of what is happening at the moment? From my perspective, looking at the modernisation programme, judges have not been told to change their practice because primary and/or secondary legislation has not changed. However, most are now aware of the rule change, which has completed its passage through the Rules Committee. It has been the subject of consultation and is likely to be brought in in January. That necessarily means that people start to look at the new wording and to think about how to apply it. I have no doubt that they will be influenced by it. I personally do not believe that any decision has been made that contravenes the welfare principle, and I know of no appeal on case management grounds to any tribunal in that regard.

Hon Mrs Justice Pauffley: I believe that there has been a cultural shift already, which is to the good because judges recognise that if they carry on in the time-worn ways of encouraging applications for experts reports in almost every care case, there will be no prospect of achieving completion of the proceedings within 26 weeks. In some instances, it is completely unnecessary, I would say, to involve an expert. Thirty years ago, experts to carry out good social work assessments were not common; they were a rarity. Somehow over the past 30 years, society I suspect has become more risk averse. That has had an impact on practitioners and judges as well. Whereas hitherto a social worker would have been able to carry out a perfectly good and full parenting assessment, now, for whatever reason, we are confronted with social workers and guardians saying, "We have to have a psychologist here." Very often the answer is, "No, you don't in truth." The real need is for a good social work assessment, which the local authorities should be able to provide. There is a guardian as well—a qualified social worker usually with very long experience. He or she is able to carry out the fundamentals of assessment. If we use those tools and possibilities, we can short-circuit the time frame for care cases very markedly.

There are some things we cannot get away from: we will continue to need alcohol testing, drugs testing, and DNA testing. We will need, in complicated, non-accidental injury cases, to import perhaps something of the police inquiry into our proceedings. It is something we all do now. We do not go to a new consultant radiologist or neuro-radiologist if the police

have already commissioned a perfectly good and independent report, because it would be a duplication to do so. There are many means, I would say, for us to be able to confine the instruction of experts and to restrict the length of time these cases take.

Q68 Mr Llwyd: I am grateful, thank you. May I move swiftly to a detailed point about child arrangement orders? A concern of the family judiciary is on the issue of cross-jurisdictional matters. May I ask either of you—or both, as you wish—to explain further your views on whether the introduction of the child arrangement order and the removal of "residence" and "contact" may well risk creating confusion, and worse still, delay in cross-jurisdictional cases?

Hon Mrs Justice Pauffley: I can give a much shorter answer to that question, to this effect: I believe that the answer that the Family Division supplied to you is correct and appropriate. There has to be clarity as to whether an individual does or does not hold parental responsibility, because there are international implications if there is any confusion. Rights of custody will be equated with parental responsibility, but there should be ways of conferring upon x or y parental responsibility. As you have heard already from others, however, there is need for complete clarity.

Q69 Mr Llwyd: Indeed there is. We are in a position where some people tell us that by not using the words "parental responsibility", somehow it takes the sting out of the issue—in other words, between the parents. However, to reintroduce that term would obviously reintroduce that tension. Am I right in saying that what we need is further definition or something on the face of the Bill, so that, for example, in terms of The Hague convention and so on, there is some clarity? Do you think that it should be on the face of the Bill?

Hon Mrs Justice Pauffley: I personally believe that would help.

Chair: I want to turn to judicial scrutiny of care plans in public law cases—Seema Malhotra.

Q70 Seema Malhotra: Thank you, Sir Alan. The family justice review proposed that, rather than scrutinising the full detail of the care plan prepared by the local authority, the court should only consider core components. What do you think the practical effect of the draft clause on care plans will be in terms of judicial scrutiny? There is an option for judges still to consider beyond the permanence clause. Do you think that is likely to happen, and what do you think the effect might be on the support that is needed to be given to the children?

Hon Mrs Justice Pauffley: I welcome the flexibility, because there are many instances where, at the end of care proceedings, the children's guardian, for example, will bring it to the judge's attention that there are issues to be resolved between the local authority and the parents or future carers of the child. If those matters are left unaddressed by the judge, you may set the case off on the wrong track. For example, you may need the support provided by the local authority to the people who are going to look after the child long term: it might be therapeutic or financial, or it might be support in terms of managing the wider family and contact. If a guardian is no longer able to draw those fine-detail matters to the attention of the court, that would be a sorry thing, but that is not the intention of the draft Bill, as I understand it. There continues to be flexibility, which I welcome.

Q71 Seema Malhotra: Do you think that judges would continue to do that? Do you think that the judgment call that they make would still meet all the needs of the child? There

have obviously been criticisms from the NSPCC and others about the change and whether it would result in the support that children need actually being—

Hon Mrs Justice Pauffley: I would be frankly amazed if any judge failed to respond to properly raised anxieties on the part of the guardian or, indeed, on the part of anyone involved in the care process.

Hon Mr Justice Ryder: May I make one additional comment? The clause does not prevent proper judicial oversight of permanence, and it is permanence that often causes the greatest emotional decision to be made by parties to a case and, indeed, it is the one that the judge is fully aware of in looking objectively at what is going to happen to this child's future. A distinction does need to be made between scrutiny of the care plan within the 1989 Act proceedings and the frequently concurrent proceedings under the Adoption and Children Act for a placement order. The degree of scrutiny of the permanence plan within those placement order proceedings is also very important and, again, is not restricted. So, what is often the more difficult decision, which is whether the child should be adopted or not, as the best of the permanence options, is scrutinised at two levels, in either two proceedings that are heard in parallel or two sequential proceedings, although I have to admit a personal preference for the former rather than the latter. There are two distinct tests and therefore two opportunities for the judge to scrutinise.

Chair: We turn finally to Mr Corbyn.

Q72 Jeremy Corbyn: In relation to divorce and the proposals from the Government that, essentially, legally qualified court staff can approve a decree nisi rather than it going before a judge, do you feel this is an appropriate thing to do or do you have concerns at the lack of judicial oversight at this particular stage in most uncontested divorce proceedings?

Hon Mrs Justice Pauffley: We do have concerns. Ernest and I do not deal with these very largely administrative functions day in, day out, but there are many district judges up and down the land who do. We have taken advice from the senior district judge at the Principal Registry, and he has produced a short paper, which we consider would be of great value to you. We are very happy to pass that across.

Q73 Jeremy Corbyn: I think that would be very helpful. Could you very quickly summarise the main points from it?

Hon Mrs Justice Pauffley: Yes, by all means. There are all sorts of things to be on alert about. There are jurisdiction issues. There are sham marriages. There are divorces that might be termed potentially suspect. There are reasons for pausing before granting a decree absolute, because of some issue to do with finances, pension entitlements etc. There are three, four, five six, several issues that the senior district judge has identified as requiring some judicial input rather than administrative input.

Jeremy Corbyn: I think it would be very helpful if we could have that paper.

Hon Mrs Justice Pauffley: For sure.

Q74 Jeremy Corbyn: What training do court staff have in scrutiny of documents and asking the kind of questions that one would expect a judge to ask when they have a decree order placed in front of them?

Hon Mr Justice Ryder: We need to distinguish between HMCTS court officers, who are not legally trained, and legal advisers, all of whom are part of the specialist service, which is managed by lawyers. The training of legal advisers has not hitherto dealt with uncontested

divorce issues. There is no reason why those legal advisers cannot be trained, because procedurally they deal on a daily basis with very complex case management issues, including enforcement and compliance, in the family proceedings courts. They are the court clerks in conventional terms who most people see sitting with the magistrates. That training would, however, have to deal with the issues that the senior district judge has raised on jurisdiction, procedure and the other complexities that can arise.

The judiciary do have a proposal that would allow uncontested divorces to be dealt with by legal advisers—properly trained—which is that they should be supervised by the district bench. If the administrative system that HMCTS set up allowed the legal advisers to work with the district judges, then the issues that the senior district judge raises could be dealt with on a day-to-day basis by proper advice and consultation between those two groups of professionals. That coincides exactly with how legal advisers and judges will be working in the new family court, both in respect of allocation of work and indeed in obtaining advice on more complex work as problems arise.

Q75 Jeremy Corbyn: Is what you have suggested very different from what in practice happens at the moment, in that a decree is presented, the court legal advisers go through it and a judge eventually sees it and approves it or not, as the case may be?

Hon Mr Justice Ryder: Yes. At the moment, a legal adviser will not see divorce proceedings. The divorce petition, the answer, any cross-petition, the acknowledgement of service and so on are documents that trained court officers will ensure are present on the file. The file goes as box work to a district judge; as a consequence of the experience and training of district judges, they will be looking for the sort of problems that Anna Pauffley has raised with you and that the senior district judge put in his paper. It is not impossible—indeed, it is entirely possible—to train legal advisers to do the same function, provided that they have the oversight of the experienced judge to whom they can go. It is not as if one is expecting HMCTS officials to do this, this is legal advisers who are part of the legal service.

Q76 Chair: Can we turn now to the intention of the Bill with its additional clauses to use the law to promote shared parenting? Is the desirability of maintaining a relationship with both parents part of what judges already take into account?

Hon Mrs Justice Pauffley: Very much so.

Q77 Chair: Does that mean that changing the law so that a presumption enters into it would not necessarily change the practice?

Hon Mrs Justice Pauffley: As a matter of personal preference, I am against presumptions in the area of children's welfare. I can tell you how many cases in the private law arena have been resolved over the years, and it is interesting that it is at either end of the spectrum of parental behaviour that you see shared orders working rather well. A shared order will work extremely satisfactorily where mother and father are co-operating fully in almost every issue to do with their child, so there would not in truth be issues. However, it is important for the child to know that each parent holds, shares and continues to be in interested in the child by virtue of the shared order.

At the other end of the spectrum, there is a phenomenon that raises its head from time to time where parents are so embittered and so entrenched in their dispute with one another that it is quite useful to consider, at least, sharing residence between them, so as to divest one from the all-powerful position of holding the residence order. That is something the president, Sir

Nicholas Wall, did many years go now in a case involving A and A. It is a useful option if things are as bad as they can be.

Q78 Chair: If the law is changed, do you think that a judicially devised framework of guidance would be necessary or desirable in relation to making child arrangements in shared parenting?

Hon Mr Justice Ryder: For my own part, I doubt that a judicial framework in addition to statutory formulations would add benefit. It is more likely to provide only for those examples of the planning between parents that we want to promote, which we have thought of, but there will be other examples that we have not thought of. Certainly, in the training that judges get, one can look at the myriad different examples at both ends of the spectrum that Anna has referred to, which is important.

Can I perhaps recast it in this way? 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, 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.

Q79 Chair: Sorry, because of an extraneous noise, I missed the crucial word you used.

Hon Mr Justice Ryder: Imperative. Imperatives are important. Children are, in general terms, subject to welfare argument, best brought up by their birth families. This is a similar imperative; it is not likely to change practice, but it might highlight what the judges already believe is good practice.

Chair: Thank you very much indeed. Is there anything else you would like to add on this issue, which will prompt considerable parliamentary debate? No? In that case, we are grateful to you for your time this morning. We have some more witnesses.

Examination of Witnesses

Witnesses: **Clare Chamberlain**, Project Manager, Tri-borough Care Proceedings Pilot, **Steve Crocker**, Deputy Director, Children and Families, Hampshire County Council, **Anthony Douglas CBE**, Chief Executive, CAFCASS, and **Bruce Clark**, Director of Policy, CAFCASS, gave evidence.

Chair: Mr Crocker, Miss Chamberlain, Mr Clark and Mr Douglas, welcome. We are very glad to have your help this morning on many of the practical aspects of the legislation the Government are bringing forward, which we are scrutinising. I am going to ask Mr Llwyd to begin. I think we are back to the 26-week limit.

Q80 Mr Llwyd: I think the four of you were in when we asked Mrs Justice Pauffley and Mr Justice Ryder about this issue. Perhaps we can take what they said about their particular avenue as read. You perhaps have a different take on things, given where you are involved in these important cases. What have been the biggest challenges in trying to meet the 26-week time limit? Given your experience, where do you think that improvements can still be made?

Anthony Douglas: May I start? We are pleased to have made some progress already, in advance of legislation. The average duration of care cases in the second quarter of this year was 46 to 47 weeks, which is down from, at its worst, 54 to 56 weeks, so we think there is evidence of momentum and a determination to improve, because delay is bad for most

children. Having said that, the last time care cases took 26 weeks on average was 1995. For the host of reasons referred to by Mr Justice Ryder and Anna Pauffley, it has taken 17 years to get up to 56, and it will take a little while to get back down.

What is encouraging is the greater confidence in the judiciary to manage cases in a much tighter way. The emphasis on active judicial case management has helped to reduce time scales. There has been a lot of work in local authorities—I am sure Clare will mention this, and Steve will talk about Hampshire—on the quality of social work assessments and the screening of those assessments before they come to court; that is a particular feature of the Tri-borough pilot. All that has helped courts to have, in general terms, slightly better assessments in enough cases to start to bring the average down.

That greater confidence has also extended to not requiring so many experts and, certainly in cases that are perhaps more obvious than others, to taking braver decisions and to being less risk averse. I think the intrinsic difficulty—the question you asked was about the challenge—has always been the nature of the families we work with. Sometimes, in talking about the system, you can gloss over the complexity of the work and the complexity of the decision that has to be made.

As Ernest Ryder said, the main decision is not whether the threshold of significant harm or likely harm has been met, because that is met in virtually every case, and our own study that we submitted—on guardians' views of care applications—shows that very few are brought that do not meet the threshold; the question is always about what is to be done about it. Therefore, a decision for safe reunification back home or of early permanence away from a child's birth parents is one of the biggest decisions that the state can take.

It is no surprise that, over those 17 years, cases have taken longer. That has partly been to build in more safeguards and more rights for people to express views about that. I think it is about the nature of the families and the difficulties they have. Over 50% of cases in most parts of the country feature substance misuse, perhaps family violence, a cumulative impact of neglect that is possibly coupled with emotional harm, and sometimes also mental health difficulties and other complications, such as learning difficulties requiring the Official Solicitor. These are not easy cases, as you all know.

The challenge will be to complete particularly the finely balanced cases, or cases with large sibling groups, in that time scale. It is not simply that those children might need care, but what is to be done about it. An example of the difficulty of that, further down the road, is the growing gap between the numbers of children legally freed for adoption and the numbers of adopters waiting to adopt. Up until two years ago, those two figures were roughly balanced, but in the past two years there has been a very wide gap. Now, well over 2,000 children are legally freed for adoption, but not yet placed. We do not want one form of delay to be replaced by another limbo.

It is a complex problem from beginning to end. It is a complex problem in terms of maintaining the quality of social work assessments. I believe that the work of the Social Work Reform Board, on which I sit, is important to take forward over the next 10 years. We are doing some work, as Ernest referred to, with the ADCS about a model of family court social work that might assist the new time limits. It concentrates on particular aspects of social work practice—the threshold analysis, the analysis of whether a parent can change and bridge their gap in capacity, and the viability of a care plan. We are hoping to bring that work forward and complete it by April.

We think that there is a lot of judicial modernisation and training still to be done, but we are encouraged by the start we have made in advance of the legislation, which I think shows the all-round commitment of professionals to do better.

Q81 Mr Llwyd: That is a very comprehensive answer. Thank you. Does anybody wish to add anything briefly?

Clare Chamberlain: I am the project manager of the Tri-borough. As you will have seen from the report, we are managing to complete cases—the early cases—well within the 26 weeks. I have an update on the figures you have. In the first 10 cases that have completed, the average is 18 weeks for completion. If we include some of the predictions about cases that will take longer, for the first 28 cases the average would be 24 weeks, so that is still within the 26-week time limit.

We see the main difficulties. As Anthony has said, where there is domestic violence, severe mental heath or drug and alcohol problems, rehabilitation times and times for treatment programmes extend the process. In terms of the system, the area that we have had most difficulty with has been judicial or magistrates' continuity and time in the courts. Of all the components of our project, that is the area where we have had the most difficulty implementing the ambitions, if you like, of the project.

Q82 Mr Llwyd: I think you might have answered the next question I was going to ask. Is it possible to estimate how many cases will need longer than 26 weeks or is that just—

Clare Chamberlain: No. One of the things we are doing in the project is tracking every case, so we have quite a lot of detail. We think 25% to 30% will take longer, just by virtue of the problems within the family and the length of time for domestic violence treatment programmes, as well as the length of time for rehabilitation programmes for drug and alcohol problems.

Q83 Mr Llwyd: Built into that is the fact that there will be a shortage of experts. Does that figure as well?

Clare Chamberlain: No, that has not been an issue for us in the pilots in those three boroughs in London. In fact, in the first 10 cases we have used experts in only a small number. In three of them we did not have any additional experts at all. In a further two or three others, we had connected persons' assessments of relatives, but not additional experts. That is because of the energy and not just the quality assurance role of the case manager, but a coaching role. She works with the social worker who is presenting the evidence right from the beginning and will help that social worker be confident about the local authority evidence, so that there is less need to ask for additional assessments. That has been borne out in the court, because the judges and magistrates hearing those cases have not then agreed to additional assessments where they have been requested because of the quality of the evidence from the local authority.

Bruce Clark: It is worth making it clear that this is not simply a Tri-borough project phenomenon that is not capable of replication elsewhere. The MOJ's own statistics, which came out at the time of the publication of the family justice review, show that in only 7% of cases in their sample were no experts being used, yet in the other 93% the average was 6.9%. I think the work both in Tri-borough and that Steve has been leading in Hampshire shows that if you focus on improving the quality of pre-application and during-application work by local authority social workers and their partners, you can markedly bring down the case duration, and the appetite and need for the use of experts during proceedings. Steve, is that right?

Steve Crocker: That's right. I think a lot of that focus for us has been on the quality of the assessment, but I think that might vary across local authorities, in that you need to do a fuller sort of self-assessment of what it is your staff group needs, whether it is coaching, more

work on the basics of assessment or court work, which sometimes falls down. It is about assessing what your work force need and working with them to deliver it.

Anthony Douglas: We think the standard is the combined expertise of the social worker, children's guardian and judge, and that that is sufficient in the majority of cases, but when I said the average duration is 47 weeks that conceals a spread from 30 weeks in the quickest courts to 64 in other parts of the country. Obviously, the areas that are currently taking 30 weeks on average will probably get to 26 relatively straightforwardly. It is the work in the areas that have not been able to bring it down in the last year—we think they need extra help, perhaps through the local family justice boards and other mechanisms to have a lot of support to make the sort of progress that Steve and Clare have made.

Q84 Mr Llwyd: Thank you. A very brief question, if I may. The Family Rights Group and Kinship Care Alliance are concerned that the 26-week limit may squeeze out wider family members who might want to take care of the child or children because there is not enough time to consider their application. Do you agree that this is a potential problem? If so, how can it be avoided while keeping to a 26-week target?

Clare Chamberlain: In our project, we have had the benefit of a direction early from the court for all relatives who might be potential carers for the child to come forward, so we have had the authority from the court in asking for that. At the same time, we have done extensive work to look for relatives. In the first 10 cases, four of those children have gone either through special guardianship orders or adoption, or just gone home—gone back to a grandmother or to relatives. Most of them have had some kind of connected person or relative assessment. We are doing the assessments in a shorter time. We are completing them in 10 weeks rather than the 16 weeks that was the standard time before. Actually, relatives are welcoming that. They said that it took too long before, so they are quite happy with that. We have no evidence at all that relatives are being squeezed in any way.

Steve Crocker: On that, the other trick is to try to do that in the public law outline stage, so that you have done as many assessments of as many relatives as you can before it gets into the court arena. A direction from the court early on is also extremely helpful in limiting the amount of relatives that may appear later.

Q85 Chair: Do you recognise that long delay—60-odd weeks, for example—is not only undesirable or inconvenient, but it can even materially change the circumstances that the court addresses in the final stage? By that time, it could be argued that there is no longer a family bond, for example, which can materially affect the decision that the court makes at that stage.

Bruce Clark: There are a couple of other points here, one of which is that there is a risk that you would knock on all the delay to the pre-application phase. Local authorities have been criticised in the past for dragging their feet about bringing children before the courts. I think Michael Gove said something of that nature only last week. Our repeat study, looking at a 2011 sample, of three weeks in November was encouraging. In our 2008 sample, more than a third of the children had been known to the local authority for more than five years before the application was brought. By 2011, only 9% of children had been known to the authority for more than five years. So it is very clear that local authorities are getting on with it in a way that they were not back in 2008.

The other thing to say, which Judith Masson's work on EPO—emergency protection order—samples and her care profiling study show very clearly, is that some families have so little confidence and trust that the local authority is either benign or competent that they will

not engage with it before the point of the application being made. That is why judicial seizure and active case management is so important in that minority of cases in which there is no viable functional relationship with the authority before the point of application.

Q86 Steve Brine: That is a good point at which to move on to social worker training. By all means please chip in, Mr Clark, although this is primarily for Mr Crocker and Ms Chamberlain. One of the key observations, as you put in your written evidence, from the family justice review is that courts need to be less reliant on so-called expert witnesses and to lend more credence to the social workers who know the cases better, have the relationship with the family and know the risk and the protected factors. Could you outline for the Committee the work that you have done in Hampshire around social worker training, and then we will come on to pitch some questions at it?

Steve Crocker: Yes. There is a range, and it was based on that self-assessment I referred to earlier. The first bit was about how we have a significant number of newly qualified social workers, so we ensured that, as part of their training, they were receiving input around court reports, about core assessments and around how to conduct a case in court. Part of that was input from our legal department, to make sure that the social workers were fully briefed. There is also a whole process of coaching, in terms of preparation for a particular case, so that they know their case, they are well briefed and they can make a good presentation in court. Part of it has also been around training for family group conferences and family meetings, so that social workers are well versed in those aspects of our work, in order that when we get to court we have, as much as possible, exhausted the possibilities for other forms of family care.

Then there is what I have described as managerial grip, which is not really training. We think in Hampshire that managers can help social workers to feel safe—that is what they are there for in lots of respects. That means that managers should have an oversight of the social workers' work and should ensure that, when they go into court, they are fully briefed and prepared and that the court reports are of an adequate standard. That is what managers are for in our book. That virtuous circle is what we have tried to put in place. As I said in the report, there is no magic bullet, this is just trying to get it right first time and incrementally increasing the quality of assessments that we put before the court.

Q87 Steve Brine: Obviously, I hear what you are saying. While it is fine that they know their cases well and have a good understanding of the families, that works in an authority with a relatively low turnover, which you enjoy in Hampshire, but where that turnover is higher, that relationship with the family is not there. Is that not why the system relied on so-called expert witnesses?

Steve Crocker: I think there are probably elements of that, and we see some of those issues in Hampshire because we work with other authorities in the family justice area. One way of trying to address that is, for example, that we work in a consortium now with Portsmouth, Southampton and the Isle of Wight to deliver consistent training across family justice to try to bring all our staff up to the same level. But it will always be a challenge, because some authorities are in a different place.

Q88 Steve Brine: But the partnerships you work in are quite large local authorities. Obviously this is the British Parliament—it is the English Parliament in some senses—and we are interested in whether what you have done in Hampshire can work across smaller authorities That is the key question.

Steve Crocker: Is it replicable? It is not an off-the-shelf solution, but the bit that is applicable is a rigorous self-assessment of the needs of social workers in any particular authority to establish what you need to do to improve their performance and the court's confidence in those social workers.

Anthony Douglas: May I add that there have been many signs recently that this work in family justice is becoming much higher profile in local authorities. Directors of children's homes are taken much more seriously. It used to be peripheral and on the fringes of children's trusts and inter-agency arrangements, but it now has a higher profile and there are many examples of local authorities working together effectively. Ten on Merseyside and in the north-west are working on agreed specialist health assessments before care proceedings. Although there is massive inter-authority variation across the 152 local authorities, I think that, by working together, we can achieve quite a lot.

We have just had an updated report of a pre-proceedings joint project in Coventry and Warwickshire, which shows that, although social work turnover in those authorities is a problem, where guardians and social workers have worked together before proceedings they can, as Bruce said, mend some of the relationships between local authorities and parents, help the case to get back on track, and give social workers more confidence by producing an integrated social work opinion. So I think there is an indication that those smaller local authorities, whether Rutland with bigger neighbours or in some of the consortiums, can transfer expertise from one to the other. Many successful local authorities are helping poorer local authorities through improvement board work, and there is quite a lot of improvement partnering. It will take some time, but there are grounds for optimism.

Q89 Steve Brine: Going back to you, Steve Crocker, you said in your written evidence that the change is encouraging for social workers, and raises a challenge for them. Does encouraging social workers to step up to the mark and to be better prepared in the presentation of cases make them worry that that takes them away from their day job, as they might see it?

Steve Crocker: No. I think they see it as their day job. I am speculating, but social workers have felt somewhat disempowered by the overuse of expert witnesses, and independent social workers as experts. Being required to step up to the mark is empowering for most of them. For some it is challenging, and that is expected, but most of them feel that it is their day job and something they should do. After all, they know their cases generally.

Q90 Steve Brine: Do you want to come in, Clare? I want to ask you about the role of expert witnesses in your projects across the Tri-borough, and the partnership you are working on. Has there been a reduction in the number of expert reports relied on?

Clare Chamberlain: Yes. The family justice review indicated that the average number of expert additional assessments or reports was between four and five, and in our first 10 cases the average has been 1.1, so it has reduced significantly.

In line with the other points about training, all three boroughs at the beginning of the project agreed to prioritise the work to ensure social work continuity, to ensure that social workers see cases right through—in some areas, teams used to change—and to ensure that newly qualified social workers have a more senior and experienced social worker as a mentor to help them.

The other benefit we did not expect is that, because we have had improved communication with barristers and judges through this project, they have offered to come and work for free with groups of social workers and to provide training. I know it has happened before in lots of areas, but it has been fantastic in reducing fear and trepidation; talking to a

real judge about a case in a training or learning environment is completely different from being in the courtroom. That has helped enormously as well.

I know the Tri-borough has a stable work force, with some good social workers, but I really believe this is replicable, and we are doing some work in other parts of London to try to roll it out. People are saying, "I suppose we could change our structures" and "I suppose we could do this—it seems to work".

Q91 Rehman Chishti: Turning to the issue of sharing expertise and experience, how effective are local family justice boards in sharing good practice to meet the needs of the 26-week time limit?

Bruce Clark: It is quite early to say, because they formed and had their first meetings just before the summer break. They have been given the task that was previously being fulfilled by the local family justice councils, which have now ended—a task that was fulfilled very variably, with huge success in places like Thames Valley in promoting interdisciplinary learning through training events. They are now forming interdisciplinary training sub-committees so that the professionals are brought together.

Ernest talked about the Judicial College swath of activity, which is very important for the judges. In my experience, what makes for successful interdisciplinary learning in local family justice areas is judicial engagement from leadership. As to the involvement of legal practitioners, Clare makes the point very well, but what the local family justice councils or boards bring to the party is creating a space where people who are often on the other side of the bench from one another in their day job, fulfilling, quite properly, their separate and distant roles, take the opportunity to learn together. The live-ammunition court example that Clare gives is very important.

We have seen research in practice in recent years, with the consortium body of which many local authorities are members producing the materials on making evidence count, which are being updated. The Children's Improvement Board is now taking forward those materials and promoting a series of seminars from January to March, so it is not only the judges who are very busy. That learning and training is terribly important: it is not just single discipline, single agency, although that is essential; it is also interdisciplinary.

Q92 Rehman Chishti: Linked to that, do you think there is enough judicial input at local level?

Bruce Clark: Yes. The constitutional distance that properly exists from the local family justice boards means that the judiciary need to be observers in the national Family Justice Board, on which Anthony sits, and in the local family justice boards. Those that I have attended all have judges present as observers, and you can be a very active, engaged observer, but it is really in the interdisciplinary training where there is no constraint, because there is no performance-management function being fulfilled in a training sub-committee.

Q93 Rehman Chishti: A supplementary to Ms Chamberlain. What methods and practices are being used to disseminate lessons learned to other London boroughs using the funding from Capital Ambition?

Clare Chamberlain: We have had interest from 20 other London boroughs, some of them in clusters around family proceedings around London. We are at the initial stage of setting up stakeholder groups. CAFCASS has attended all those, and we have had some representation from the courts, although not quite as much as we would like. We have project resource time, so the same kind of role that I have undertaken in managing the Tri-borough is

being replicated around London. We are sharing all our materials; anything that we have developed over the last nine months is open to anybody to use. So far it is going well.

Q94 Jeremy Corbyn: On to CAFCASS. Last year, our Committee produced a report on the operation of the family courts. What has CAFCASS done since our report came out to meet some of the concerns that we expressed?

Anthony Douglas: We have responded in writing to Sir Alan and given full briefings. We have had no unallocated cases for some considerable time, despite the rise in the numbers of care applications, which is about 8% this year. We have increased productivity by roughly 10% a year, reduced sickness levels and improved quality, in the judgment of our inspectorate, Ofsted. We believe we have responded well to the concerns. We are still very stretched—on some days, overstretched. We have some concerns that the numbers of care applications look projected to rise further still, and about private law cases possibly increasing in future, although it is harder to judge the impact of the reforms on those levels of demand on us. In that period, we hope to become more confident and more resilient. I am not saying that it is easy, but we believe that we have responded in full to the concerns that you had.

Q95 Jeremy Corbyn: It is very difficult to predict future demands for your work—almost impossible. Do you feel that, if the work load continued at more or less the current volume, you have the resources to cope? Are any children left at risk because of your lack of resources?

Anthony Douglas: We have had to change working practices and, along with judges and everybody else, to narrow the issues on cases that we look at and to become more analytical. In some cases, that has meant that we have not done as much direct work as we used to. We decided at the time of the Justice Committee concern that what was most important was that every child receives a service from us straight away and that we complete the work quickly. That is now being captured in legislation. At the moment, we are keeping pace. The stock of cases in the system is roughly the same. In other words, by becoming more productive, we are closing as many cases—they are finishing in court—as we are opening new applications. I do not know whether that can continue for ever. There are various scenarios. Local authorities are forecasting pessimistic scenarios all the time, particularly about the burden of adult social care, and there are some difficult scenarios in future. We still think that we will keep pace with these reforms through changes in working practice along with local authorities.

Q96 Jeremy Corbyn: Two final points. Do you have any facility, either by estimation or by samples, of follow-up of cases that have come through CAFCASS to see how the children in the families concerned have progressed after that?

Anthony Douglas: We have children's feedback work in most of our local areas, but not apart from the research findings—our own work on longitudinal outcomes. We are beginning in the new year, in Essex, to pilot at least a small sample of ringing and contacting people three and six months after they have used our service—both parents and children—to look at what the impact of our work and the court process has been. Those will be sample studies. We are considering, funds permitting, having an independent firm looking at what service users say about our service—again perhaps six and 12 months afterwards. We want to do some work, as does the Family Justice Board, on, at the very least, intermediate outcomes for children. But the feedback that we get at the moment—I sit down with groups of children who went through court perhaps five or six years ago—is very mixed. Some have turned their

lives around from care despite some of what you hear. Others still need services well into adulthood. In private cases, some cases have resolved very well and others remain difficult long after the court case. You will always get that feedback because of the nature of the families that we work with and the difficulty in finding solutions for many children.

Q97 Jeremy Corbyn: Could and should CAFCASS be involved in mediation meetings? Do you have the capacity to cope with that, or is that too difficult?

Anthony Douglas: It would be ultra vires, and there are no plans for us to be involved that early on in private law cases. Our involvement starts with the private law programme when an application has been made. I think that this is territory in which to expand mediation. There are some very good models of therapeutic mediation and child-inclusive mediation. I believe that the expansion of mediation, and the training and accreditation of mediators need to fill that gap.

Chair: Thank you very much; we are very grateful. We have further witnesses.

Examination of Witnesses

Witnesses: **Ken Sanderson**, Chief Executive Officer, Families Need Fathers, and **Paul Apreda**, National Manager, FNF Both Parents Matter Cymru, gave evidence.

Chair: Welcome Mr Sanderson, chief executive officer of Families Need Fathers, and Mr Apreda, the national manager of the exotically named FNF Both Parents Matter Cymru, which has a similar vocation in Wales but is structurally slightly different. I am going to ask Mr Buckland to open the questioning.

Q98 Mr Buckland: Good morning, gentlemen, and welcome. May I first deal with the draft clause, the short title of which would be, I suppose, "Shared Parenting"? It represents a significant change from the original clause in the consultation. Just a general question first. Are your organisations happy with the proposals in the draft clause as they stand?

Ken Sanderson: I think we would say we are generally positive about all of it. In the consultation, we came out with option 1 as being the best option, purely because we feel that a presumption—or as Justice Ryder put it, an imperative—that in most cases, shared parenting or parents having a duty of care for the children, is the best way forward. All the research has shown that children benefit most when both parents are involved actively in their upbringing. So yes, we are generally happy with what the Government have come out with.

Paul Apreda: Yes, I echo Mr Sanderson's comments. The key thing for us is not trying to hold the judiciary to some sort of new test; it is about creating impressions for potential litigants through the family courts. The legislation that is being proposed will help in doing that. I personally have a lot of faith in the way in which judges currently handle cases, but we also need to be aware that the majority of cases are handled through magistrates courts. It is helpful to give, particularly to magistrates, a sense of the direction of travel and to allow them to rely on the guidance that they receive.

Q99 Mr Buckland: Isn't there a problem, though? The system at the moment is quite simple, isn't it? There is a presumption that the child's welfare will be paramount. Doesn't this complicate the position? Can you have two presumptions?

Ken Sanderson: The Government have made a couple of things very clear. One is that shared parenting is not an equal split of time, and that's imperative. The other thing is that the paramountcy principle overrides everything. So this presumption does not replace the paramountcy principle, and that is what we need to get across to people.

The importance of the presumption of shared parenting is the effect it will have on culture as a whole, in that it should encourage more people to look at agreements outside of court, because they know that, by going to court, they are not going to have a winner-takes-all situation where they can freeze out one or other of the parents. So the shadow of the law will have a very great effect by being strengthened by a presumption of shared parenting.

Q100 Mr Buckland: What do you think, Mr Apreda?

Paul Apreda: I'd like to put it in the context of the legislation in Wales, specifically the Rights of Children and Young Persons (Wales) Measure, which creates a duty of due regard on Welsh Ministers in relation to the exercise of all their functions. The work carried out by CAFCASS Cymru is a function of Welsh Ministers, so it is different in that sense from the position of CAFCASS. Within that, I think article 9.3 creates clarity. It says that children have the right to maintain direct contact and a meaningful relationship with both parents following divorce or separation. It also contains the phrase, "unless it is not in their best interests". That provides some clarity.

Q101 Chair: Is not there a danger in trying to use the law to give a signal—perhaps a very desirable signal—because it may not give the signal that you intend? It may create the impression that new rights have been created. I think that there is widespread agreement that being with a child on the basis of the rights of others over it is not the best way to proceed. The welfare of the child is the paramount principle. Tinkering with the law as a means of managing expectations is a bit difficult, isn't it?

Paul Apreda: In relation to rights, it is the right of the child. It is important, certainly for our charity, that we constantly strive not to be seen as a fathers' rights charity; we are a children's rights charity. Article 9.3 is about the right of a child to maintain direct contact and a meaningful relationship. That is an important element. Certainly from the Welsh perspective, anything that focuses on seeing these things as rights of children is helpful. I would agree with you respectfully that seeing them as the rights of parents, or as children being in some way owned by parents and parents having rights over children, is not helpful.

Q102 Chair: Is not it the case however that a lot of non-resident parents—mainly, but not always, fathers—have a very deep sense of grievance? They are contributing, either voluntarily or through the CSA, to the welfare and upkeep of a child and feel that they are being deprived of contact. They are looking to the law to restore that contact to them. Are they going to feel helped by the kind of change we are talking about here?

Ken Sanderson: There are two things. First, the YouGov research published in the summer showed that 85% of the population agreed that both parents should have a role to play post-separation. I think that the Government are right to try to put some law into place that says that, in normal circumstances, both parents should be involved in their children's upbringing. I do not think that changing the law will encourage more parents to go to court. I think that it will have exactly the opposite effect. If they presume that, if they go to court, there will not be a winner takes all or their rights will not be looked at, but that the children's rights and the best interests of the children will be, and that is made very clear to them, I think that more families will stay out of court.

Q103 Mr Llwyd: I have just one brief follow-up question. It is only a very tiny—minuscule—minority of cases per annum in which a party to a marriage is excluded from contact with the child, isn't it?

Ken Sanderson: Well, that might be what happens in court, but in practice unfortunately, when a court makes an order in the best interests of the child, a resident parent will often almost metaphorically stick their fingers up at the court and not comply with the order.

Q104 Mr Llwyd: That is being addressed in the Bill via enforcement.

Ken Sanderson: Yes, we hope that that is effective. New enforcement measures are not being introduced, but courts will be encouraged to use those enforcement regulations that are there at the moment. Quite often, those are not used, because it will be said that they are not in the best interests of the child if either of the parents is upset by the court decision.

Q105 Jeremy Corbyn: Don't you think it is a terrible message for the children when court orders are used to ensure that one parent or the other has a degree of contact with the children? Wouldn't we all be better employed in putting far greater effort into making it abundantly clear to both parents that an ongoing war between them is incredibly damaging to the child and publicly very damaging to the child—very humiliating? Both parents should be required to co-operate in some sensible way for the benefit of the child. I am sure you agree that every child has a right to contact, providing it is safe, with both parents.

Ken Sanderson: I agree with you totally. I think that the statement in law of a presumption of shared parenting will stop many families going to court. We are hoping that the savings made by fewer cases coming to court will be able to be diverted to support for families early on in the break-up, so that they become more used to working together.

Q106 Jeremy Corbyn: What advice do you give anyone who comes to you when one parent has unreasonably prevented the child or children from having access to the other parent? Typically, the father arrives on a Friday evening, expecting to pick up the children for a weekend, and they are just not there. No word is given and nothing can be done until the end of the weekend, by which time, of course, the whole opportunity has gone and it is very sad for everyone concerned. What sort of pressure can be brought to bear to encourage parents to behave in a rational, sensible way?

Ken Sanderson: Unfortunately, many of the parents that we come into contact with have been through many court cases, many attempts to enforce orders, and have spent tens of thousands of pounds getting to the stage where they are now. We do still try to encourage parents to settle matters outside court and always say to them that court should be a last resort. We have talked about the small number of cases that come to court. We are dealing with the most difficult 10% of cases, I guess.

Q107 Jeremy Corbyn: Legislation and inquiries such as ours have to deal, inevitably, with the most extreme cases. Clearly, in a large majority of cases, there is shared parenting. They do not go anywhere near a court, advisers or anything else. Both parents work it out, and the children do not suffer too much as a result, but there has to be some process for that; otherwise, the damage to the children is so extreme.

Ken Sanderson: We can take heart from the fact that in Australia, in the six years since the introduction of a shared parenting presumption, the number of cases coming to court involving children has fallen by 32%. There is very clear evidence from the Australian experience that we could see the same fall in cases involving children, and that would be a great outcome.

Q108 Chair: What about the content of court orders? Do you think the draft clauses will affect the content of court orders?

Ken Sanderson: The proposed legislation will strengthen the "best interests of the child" presumption. That will still be the paramount principle. I do not think that the court order content will change much at all anyway. It certainly will not conflict with the paramountcy principle; I think it will add to it, so it will be a benefit.

Q109 Steve Brine: I wonder whether you heard our conversation with the previous witnesses about increased use of social workers and not so much use of expert witnesses. The logical consequence of what Mr Crocker from Hampshire county council was saying was this. The increased use of social workers, who know the families and know the cases well, is ultimately aimed at—hopefully—diverting cases away from court in the first place. It was a few years ago now, but there were some statistics showing that 50% of contact orders are broken and not enforced—I am sure you know these figures better than we do. I just wonder what your view is of that increased use of social workers and whether you think that is a utopia that we will ever get to.

Ken Sanderson: There is almost a dichotomy, in that funding for local authorities and social care is reducing, yet we are saying they should be more involved. I think that Treasury wishes and family wishes need to be more in line. The increased use of social workers who have, in many cases, a good relationship with the family members is a great idea, but I think also, as the previous witness said, in many cases, social workers' work loads are so large that that relationship is not possible.

Q110 Seema Malhotra: I want to raise a couple of issues about welfare. The Association of Lawyers for Children told the Committee recently—repeating what was in the family justice review—that in a third of the cases looked at, the box indicating "Harm" "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." Evidence from Australia in a sample of 10,000 separated parents suggests that even where there were parents with safety concerns, they were no less likely than other parents to indicate that they had shared care-time arrangements. Obviously the draft clause is not a presumption in favour of equal time, but do you think that there is a danger of presumption in support of the involvement of the parent being applied perhaps inappropriately, where there are concerns for safety of children?

Ken Sanderson: Again, I think I am confident that the paramountcy principle will override everything. I think that courts will not see the presumption of shared parenting as an overriding factor, but they will very much use the welfare checklist. We have heard from the Government as well that they intend to strengthen that welfare checklist, so there is a very clear indication from them that that is not the intention. It is good that the Government have looked at some of the faults in the Australian system and learnt from them, and they seem to be putting measures in place that will overcome them. I am quite confident.

Q111 Seema Malhotra: Can you clarify whether that is a belief or whether it is based on discussions and evidence? There is obviously still the ongoing concern about perhaps the danger to either the other parent or to the child.

Ken Sanderson: We see domestic abuse not as a gender issue, but as a control issue. It is interesting, for example, that Women's Aid has just opened a men and children's refuge in Berkshire, because last year, there were 5,800 cases of abuse against men in Berkshire alone.

We see it as a very real problem, but we should not take the best interests of a child and abuse as being so related, because in many cases—the vast majority—the welfare of the child will be in having the relationship with two loving parents. There will obviously be instances where the mother or father is not fit for many reasons. Hopefully—well, not hopefully; I know that the courts will use the paramountcy principle and the welfare checklist to make sure that children are protected.

Q112 Seema Malhotra: I completely agree and I think it is absolutely right that it is not a gender issue. Whether it is more one side or the other, it could affect both fathers and mothers. However, coming back to the point about where there is domestic abuse, whichever side it is, is it your view that there will be no extra risk coming into play as a result of this presumption?

Ken Sanderson: Yes. It is very unlikely that the courts will change their views on the best interests of the child, so if there is clear evidence of domestic abuse, I cannot imagine that any judge will say that care for the child should be shared, or that any contact with the children should be unsupervised. We are doing judges and courts a dishonour to think that that would be the case. They just would not.

Q113 Mr Llwyd: One or two practical issues, if I may. Do you agree that the clause will require some guidance from courts—appeal courts, possibly—to define the word "involvement" and the phrase "unless the contrary is shown"? Could you tell us how you see the section interacting with the existing sections of the Act?

Ken Sanderson: Yes. I think courts will need some guidance, and there will need to be a statement from Government as to what "substantial involvement" means. From our point of view, again, it is not time related, although clearly there will need to be sufficient time for what would traditionally be the non-resident parent to be able be involved in all aspects of the child's life. It is not just about McDonald's for an afternoon once a fortnight; it is about being involved with the child's schooling, the child's friends, being able to take the child to Cubs or Guides, attending sports days and things like that. It is on all aspects—emotional, social and the child's well-being.

There needs to be clear guidance on what that high-level involvement actually represents. That may be difficult to come to a decision on without being specific about the minimum amount of time, but we would rather that it focused not on time, but on the type and the quality of involvement.

Q114 Mr Llwyd: If the child arrangement orders do in fact work as they are intended, and in effect remove the concepts of winners and losers, why, then, is the presumption in favour of shared parenting necessary?

Ken Sanderson: Many families work in the shadow of the law, so if the law says, "When a family comes to my court, I will presume that, unless there are very clear signals to the contrary, both parents will be involved actively in the upbringing of the children," that will say to many parents, "There is no point going to court. You are not going to exclude the other parent and you are not going to have a winner-takes-all situation."

Q115 Mr Llwyd: May I briefly tell you that I have had some 30 years' experience of family law as a solicitor and barrister, and in every court every judge has always started from the premise that shared parenting is a good thing and that it is consistent with the overall presumption of the welfare of the child, so what is going to change?

Ken Sanderson: I think very few of the public realise that that is where courts operate from, and when they see, for example, that in almost 90% of cases the resident parent is mother, they see in the family justice system almost a gender bias. That is unfortunate, but what we need to do in family law is get rid of the preconception that there is a gender bias, so having a presumption in law of shared parenting will certainly do a lot to address that.

Q116 Chair: Do you think that that gender bias arises from a perception of decisions made by judges on what arrangements should be made, or does it arise from what people would see as a failure of enforcement—that the court is doing nothing to insist, as they would put it, that the original decision is carried out?

Paul Apreda: It is very difficult. We are dealing with complex issues. I take the point that judges have been dealing with these issues for many years. Mr Llwyd made a point that, in the vast majority of cases, contact is upheld. I would agree with him on that. I am mindful that the First Minister of Wales said, "As someone who's worked as a barrister, I've seen it can be too easy for contact to be denied to one parent, for no real reason." I think there is a problem of perception, and it is important that we try to tackle it. The number of times that people have come to our support group meetings—we now have seven of them, covering the whole of Wales—and they say, "Oh, I've been told by my solicitor that I will be lucky if I see the kids once a fortnight." I fear that that perception overshadows the family justice system. What I would like to see, and what I would hope, is that, when there is a clearer message that both parents should, as a default, be encouraged to play a full and active part—or, in terms of the children's rights measure, to have direct contact and a meaningful relationship—that will clear away a large number of cases where the parents appreciate that seeking to exclude one parent or vastly to reduce their contact with the child is counter-productive and will not achieve the aims that they are looking for. That will, I hope, contribute to the reductions in the number of cases, certainly in private law, that we are seeing.

Q117 Mr Llwyd: Overall, do you think that the package of legislative changes to private family law cases in the Bill will meet with the approval of your members and supporters?

Paul Apreda: That is difficult. I consulted all our local group meetings across Wales. It will not surprise you to hear that many parents have said to us, "Why shouldn't there be a presumption of a 50:50 split?" I argue with them and say, "Because it is not always in the best interests of children for that to be the case". I much prefer the legislation that the Welsh Government have enacted in terms of having a duty of due regard to the specific articles of the UN convention on the rights of the child. It is important for us, as support organisations, to inform the perspectives of people who come to us in very difficult, conflicted circumstances. It would be no use for me to be advising people, "Take this to court and push it through". It is incumbent on an organisation such as ourselves that receives core funding from the Welsh Government to assist in these areas, and, while listening to the examples and the perspectives of the people who come to us as service users, to inform them about the realities. Of our seven branches, two are run by non-resident mothers. The biggest change that I have seen in the past couple of years is the fact that our largest local group meeting, which is in Cardiff, has seen a majority female attendance. It was one of the reasons that we, to use Sir Alan's phrase, changed the name to a somewhat exotic title—we wanted to recognise that fact. This is not for me about fathers' rights. This is about children's rights and about recognising that we are supporting a growing number of non-resident mothers. I feel very strongly about the position of non-resident mothers. When I have done work in partnership with Save the Children, the perception among other mothers of a non-resident mother—that

they must have done some terrible heinous crime to be a non-resident parent—says an awful lot about the public perception.

Q118 Chair: May I pursue my earlier point from two angles? I still feel from constituency experience as a Member of Parliament that the number of cases where people can come to Members of Parliament with what they can present as very unfair initial judgments made by the court are few. There are many occasions when they come along and say, "The court will take no notice. The child will not be there when I go to pick them up, and nothing will happen. They will go to court and they will be slapped on the wrist and that will be that". The argument is primarily about enforcement. Is there truth in that?

Ken Sanderson: I think there is. I think judges feel as if their hands are somewhat tied. We recently had a meeting in the House chaired for us by a senior judge, and he talked about how he feels his hands are tied when it comes to making enforcements. It is very clear from our organisation's point of view that a family court will make a judgment only if it is in the best interest of the child. De facto, if someone is stopping the enforcement of that order, they are working against the best interests of the child.

Q119 Chair: Looking at it from the other angle, of course, the situation that gives rise to the enforcement problem may be that the child says, "I want to go to scout camp," or whatever, so they do not want to go dad's or mum's, or whoever it is. You then enter very difficult arguments about how far you should be telling the child, like we all do, "You are going to grandma's this weekend". How far should the child's own wishes start to play a bigger part?

Ken Sanderson: I have an eight-year-old stepson, and some mornings he says, "I don't want to go to school," but we are very firm that that is definitely in his best interest. I am not saying it is exactly the same in this case, and a child's views must be taken into account, but we also have to bear in mind that, quite often, one or other of the parents will be using undue influence to poison the mind of the child. Professor Robert Emery in the States has done some longitudinal research, and one of the things he has found with adults who as children were involved in high-conflict cases in court is that 75% of them said that they wished their wishes had not been listened to. That is almost contrary to what we are saying, which is that we should listen to the wishes of children, but bear in mind that often their wishes can be influenced by one or other of the parents.

Paul Apreda: The voice of the child is extremely important. Article 12 of the UN convention talks about the voice of the child, but it does not say that children should be required to make a choice between their parents. In terms of the advice that courts receive, I am concerned about children being effectively asked to make a choice between their parents and that they are being influenced to do that.

We have seen a number of cases recently that have dragged on for a couple of years, and I am afraid that they are still running. There were originally unbelievable objections from the resident parent involving all manner of allegations. All those have now disappeared—I am thinking of two cases in particular—and the position is that the resident parent is saying, "I am very happy that the children should have contact with the non-resident parent; it is just that the children say that they do not want to see them now". I think that is a very difficult situation.

I listened to the Children's Commissioner for Wales at the launch of the CAFCASS Cymru strategic plan, and he warned of the difficulty of putting children in a position where they are required by some sort of tick-box exercise to choose between their parents. I think

that is deeply damaging. The example he gave was from when he was on the family justice review. He had evidence from a child who said that the experience of going through the family court was similar to being caught up in a washing machine because you feel drowned and pulled apart. It is a difficult task to listen to the voice of the child without requiring them to make choices that, frankly, are adult choices.

Chair: Thank you very much indeed. We are very grateful to you both for your evidence this morning.