



HOUSE OF LORDS

Children and Families Act 2014 Committee

Corrected oral evidence: Children and Families Act 2014

Monday 14 March 2022

3.15 pm

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Members present: Baroness Tyler of Enfield (The Chair); Baroness Blower; Lord Brownlow of Shurlock Row; Lord Cruddas; Baroness Lawrence of Clarendon; Baroness Massey of Darwen; Lord Mawson; Baroness Prashar; Baroness Wyld.

Evidence Session No. 1

Heard in Public

Questions 1 - 14

Witnesses

I: André Imich, SEN and Disability Professional Adviser, Department for Education; Sophie Langdale, Director, Children's Social Care Strategy and Practice, Department for Education; Neal Barcoe, Deputy Director, Family Justice Policy, Ministry of Justice.

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Examination of witnesses

André Imich, Sophie Langdale and Neal Barcoe.

Q1 **The Chair:** Welcome to this meeting of the Children and Families Act 2014 Committee. We are being broadcast online and a transcript will be taken of our proceedings and handled in the normal way. Could I ask each of our three witnesses to introduce themselves briefly, please.

Sophie Langdale: Good afternoon. I am the director for children's social care at the Department for Education. My team are responsible for implementing Part 1 of the Act, for working in partnership with my colleague Neal and his team to implement Part 2 on family justice, and some parts of Part 5 on welfare of the child. Today, I will also do my best on childcare.

André Imich: Good afternoon. I am the department's special educational needs and disability professional adviser. I have been working in that role for 11 or 12 years and have been part of the system that introduced the SEN elements of the 2014 Act.

Neal Barcoe: Good afternoon. I am the deputy director for family justice in the Ministry of Justice, and I will be talking to you about Part 2 of the Act.

Q2 **The Chair:** Thank you very much indeed. I should say that we were due to have a fourth witness, Mike Warren, from Department for Business, Energy and Industrial Strategy, but, unfortunately, he is unwell and unable to join us. We will be putting some of the questions we would have liked to ask through to the department.

As this is our first meeting, I will introduce myself as the Chair of this Select Committee. I have no formal interests to declare, but I would like to make it clear, given that family justice is so much part of what we are looking at, that I was chair of Cafcass for six years, from 2012 to 2018, so my knowledge and understanding of the family justice system are very much based on my time at Cafcass. Also, simply for information, I am a co-chair of the all-party group on children.

This is our opening evidence session, and its purpose is very much to provide us with an overview on the key issues relating to the Act and its implementation. As a committee, we are keen to understand issues to do with the Act itself: the way the legislation was framed and whether, with the benefit of hindsight, it was framed in the best way it could have been; we want to know whether things were missed out, for example. We are also particularly interested in how it has been implemented and how that implementation has been monitored. We are keen to hear from you the Government's assessment of the Act's success or otherwise, and how they have been monitoring the implementation of the Act and other related work, as obviously there are other reviews going on at the moment that are relevant, and we will hear from Ministers in September. Before I ask my first question, I wanted to thank you for sending the memorandum from the Government to the Select Committee and giving your assessment of it. I am conscious that no formal post-legislative scrutiny memorandum has been published, which is the normal practice for Acts after five years. We are a bit late, and it has been useful looking through it, but it also raises quite a lot of issues about areas where data that you might have expected to have been collected has not been

collected, or reliance has been put on data sources that do not directly answer some of the issues. In some places, assertions have been made about things that are happening or not happening, and we want to know what those assertions are based on. I suspect that those points will be picked up as we go through the questions.

I will ask the first question. In each of your areas, what follow-up work has been done to monitor the implementation and effectiveness of the Act, and could you explain why a post-legislative scrutiny memorandum has not been formally produced?

Sophie Langdale: I am not entirely sure why a post-legislative scrutiny memorandum has not been produced for the entire Act; I will take that away. It is a wide-ranging Act covering five different departments, and even in each department there are a huge number of different policy areas. When we go through each of those policy areas one by one—and I agree with you, Chair, about the quality of the data—we can share with you where we feel that the Act is delivering on the intention that it had at the outset and where it is doing that reasonably well, and share with you the best data and best assumptions that we have in support of that. For me, it is doing reasonably well on some areas of the adoption provisions, the staying put, the creation of the virtual school head and the welfare section, and some parts of the childcare provisions. Interestingly, there is another group of provisions where we are still seeking to achieve the intention of the Act, but actually these provisions were part of the journey towards reaching the right way of doing that. Again, we are making success in those areas, but we might now be delivering a particular service in a way that we had not conceived of at the time of the Act. As an example, there is a national register for adoption, but it is a different kind of register than we had envisaged in the Act. Equally, childminder agencies are not working in the way we thought they might. There are some things that we are still on track with to an extent; we have met some challenges, but we are getting there on others. There are other areas, which I am sure we will cover in detail, where we are still absolutely working on the intention in the Act, but the challenges overall have felt much more difficult than envisaged at the point at which it got Royal Assent. As I say, we will find out about them in more detail, but we are still working on some parts of family justice, such as the SEND provisions. Therefore, for me, it is a tale of three parts overall.

The Chair: Could you go back to the department and ask if we could have a formal response as to why no memorandum has been published? The impression we are getting, even at these early stages, is that no one has seen the monitoring, implementation and effecting of this Act as a high priority, or we might have heard it first. Also, specifically in the areas of adoption, as you say, in the assessment we just get the sentence, “The department has not carried out any research on the impact of this duty”. That appears about six times, so I would be interested to know why. Was it just that no one thought about it, or was it because somehow it has been off the political radar and the focus has been elsewhere?

I certainly noticed the point you made about the use of the register.

Frankly, I thought it was quite odd that, as you said, by 2019 over 90% of adoption agencies had chosen to do it in a completely different way. I was not clear whether that was just because things had moved on or whether the legislation was never properly thought through in the first place. Are you able to respond on that specific point?

Sophie Langdale: When we introduced the register, it had the intended impact that we wanted it to have. For example, children were able to be matched to adoptive parents who were in different local areas from the ones they were in themselves. There were some issues with the usability of the register, both from the social worker's perspective and from the parents' perspective. Meanwhile, Link Maker, a social enterprise, spotted an opportunity to come in and deliver a service. At the same time, the department worked with Coram to try to fix the usability issues, but, in 2019, we found ourselves with 90% of local authorities and regional adoption agencies all happy using Link Maker and prepared to pay a fee to Link Maker to do so, so it no longer feels like value for money. To some extent, the market has resolved itself in a not-for-profit-making way. We now have every local authority and regional adoption agency all using Link Maker and being happy with it, and regional adoption agency leads are trying to work with them to look at other areas too.

The Chair: When you respond to us on why we have not had a memorandum up to now, we would also be interested to know about all the times it is said that "the department has not carried out any research on the impact". We would like to understand why that is.

André, could I get your take on the success or otherwise of the Act and how well it has been monitored and implemented?

André Imich: The SEN reforms had a transformational impact on special educational needs and there are many strands that flow from that. We have kept a close eye on all the new developments, such as the local offer, the inspection framework and the joint commissioning. We also introduced a new inspection framework. Ofsted and the CQC have been commissioned since 2016 to monitor the implementation of the new reforms in every local area, so it has been very much Ofsted and the CQC looking at all aspects in local areas, and they report on all their inspections. Some areas have come out well on their implementation, while others have been found wanting. Where that has been the case, the DfE and NHS England have provided additional support and guidance and worked to help improve the elements that are found to have serious weaknesses. That has been a powerful element of the accountability system that we introduced.

We also had an extensive Education Committee report in 2019, which was a granular look at many aspects of those changes and was published around the same time as a National Audit Office report into the implementation of the system. Those were two major analyses of how well or otherwise the SEN elements had been introduced. You will be aware from the brief that we are close to publishing a review of the SEN system, which will look at the current issues in relation to the system and come up with proposals for further improvement that will be subject to public consultation.

The Chair: That very much demonstrates the different parts of the Act

and how there has been a different approach to monitoring and implementation and the different impacts. Neal, could you give us your perspective in relation to family justice?

Neal Barcoe: I cannot comment on why no formal post-legislative review was conducted on family justice, but what I will point to is the creation of the Family Justice Board, which is chaired by a DfE and a MOJ Minister. It brings together all the relevant parties that work in the family justice system—the judiciary, Cafcass, Cafcass Cymru, local authorities. It is very focused on the performance of the system and touches on all the measures here in the Act—for example, on 26 weeks.

As a group, we meet regularly to discuss how the system is performing and identify where there are delays and where efficiencies could be made. We will obviously write to the committee on the position on post-legislative review, but there is quite a lot of scrutiny in the process of how the system is working and in areas where the Act has not delivered quite what we had hoped for. The board is always looking at that.

The Chair: I am sure we will come back to those issues, particularly the 26 weeks, which I remember rather well as being the linchpin reform. I noted from your memorandum that the time had started to increase again from 2016, which is well before the start of the pandemic, so that cannot be attributed to backlogs in the family court because of the pandemic. There is therefore a sense that the times have been increasing significantly for a few years, and I am not quite sure who has been trying to do something about that. Thank you very much for that opening salvo.

Q3 **Lord Mawson:** I spent 30 years of my life dealing with dysfunctional organisations, some of them in business, some of them in the volunteer sector, and certainly in large parts of in the public sector, where things did not actually deliver. The paperwork looked wonderful when you read it. However, when you arrived at the front edge and the detail of what was happening to real families and real people, something quite different was going on. I often heard lots of talk about accountability and then watched the detail, which was quite different.

Therefore, I am interested in organisations and whether they are actually learning anything and whether they have any memory. In the justice system, I forget how many Secretaries of State there have been in the last decade. Maybe 13? It is a lot. However many it is, it is a lot of moving around and so on. I wonder how you work together. How is that actually working in practice? What formal structures do you have for collaboration, and how consistent are they?

I am also interested in how connected you are at the top, the middle and the bottom of your systems, because in my experience of transforming cultures and really coming to terms with the implementation issues at the front edge, you have to connect. You cannot be everywhere, but you certainly have to be somewhere—the top, the middle and the bottom—in a lot of detail, in the micro. I wonder how joined up you really are, how consistent that is, and how much you really know about what is going on in the micro at the front end.

André Imich: Are you looking at cross-government join-up on that, or actually with front-line delivery services?

Lord Mawson: In the sense that we have you here today, so this is a

good place to start with how connected you are to the system.

André Imich: The special educational needs system is reliant on cross-government working. It is reliant on good work with health and good work with social care services. My and Sophie's teams work closely together on the social care elements. We are trying to improve some elements of that, but we do work closely. We introduced some reforms in 2014 that had an impact on young offenders up to the age of 18. We brought in new rights for them and new ways of working. We did that in collaboration with the Ministry of Justice, and we stay connected on that. We work closely with NHS England and Public Health England, and, in a way, the pandemic has brought us closer together by necessity.

There are so many interdependencies, but we do work together. We have regular meetings and I lead a team of DfE special needs advisers who work with NHS England advisers on every local area that does not do so well in the inspections that I referred to. We have joint meetings, we plan strategies together, we share data together. There is a lot of good understanding. I agree that on the front line it does not always get to every child who needs these services at the time they need it, but there is an awful lot of collaboration going on, and we are dependent on each other for success.

Lord Mawson: Can you tell me what that actually means in practice? In your organisations, how does the top connect to the middle and the bottom? How does that work in practice and in detail? In my experience, if those connections are not there, systems are not really in touch; the micro and the macro are not talking to each other in any meaningful sense. There is stuff happening at the top but, as many Governments have found, when you press the button something different could be happening at the bottom. Indeed, sometimes it is the reverse of what you intend. I am interested in how connected you are to those places at the front edge and in the middle, because you often find that middle management has 100 reasons why you cannot do X, Y and Z, and that is where the real blockage actually comes.

André Imich: From the special educational needs point of view, we also have close connections that try to drive a bottom-up approach. The department has some strong links with organisations called parent carer forums, which represent parents and carers of children and young people with SEN and disability across the country. The department meets with them regularly. They tell us what it is like on the ground, and they also meet Ministers regularly. We also have a young person's group that comprises solely young people with special educational needs and disability. It is called the FLARE group. We meet them regularly and they tell us what it is like from what they hear from their peers about life in school and college as a young person with special educational needs and disability. We hear those messages, and our colleagues from NHS England and the DHSC are also engaged with those groups. Those are two examples.

We also meet with head teachers and others and visit schools and colleges. We are doing our best to try to get a close assessment of how things are operating on the ground, and then we work together in the middle to try to improve that.

Sophie Langdale: I will try my best to answer the at from the adoption perspective. Some 151 local authorities are involved in adoption, so about five years ago we started creating regional adoption agencies, and we are now at a point where we have 32 regional adoption agencies working together to create a national set of standards. They work incredibly closely with their local authority partners, and through going up a level we have found real benefits by being able to share best practice and expertise by having that larger footprint. Equally, as the DfE, all my team work incredibly closely with each regional adoption agency. They help them to set up, and they meet with them regularly on different working groups and in different groups. The lead of the regional adoption agencies, Sara Johal, is a best-practice practitioner in her own right. She is based in Leeds, and she brings all the leaders together and supports them to help focus on practice. We have found that to be a good governance arrangement for everyone working collaboratively together to try to drive improvement in the adoption system. That is why I can share with you today a direction of travel that is showing real improvements in a number of different areas that you will be interested in.

It is one of the principles that the voice of an adopted child and the voice of the adopter parents are also part of the governance, the co-design of practices and the setting of priorities. What has also made a real difference in some areas, and which we really want to build on, is joint working with health—areas that have a centre of excellence that bring together joint health and social care, working together to assess the needs of a child, and joint therapeutic practices of support in place. That is an example of why we are trying to do things at a number of different levels and to bring together the right number of leaders to try to drive improvement across what is, as you say, quite a complicated landscape of lots of different local authorities and lots of different parties.

Neal Barcoe: I will start with the cross-government relationships. My team has a good relationship with DfE colleagues. We have a shared agenda and it helps that we are focused on delivering the best outcomes for children. It really does bind us together. I mentioned the Family Justice Board, which brings all the senior leaders together, and we work closely with the senior judiciary, Cafcass and local authorities at that senior level to try to set the direction and challenge ourselves on whether the system is performing as it should.

I would also like to include in that group the Family Justice Young People's Board, which is an excellent group of young people who have experience of the family justice system. They really hold us to account on whether we are doing the right things, whether we are speaking and talking in the right way and placing children at the heart of what we do. Having them a regular presence at the Family Justice Board and the other meetings we hold is a great way of keeping us focused on what we are there to do. That is the top strategic level.

At a more local level, we have local family justice boards that bring together professionals from across the system to scrutinise what is happening at that local level and then feed that up. Quite regularly, I receive questions from those boards: "We're seeing this particular issue.

Can we get a bit of guidance on this", or, "Can you check whether other groups across the country are facing similar issues?" It provides that upward mechanism to challenge us. I am sure that departments run quite a few consultations on how things are going on the family justice and specific measures. We get quite a lot of input from members of the public and third sector organisations on how family justice is delivering, as you will hear that when we get into the detail.

Q4 **Baroness Blower:** My question is about SEND. The memorandum that we have received says, "The number of pupils with SEN has increased every year from 2016. In 2016, there were 1.23 million pupils. This rose to 1.41 million in 2021". It then goes on to say that, over a period, there was an average increase of 2.8%, while the pupil population had gone up by 0.8%. I wondered whether you would like to hazard a view as to how that has happened.

André Imich: That will obviously be a central part of the SEN review when it is published, which will be soon, but it is certainly true that the numbers of young people across the country have gone up since the reforms came in. There are a number of possible reasons for that, such as increased skills in the workforce at identification. I would ask you to wait for the review to look into that as it is a central part of the review and the upward identification of need driving all sorts of other issues.

Baroness Blower: Do we have a date for that? My second question is about the top, the middle and the bottom. You said that when you visit schools you talk to head teachers. When you do the school visits, do you speak to SENCOs, to class teachers, to parents, to children in situ?

André Imich: On the first point, the review will be published by the end of this month. On the second point, I spend an awful lot of time meeting and talking to SENCOs. A week or two ago, I addressed a group of about 150 SENCOs in the north and we talked about the way things were, their perspective on things and their training and development needs. When I visit schools, the pleasure is meeting children and young people. I am going to a school in a couple of weeks, and I am very much looking forward to meeting with some more young people in a primary school. We are trying to find things out from young people, who, as I said, are also represented in local authority forums. We have done our best to promote co-production. In many of those areas, as I have said, we are working hard on improvement because of inspections. They have SEND improvement boards that include young people. I have attended some of those and it is often the young people who say more than the adults. We have been trying to promote the voice of the young person, but there is no point in doing that if you do not listen to what they say.

Baroness Blower: Absolutely.

The Chair: Just to be absolutely clear, we will have the Green Paper by the end of the month.

André Imich: That is what we are saying. That has been a commitment.

The Chair: Super. Thank you very much for that. Lord Brownlow has a question.

Lord Brownlow of Shurlock Row: I think that all of my question has been answered.

Q5 **Baroness Wylde:** I want to talk a bit more about adoption, but before I

do I need to declare a current interest as a non-executive board member at Ofsted.

Sophie, you cited the adoption provisions as a success but talked about it as part of a wider journey in the context of the wider Bill. My observation would be that if you are a child, a journey has to be quite quick. You do not have that long to play with. I took all your points about the work that has been done and that there are good inputs, but are you confident that this is translating into outcomes? I have seen your own data. We have all seen the data on the numbers of children being adopted falling, on the number of children who are waiting to be adopted, and on the children from different backgrounds and different ages who are most likely to not be adopted or be waiting longer.

On the back of that, do these challenges, which the Government have recognised in the adoption strategy, reflect a failure or gap in the legislation, or are there wider societal and cultural issues that we need to think about, or a bit of both?

Sophie Langdale: There is a lot there, so let me just try to work out how to how to get into it. I should have mentioned the importance of data at all levels and how vital that is for understanding how systems are going and the importance of everyone working to the same data. In adoption, over the past five years we have been trying to have a much better overall understanding of what is going on. If I look at the data, taking your point that journeys need to feel fast for children, it feels to me that we are going in the right direction. Waiting times, for example, have decreased from 18 months to 15 months since the Act received Royal Assent. We can also see from data published in March that 1,900 children this year are waiting to be placed. Two years ago, we had 2,600 children waiting to be placed, so that is 700 more children in a stable, loving home. Therefore, at a headline level, it feels as though we are making improvements.

With the harder to place children—children from ethnic minority groups, children with siblings, children with disabilities, children over the age of five—we are not at all complacent about the fact that there are 1,000 children waiting more than 18 months to be placed for adoption. We have increased our overall number of recruiters in the last 12 to 15 months by 23% overall. We have focused in particular on bringing more people in from all walks and communities of life, including ethnic minority families, but we have gone much broader than that and tried to attract people who might not previously have located themselves as adopters. We are already heartened to see that has translated itself in our recruitment figures; in that cohort, we have an increase of 23%, and more than 30% of those are from ethnic minority families.

We are doing targeted recruitment to try to bring in adopters who are also interested in adopting groups of siblings and children with disabilities. That is absolutely the right thing to do, but if we want to further reduce the amount of national time it takes to place in an adoption placement, which is absolutely our ambition, we have to work with the harder to reach children first. For example, since this Bill received Royal Assent, it used to take 37 months for an ethnic minority child to be placed for adoption, but now it takes 29 months. That is not

nearly good enough, which is why we are trying to target children who are harder to place while working with regional adoption agencies to improve all placement levels.

There are three different areas on which we are working. The first is recruitment, which I just talked about. The second is matching—looking at how we can link children up with adoptive parents who might live quite far away by trying to create regional events and using the national register to make the pool of adoptive parents much bigger in relation to the pool of waiting children. Another key plank of what we are doing is support, because, of course, we really need to support those who become adopted parents to create loving, stable homes for these children in a way that does not break down.

Baroness Wyld: I know I gave you a lot of questions, but there is even more there, thank you. You clearly have a comprehensive grip of your brief, but can we just step back again to the big picture? If you were to look at the ambitions of the Act in 2014 and at the overall outcomes now in terms of the number of children going from care into adoption in safe and stable homes, and the fact that there is an increase in the average time going from care into adoption, would you say that the Act has achieved what it set out to do?

Sophie Langdale: I think it has speeded up the adoption process, enabling more children to be placed with less disruption and less delay, but we have only achieved the first part of that. We have high ambitions for the next three years, which is why we published the strategy seven years ago and announced earlier this month that the Government will invest £160 million in delivering on that.

Baroness Wyld: Going back to my original question, do you think that the framework and the detail of the legislation are enough? Has the coalition done anything wrong? Was anything missed, or is the Act fit for purpose and for all the challenges of implementation and the wider cultural issues?

Sophie Langdale: I can continue in relation to adoption, if that helps, and then open it up to the rest of the panel. My sense is that we do not need any more legal duties or a different legal framework to deliver the system level improvements that we are all—Ministers, regional adoption agencies, local authorities—committed to. Everyone has high ambitions in this space for these children. It is about continuing to have the collaborative leadership and focus on the priorities in the strategy. It is about training and data that help to support that and the package of measures that we have in our adoption strategy.

My sense is that we are now in the zone of delivery. I agree with André's point about how Covid was fantastic at helping, despite the huge challenges that it created for everyone, particularly in children's social care. Covid made us work far more seamlessly and collaboratively across government with all our local partners and at a local level. That, for me, is where the success lies in supporting these families and these children.

Q6

Lord Mawson: I have a question about the data. I used to sit as an independent member of the Prime Minister's Delivery Unit in the Blair years, and the overconfidence you could hear from Michael Barber at the front about all the data he was receiving was always fascinating. I

remember a particular conversation one afternoon about the health service data. There was great confidence about what was happening in a hospital in Batley in Yorkshire, and then suddenly someone behind me said, "Funnily enough, the data sounds wonderful, but I was in that hospital yesterday having a nosey around, and I began to discover when a corridor is a ward, and when a trolley is a bed".

I have worked with the public sector myself, so I know how easy it is to produce numbers that you think are telling you one thing when the reality is actually something else. I suspect there is rather a lot of that going on in Russia at the moment around Mr Putin, because these systems are often experts at telling people what they think they want to know. I am just checking how secure you feel about the data.

Sophie Langdale: I came into children's social care two and a half years ago, and I still feel that even though we collect a lot of data from local authorities, we do not have the data that we actually need in many areas to share in a transparent way to help everyone to make the local and national improvements that they would like to make. This is recognised by our Secretary of State and it is a personal priority for him to change it. In adoption, we have had a particular lens and have done more work through the Adoption and Special Guardianship Leadership Board, through commissioning different people, through agreeing on a set of metrics, so I feel more confident. That said, with data in children's social care, you have to be incredibly careful with what it is telling you. From my perspective, it is always the start of a conversation rather than an answer on a page.

Q7 Baroness Lawrence of Clarendon: I just want to follow on from Sophie's answers about adoptions. Is there an age limit for adopters? Sometimes, if there is an age limit, there is great difficulty in finding adopters for children. Do you have an age limit for people looking to adopt children?

Sophie Langdale: I am sorry, but just to check, do you mean an age limit on the age of the adopters?

Baroness Lawrence of Clarendon: Yes.

Sophie Langdale: Let me check that for you. I know that we have been trying to open recruitment up to attract a far greater range of communities. I will write on that point and, if it helps, I will also share what other measures we have tried to attract people who might previously have stopped themselves from coming forward when we really want them to do so.

Baroness Lawrence of Clarendon: Thank you.

Q8 Baroness Prashar: Before I ask my question, I would just like to declare that I have recently become patron of Peer Power Youth, an organisation that works with children who have either been fostered or adopted. My question is about the family justice system. Do you think that the reforms have succeeded in making the family justice system faster, simpler and less adversarial? Secondly, as the Chair indicated at the outset, why has the time taken to complete care proceedings been rising? What are the Government doing about it? From your point of view, what are the challenges in achieving the 26-week limit, Covid aside?

Neal Barcoe: There is a lot to cover there, and I will try to do it justice. Are the family justice system or the reforms of the 2014 Act leading to a faster, simpler, less adversarial system? Let me start by talking about the successes in making things simpler and less adversarial. In Section 12 of the Act, we have changed some of the terminology to make it less about winners and losers. That has happened and has been successful. We have made it simpler by removing child arrangement considerations from the divorce process, so that they can be dealt with at any time; you do not need to wait to deal with your finances. I would not say that this makes some of those issues more straightforward, but in decoupling them it makes the system in cases faster, and hopefully simpler for parties going through it, and perhaps less adversarial on other elements.

With Section 10, the introduction of MIAMs, the idea was to encourage more people out of the family justice system when it is safe to do so, but there is a question mark about whether it has been successful enough. When you look at the results from MIAMs when both parties are there, the Family Mediation Council says that about 73% of people who attend MIAMs end up going into mediation, which is a successful figure. Not enough people are going to MIAMs, but the intention was there and I will say a bit about what the Government are doing to try to address that. Let us talk about the 26 weeks. The intention in Section 14 of the Act was to introduce a time limit of 26 weeks, and that by putting that time limit in place you focused the minds of the system to deal with cases as quickly as possible, because it is in the best interests of the child to do so, and there were definitely some initial successes there. As you pointed out, by the time we got to about 2016, somewhere above 60% of cases were being dealt with in that 26-week period. That is a significant improvement on how we were doing in 2013, or in 2011, which shows the importance of having a time limit and focused activity across the system. It is also true that, post 2016, we have seen incremental rises and, as the Chair said right, Covid only accounts for the last two years; it is not an excuse in itself. It has certainly contributed to things, and there is no question that it has made things difficult in the last two years, but in the public law space there are a number of factors that are influencing those timescales.

I am sure we will get into this with Section 13 of the Act on experts, but we know that the use of experts can lead to delays. There have been listing challenges, trying to get cases heard as quickly as possible. We know from a joint piece of work done by the Government and DfE colleagues on timings that the practice of local authorities—how well they engage with families—can lead to significant different experiences when it comes to being heard.

There are a lot of factors there and it is a complicated landscape. Several years ago, we did a piece of work for the Family Justice Board exploring what is leading to the delays, and we are continuing to do that following the pandemic. One of the priorities of the Family Justice Board is to identify those factors and bear down on them. I do not know whether that answers your question in full.

Baroness Prashar: I would like to go a little further. You are looking at what causes the delay. What are the early indications, or factors, which

limit the achievement of the 26-week limit?

Neal Barcoe: One of the most important things is the use of pre-proceedings in public law cases. This is the work that local authorities do with the wider families to ensure that there are no aunts or uncles who could take care of a child, so that when a case does come to court in public law it is ready to go, and all the appropriate checks have been made and all the appropriate actions have been taken. That can significantly improve timings. When you look at regional performance in the system, there are local authority areas that are doing incredibly well on that and their performance is strong because they have a really good system in place for dealing with that. Over the last year or so, as a system we have been working closely with the judiciary and with directors of children's services to get a clear message about what works well in that pre-proceeding space. That is probably priority number one. I touched on experts earlier and the use of experts in public law proceedings. That can lead to significant delays, because there is a shortage of experts and we are seeing the courts increasingly ordering the use of independent experts. More recently, there has been the pandemic. Hearing things virtually is quite difficult in public law proceedings. You have a greater number of parties and you have parties who, because of their home circumstances, find it difficult to engage and might not have the right kind of equipment. There have been a lot of efforts to level that out, but it means that judges can be reluctant to proceed with a hearing if they believe that certain parties cannot keep up with what is going on. Again, that is another priority area where we are looking to see what we do.

The move now back to more and more cases being heard face to face will help dramatically. Last week, the President of the Family Division issued further guidance on the use of experts and, as is stressed in the 2014 Act, you should call on experts only when it is really necessary. Often in public law cases it is enough to rely on the local authority social workers and their assessments.

Baroness Prashar: It would be quite helpful if you could write to us with what actions you are taking to make sure that you are looking at this.

Neal Barcoe: Sure.

Baroness Prashar: How is mediation viewed, and have the cuts in legal aid affected the uptake of mediation?

Neal Barcoe: I will take the second part of the question first. LASPO has affected the number of mediators. It is true to say that mediation is covered and provided for by legal aid. As long as the means test is passed, access to mediation is generally there in family justice cases. There has been a significant drop in the number of mediated sessions following the introduction of LASPO. It was probably not realised at the time of the 2014 Act, but it is fair to say that the pathway from solicitors into mediation and identifying the benefits of mediation have been a significant contributing factor. That points to the need to focus more on promoting the benefits of alternative dispute resolution and identifying how we do that.

As part of the Covid-19 response, in March last year the Ministry of Justice introduced a family mediation voucher scheme that in effect gives

people up to £500 towards family mediation. We have seen a really good up-take of those cases; over 6,000 families have now taken advantage of that scheme. Certainly, the early results are that in the majority of cases it is helping them to resolve their issues without having to go to court, which is a good thing. It demonstrates that the appetite is there.

When he was before the Justice Select Committee in November last year, the Deputy Prime Minister talked about the importance of alternative dispute resolution and that he is very much in the market for doing radical stuff in this space. Ministers in the MOJ are focused on how we better promote alternative dispute resolution and how we ensure that those who would benefit from it recognise that, where appropriate, going to mediation can often be quicker and less adversarial than going through the courts. There are lots of cases where mediation is not appropriate—for example, in domestic abuse or other factors—but there is a recognition that we need to do more to promote it and help people to understand the benefits of mediation. I expect Ministers to say more on that over the year.

Baroness Prashar: How is it viewed by the parents themselves? We were given to understand that they are rather cynical about it.

Neal Barcoe: I know from experience from speaking to different parties that you are absolutely right. There are quite a few misconceptions about what mediation is. A common refrain will be, “I don’t want to do marriage counselling” or comments of that nature. People do not often understand what it is and what the benefits of it are. People are genuinely concerned about getting something that has the backing of the court. Let us say that you make an agreement with the mediator. There are concerns that that does not have the same force as if you go to court and get a child arrangements order, for example. There are concerns about that, and there are straightforward ways around that with consent orders, but there is this perception that they will not suffice.

The other biggest factor that comes up when you speak to people is their lack of faith in the respondent and their ability and willingness to engage in the system. Quite often when you get into it, that is not necessarily the case. The majority of separating parents resolve their issues without going to court. We are talking here about a small percentage where the conflict is ingrained. To enter into mediation, you have to believe that the other party is willing to meet and resolve issues. That is the big challenge: how you get people to a space where they recognise that this is possible for them. There is a big job there.

The Chair: Is it now obligatory for both parties to participate in mediation? A few years ago, it was obligatory only on one party, which was a problem.

Neal Barcoe: It is obligatory, although in practice there is a real issue with enforcement of MIAMs in court. The courts have the power to push people back by saying, “You don’t have an appropriate exemption. You need to go to MIAMs before you appear in my court”. Often the reality is that two people are there, the case is going ahead, they are signalling that they do not want to go to mediation, and judges often believe that it is in the best interests of the children in this case that they proceed as

quickly as possible. However, we are looking at the enforcement side of MIAMs.

Baroness Prashar: I have one final question, if I may. You say that there are perceptions in relation to take-up. Do you have a worked-out strategy to tackle this issue of time limits and mediation?

Neal Barcoe: Yes, we are currently working on that. Lord Wolfson, our junior Minister at MOJ, and the Deputy Prime Minister, are seized of this issue. We have quite a comprehensive set of actions that we are working through with Ministers at the moment, and I very much hope that in the near future we will be able to say more about that plan. It is a priority for our Ministers, and they are focused on this issue and challenge.

Baroness Prashar: Thank you.

Q9 **Baroness Blower:** I failed to make a declaration when I first spoke, so I will make it now. At the time of the passage of the Bill in 2014, I was the then general-secretary of the National Union of Teachers, which is now the National Education Union—it became so by amalgamation. Probably less importantly, but I will say it anyway, I am a vice-chair of the All-Party Parliamentary Group for Parental Participation in Education. This question most logically goes to Neal Barcoe, and for that I am sorry, given that you have just done a big, long piece. You talked a lot about mediation. Have the Government assessed the impact of the changes? By changes, of course, we mean cuts to legal aid in the family justice system against a background of significant ongoing austerity, which was pointed out to us by one of the people who gave the committee some information. What has been the impact of that?

Neal Barcoe: I touched on this in relation to MIAMs earlier, in that one of the unintended consequences was the pathway into mediation, where a solicitor could say to you, "Looking at your case, I think there is a good, solid case for mediation here, and here are the things you get if you go to court". In terms of MIAM and mediation take-up, there is definitely a link there, but you are asking more generally about the impact on family justice. I am afraid that legal aid is not my area of specialism. There is a team focused on that. I know that there are a number of reviews on means testing, for example, and that it conducts quite a bit of work on the impact of LASPO. I am afraid I would not be able to talk specifically about the impact, because it is not my area of expertise, but I can take action to get a written answer to you on the specific question about the impact of LASPO on the family justice system.

Baroness Blower: That would be helpful.

The Chair: A couple of other members of the committee are interested in this area, and at some point we would like to ask someone who can talk knowledgeably about the impact of legal aid to appear in front of us. Thank you very much for that.

Q10 **Baroness Massey of Darwen:** I am a Labour Peer, and I would just like to say that I am so glad you mentioned the involvement of young people who are represented at local government level. That is splendid, and thank you for mentioning it.

I want to ask you about the assessments that have been made of the impact of the presumption of the involvement of both parents in the life of the child. I am aware that the Act introduced a statutory presumption

requiring courts to presume that the involvement of a parent in a child's life would further the child's welfare, so long as that parent could be involved in a way that does not put the child at risk of harm.

I also know that research has found that the presumption was having no impact on the outcomes of the majority of cases. There is a strong pro-contact preference already listed in case law, however, in a minority of cases it was found that the presumption was actually shifting the balance in favour of domestically abusive parents, and it was being misinterpreted in practice as an inevitability that the contact would take place. It also found that the presumption was adding to pressure on mothers to agree to contact that is damaging to children. I am aware of a review that the Ministry of Justice launched in 2020 on how current decisions on parental access made in family courts was impacting on child safety, and I believe that report is now available, at least in draft.

Could you comment on these findings and mention the Ministry of Justice findings in relation to the impact of presumption on the involvement of both parents in the life of a child? I would say that this question is for Neal again, and then we can follow up with others.

Neal Barcoe: It is, yes. It is obviously my time to shine. On the presumption of parental involvement, the intention was to codify case law that was already in place. But, as you said, it was about reinforcing the importance of children having an ongoing relationship with both parents unless it could be demonstrated that it would not be safe to do so. I believe that the researcher you talked to was Dr Joanna Harwood, and in her piece from last year she looked at the effect of the presumption.

Baroness Massey of Darwen: I will find the reference.

Neal Barcoe: I suspect it is that, but I will say a couple of other things. First, practice direction 12J in the courts sets out how the court should deal with domestic abuse cases. The guidance of the courts is quite clear on the application of the presumption and the focus on domestic abuse, including the harm that it can do to the child and the survivor parent, but I will say a bit about the pieces of MOJ work in this space.

In 2019, the MOJ convened a panel of leading academics and parties from the third sector and senior members of the judiciary to explore how survivors of domestic abuse and other serious harms experience the family justice system. We had a call for evidence with over 1,200 responses, most of them from survivors of domestic abuse. The panel released its report in 2020, and said about the presumption that the evidence indicated that it was being used inconsistently and was rarely disapplied in cases when perhaps it should be. It recommended that the Government undertake an urgent review of the presumption, which the Government, in their response to the harm panel's paper, agreed to do. We announced the launch of a specific review on the presumption in November 2020. Unfortunately, because of the pandemic, there were delays in the commissioning of the research for this, but the work is well under way now and will be completed this year.

That review is seeking to do three things. The first is a literature review looking at the evidence of the impact on child welfare in relation to contact with a parent in different circumstances and whether it is harmful or not. The second element of that work is a review of judgments to

analyse where the presumption may have applied, whether it applied in that case, and what was taken into consideration, so that we have quantifiable evidence about what is happening in courts.

The final element of the review is a qualitative piece of research to understand which particular groups have experienced decision-making on harm and parental involvement in these cases. The aim is to reach those who perhaps find it more challenging and difficult to engage in this sort of research. That work is currently ongoing, and the aim is then to look in the round at whether this presumption is working as intended, and, if not, what can be done about it.

Baroness Massey of Darwen: When will that work be finished?

Neal Barcoe: We are hoping to complete it this year. Initially, there were delays, because we had real difficulties when we went out to tender for different organisations. With things like the judgment analysis, we know that people had real concerns about how to do this safely in courtrooms and about working together. We are in a much better position to do that now and the work is under way. I am hopeful that, certainly by the end of this year, the results of the review will be out.

Baroness Massey of Darwen: Does anyone else want to contribute to this discussion?

André Imich: Not directly to that subject matter.

The Chair: Okay, thank you. We move now on to the area of special educational needs and disability.

Q11 **Lord Brownlow of Shurlock Row:** Some of the questions I wanted to ask were covered off earlier. André, perhaps you can tell me what assessment you have made of the success of different types of schools and their implementation of the Act?

André Imich: That is a good question. We have all sorts of sources of information about schools, such as Ofsted inspections of schools, but one issue that pervades the special educational needs system is a lack of clarity about what works well and what is most effective, and we will be taking work forward on evidence base for what makes the most impact. We have a presumption towards mainstream education—the law supports any parent who wants their child to be educated in mainstream—but we do not have a solid enough basis of empirical evidence about what works well. There is plenty of research that one can draw on, some of it inconclusive, but we need to do more on that.

The department has started a longitudinal study, which will take quite a few years to complete, that it is tracking children as they progress through school, through different types of provision, through different types of need such as hearing impairment, visual impairment, profound and multiple learning difficulties, autism and so on.

We also have work going on to evaluate where they are placed. Often, because of the way the system works, two children with similar types of needs end up in different settings; one might end up in mainstream, one might end up in special. There are good reasons at the moment as to why they go to different types of settings—parental preference, for example. However, we do not have concrete evidence of the long-term outcomes of those two children and the difference over 10 years. That is

absent from a field that at times can be quite divided on what is best for children, and it is an area that we are very aware of.

We are doing work generally on interventions that work, and there will be more about what works well, but the longitudinal study will also help.

There is plenty of independent research from universities and other quarters about the difference it makes to be in mainstream or otherwise. It is certainly a controversial area.

Q12 Baroness Massey of Darwen: Do you have any evidence of geographical differences in how young people with special education needs are being educated, treated, at local levels? Also, how do you involve young people and parents in decisions that are made about young people with special educational needs?

André Imich: Those are two excellent questions, and I will take them in the order you gave them.

The first is about geographical evidence. I answered the last question by saying that we did not have much evidence about what leads to effective outcomes, but we certainly have lots of data about the system as a whole and where children are placed. In an open letter that Minister Quince published in November, he talked about local variation. Certainly, the data shows that there is wide variation in the experience of children and families in the number of plans that are made in one area versus another area, whether more children are placed in mainstream schools in some areas than in other areas. There is regional and local variation, and that might be a theme that comes out in the SEND review when it is published. There is regional variation, and we need to understand why that occurs and whether it is the right thing to be happening in the system.

I did not scribble down the second part of your question and have now lost my response. Can you remind me of it?

Baroness Massey of Darwen: It is about whether you involve the young people.

André Imich: And parents?

Baroness Massey of Darwen: Yes.

André Imich: The Children and Families Act made the involvement of children, young people and parents a requirement at a wide level, not just in their own individual assessments. For every individual assessment, whether it is a child on SEN support in the mainstream school or if a school feels that a child has special educational needs that require support, they must talk to parents about it and get parents' views on it. For those with the more complex needs who require an education, health and care needs assessment, it is a statutory requirement that local authorities secure advice and information from parents, or try to, but there is no requirement on parents to give that. Also, the voice of the child and young person must come through in the assessment. That is very much a part of the requirement about individual assessments. The Children and Families Act went wider than that, and that was one of the elements that has been welcomed universally. That was about creating a climate, or culture, of co-production; a requirement on local authorities to work in a co-productive way with parents and their representatives when developing new policies, new procedures and new

ways of working. Co-production has been a powerful theme in the reforms.

It is not always an easy thing to achieve in every local area. Some local areas have got it flowing beautifully and there are some good examples across the country, whereas there are challenges in other areas. It is certainly an element that we would say has been successful in terms of the culture and intention behind the reforms, but with some universal implementation challenges. Certainly, the voice of children, parents and young people is a central part of the SEN system.

Q13

Baroness Blower: You may have no information about this, but historically it was not uncommon, certainly when I worked in the ILEA, for children to be placed on the roll of a special school but to spend time in a mainstream school. I worked in a mainstream school where children also spent time in the special school, because the schools had different sorts of facilities and that was a positive way of working. Obviously, that depends on the schools being close enough to each other and all those kinds of things. There are bound to be regional/local differences. I just wondered where there was any information about that.

André Imich: I am unsure whether we have data on numbers, but we certainly know that some children are dual-registered, which is permitted by the legislation and certainly happens in practice; some children are receiving maybe two or three days in one school, and two or three days in the other school. We are also keen to promote the outreach work from special schools, and they have been able to succeed in supporting children in mainstream schools in some areas—for example, the special school coming into the mainstream school and giving advice to class teachers and so on. It is certainly an important way of working and one that is happening in some areas.

Baroness Wylde: You have huge expertise in this area and I hasten to add that I have not, so this is a lay person's question. You talked about mainstream versus specialist provision being a controversial area, and you also talked about what parents want and parental choice. In broad terms, have you seen any societal trends in all the time you have been working on this? Have you seen any change in what parents want for their children when they realise that they will need additional support? Has there been a push towards mainstream and away from mainstream? If you have, I would be interested in what you see as the reasons for that and the impact.

André Imich: That is big question. I probably look my age and I do remember the 1981 Education Act coming in and bringing in the rights to mainstream education. At that time, it was seen as an exciting opportunity. There were lots of families whose children would otherwise have been in specialist education—or even in hospital in the past—driving to make sure their children were in mainstream school. That was a big thrust for a long time. Mainstream schools developed expertise and learned how to meet the needs of a much wider range of needs than they had experienced before. There was a general feeling that it was good for other children to experience children with special educational needs and to empathise and to learn how to support.

In the last 15 years or so, we have certainly seen a large increase in the number of children going to specialist provision. We have seen a large increase in the number of children identified with special educational needs, and there is still a large number of children with the most complex needs in mainstream schools. There are some children in mainstream schools with really complex needs, and those schools are doing their best to make it work and are working with parents.

There is also a move towards more specialist provision, and there have been areas where perhaps we have not trained our mainstream schools enough in meeting particular types of special educational needs. We need to do more on teacher development, teacher training and support and so on, to make that happen. Ultimately, we need to respect the wishes of parents. As I said, there is no clear evidence either way for some of the issues with the most complex needs, but we do know that it can work effectively in mainstream schools.

Baroness Wyld: Thank you, that is helpful.

Lord Mawson: I would be interested in us having an opportunity to look at the best practice. Where is the real innovation happening out there? I am sure you are aware of it. Can we actually get sight of, and talk to, the people involved in co-creation and what we are actually learning? Also—this may be more difficult—where is the stuff not working? What is actually going on? Maybe not now, but could we try to find out where we need to look and who we need to talk to?

André Imich: If you are interested, we can certainly arrange that.

Q14 The Chair: Thank you for that. As I said at the beginning, it has not been possible for the BEIS representative, Mike Warren, to attend, so we cannot ask the questions we had hoped to on flexible working and shared parental leave, but we will send some detailed questions through. Before I wrap up, I want to emphasise two points. First, we only received this memorandum from you on Tuesday, so we have had little time to go through it. I am pretty certain that we will want to come back with some detailed questions, so we will pursue those in writing initially and see how we get on. There are certainly a lot of points that I wanted to raise and understand what lay behind them.

The second point is for Neal on family justice. I am sorry about this. You started to talk about the 26 weeks. I said that it was the lynchpin of the reforms and, as you have made clear, despite some initial improvements, from 2016 to 2020 it was going in the wrong direction. When I was actively involved in this area it was the key driver at the Family Justice Board. Ministers were monitoring the data and asking for detailed explanations, and the local family justice boards were being fed with comparative data on different areas all the time.

I know that sometimes the designated family judges and the local authorities did not particularly like the comparative data, but it led to some crunchy questions about why some areas with similar conditions were up in the 40 weeks and others were down at 25. I cannot quite understand what has happened on maintaining the momentum. Did someone take their foot off the accelerator? Did Ministers lose interest? I want to understand what happened there, because it is significant.

Neal Barcoe: I agree. There was definitely no foot taken off the accelerator. The Family Justice Board has a subcommittee called the performance and improvement sub-committee, which looks at this data on a quarterly basis. Local family justice boards are still given data on how they are comparing, and they instinctively want to know what is working well elsewhere. That interest is there.

I know this predates it, but the pandemic has had quite an impact on measuring data and holding local family justice boards to account on the 26 weeks while there have been much bigger issues, such as keeping the system working and operating properly and dealing with the challenges of not being able to see people, which the pandemic has put on them. Over the last couple of years, that has definitely been a factor in people not going on the 26 weeks every day. We are coming out of that phase now, and there is a huge amount of interest in how to get this figure down, so I do not think it is fair to say that the foot was off the gas. I committed to writing on the factors relating to the 26 weeks. I will try to do that, and if we need to come back to that, we can.

The Chair: I would just ask you to bear in mind that the committee, and me in particular, have a strong interest here, and I am sure it is an issue that we will want to pursue with Ministers when they come before us. If you can give us any more information on that, that would be extremely helpful.

We are through the formal proceedings now. I thank all three witnesses very much. We are at the early stages in our journey, and I am sure we will wish to come back to you with questions as our work progresses, so I hope you are okay with that. As I say, this is the first time we have had a witness session with some of us here in person, so it marks a bit of a new phase for us. Thank you very much indeed for sharing your knowledge and expertise with us and giving us your time this afternoon.