HOUSE OF LORDS

Children and Families Act 2014 Committee

Report of Session 2022–23

Children and Families Act 2014: A failure of implementation

Ordered to be printed 21 November 2022 and published 6 December 2022

Published by the Authority of the House of Lords

HL Paper 100

Children and Families Act 2014 Committee

The House of Lords Select Committee on the Children and Families Act 2014 was appointed on 19 January 2022 and reappointed on 12 May 2022 to consider the Children and Families Act 2014.

Membership

The Members of the Select Committee on the Children and Family Act 2014 were:

Lord Bach
Baroness Bertin
Baroness Blower
Lord Brownlow of Shurlock Row
Lord Cruddas
Baroness Lawrence of Clarendon
Baroness Massey of Darwen
Lord Mawson
Baroness Prashar
Lord Storey
Baroness Tyler of Enfield (Chair)
Baroness Wyld

Declarations of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests

Publications

All publications of the Committee are available at: https://committees.parliament.uk/committee/581/children-and-families-act-2014-committee/publications/

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Committee staff

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Q in footnotes refers to a question in oral evidence.

SUMMARY

The Children and Families Act 2014 was envisaged as a landmark piece of legislation, giving greater protection to vulnerable children, better support for children whose parents are separating, a new system to help children with special educational needs and disabilities, and help for parents to balance work and family life. Our inquiry has shown us that this could have been the case, had any real focus been on implementing and monitoring the impact of the Act. Instead, it was a missed opportunity.

The Government passed the Act with the aim of improving the lives of children, young people and their families. Its intentions were admirable and many of its reforms were the right ones to make. However, the Act has struggled to achieve its goals given the sheer breadth of the areas covered and a lack of due concern given to implementation. Many people have worked hard to bring about the Act's reforms and improve the lives of children and young people, but they are often hindered by lack of cohesion in the very systems they work in.

The Children and Families Act 2014 has ultimately failed in meaningfully improving the lives of children and young people. Instead, it has largely sat on the shelf, a piece of legislation which has languished as a result of a lack of implementation, inadequate scrutiny and incessant churn amongst Ministers and officials. All this has been allowed to occur while children and young people continue to suffer through public service failures including poor SEND services, increasing mental health referrals waitlists and creeping delays in family courts.

It was not until our inquiry was established that the Government gave any thought to a comprehensive post-legislative review of the whole Act, eight years after it received Royal Assent. Eight years is a long time in the crucial early years of these children. The evidence we received from the Government showed that in some cases, such as delays to family justice cases, the Government was well aware of its failings but had not taken any action to address them. In other areas, such as fostering to adopt, the Government's data were insufficient to allow it to truly measure impact. Most worryingly, in some cases such as assessing the needs of young carers, departments held no data and appeared uninterested in making any attempt at evaluation whatsoever. This implementation failure is symptomatic of an inability of Government to innovate and learn lessons from its own practices.

Post-legislative scrutiny, whether by Parliament or the Government itself, is vital to ensuring legislation is achieving its goals, providing value for money, and improving people's lives. We are not the first inquiry to draw attention to the failures facing children, young people and their families, but time and time again little is done to address the problems identified. In this report, we urge the Government to improve its systems for monitoring and assessing the implementation of legislation, particularly by building robust systems for data collection and sharing. We call on the Government to take implementation of legislation seriously, beginning by ensuring continuity of Ministers and senior officials.

When the systems we looked at, including education, family justice and social care, fail to provide adequate support, it is children and their families who bear the burden. Nowhere was this clearer to us than in the current crisis facing children and young people's mental health services. Children and young people

with poor mental health face long waiting lists for referrals and treatment. All the while, their mental health continues to decline, increasing their need and making the need for crisis support more likely. In failing to give due concern to children's mental health when constructing the Act and allowing waiting lists to grow to unsustainable levels, the Government has failed a generation of children and young people.

A key theme of our inquiry was the value of early intervention. It is clear to us that investing in early intervention results in better outcomes for children and young people. It can head off crises before they emerge, reducing the need for high-cost interventions later in the cycle. Despite the clear value of early intervention, it remained absent across many of the areas we looked at, threatening the stability of families and the health of children and young people. We are calling on the Government to prioritise early interventions including legal advice appointments for separating couples and improved post-adoption support.

Given the wide breadth of the Act, it was not possible for us to cover it in its entirety. Unfortunately, we have been unable to give some parts of the Act—including on childcare and children's welfare—the attention we would have liked. However, ranging across policy areas has allowed us to reflect on overarching themes. We focussed on the areas which we felt would be most likely to benefit from further scrutiny, principally: adoption, family justice and employment rights. Part 3 of the Act on SEND both had already received post-legislative scrutiny by the Education Committee and was the subject of a major consultation which would close halfway through our inquiry. As a result, we spent a more limited time on it than would otherwise have befitted its importance. To ensure the valuable evidence we received was communicated to policymakers when it could make the most difference, we responded to the Government's consultation on SEND, making clear the changes needed to improve outcomes for children and young people with SEND.

This report makes recommendations on how the Government can finally realise its ambitions as initially set out in the Act across adoption, family justice and employment rights. They include:

- establishing an outcome focussed task force, accountable to the Secretary of State, dedicated to addressing ethnic and racial disparities in the adoption system;
- improving post-placement support for adopters and kinship carers;
- developing a safe and modern digital contact system for post adoption contact;
- addressing the creeping delays in public family law cases through top-level leadership and investigation by the Family Justice Board;
- producing an impartial advice website for separating couples, providing clear information on the family justice system;
- replacing MIAMs and the mediation voucher schemes with a universal voucher scheme for a general advice appointment;

- reviewing the current approach to empowering the voice of the child in family law proceedings;
- creating an ambition for a move towards a new dedicated 12 week paternity leave allowance; and
- making flexible working a day one right to request and encouraging businesses to advertise jobs flexibly from the outset.

Throughout our inquiry, we have sought to hear directly from children, young people and their families. We are grateful for their time and insight, as they shared with us the challenges they face and how they feel let down by the very systems designed to support them. The welfare of children and young people should be the Government's paramount concern when developing policies in this area. We urge them not to allow another eight years to pass before they make the improvements which are so demonstrably necessary.

Children and Families Act 2014: A failure of implementation

CHAPTER 1: INTRODUCTION

1. Since 2012 the House of Lords has appointed various select committees to undertake post-legislative scrutiny. Key questions for such committees include:

    - whether an Act has fulfilled the aspirations behind it;
    - how well it has been implemented by public bodies;
    - whether it contains deficiencies or loopholes;
    - whether any sections should be repealed;
    - whether it needs to be updated to respond to new challenges relating to the policy areas it addresses.

2. On 19 January 2022 the House appointed this committee to consider the Children and Families Act 2014 and report by 30 November.

The Act

3. The Children and Families Bill was introduced by the 2010–2015 Coalition Government. It had its first reading on 4 February 2013 and received Royal Assent on 13 March 2014. Its aim was to improve services for vulnerable children and young people by reforming the systems for adoption, looked after children, family justice and special educational needs and disabilities. It also sought to increase support for families through reforms to the childcare sector, the Children's Commissioner, shared parental leave and flexible working.

4. Pre-legislative scrutiny was conducted during 2012 in relation to the parts of the Bill dealing with adoption, special educational needs and disabilities, family justice and the role of the Children's Commissioner.

5. Given the scope of the Bill, several departments were involved in drafting: the Department for Education (DfE), the Ministry of Justice (MoJ), the then Department for Business, Innovation and Skills (BIS), the Department for Work and Pensions (DWP) and the Department of Health and Social Care (DHSC). It was described at the time as a landmark Act.[1]

6. The Act applies primarily to England, but makes some changes to the systems in Wales, and minor changes to the Scottish and Northern Irish systems.

7. Part 1 of the Act relates to adoption. Its overarching purpose is "to speed up the adoption process and enable more children to be placed in stable, loving homes with less delay and disruption."[2] Specific provisions include: 'fostering

1 DfE, BIS, DWP, DHSC and MoJ, 'Landmark Children and Families Act 2014 gains royal assent', 13 March 2014: https://www.gov.uk/government/news/landmark-children-and-families-act-2014-gains-royal-assent [accessed 15 October 2022]

2 Explanatory notes to Children and Families Act 2014

to adopt' placements, where a child who may need to be adopted is fostered by approved adopters; the repeal of the requirement to consider ethnicity, religion, racial origin and cultural and linguistic background when seeking prospective adopters; the introduction of personal budgets for adoptive families; and giving potential adopters access to a national matching register.

8. Notable subsequent developments include: the closing down of the matching register in March 2019 and the publication of the Government's independent review of children's social care—led by Josh MacAlister—in May 2022.[3] The Government has said it plans to publish an implementation strategy on children's social care before the end of 2022.[4] In July 2021 the Government published its National Adoption Strategy, outlining various challenges for the adoption system.[5]

9. Part 2 addresses the family justice system, making changes to both private and public family law. Private law governs disputes between private individuals, such as divorce and private children proceedings. Public law governs cases where the state has an interest in protecting a child at risk of significant harm or neglect. The Act's provisions relating to public law include: introducing a maximum 26 week time limit for completing care and supervision proceedings when the courts are considering whether a child should be taken into care and restricting the use of expert witnesses. In private law, it introduced provisions such as making it a requirement to attend a family mediation, information and assessment meeting (MIAM); and requiring the court to presume that the involvement of both parents in the life of the child after parental separation is in the child's best interests, unless it can be shown that it would be harmful.

10. The implementation of the Act coincided with reforms to Legal Aid made in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which removed most private law cases from the scope of legal aid and changed the financial means tests. It also coincided with cuts to public spending under the Coalition Government's austerity programme. In 2020 and 2021, the COVID-19 pandemic and associated restrictions brought further challenges. There has also been concern about the effect of the presumption of parental involvement on children's welfare and victims of domestic abuse. In June 2020 an independent report commissioned by the Ministry of Justice recommended that the presumption be urgently reviewed.[6] The Government's review is ongoing.[7]

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3 Children & Young People Now, 'Adoption register suspension - will it make matching harder?' (26 March 2019): https://www.cypnow.co.uk/features/article/adoption-register-suspension-will-it-make-matching-harder [accessed 25 October 2022] and Josh MacAlister, *The independent review of children's social care*, May 2022: https://childrenssocialcare.independent-review.uk/wp-content/uploads/2022/05/The-independent-review-of-childrens-social-care-Final-report.pdf [accessed 25 October 2022]

4 HM Government, 'Independent review of children's social care': https://www.gov.uk/government/groups/independent-review-of-childrens-social-care [accessed 4 November 2022]

5 DfE, *Adoption strategy, Achieving excellence everywhere*, July 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1006232/_Adoption_strategy_.pdf [accessed 25 October 2022]

6 MoJ, *Assessing Risk of Harm to Children and Parents in Private Law Children*, June 2020, p 9: https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf [accessed 25 October 2022]

7 Q 188 (Lord Bellamy)

11. Part 3 is focussed on support for children with special educational needs and disabilities (SEND), defined as having "a learning difficulty or disability which calls for special educational provision to be made." Most notably, this part: requires education, health and social care agencies to work together and introduced Education, Health and Care Plans (EHCPs) for children and young people; places a duty on local authorities to identify children and young people who may have SEND and to publish information about the support available to them; and allows young people, parents or schools to request a needs assessment of a child or young person.

12. This is the only part of the Act which has received substantive post-legislative scrutiny. In its report in October 2019, the House of Commons Education Select Committee found that the SEND reforms introduced by the Act were positive but undermined by "failures of implementation." The committee concluded that this had resulted in "confusion and at times unlawful practice, bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences, and ultimately dashed the hopes of many."[8]

13. Part 3 also received scrutiny from the National Audit Office in 2019. It concluded that the Department did not fully assess the likely financial consequences of the 2014 reforms to the system for supporting pupils with SEND and that it was not, on current trends, financially sustainable.[9]

14. In September 2019 the Government announced a major review of support for children with SEND. A Green Paper was released in March 2022, with a consultation running until July.[10] A response is expected by the end of the year.

15. Part 4 reforms childcare. It allows for the registration of childminder agencies on the childcare registers, and the registration of certain childcare providers with childminder agencies, as well as repealing local authorities' duties to assess the sufficiency of childcare provision in their area and allowing maintained schools to create childcare provision without consulting the local authority, staff or parents.

16. Part 5 contains a range of provisions related to child welfare. These include: removing the restriction on local authorities issuing performance licences to children under the age of 14; making it a criminal offence to buy tobacco or cigarette papers on behalf of a person under the age of 18, or to smoke when in a car with them; requiring local authorities to assess whether young carers and parent carers within their area need support; allowing children to stay on with former foster parents until the age of 25 if the local authority determines it appropriate; requiring local authorities to appoint a 'Virtual School Head' to promote the educational achievement of looked after children; making changes to the regulation of children's homes; and obliging state schools to provide free school meals to pupils in reception and years one and two.

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8 Education Committee, *Special educational needs and disabilities* (First Report, Session 2019, HC 20)

9 National Audit Office, *Support for pupils with special educational needs and disabilities in England* (Report of Session 2017–2019, HC 2636): https://www.nao.org.uk/wp-content/uploads/2019/09/Support-for-pupils-with-special-education-needs.pdf [accessed 28 November 2022]

10 DfE and DHSC, 'SEND review: right support, right place, right time' (26 May 2022): https://www.gov.uk/government/consultations/send-review-right-support-right-place-right-time [accessed 25 October 2022]

17. Part 6 amends the remit and powers of the Children's Commissioner, a role which has existed since 2004. The Commissioner's primary function is to promote and protect the rights of children in England, including promoting awareness of the views and interests of children. They must have particular regard for the rights of children living away from home or receiving social care, and other at-risk groups. They must take reasonable steps to involve children in their work. The Commissioner may not investigate individual cases. However, they can provide advice and assistance directly to children living away from home or in care and make representations on behalf of those children to those providing them accommodation or other services. They can also enter premises to interview children or observe the standard of care provided.

18. Part 7 creates a new employment right to shared parental leave and statutory shared parental pay for eligible working parents. Parents can share up to 50 weeks of leave and 37 weeks of paid leave between them. Eligible adopters can use the new system for shared parental leave and pay.

19. Part 8 gives employees and qualifying agency workers the right to take unpaid time off work to attend up to two ante-natal appointments with a pregnant woman, if she is their wife, partner, daughter, or carrying their child.

20. Part 9 extends the right to request flexible working arrangements to all employees, providing they have been employed for at least six months. It removes the statutory procedures for processing the request, instead requiring employers to deal with the request in a reasonable manner. There are eight business reasons why such a request may be refused.

21. Between September and December 2021, the Government consulted on plans to make flexible working the default. It has not yet published a response.[11]

Post-legislative evaluation and scrutiny

22. We follow a series of post-legislative scrutiny committees which have been appointed since 2012. Previous committees have considered the Licensing Act 2003, the Bribery Act 2010 and the Electoral Administration and Registration Act 2013, among others.

23. We were the first committee to be tasked with scrutinising such an extensive and wide-ranging Act. Although a committee examined the Equality Act 2010, it was only asked to consider its impact on disabled people.

24. The breadth of our remit has had both advantages and disadvantages. Unfortunately, we have been unable to give some parts of the Act—including on childcare, special educational needs and disabilities, and children's welfare—the attention we would have liked to. However, ranging across policy areas has allowed us to reflect on overarching themes.

25. The Government has committed to producing a post-legislative memorandum between three and five years after a given Act has received Royal Assent, unless it is felt to be unnecessary.[12] This follows a recommendation by the

11 Department for Business, Energy & Industrial Strategy (BEIS), 'Making flexible working the default' (29 October 2021): https://www.gov.uk/government/consultations/making-flexible-working-the-default [accessed 25 October 2022]

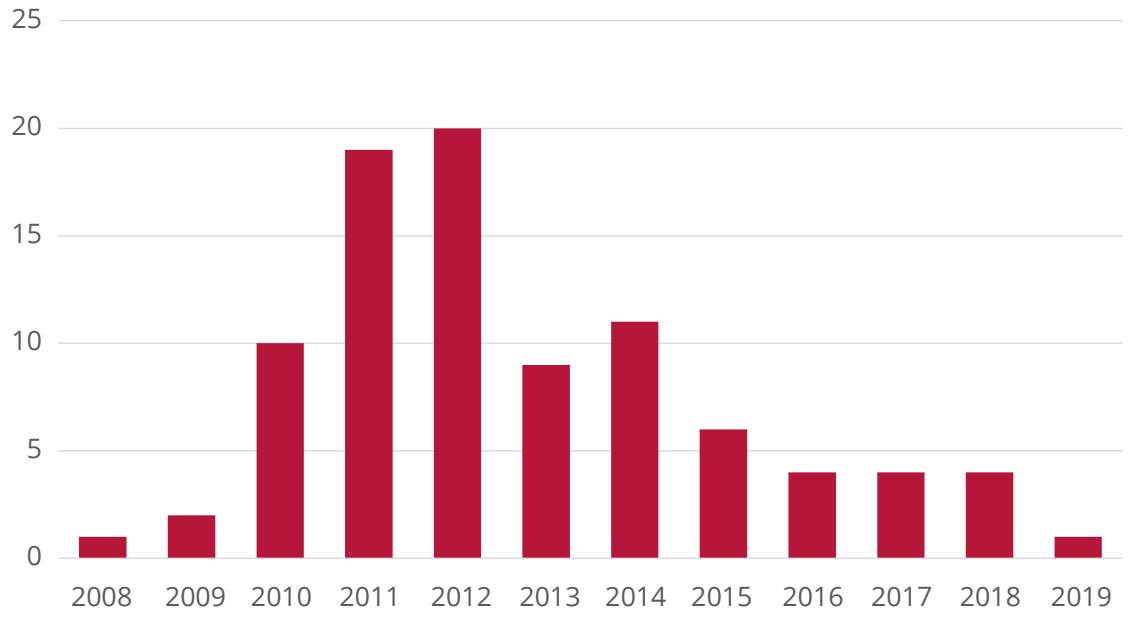
12 Cabinet Office, *Guide to Making Legislation* (2022), p 284: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1099024/2022-08_Guide_to_Making_Legislation_-_master_version__4_.pdf [accessed 25 October 2022]

Constitution Committee in 2004 that government departments should conduct post-legislative scrutiny of all significant primary legislation other than Finance Acts.[13] These memoranda are supposed to include a preliminary assessment of how the Act has worked in practice. No memorandum had been produced for the Children and Families Act 2014 (with the exception of a memorandum on Part 3 for the Education Select Committee in 2019), until one was produced at our request and submitted to us on 10 March 2022, almost eight years to the day after the Act received Royal Assent.

26. Officials were unable to tell us why a memorandum had not been produced in a timely manner.[14]

27. While Parliament passes around 30 Acts each year, analysis by Dr Tom Caygill shows that post-legislative memoranda are produced only for a handful, as Figure 1 shows. There have been 11 post-legislative scrutiny committees in the House of Lords since 2012.

Figure 1: Number of post-legislative scrutiny memoranda produced



Source: Higher Education Policy Institute, 'What does post-legislative scrutiny look like?' (23 July 2022): https://www.hepi.ac.uk/2022/07/23/what-does-post-legislative-scrutiny-look-like/ [accessed 2 November 2022]

28. The memorandum we received was disappointing, betraying a lack of focus by the relevant departments on implementing and evaluating the Act.

29. At times, the Government did not explain its evidence for claims. In relation to section 15, it told us: "We think that this greater emphasis on the importance of permanence considerations has been seen as a positive step and has had a positive impact on decisions made by the family courts." When subsequently asked why the Government thought this, the only evidence it was able to cite was guidance from the President of the Family Division which aligned with the requirement.[15]

13 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173)
14 Q 2 (Sophie Langdale and Neal Barcoe)
15 Written evidence from DfE (CFA0033)

30. Where data were provided, they were often partial. For example, evaluation of section 2 of the Act—which focusses on 'fostering to adopt'—has been impeded by statistics only being available for 'early permanence' in general, without being disaggregated into its two types: fostering to adopt and concurrent planning.

31. Measures of success were sometimes highly simplistic. Most egregiously, the Government's assessment of the success of the requirement to provide free school meals was simply to note that 88% of eligible children were eating them. It offered no assessment of whether the scheme represented value for money in relation to measures such as improving educational outcomes or children's quality of life.

32. In some cases, departments appeared uninterested in making any attempt at evaluation whatsoever. For example, the Government told us that it is "impossible to accurately assess the impact of section 96", which requires local authorities to identify young carers in their local area who may need support, because of a lack of reporting requirements on local authorities. Similarly, in relation to section 100—the duty on schools to make arrangements for supporting pupils with medical conditions—the Government's one sentence assessment was: "The department does not monitor compliance with the duty and has not carried out any research on the impact of this duty."

33. One potentially consequential provision in the Act—section 5, which would have required local authorities to provide personal budgets for adoptive families—was never commenced. The Government told us that this was due to negative feedback from adopters. We asked whether the department had consulted adopters on this issue before the Act became law. We were informed that there was "no record of any feedback being sought prior to the Act's passage."[16]

34. **At the time of receiving Royal Assent, the Children and Families Act 2014 was described as a "landmark" piece of legislation. However, successive governments have failed adequately to monitor its implementation. In some instances, departments have made no meaningful effort to evaluate impact. This is unacceptable.**

35. ***When an Act receives Royal Assent, the Government should publish a post-legislative scrutiny plan. This should include when a post-legislative memorandum will be published, if applicable, and details of the metrics which will be used to evaluate each section and what data will need to be collected to do so.***

36. **Our experience of this inquiry has convinced us of the real value of post-legislative scrutiny. The House of Lords, with its history of post-legislative scrutiny, is well placed to scrutinise Acts, but cannot singlehandedly scrutinise every Act passed. Once Parliament has passed a law, it owes it to those citizens affected to check how well the law is working. We are concerned by the disparity between the number of bills passed each year and the number of Acts scrutinised by the Government.**

16 *Ibid.*

Our inquiry

37. As previously discussed, it would not have been possible for us to examine the whole Act in adequate detail. We focussed on the areas which we felt would be most likely to benefit from further scrutiny: principally parts 1, 2, 7 and 9, as well as touching on part 6 in taking oral evidence from the current and former Children's Commissioners.

38. As part 3 of the Act on SEND both had already received post-legislative scrutiny and was the subject of a major consultation which would close halfway through our inquiry, we spent a more limited time on it than would otherwise have befitted its importance. We wanted to ensure the valuable evidence we received was communicated to policymakers when it could make the most difference, rather than miss an opportunity to make clear the changes needed to improve outcomes for children and young people with SEND. We drew on our written evidence and oral evidence from civil servants and leading experts, alongside a visit to a school and community centre in North London, to respond to the Government's consultation. Our letter and the Government's reply are appended to this report.[17] A summary of our main points is contained in Box 1. We hope that our response helps to guide policymaking in this area—and that the Government takes seriously our warning that the SEND system is failing many children and young people as part of its ongoing review into the SEND system.

Box 1: A summary of our response to the SEND Green Paper

The SEND review has taken too long to come to fruition, and there is no clear timeline set for the next steps. We are concerned that the much-needed reforms to the system will continue to be drawn out indefinitely.

The 2014 reforms were, fundamentally, the right ones, but little thought was given to their implementation. A clear implementation plan for the proposed next set of reforms is needed.

The SEND review does not give enough concern to students who receive SEN support, but who don't have an education and healthcare plan (EHCP). More consideration should be given to early intervention and better mainstream provision for those students who need SEN support without an EHCP.

There is immense financial strain on the system. The current mechanisms of allocating funding are not fit for purpose and do not match pupil need. Any proposals to make the system more financially sustainable are welcome, provided they can be achieved without rationing support for pupils.

Truly joined up working between education, health and social care remains unrealised. Health and social care are often absent from the picture, and families struggle against an overwhelming tide of bureaucracy in a system lacking coherence. More accountability for all elements of the system is needed.

Balancing different views as to what is in the child's best interest is difficult, particularly where there is disagreement between parents and schools. A rebalancing of how the differing views of parents and schools are reconciled, acknowledging the valuable insights of both parties.

It is regrettable that the system has been allowed to deteriorate to this level. This review is an opportunity to make much needed changes. It should be open and engage with stakeholder throughout this reform process.

17 See Appendix 4 and Appendix 7.

39. Our mandate is also to consider areas which were notably absent from the Act. Mental health emerged early on in our inquiry as a key theme which the 2014 Act didn't address and which was indicative of a failure to support the wider needs of children and young people. Contributors to our inquiry stressed the poor mental health experienced by many children and young people, and their challenges in accessing care. This was particularly the case for those in social care or with special educational needs and disabilities. We drew on our written evidence and oral evidence from leading experts, alongside our visits and engagement events, including to a CAMHS clinic, to assess the failures in children and young people's mental health services. This, along with other cross-cutting themes we identified, is covered in Chapter 5.

40. We heard from 44 witnesses in oral evidence sessions and received more than 150 written submissions. Some of these provided detailed accounts of sensitive personal experiences rather than commenting on the Act itself, with many correspondents requesting confidentiality. Rather than publish them as formal evidence, they are summarised in appendix 5.

41. We also wanted to hear directly from members of the public who might not otherwise take part in select committee inquiries. As well as our SEND visit, we spent a day at the court in Oxford and an afternoon at the Maudsley Hospital in Camberwell, held roundtable discussions with birth parents, adoptive parents in Yorkshire, young people with experience of the family justice system, and people working in mental health, and conducted an online survey.[18]

42. At the beginning of our inquiry, we asked the Government for the post-legislative memorandum on the Act. The Government has committed to produce such a memorandum between three and five years after a given Act has received Royal Assent, unless it is felt to be unnecessary.[19] Almost eight years after the Children and Families Act 2014 received Royal Assent, no memorandum had been produced (with the exception of a memorandum on Part 3 for the Education Select Committee in 2019). The Government produced a memorandum at our request, setting out its assessment of the implementation of the Act. We discuss the inadequacy of the memorandum and the Government's approach in our final chapter.

43. Chapter 2 focusses on adoption, chapter 3 on family justice, and Chapter 4 on parental leave and flexible working rights. Chapter 5 draws together themes which cut across our inquiry, including the lack of mental health support for children and young people, the need to respect the views of children in policymaking, the effectiveness of government, and the value of post-legislative scrutiny.

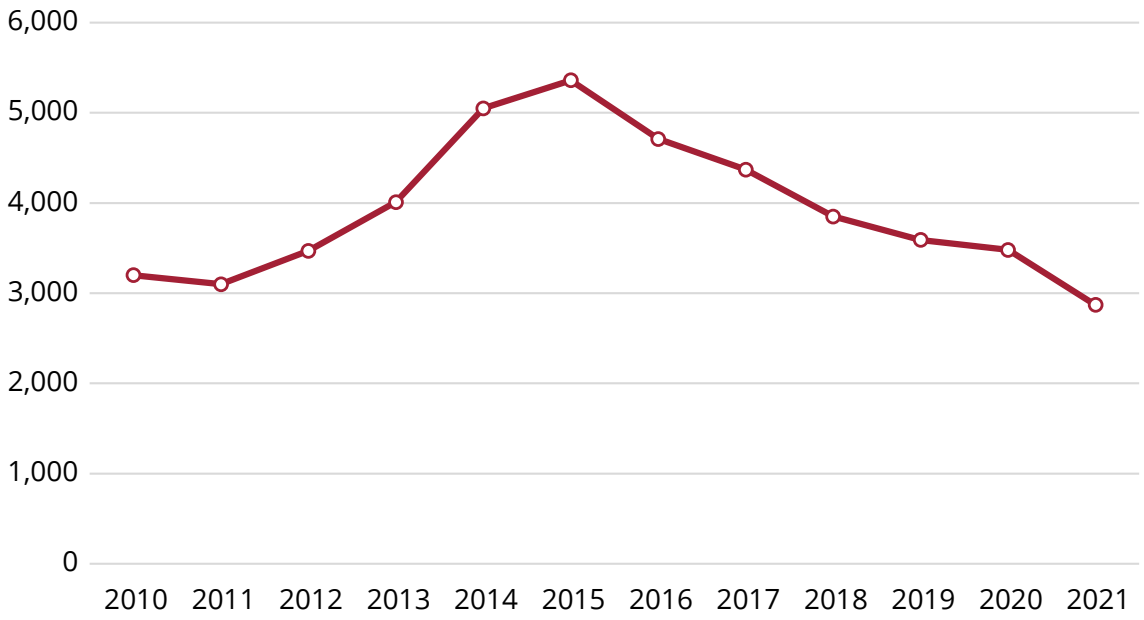
44. We are grateful to all those who contributed to our inquiry. In particular, we thank our specialist advisers for their invaluable support: on adoption, Julie Selwyn, Professor of Education and Adoption at the University of Oxford, and on family justice, Rob George, Professor of Law and Policy at University College London and barrister at Harcourt Chambers.

18 See Appendix 6 and Appendix 13.
19 Cabinet Office, *Guide to Making Legislation*, p 284

CHAPTER 2: ADOPTION

45. The Act made a number of changes to the adoption landscape, primarily aimed at ensuring adoptive homes could be found for all those children who needed them and increasing speed of adoptions. The then Children and Families Minister said: "Our adoption reforms will help the 6,000 children who need loving homes to be adopted."[20] The number of adoptions rose sharply from 3,100 in 2011 to a peak of 5,360 in 2015. However, they have been falling steadily since. In 2021 2,870 children under local authority care were adopted (see Figure 2). The average time between entry into care and adoption has also been rising. In 2021 the average time between entry into care and adoption was 2 years and 2 months, up from 1 year and 11 months in 2018.[21] At the same time, the number of children looked after has risen steadily. Between 2011 and 2021, the number of children looked after rose by 23%, from 65,510 to 80,850.[22] The average age of children in care has also risen, with children entering the care system with more complex needs.[23]

Figure 2: Number of children looked after during the year who were adopted



Source: DfE, 'Children looked after in England including adoptions': https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions [accessed 28 November 2022]

46. A child in care is only adopted when it is not possible for them to be safely returned to their birth parents and no-one in the extended family can provide permanent care. In considering whether to make an adoption order,

20 DfE, BIS, DWP, DHSC and MoJ, 'Landmark Children and Families Act 2014 gains royal assent' (13 March 2014): https://www.gov.uk/government/news/landmark-children-and-families-act-2014-gains-royal-assent [accessed 26 October 2022]

21 *Ibid.*

22 DfE, 'National - Time series of children looked after data - 1994 to 2020' from 'Children looked after in England including adoptions': https://explore-education-statistics.service.gov.uk/data-tables/permalink/bc87ab18-fc58-4c83-a12b-f65dbedbba9b [accessed 4 November 2022] and DfE, 'Children looked after in England including adoptions': https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions [accessed 26 October 2022]

23 Oral evidence taken before the House of Commons Education Committee, inquiry on Children's Homes on Tuesday 11 January 2022 (Session 2021–22), Q 197 (Yvette Stanley)

the court's paramount consideration has to be the child's welfare throughout his or her life. An adoption order enables the child to become a full and legal member of an adoptive family. Adopters become the child's legal parent with the same rights and responsibilities as if the child was born to them. An adoption order is intended to be permanent, and it is extremely rare for an order to be set aside once made.

47. In England, between 2,500-3,000 children are adopted from care each year: about 3% of the total care population.[24] Most of these children (76%) first became looked after because of parental abuse and neglect.[25] Adoption is the most stable of all placement types, with approximately 3% of those adopted returning to care over a 12-year period, thus providing a family for life for most children.[26] However, the effects of children's pre-adoption adversities and maltreatment can be long lasting and support for young people and their families might be needed throughout the lifespan.

Fostering for adoption

48. The Act aimed to encourage local authorities to reduce the number of moves young children have in care by placing children with prospective adopters more swiftly. Section 2 requires a local authority to consider placing the child with 'Fostering for adoption' carers who would become the child's adopters if a placement order is later made or the parent gives consent.

Box 2: Early permanence placements: Fostering to adopt and concurrent planning

A fostering for adoption placement is a type of early permanence placement, whereby the aim is to place a child in care with an adoptive family at the earliest opportunity. The other type of early permanence placement is concurrent planning.

In concurrent planning, there are no suitable family members available, but the local authority is still working to see if the child can be reunified with their birth parents. Meanwhile, the child is placed with prospective adopters who are approved as both foster carers and adopters. If reunification is not possible, adoption can then proceed if a placement order is made, or parental consent given. In concurrent planning there is no single plan for adoption, but the carers are expected to become the adoptive parents if that becomes the plan.

By contrast, in fostering for adoption, the local authority has decided reunification is not possible and the child is placed with carers who are dually approved as both foster carers and adopters, and who can also be approved as temporary foster carers for a named child. In fostering for adoption, the local authority is expecting the carer(s) to become the adoptive parent(s) but the court has yet to confirm that adoption should be the plan for the child and make a placement order.

Source: First4Adoption, 'Early permanence for young children': https://www.first4adoption.org.uk/who-can-adopt-a-child/early-permanence/ [accessed 26 October 2022]

24 DfE, 'Children looked after in England including adoption: 2020 to 2021', 18 November 2021: https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2020-to-2021 [accessed 26 October 2022]

25 DfE, 'Children looked after in England including adoptions: 2018–2021': https://explore-education-statistics.service.gov.uk/data-tables/fast-track/6aee986e-0102–40e6-aaab-b8130d7fdf27 [accessed 3 November 2022]

26 DfE, *Beyond the Adoption, Order: challenges, interventions and adoption disruption Research report* (April 2014): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/301889/Final_Report_-_3rd_April_2014v2.pdf [accessed 3 November 2022]

49. Witnesses were unanimous about the benefits of fostering to adopt placements, highlighting how they are child-focused and can reduce the number of moves a child undergoes before they find a permanent placement, increasing stability and reducing uncertainty.[27] Home for Good, a charitable organisation, told us: "The importance of enabling a continuity of relationships for children and young people cannot be overstated".[28]

50. However, the number of fostering to adopt placements remains low. In 2021, 470 children were in an early permanence placement (0.6% of looked-after children) compared to 250 on 31 March 2015 (0.4%).[29] Government figures are only provided for the aggregate number of early permanence placements, making it challenging to determine the impact of the Act on fostering to adopt placements specifically. The Department for Education said it has not carried out any research on the outcomes for children in early permanence placements, but it has commissioned research on those leaving care through adoptions and special guardianship orders (SGOs), which will include those adopted via fostering to adopt placements.[30]

51. Fostering to adopt placements present unique challenges. They do not guarantee that an adoption will occur. This requires potential adopters to manage a great degree of uncertainty in the placement, necessitating careful recruitment, preparation and support of adopters.[31] Mandy Davies, Assistant Service Director at Parents and Children Together, told us that the growing length of court cases was increasing uncertainty for carers.[32]

52. Fostering to adopt placements often involve greater contact with birth families while care and placement orders are being sought. This may require more support from social workers and raise safeguarding concerns,[33] but contact can reduce later opposition to the care and placement order.[34] Jo Mitchell, National Service Lead at PAC UK, said that recruitment of the right adopters, combined with "upskilling social workers and resourcing them with the right knowledge" was key to making fostering to adopt successful.[35]

53. In addition to the complexity of these placements, witnesses also suggested that legal uncertainty may account for the low number of fostering to adopt placements. The requirement to consider fostering to adopt applies to local authorities but not courts.[36] While the decision to make a fostering placement, and by extension a fostering to adopt placement, is solely for the local authority, some courts are thought to view fostering to adopt as pre-empting their decision on where the child should be placed permanently.[37] This has led to regional variation in the number of placements.[38]

54. Steve Crocker, President of the Association of Directors of Children's Services, told us that, following a period of scepticism, fostering to adopt

27 Q 36 (Mandy Davies), Q 141 (Sir Andrew McFarlane), Q 20 (Professor Elaine Farmer) and Q 61 (Naomi Angell)
28 Written evidence from Home for Good (CFA0083)
29 Written Evidence from DfE (CFA0001)
30 *Ibid.*
31 Q 36 (Mandy Davies)
32 Q 36
33 Q 36 (Mandy Davies) and written evidence from Adoption UK (CFA0068)
34 Q 61 (Naomi Angell)
35 Q 20
36 Q 51 (Alexandra Conroy Harris)
37 *Ibid.*
38 *Ibid.*

is increasingly being viewed positively by the courts and local authorities.[39] Dr Carol Homden, Chief Executive of Coram, felt it was unfortunate that the number of placements had not increased since 2014, and said: "greater priority should be placed upon it in the examination of the figures and the focus on it in the courts".[40] As part of its Adoption Strategy, the Government has committed to supporting Regional Adoption Agencies (RAAs) to expand early permanence services to all RAAs with the aim of increasing the number of early permanence placements.[41]

55. **Early permanence placements, including fostering to adopt placements, can bring many benefits for the children involved, but require careful preparation and support for the prospective adopters. The Act's requirement to consider fostering to adopt placements has had minimal impact, in part because it was not matched with the support necessary for adoption agencies and local authorities to implement the change. Inconsistent approaches by the courts in approving fostering to adopt placements have also hampered uptake.**

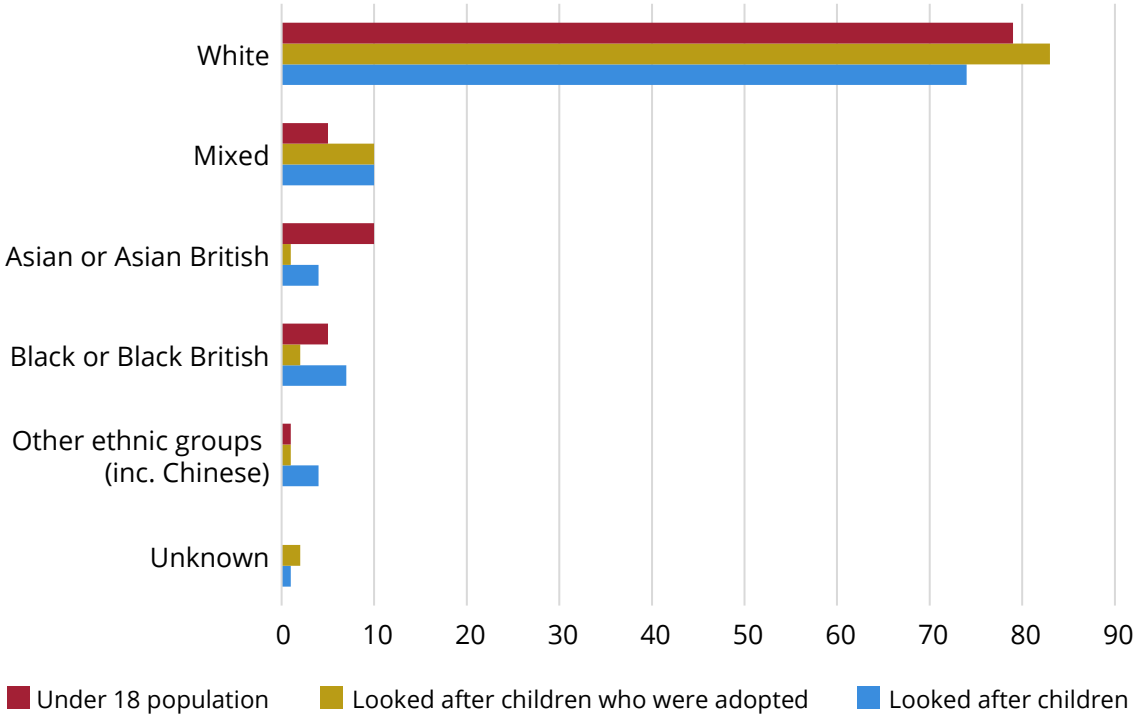
56. ***We welcome the Government's commitment in the Adoption Strategy to increasing the number of early permanence placements where appropriate. The Government should publish an assessment of the impact of the funds spent on increasing early permanence placements, as well as publishing a longer-term strategy for promoting early permanence.***

Race, ethnicity and adoption

57. There is no singular experience of racial and ethnic disparities in the care system and with adoption. However, generally, children from minority ethnic backgrounds are over-represented in the care population and wait longer to be adopted than white children. Figure 3 shows a breakdown of the percentage of looked after children, looked after children who were adopted during the year, and the under-18 population, by ethnicity:

39 Q 141 (Steve Crocker)
40 Q 51 (Dr Carol Homden)
41 Written evidence from DfE (CFA0001)

Figure 3: The percentage of looked after children, looked-after children who were adopted during the year and under-18 population



Source: HM Government, 'Adopted and looked-after children' (16 December 2021): https://www.ethnicity-facts-figures.service.gov.uk/health/social-care/adopted-and-looked-after-children/latest [accessed 28 November 2022]

58. Section 3 of the Act removed the statutory requirement to give due consideration to a child's religion, racial origin and cultural and linguistic background in matching considerations in England. This was intended to reduce the time between entry into care and adoption and increase the likelihood of a child being adopted. Under the adoption welfare checklist, the court or adoption agency must still consider the child's background and characteristics which are considered relevant when making a decision relating to the adoption of the child. The Government has not carried out any research into the impact of the repeal. However, it says that although Black and minority ethnic children are now being placed for adoption on average 8 months earlier than in 2013–14, they remain one of the groups who wait the longest to be matched with a new adoptive family.[42]

59. Despite the removal of the requirement, a report from the APPG for Adoption and Permanence noted that children from ethnic minority groups wait three months longer than white children to be adopted. They also noted evidence from social workers who said that practice has not followed the legal change, and strict adherence to ethnic and cultural matching can often remain.[43]

60. Evidence we received supports the idea that the repeal has had a limited impact. Alexandra Conroy Harris, Legal Consultant at CoramBAAF, felt that the repeal had not made a difference due to the continuing requirement to consider the child's background and characteristics in making a decision

42 Written evidence from DfE (CFA0001)

43 APPG for Adoption and Permeance, *Strengthening Families: Improving Stability for Adopted Children* (September 2021): https://static1.squarespace.com/static/5ce657108ebdc40001702327/t/6152f529cf5b3a3851cd612d/1632826669745/APPG_Report_Strengthening_Families_Sept_21_Final.pdf [accessed 27 October 2022]

about adoption.[44] CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee wrote that: "There is no evidence available to support that this change has had any positive impact on the waiting times for black and minority ethnic children."[45] Home for Good told us:

> " … it has become evident that this legislative shift has not necessarily impacted practice on the ground. For many social workers, finding a strong ethnic match remains a priority as a result of the increased attention over the last few years given to the importance of race and ethnicity as part of identity formation."[46]

61. Some witnesses felt that the removal of the requirement could reflect an underappreciation of the importance of race and ethnicity to adopted children. CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee raised concerns that:

> "Arguing that the less explicit 'background and characteristic' will suffice in ensuring 'due consideration' is given to addressing all aspects of the needs of black and minority ethnic children, shows a lack of understanding of institutional racism, cultural humility and listening to the lived experiences of transracial adoptees."[47]

Nagalro, a professional association for social work practitioners, wrote that

> "Black children are in effect being treated differently from their white counterparts, who are almost certain to be placed with adoptive parents who reflect their cultural, religious and linguistic needs. The impact of the deletion … is that Black children are more likely to be placed with families who do not reflect their heritage and who are not able to meet their cultural, religious and linguistic needs."[48]

However, some witness felt that race, culture and religion had previously been treated as 'trump cards' when seeking an appropriate placement, and that those characteristics were still sufficiently accounted for by the welfare checklist.[49]

62. Reaching out to and engaging those who are willing and able to adopt a child from a minority ethnic background is a fundamental step to reducing waiting times. Witnesses told us that one cause of these increased waiting times was a lack of minority ethnic adopters or adopters willing to take on a transracial adoptive placement.[50] One reason given for this was the intersection between ethnicity, poverty and marital status as a barrier, with Professor Elsbeth Neil from the University of East Anglia saying: "ethnic minority families who are coming forward and saying 'We would like to adopt a child' may have less financial resource or be less likely to be married."[51] Ade Larigo, Founder and Chief Executive Officer of Agency Connection, told us that, while the legislation does not require prospective adopters to have an additional

44 Q 53 (Alexandra Conroy Harris)
45 Written evidence from CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee (CFA0115)
46 Written evidence from Home for Good (CFA0083)
47 Written evidence from CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee (CFA0115)
48 Written evidence from Nagalro (CFA0010)
49 Q 67 (Naomi Angell)
50 Q 50 (Sarah Johal)
51 Q 27

bedroom, this has become a de-facto requirement, acting as a barrier to many families from ethnic minority groups.[52] Witnesses also pointed to historical distrust of social services as a reason for lower numbers of minority ethnicity adopters.[53]

63. We also heard that the experience of navigating the adoption system as someone from a minority ethnic background can be challenging. In our engagement session with adopters, we were told that some social workers would benefit from more training in cultural issues when working with prospective adoptive parents from ethnic minority backgrounds.[54] One contributor to our inquiry called for social workers to have a greater understanding of ethnic minorities and other religions and cultures. [55] Lorraine Agu called for social workers and adoption panel members to have training that examines practitioner bias and the impact on their practice.[56]

64. While there is a need for more adopters prepared to adopt children from minority ethnicities, transracial adoptive placements can bring unique challenges. Professor Elsbeth Neil said: "Children in transracial placements can have real difficulties with their ethnic identity."[57] Joanne Alper, Director of Adoption Plus, explained that encouraging more transracial adoptions is complicated:

> "Although it was previously thought of as a way to encourage more adoptions, we have learned more about issues of identity over recent years, listened more to the experience of young people who have been transracially adopted, and become more aware that it is a much more complicated area than thinking about it purely in terms of legislation."[58]

65. CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee noted: "Adult adoptees who have experience of being transracially adopted, often tell us that this has come at a cost to their sense of belonging and of knowing where they fit in in the world."[59] Al Coates, Founder of the Adoption and Fostering Podcast and adoptive parent, highlighted that adopters are not assessed or prepared to be transracial adopters.[60] Yoni Ejo, CEO of Diversity Adopt, suggested that the repeal of the requirement to consider race had made social workers and adopters "reticent to talk about race", which had resulted in transracial adopters being insufficiently prepared.[61]

66. Witnesses also told us about a lack of diversity in the adoption workforce more broadly, and on adoption panels specifically (see Box 3). Sarah Johal, National Adoption Strategic Lead for the Regional Adoption Agencies, said: "generally, the panel is all-white and mainly female, which is reflected in the adoption workforce … It is an ongoing issue."[62] Ade Larigo suggested that one cause for the lack of diversity on adoption panels was agencies defaulting to asking those within their own networks and failing to do active recruitment,

52 Q 106
53 Q 104 (Ade Larigo) and Q 67 (Al Coates)
54 See Appendix 8.
55 Written evidence from Miss K. Thornton (CFA0096)
56 Written evidence from Lorraine Agu (CFA0110)
57 Q 27
58 Q 38
59 Written evidence from CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee (CFA0115)
60 Q 67 (Al Coates)
61 Q 105 (Yoni Ejo)
62 Q 54 (Sarah Johal)

while Yoni told us that a failure to adequately pay panel members led to more affluent or retired applicants, further contributing to lack of diversity.[63] Mr Coates highlighted that the leadership of adoption agencies is predominantly white.[64]

Box 3: Adoption panels

Adoption Panels make recommendations to adoption agencies on:

- Whether a child should be placed for adoption, where there is parental consent and there is no application for a placement order;
- The suitability of prospective adopters; and,
- Whether a child should be placed for adoption with a specific prospective adopter.
- The Adoption Panel can also advise on other issues such as the contact arrangements for the child and the proposed adoption support.

There is no fixed membership of the Panel. A list is maintained of people considered to be suitable to be members of the Panel. This list should include:

- Adoption social workers with at least 3 years' relevant post qualifying experience in childcare social work, including direct experience in adoption;
- Medical Adviser(s); and
- Other persons whom the agency considers suitable including specialists in education; race and culture; child and adolescent mental health services; and those with personal experience of adoption.

Source: Trafford Council, 'Adoption Panel': https://www.proceduresonline.com/trafford/cs/chapters/p_adop_panel.html [accessed 22 November 2022]

67. When questioned about the increased waiting times for ethnic minority children, Kelly Tolhurst, then Minister of State at the Department for Education, told us "To give you a very straight answer, I do not know all of the reasons why that is the case, but it is work that we are undertaking and concerned about."[65] The Minister was unable to point to any specific reasons or initiatives being undertaken to address the problem. [66]

68. **It is not clear that the change of law, removing the requirement to consider ethnicity, has changed practice. Ethnic minority children still wait too long to be adopted; a disparity which is unacceptable. There remains a shortage of prospective adopters who are prepared to adopt children from minority ethnic groups and those who do are insufficiently supported. The adoption workforce, and adoption panels, are insufficiently diverse. Failure to undertake active recruitment and inadequate pay are serious contributors to a lack of diversity in adoption panels.**

69. ***To help drive whole system change at all levels, we recommend that the Government create a task force dedicated to addressing ethnic and racial disparities in the adoption system. Membership should***

63 Q 108
64 Q 67
65 Q 191
66 *Ibid.*

include those with appropriate skills, expertise and experience, including regional and voluntary adoption agencies, community groups and those with experience of the adoption system. It should address issues of race and ethnicity in the adoption system. This should focus on issues including increasing diversity in the workforce and on adoption panels, support for transracial adopters, training for those working with minority ethnicity adopters and adoptees and recruiting and supporting minority ethnicity adopters. The task force should be outcome focused and directly accountable to the Secretary of State for Education, and should have specific, targeted and measurable outputs.

The matching register

70. Section 7 allowed for the making of the Adoption and Children Act Register (Search and Inspection) Regulations 2017, which extended direct access to the Adoption and Children Act Register to prospective adopters. The Register was an online nationwide database of children waiting for adoption and approved adopters. All adoption agencies were required to refer unmatched children no later than 90 days after their adoption plan was approved with the aim of bringing children and adopters together even if they didn't live in the same local authority. In August 2018 the Government announced its decision not to re-procure the database. The contract for its running ended on 31 March 2019 and the duty to refer children to the register was revoked. The Government stated that 93% of adoption agencies made use of alternative, paid registers and many had raised difficulties with the State-provided register. According to the Government, in 2017/18 the register contributed 7.4% of matches.[67]

71. All adoption agencies now use Link Maker, a service run by a social enterprise which requires local authorities to purchase a licence. On Link Maker, agencies can choose to share the profiles of children in need of an adoptive family and allow prospective adopters to review those profiles. Witnesses told us that Link Maker was a useful tool for adopters, and that feedback had been positive.[68]

72. However, our witnesses raised serious concerns about services or benefits of the Register which were lost with the move to Link Maker. There is also no longer a requirement for adoption agencies to place children on an equivalent register, such as Link Maker. Home For Good said that this was "potentially causing children who are likely to wait a long time for adoption to wait even longer, as Regional Adoption Agencies and Voluntary Adoption Agencies seek to find adopters from within their regions and may thus delay placing a child's profile on Link Maker."[69] Joanne Alper told us:

> "In the past, there was a more aspirational, national approach to trying to match children, because all families in England and Wales could see all the children who needed families and you could move fairly quickly. Now, there is more of a regional focus, which may slow down matching."[70]

67 HL Deb, 18 June 2019, cols 738–739
68 Q 37 and Q 52
69 Written evidence from Home for Good (CFA0083)
70 Q 37 (Joanne Alper)

Mandy Davies echoed this, saying: "regional adoption agencies can just keep the children in their agencies and not share them with the rest of the people on Link Maker."[71]

73. Due to restrictions on involvement in adoption support by commercial entities, Link Maker does not provide any social work support for matching.[72] Dr Carol Homden was critical of this, telling us:

> "The removal of the requirement for a registration has removed from the child the entitlement to be seen by any and all who might be able to provide support to that placement beyond boundaries and within a defined timescale. In my view, that is entirely negative for the child."

74. She added: "It has also removed the accompanying service for children, which was a professionally supervised service that enabled the proactive recommendation of links beyond boundaries and the challenge of practice presumptions or failure to follow up those links."[73]

75. Sarah Johal reiterated this, warning: "the fact that there is no practitioner support alongside it is problematic".[74]

76. Research by Coram-I suggested that "with the loss of the Register as many as 200 children a year could end up remaining in care rather than being adopted, and local authorities would spend around an extra £7.3m per year on supporting those children. To cover its annual cost, the Register needs to help find adoptive families for just two children."[75]

77. **The move away from the national matching register to commercial service providers has led to some improvement in usability for adopters. However, the loss of compulsory referrals and practitioner support for matching has undermined the ability of children to be seen by all those who may be able to provide them a permanent home. This is an unnecessary barrier to finding loving, secure homes for children, and one the Government failed to account for. *The Government should re-instate the statutory register on its original terms, working with commercial service providers to build a more functional platform which combines the usability of existing services with the matching support and referral requirements of the statutory register.***

Post-adoption support

78. Adoption placements can be challenging and require additional support, often owing to the trauma experienced by children in their early years and additional challenges in building a sense of self.

79. Under section 5 of the Act, local authorities would have been responsible for providing a personal budget for adoption support services. However, this section of the Act was never brought into force. The Government said that "following discussions with the Department's Adopter Reference Group it was decided not to bring this section into force. Adopters were concerned

71 Q 37 (Mandy Davies)
72 Q 52 (Alexandra Conroy Harris)
73 Q 52
74 Q 52 (Sarah Johal)
75 Written evidence from Dr Carol Homden (CFA0117)

they would not have the expertise to decide what therapy would be needed to support their child and how to buy this from a wide range of providers".[76] The Government stated that no feedback had been sought from adopters prior to the Act's passage.[77]

80. In 2015, the Government created the Adoption Support Fund (ASF). The ASF provides funds to local authorities and regional adoption agencies to pay for essential therapeutic services for the children of eligible adoptive and special guardianship order (SGO) families.[78] Families must be assessed by a local authority or RAA, who apply to the fund on their behalf.[79]

81. Witnesses broadly praised the fund but lamented that the system was overly bureaucratic and complicated, [80] with Al Coates telling us that families found they had to "fight at every juncture to get effective and meaningful support".[81] During our engagement session with mental health practitioners, participants felt that support systems for children who have been adopted are often very slow moving, with long waiting lists for post-adoption trauma support.[82] Professor Elsbeth Neil suggested that some adoptive parents are not aware of their entitlement to support.[83] She also highlighted that adoptive parents are only entitled to an assessment of need, and are not entitled to any actual level of post-adoption support.[84]

82. We heard that support should be more targeted at early intervention, where it can be more effective, rather than being provided only at the point of serious risk of harm or risk of placement breakdown. Naomi Angell, Consultant at Osbornes Law and children's lawyer with a specialism in adoption, told us:

> "I see families with their children—often teenagers—who are really challenging. They need support desperately and they have to fight every step of the way, when their energy should be given to bringing up these really challenging teenagers. It is often only at the point of breakdown that they get that support, and it is too late by then."[85]

During our engagement session with adopters, they stressed the importance of early intervention, telling us that problems—and especially underlying trauma of adopted children—are too often left untreated until they result in serious harm.[86]

83. Prior to 2022, funding for the ASF was only guaranteed for the following financial year. In 2022, the Government announced that funding would be secured until 2025. Witnesses were critical of the previous practice of one-year funding announcements, which the Local Government Association said

76 Written evidence from DfE (CFA0033)
77 *Ibid.*
78 DfE, 'Adoption support fund' (11 July 2022): https://www.gov.uk/guidance/adoption-support-fund-asf [accessed 27 October 2022]
79 First 4 Adoption, 'Adoption support fund': https://www.first4adoption.org.uk/adoption-support/financial-support/adoption-support-fund/ [accessed 1 February 2022]
80 Q 42 (Joanne Alper), Q 180 (Dr Matt Woolgar)
81 Q 63
82 See Appendix 11.
83 Q 28 (Professor Elsbeth Neil)
84 Q 32
85 Q 60 (Naomi Angell)
86 See Appendix 10.

limited opportunities "to plan for provision and ensure children and families receive the support they need".[87]

84. **We are concerned by the lack of post-adoption support—particularly that which is targeted at early intervention, addressing problems before they threaten the stability of placements. The Adoption Support Fund is a welcome development, but its narrow parameters, short term funding and excessively complex and bureaucratic application process hamper its effectiveness.** ***The Government should consider the expansion of the Adoption Support Fund, allowing it to be used for more than therapy and ensuring it is also focused on early intervention. We welcome the most recent multi-year settlement and encourage the Government to commit to continuing to guarantee sufficient and appropriate funding several years into the future.***

Contact

85. Contact between an adopted child and their birth family can help them to develop their sense of self.[88] However, witnesses stressed that there is no 'one size fits all' approach to contact arrangements, and that all parties involved need careful support to manage what can be a challenging undertaking.[89] Currently, the majority of contact is done via 'Letterbox' contact, whereby letters are shared once or twice a year between adoptive parents and a child's birth family.

86. Section 9 makes provisions for refusing and requiring post-adoption contact. It created a statutory framework for post-adoption contact, allowing the court to issue an order either providing or prohibiting contact with specific individuals including blood relatives or relatives through marriage or civil partnership. Under the Act, the court must consider the extent to which allowing such contact would disrupt the child's new life and result in harm, the applicant's connection to the child, and any representations made to the court by the child or the adoptive family.

87. Contributors to our inquiry agreed that getting the arrangements for contact right was critical to the success of an adoptive placement. Al Coates warned: "contact is the issue that will define whether adoption is still with us in 20 or 30 years." He added: "We need a flexible, intuitive, meaningful, risk averse but appropriately safe system that allows for meaningful support for lifelong contact with safe members of birth families."[90]

88. However, we heard that the current system for contact is too rigid. Naomi Angell told us that currently "orders made for contact are not appropriate. They take a snapshot of a point in time, and it is hard to force an order on adopters who really do not want that rigidity"[91] Professor Elsbeth Neil called for "more individualised contact planning".[92]

89. Social media has significantly changed the situation, with birth families and adopted children able to find each other more easily.[93] Jo Mitchell noted

87 Written evidence from the Local Government Association (CFA0066)
88 Q 66 (Naomi Angell)
89 Q 43 (Natausha van Vliet)
90 Q 65
91 *Ibid.*
92 Q 29
93 Q 60 (Naomi Angell)

that young people are tracing and meeting with their birth parents via social media, without the knowledge of their adoptive parents.[94] Professor Neil suggested that this rise in social media contact is driven by unmet needs arising from the insufficiency and irregularity of letterbox contact.[95]

90. During our discussion with adoptive parents, many saw the benefits of contact with birth parents and siblings but said that letters often went unanswered. There was enthusiasm for moving contact from letters to an online portal. However, there was concern about the "shambles" contact was becoming, with teenagers able secretly to reconnect with birth parents via social media.[96]

91. We also met birth parents, many of whom similarly felt the current contact system was insufficient. They argued that reforming it should be the top priority in this area. There was a consensus that letterbox contact should be replaced by digital communication, including other media such as photographs and voice recordings.[97]

92. The post-legislative memorandum supplied by the Government indicates that it has not made any assessment of the provisions relating to contact. However, it did note that it was "also aware that unwarranted contact with adoptive children has increased in recent years by birth relatives using social media."[98] The then Minister expressed a view that the Act's provisions on contact has provided clarity, but acknowledged that letterbox contact can be variable and that the Government needs to "get with 2022 and come up with policies that support people".[99]

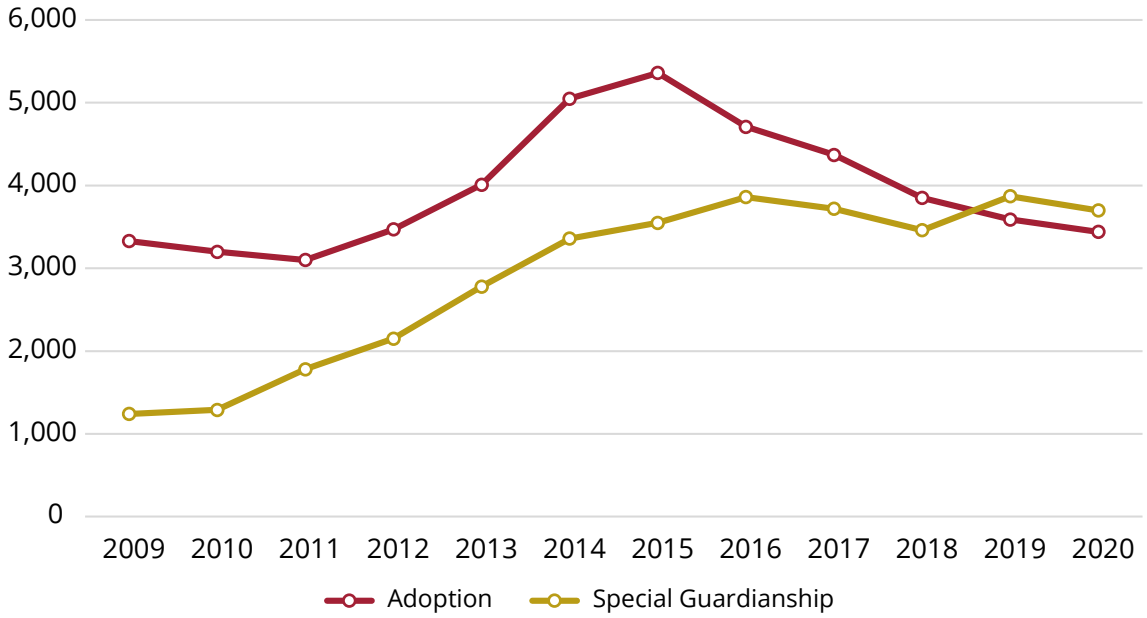
93. **Contact, where safe, appropriate and properly managed, can be valuable for an adoptive child, their new family and their birth family, including siblings and other relatives. However, contact orders and support can vary, and the current system of letterbox contact is outdated. The failure to modernise contact threatens to undermine the adoption system. *We urge the Government to support adoption agencies in developing and rolling-out a safe and appropriate national digital system for contact as a priority. This system should allow for faster and more intuitive contact, while ensuring contact remains moderated and safe for all.***

Kinship care

94. Kinship care refers to the circumstances whereby a child lives with a relative or friend who isn't their birth parent(s). This can be done formally, through a special guardianship order (SGO), child arrangement order or informally without a legal order. The Act did not address SGOs and focused its changes on the adoption system. However, the number of children leaving care through an SGO has been steadily rising, and overtook the number of adoptions in 2019.

94 Q 22
95 Q 30 (Professor Elsbeth Neil)
96 See Appendix 10.
97 See Appendix 8.
98 Written evidence from DfE (CFA0001)
99 Q 185 (Kelly Tolhurst MP)

Figure 4: The number of children looked after during a year leaving via an adoption order or special guardianship order



Source: CoramBAAF, 'Statistics on Special Guardianship': https://corambaaf.org.uk/practice-areas/kinship-care/special-guardianship/statistics-special-guardianship [accessed 28 November 2022]

95. We heard that not enshrining the rights of kinship carers in legislation was a failure of the Act.[100] Kinship carers tend to be older, in poorer health, living in poverty and deprivation, living in insecure accommodation, and in low paid employment or unemployed, meaning their support needs can be greater.[101]

96. Kinship carers who are caring for a child under an SGO and who were previously looked after became entitled to support via the Adoption Support Fund in 2016. However, those we spoke to felt that this support is poorly signposted and take up rates remain low as a result. Professor Elsbeth Neil told us "It is great that they can now access the adoption support fund, but the evidence is that they are not accessing in it anything like the numbers that adoptive families are. A relatively small proportion of people accessing the adoption support fund are special guardians."[102] On our visit to a family court, we heard about how a lack of support for kinship carers could be contributing to the breakdown of special guardianship placements.[103]

97. Many kinship carers do so outside of a legal order (i.e. without an SGO), meaning they aren't entitled to the same supports as adopters or special guardians. Local authorities have a duty to safeguard and promote the welfare of children in their area who are 'in need' by providing a range of family support services. This can include financial support, but it is typically restricted to those in particularly difficult circumstances.[104] As a result, in England, allowances for kinship carers are discretionary and levels of support

100 Q 25 (Jo Mitchell)
101 Written evidence from Kinship (CFA0080)
102 Q 26
103 See Appendix 9.
104 Kinship, 'What financial support are kinship carers entitled to?': https://kinship.org.uk/2-what-financial-support-are-kinship-carers-entitled-to/ [accessed 22 November 2022]

vary between and within local authority areas.[105] There is a large amount of variability in the prevalence of kinship care across local authorities in England, with rates of kinship care placements ranging from 4% to 39%.[106]

98. Kinship carers can also face unique challenges in managing relationships with birth families as many of them, by definition, have close relationships with the child's birth family. One kinship carer told us:

> "Too many families are left struggling with contact arrangements, volatile birth parents, being taken back to court repeatedly to try and overturn the SGO or ask for more contact. Special guardians receive little or no support and are often locked in battle with birth parents for years after the SGO is awarded, leaving special guardians exhausted and traumatised and kinship children without therapy due to ongoing contact and leaving the family little time for family time and to build connections with each other."

Dr Lucy Peake, CEO of Kinship, noted that "there is a huge challenge for many kinship carers in managing ongoing contact and relationships within the family" and flagged that many carers needed "some help and advice about how to manage it (contact)".[107]

99. The charity Kinship found that two-thirds of kinship carers who needed support with contact did not receive it, and called for all kinship carers, birth parents and children to be offered support to manage contact to ensure good long-term relationships.[108] The carers' relationships with birth parents can also impact on care proceedings in the courts. Naomi Angell told us that potential kinship carers "often stand back when the birth parents are being assessed, because they do not want to interfere or to think that they are not supporting the birth parents, so they can step forward really quite late in the process", impacting the timeline of cases.[109] Kinship noted: "Often, kinship carers are only identified towards the end of proceedings and assessments are rushed" and called for work to be completed pre-proceedings to identify and assess potential kinship carers.[110]

100. The then Minister agreed with us that support for kinship carers is critical and acknowledged the differing support needs of kinship carers. She promised that the Government is exploring improved support, including financial support, for kinship carers but did not provide any further information on what this support might entail.[111]

101. **The lack of consideration given to kinship care when the Act was passed is a clear failure, made only more critical with the rise of Special Guardianship Orders in the intervening years. We are concerned by the lack of support provided to kinship carers, whose situations are often, if anything, more challenging than those of adopters. While the extension of the Adoption Support Fund to kinship carers**

105 Written evidence from Kinship (CFA0080)
106 What Works for Children's Social Care, *Understanding formal kinship care arrangements in England*, May 2022: https://whatworks-csc.org.uk/wp-content/uploads/WWCSC_kinshipcare_summary_report_FINAL_accessible.pdf [accessed 22 November 2022]
107 Q 21 (Dr Lucy Peake)
108 Written evidence from Kinship (CFA0080)
109 Q 62
110 Written evidence from Kinship (CFA0080)
111 Q 190 (Kelly Tolhurst MP)

with a Special Guardianship Order is welcome, take-up remains low. Support for kinship carers providing care outside of an SGO is discretionary and varies significantly between local authorities, leading to an unjust distribution of support. ***The Government should undertake a promotional campaign to increase take-up of the fund by those parenting under a Special Guardianship Order, beginning with renaming the fund to reflect that it is not limited to adopters.***

102. **Owing to their relationship with the child's birth parents, many kinship carers do not come to the attention of children's services and the courts as potential carers until too late in the process, in an effort to avoid 'competition' with birth parents. This can lead to unnecessary delays and rushed assessments, which are not in the best interests of the child.** ***We recommend that possible kinship carers should be identified and assessed alongside other options during pre-proceedings. This should be done in a manner which does not presume any particular outcome, with this made clear to all involved.***

CHAPTER 3: FAMILY JUSTICE

103. Part 2 of the Act makes changes to both private and public family law, most of which focus on making the system simpler, faster and less adversarial. The changes apply to England and Wales.

Box 4: Public and private family law

The Family Court, together with the Family Division of the High Court, seeks to resolve issues concerning families and children, mainly following family breakdown and disputes. The Family Court is a large body with four tiers of judiciary, from High Court Judges to lay Magistrates, with responsibility for adults and children.

For adults, the main areas of work concern the making of fair financial arrangements after divorce or dissolution and giving protection from domestic abuse. For children, the work of the court is generally divided between what are termed public law and private law, though some families are involved with both in what are sometimes termed 'cross-over cases'.

In public law cases, the state has an interest in protecting a child at risk of significant harm or neglect, with applications brought by the Children's Services departments of local authorities; some public law cases go on to consider issues about adoption.

Private law cases concern disputes between individuals about aspects of parenting and children's upbringing. Common issues include how much time a child will spend with each parent, but many cases involve allegations of domestic abuse, drug and alcohol misuse, or other child protection concerns.

26 week timeframe

104. Section 14 introduced a maximum 26 week limit for completing care and supervision proceedings when the courts are considering whether a child should be taken into care or placed with an alternative carer. This can be extended for up to eight weeks at a time, if necessary to resolve proceedings justly.

105. As Dr Carol Homden, Chief Executive of Coram, noted, "For a six-month-old, 26 weeks is their whole life".[112] The importance of achieving a 26 week timeframe was emphasised by Lisa Harker, Director of the Nuffield Family Justice Observatory, who said that "timely decision-making is crucial for children, as we know from all the research about the impact of delay on children and the need for consistent relationships in their lives, particularly at a young age."[113] Resolution noted that the 26 week limit "helps to focus minds on resolving cases within that time if possible".[114]

106. However, some witnesses noted the challenges associated with a target of 26 weeks. Professor Elsbeth Neil raised a concern that the 26 week timeframe was not sufficient to deal with some complex cases, including those of new-borns taken into care and cases of domestic abuse.[115] Dr Julie Doughty, Senior Lecturer in Law at Cardiff University, noted that the 26 week timeframe may prove too constraining if a kinship carer makes themselves known very

112 Q 57
113 Q 80
114 Written evidence from Resolution (CFA0078)
115 Q 31

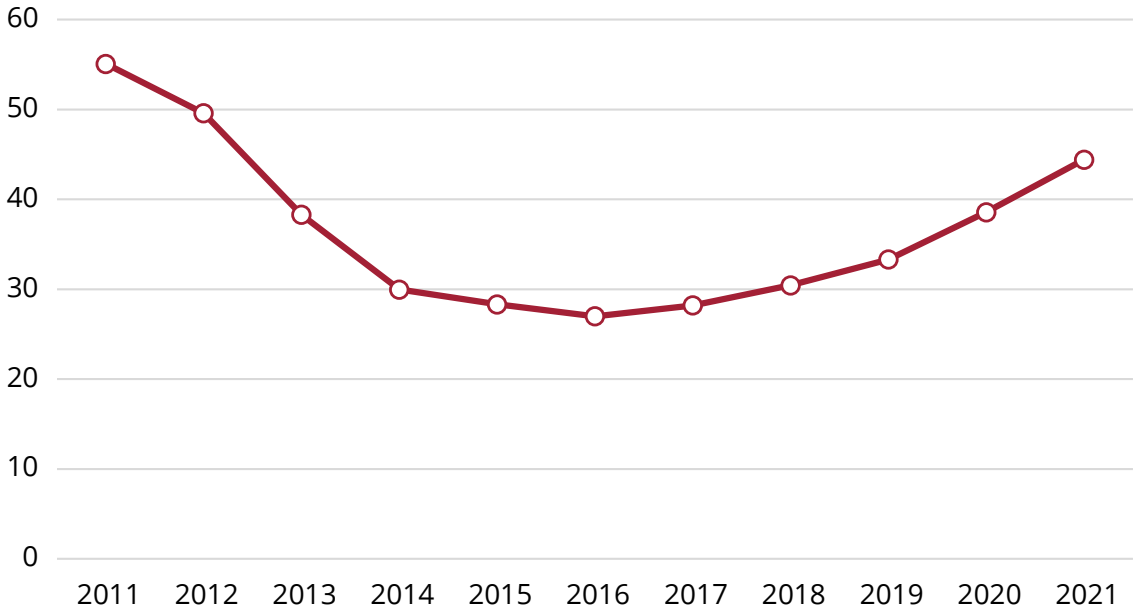
late in the process, leading to a rushed assessment.[116] In these cases, a rigid adherence to 26 weeks could lead to detrimental outcomes for the child. Extensions may be needed but are not always granted. Dr Doughty warned that "on the face of it, that flexibility is there, but it is not necessarily being applied in a flexible way."[117] The NSPCC explained: "the current average length of care proceedings suggests children and families are having to endure the anxiety of repeated eight-week extensions until proceedings are resolved."[118]

107. Ms Harker urged a more holistic view of the benefits and challenges of 26 weeks, saying: "An unintended consequence of the 26 week rule was that it became the success measure through which everything was judged, and we ought to go back to thinking about the best interests of the child. Yes, focus on timeliness, but also on the impact and outcomes for children, which is ultimately the most important thing."[119] The NSPCC raised concerns that "in certain cases, over-adherence to the 26 week target can prevent the use of innovative interventions, which are more likely to meet the long-term needs of the child".[120]

108. The average (mean) length of time for completing care and supervision cases is well above 26 weeks. Between January and March 2022, the average time to complete care proceedings was 49 weeks, and only 17% of cases were completed within the 26 week (6 month) timeframe.[121][122] The average time fell between 2011 and 2016, to a low of 27 weeks, but has been rising since. Similarly, the percentage of cases completed within the 26 week timeframe steadily rose to a high of 62% in 2016 but has been falling since. Delays have also been seen in private law, with cases taking on average 46 weeks to reach closure.[123]

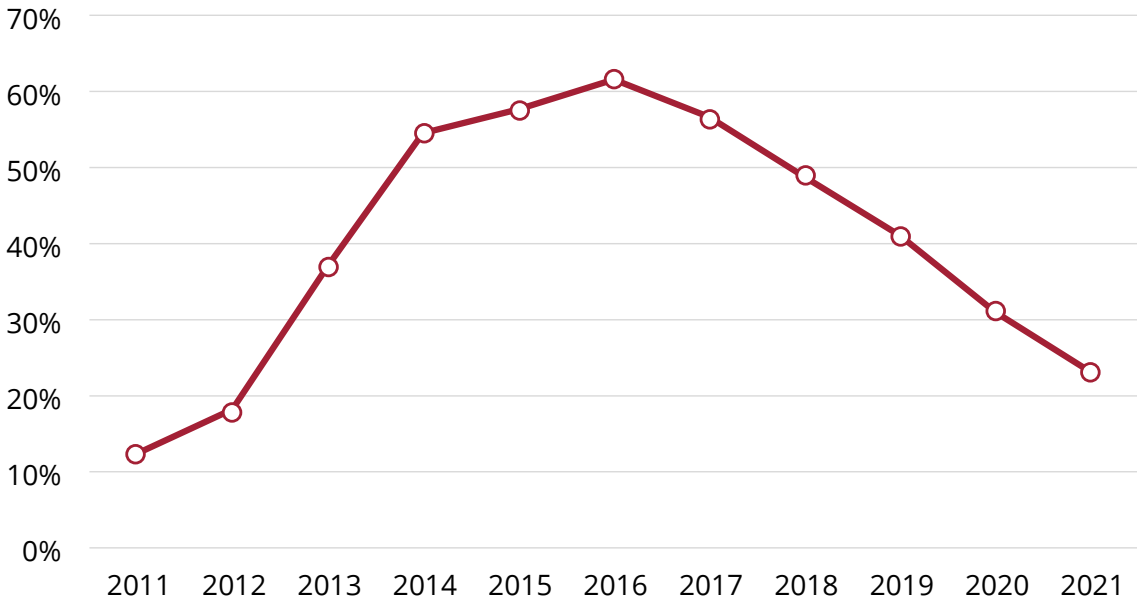
116 Q 70
117 *Ibid.*
118 Written evidence from NSPCC (CFA0071)
119 Q 80
120 Written evidence from NSPCC (CFA0071)
121 MoJ, 'Family Court Statistics Quarterly: October to December 2021' (8 April 2022): https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2022/family-court-statistics-quarterly-april-to-june-2022#children-act---private-law [accessed 28 October 2022]
122 MoJ, 'Family Court Statistics Quarterly: January to March 2022' (30 June 2022): https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2022/family-court-statistics-quarterly-january-to-march-2022#children-act---public-law [accessed 28 October 2022]
123 MoJ, 'Family Court Statistics Quarterly: April to June 2022' (12 October 2022): https://www.gov.uk/government/statistics/family-court-statistics-quarterly-april-to-june-2022/family-court-statistics-quarterly-april-to-june-2022#children-act---private-law [accessed 15 November 2022]

Figure 5: The average number of weeks taken to complete proceedings



Source: MoJ, 'Family Court Statistics Quarterly: October to December 2021' (8 April 2022): https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021 [accessed 15 November 2022]

Figure 6: The percentage of cases completed within the 26 week timeframe



Source: MoJ, 'Family Court Statistics Quarterly: October to December 2021' (8 April 2022): https://www.gov.uk/government/statistics/family-court-statistics-quarterly-october-to-december-2021 [accessed 15 November 2022]

109. Several reasons for the increase in delays were put forward to us. The Government's memorandum said: "The impact of the COVID-19 pandemic led to a backlog of cases in the family courts, which significantly impacted the timeliness of proceedings."[124] However, the time taken to complete proceedings had been rising from 2017 onwards, well before the pandemic.

124 Written evidence from DfE (CFA0001)

Neal Barcoe, Deputy Director of Family Justice Policy at the Ministry of Justice. suggested that delays in obtaining expert evidence and how well local authorities engage with families also contributed to delays.[125]

110. Professor Judith Masson, Emeritus Professor at the University of Bristol Law School, told us that, previously, 26 weeks had been achieved by "focusing on doing what the legislation said, so a strong focus on the 26 weeks, a reduction in the number of experts, cases being properly prepared at the start and judges having what the judiciary usually call robust case management." However, she noted that "a lot of those things have gone out the window."[126]

111. Our evidence suggests that resource shortages in the courts have played a major part in delays. Coram wrote: "In many areas the 26 week rule is largely irrelevant, as there are inadequate resources, either in court time or in availability of experts to provide evidence within the timeframe".[127] Dr Julie Doughty pointed to a shortage of judges as a reason for the delays, saying: "the less judge time you have and the fewer judges you have, the less management there will be. Things become less efficient and that just builds in more and more delays."[128] Mavis Maclean CBE, Senior Research Associate at the Department of Social Policy and Innovation, University of Oxford, told us that a shortage of administrative support staff had led to judges taking on more bureaucratic tasks, which she deemed an "extraordinarily extravagant use of the time of a judge".[129] During our visit to Oxford Combined Court,, staff from HMCTS told us that the additional administrative work demanded by virtual proceedings had put them under added strain.[130] Professor Masson indicated that a shortage of magistrates was also an issue in the system.[131]

112. We also note that Children and Family Court Advisory and Support Service (Cafcass) is under strain, which is contributing to delays. Mavis Maclean told us that Cafcass's workload has increased, saying "It simply has more to do."[132] Jacky Tiotto, Chief Executive of Cafcass, told us about the depth of the resourcing issue:

> "At Cafcass, we have resourcing problems beyond the 26 weeks. We have a backlog now of about 7,000 children that we did not have before March 2020. We do not have a solution for that. We do not have the social work capacity to manage that backlog. The easy answer for us in allocating work and getting it through is more staffing, I am afraid; it really is that basic. Even if we took out the backlog and pretended COVID had not happened, we still would not have had enough guardians to resource the demand in public law that was there at the time."[133]

Professor Judith Masson summarised: "if we are making more demands on resources than we can deliver, we will get delay."[134]

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125 Q 8
126 Q 70
127 Written evidence from Coram (CFA0117)
128 Q 70
129 Q 95
130 See Appendix 9.
131 Q 70
132 Q 96
133 Q 145
134 Q 70

113. We heard that the use of expert witnesses can be a further cause of delay. Section 13 introduced a requirement that courts must give permission for expert evidence to be used in care proceedings and do so only when this is necessary to resolve the case justly. Box 5 sets out some of the most commonly used experts in the family court.

Box 5: Types of experts in the family court

The family court makes significant use of experts in a wide variety of fields. Experts are often, though not always, appointed as 'single joint experts', instructed jointly by all the relevant parties. Common examples of experts used in family cases include:

- Independent social workers in both public and private children disputes. They may provide a parenting assessment in care proceedings when the local authority is not able to do it, or to prepare a welfare report in private children proceedings when the parties consider that particular expertise is needed beyond what Cafcass can provide;
- Psychologists and psychiatrists in both public and private children disputes, to assess one or more family member;
- Medical experts to comment on causation or prognosis of injuries or illnesses, most commonly in public children cases and disputes about medical treatment for a child;
- Financial experts like pensions advisors or property valuers in financial remedy proceedings; and,
- Foreign legal experts in cases with an international element where the family court needs to understand the family's legal position in another jurisdiction.

114. Research commissioned by the Department for Education found that social workers were increasingly being recognised as experts, but there was some variation in perception amongst individual judges.[135] A review on the outcomes of care proceedings for children before and after the reforms, conducted by academics and published in 2019, reported that judges were happy with their ability to restrict expert testimony and hear from social workers who knew the family.[136]

115. The use and availability of expert witnesses was pointed to as a cause of delays in the family court. Professor Masson argued: "The more experts you have, the longer a case will take and the longer it will be before a decision is made for the child. Yet the quality of information in most cases does not really change"[137] Hannah Markham KC, Chair of the Family Law Bar Association and Chair of Women in Family Law, described "an extraordinarily difficult time at the moment trying to get expert witnesses", which is contributing to delays.[138] The NSPCC wrote that there should be a focus on using

135 DfE, *Impact of the Family Justice Reforms on Front-line Practice Phase One: The Public Law Outline* (August 2015): https://www.familylaw.co.uk/docs/pdf-files/Family_justice_review_the_effect_on_local_authorities.pdf [accessed 28 October 2022]

136 School of Law, University of Bristol, *Child Protection in Court: Outcomes for Children, Establishing outcomes of care proceedings for children before and after care proceedings reform* (2019): https://research-information.bris.ac.uk/ws/portalfiles/portal/214931511/FINAL_REPORT.pdf [accessed 28 October 2022]

137 Q 71

138 Q 82

professionals working directly with children, rather than relying on external experts, and that there should be a renewed focus on assessing the necessity of experts.[139]

116. The quality of expert witnesses was also called into question. Dr Matt Woolgar, Consultant Clinical Psychologist at the National Adoption and Fostering Service South London & Maudsley NHS Trust, told us that expert witness reports can be variable in quality, and that reports used in care and supervision proceedings may not stand up to repeat scrutiny.[140] Written submissions to our inquiry pointed to the problem of witnesses who are not properly trained, qualified or experienced being used in family proceedings.[141]

117. Overall, there is a lack of quantitative evidence about the use of expert witnesses in the courts. Lisa Harker told us:

> " … this is a very good example of an area where there is insufficient data available … We ought to be tracking the use of expert witnesses systematically across the system, and understanding where expert witnesses are being used differently or where there are major gaps."[142]

118. The Family Justice Board (FJB) is the primary forum for setting the direction of the family justice system in England and Wales and overseeing performance. Its membership includes Ministers; representatives from Cafcass, ADCS, Ofsted and HMCTS; and officials. Sir Andrew McFarlane, President of the Family Division of the High Court of England and Wales, sits as an observer.[143] Officials from the Department of Justice said that the Board is "very focused on the performance of the system" and meets "regularly to discuss how the system is performing and identify where there are delays and where efficiencies could be made".[144]

119. The Board is designed to represent and provide leadership to all elements of the family justice system. Our witnesses were sceptical about the extent to which such a 'system' truly exists in practice. Sir Andrew McFarlane, President of the Family Division of the High Court of England and Wales and Chair of the Family Justice Council, said:

> "There is no system […] What we have is a list of different agencies—the judiciary, the Courts Service, Cafcass, the local authorities and then the police, the health service, the Legal Aid Agency and the professions—and everybody has to co-operate with each other for a case to take place. There is no single system that requires them to work together, but we try to, and we do."[145]

Sir James Munby, former President of the Family Division and Head of Family Justice, noted that while the judiciary and Cafcass have a single point of leadership, the same does not exist for local authorities as a whole. This, he said, meant: "We will never have a single, cohesive family justice system

139 Written evidence from NSPCC (CFA0071)
140 Q 181
141 Written evidence from Carla James (CFA0021) and Women's Resource Centre (CFA0064)
142 Q 82
143 HM Government, 'Family Justice Board': https://www.gov.uk/government/groups/family-justice-board [accessed 28 October 2022]
144 Q 2 (Neal Barcoe)
145 Q 142

unless, somehow, we manage to solve the local authority issue, that there is no single lever there."[146]

120. Jacky Tiotto told us that the Family Justice Board is "not strong enough" and that stronger leadership and an agreed business plan for the family justice system is needed.[147] Sir Andrew McFarlane agreed, saying the Board "really does not work. It meets once every three or four months. This is not at all to be critical of any of the individuals, but the Ministers change; quite often it is never the same two chairs from one meeting to the next."[148] He called for the Board to have an "acknowledged and respected person co-ordinating it to draw everyone together."[149] Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice, assured us that the Government remains entirely committed to the 26 week timeframe and that the Family Justice Board is due to develop a "detailed plan, with specific KPIs and comparative dashboards across different regions of the country" to tackle the delays. However, Lord Bellamy would not be drawn on committing to a specific reduction.[150]

121. **The 26 week timeframe imposed by the Act has generally been positive. It has helped to bring cultural change, highlighting that it is essential that children—particularly the very youngest children—receive timely judgements. While flexibility may sometimes be needed in the most complex of cases, the average case duration has been allowed to become too long. Particular causes for concern include resource pressures on local authorities and Cafcass, pressures on judicial time, the use of expert witnesses and a lack of data about the functioning of the family justice system.**

122. **The Act's provisions on the use of expert witnesses have been welcome, and the intention to limit the unnecessary use of experts is a correct one. However, we are concerned that there may be variation in both the quality and frequency of expert witness usage across the courts. In cases where expert witnesses are necessary, the lack of ready availability of expert witnesses can pose further challenge to concluding cases in a timely manner. Improved data collection is needed to clarify the scale of the problem.**

123. ***There is no easy solution to the creeping delays in family law cases, but it is clear both that more resources—and more efficient use of resources—are needed. Improved data gathering and sharing are needed to identify and tackle delays as they emerge. We recognise that the Family Justice Board faces a difficult task in trying to give guidance to the various participants within the Family Justice System, but we are concerned that it may nonetheless not be fulfilling its role to the full extent that is possible. We consider that stable, high-level leadership of the Board is essential, and recommend the appointment of an independent Chair at a senior level, with a view to the Board being able to show greater leadership and share insights with Local Family Justice Boards and others. We welcome the Government's commitment to making a significant dent in reducing***

146 Q 97
147 Q 142
148 *Ibid.*
149 Q 151
150 Q 186

delays by 2023 but call on them to quantify the reduction they are seeking, alongside specified timescales. We urge the Government to publish a target for the timeliness of public children cases, along with an associated action plan laying out how it aims to achieve this reduction and how it will measure progress.

Data use in the family justice system

124. The availability of data is critical in order to be able to understand fully the functioning of the family justice system, and to help in identifying problems as they arise.

125. We heard in many cases about an absence of data. Professor Elaine Farmer, Emeritus Professor of Child and Family Studies at the University of Bristol, told us: "We simply do not know how many children known to local authorities are in kinship care."[151] Al Coates, founder of the Adoption and Fostering Podcast and adoptive parent, said "we do not know how many children are being adopted by parents of a different race or ethnicity. That data is not collected, and the response is always, "What do we do with that data? If we are bothered about it, we measure what matters."[152] Jacky Tiotto warned that: "The data we have on the effectiveness of proceedings and what happens to children is pretty poor. We have to be very worried about having a family justice system that does not know how children fare in it."[153]

126. Witnesses also highlighted a lack of longitudinal data which allows the tracking of outcomes of cases. Mavis Maclean told us:

> "We know so little about mediation. It is one of the big data black holes in the family justice world. We do not even know whether people who have been to mediation and have come to some form of agreement show up in court six months later"[154]

Professor Rosemary Hunter, Professor of Law and Socio-Legal Studies at the University of Kent, said, on court orders, "…the court has no way of following up on what happens after orders are made, unless there is a return to court or enforcement proceedings. The court does not routinely gather any information on what happens as a result of the orders that it makes".[155]

127. Our witnesses called for improved data collection and use in the family justice system. Professor Judith Masson said: "We need more and better data in the system, and it needs to be fed back to the courts in order to get much more similarity in decisions, much more consistency and equal justice across the court network."[156] Lisa Harker told us: "The data that we have on the family justice system is in its infancy but improving, and a huge amount could be achieved by sharing that information and trying to understand why some areas seem to be working better than others."[157] Sir James Munby summarised that "To get uniformity of performance, one needs proper data."[158]

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151 Q 24
152 Q 67
153 Q 140
154 Q 98
155 Q 90
156 Q 76
157 Q 81
158 Q 95 (Sir James Munby)

128. **Improved data collection and data sharing are necessary to track the performance of the family justice system, identify regional inequalities and ensure consistent outcomes for children and their families. The current absence of sufficient data on court outcomes is an evident failure of the system, and without improved data the Government is at risk of making major policy changes which have far reaching impacts on the lives of children and families without a sound evidentiary basis. *The Government should improve its collection and sharing of data on the family justice system.***

Mediation and early legal advice

129. Section 10 requires anyone wishing to make a relevant family application[159] to attend a family mediation, information and assessment meeting (MIAM) to learn about and consider mediation. A MIAM lasts approximately an hour, during which time the situation will be discussed with a mediator who will provide information about mediation and a judgement on whether mediation may be appropriate for the case in question. Only the applicant is required to attend a MIAM, with no similar duty on the respondent. There are exceptions for attendance at a MIAM, including domestic abuse, urgency, and child protection concerns.

130. In its post-legislative memorandum, the Government stated that take-up of MIAMs and mediation had been "lower than anticipated", but later clarified that it did not publish any specific targets.[160] It did note that data collected from HMCTS suggested that only 35% of applicants to the family court attended a MIAM when their application type would have required MIAM attendance unless a valid exemption were claimed.[161]

131. MIAMs, and by extension mediation, are intended to divert cases which may not need to be heard by the courts. However, our witnesses felt that too much focus had been placed on this group who may theoretically benefit from mediation and be able to avoid court proceedings. Professor Rosemary Hunter said: "It seems that there has been an awful lot of legislative and policy effort focused on trying to reroute that small minority (who do not need to go to court)."[162] Sir Andrew McFarlane also felt it was unfortunate that only the applicant is required to attend a MIAM, rather than both parents.[163]

132. Mavis Maclean was also concerned about efforts to dissuade people from the courts, saying "a court is there to help people", and noted that very little is known about mediation, calling it "one of the big data black holes in the family justice world".[164]

159 These include child arrangements orders, parental responsibility orders, special guardianship orders, orders appointing a child's guardian and orders giving permission to change a child's surname or remove a child from the United Kingdom.
160 Written evidence from DfE (CFA0001) and (CFA0033)
161 Written evidence from DfE (CFA0033)
162 Q 87
163 Q 140
164 Q 98

133. Furthermore, witnesses were critical of the focus on mediation over other forms of non-court dispute resolution. Sir James Munby argued:

> " … one of the great disasters and one of the great mistakes by government in 2013 was identifying mediation as the non-court solution […] We need to encourage people to use all of these techniques, recognising that one technique may suit one case and another technique may suit another couple. The idea that one techniques suits everybody and all cases is, I am afraid, simply silly."[165]

Sir Andrew McFarlane told us: "we owe it to society to form a whole range of options. It is a mistake to think it is just mediation".[166] The Ministry of Justice is "seriously considering further measures to make reasonable efforts to mediate more or less obligatory in family law cases".[167]

Box 6: Non-court-based dispute resolution methods

Many families enter into private arrangements reached entirely informally, with no formal input from any professionals beyond possible background advice. For those families unable to reach a private agreement on their own, there are a number of established alternatives, other than applying to the family court.

The most well-known non-court resolution method is mediation, where a trained independent mediator assists the parties to try to reach an agreement between them. If agreement is reached, it is recorded in a Memorandum of Understanding, and can be used to form the basis of a consent order if the parties want their agreement to be legally enforceable.

Arbitration is a process more like a court case, but where the parties appoint an independent arbitrator (who is usually a senior lawyer or retired judge) to resolve the dispute. Arbitrators' decisions are binding on the parties, and there is a formal process required to enter into arbitration.

Other methods may involve lawyers but do so outside the courts. Collaborative law is a lawyer-led method where the parties' lawyers commit to trying to reach agreement by negotiation, with the lawyer(s) precluded from acting for their client if court proceedings are commenced. Less formally, solicitors usually seek to negotiate informally before and after court proceedings are initiated. A newer process is referred to as 'one lawyer, two clients', where a single lawyer meets with both parties, receives relevant background, and gives independent advice about the likely outcome of the dispute, with both parties receiving the same information. A similar process can be undertaken by way of early neutral evaluation, where parties (usually each having their own lawyer) approach a neutral (legal) expert to assess the case and provide an independent assessment.

134. The impact of the Act, both generally and specifically in relation to MIAMs, cannot be separated from the context of other reforms to the family justice system which were occurring at the same time. The Act came two years after the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which introduced funding cuts to legal aid. Private family law (i.e. disputes between private individuals, such as divorce and private children proceedings) was removed from the scope of legal aid, other than for limited exceptions mainly requiring an applicant to show that they were subjected

165 Q 98
166 Q 147
167 Q 187 (Lord Bellamy)

to domestic abuse. The financial means test was changed, ending automatic eligibility for those in receipt of means-tested benefits, and reducing the limit on the maximum income and capital an individual can have to qualify for legal aid. Legal aid is generally available in two forms—legal help and legal representation. Legal help entails initial advice and assistance to solve a problem, while legal representation refers to formal representation by a solicitor or barrister in court or at tribunal.

135. Neal Barcoe from the Ministry of Justice said that there had been "a significant drop in the number of mediated sessions following the introduction of LASPO".[168] He also suggested that there are misconceptions about what mediation entails, saying: "a common refrain will be, 'I don't want to do marriage counselling' or comments of that nature." He also noted that while MIAMs are theoretically obligatory, in practice they are not always enforced as parties are reluctant and judges may wish to proceed with the case as quickly as possible to protect the interests of the child.[169]

136. Sir James Munby argued: "Money properly spent at an early stage usually pays dividends later on. One of the great tragedies of LASPO is that what the elderly amongst us fondly remember as green form legal aid has gone and there is a desperate need to have proper legal advice right at the outset, if only to manage expectations."[170] Under the Green Form scheme, solicitors could provide limited legal advice and assistance on the basis of a simplified income and expenditure test.[171] Sir Andrew McFarlane also drew our attention to green form legal aid and said it had "paid dividends", but suggested that it should be replaced with, "some form of professional who might be able to signpost them to mediation and to some form of educational videos, books and information about dispute resolution or to a lawyer would be helpful."[172] Lord Bellamy was clear about the value of early intervention, telling us "it is probably a good use of public resources to invest further in mediation and early resolution of these very difficult cases."[173]

137. Dr Julie Doughty raised concern that the cuts to legal aid had just shifted costs to other parts of the court system, "because it is those working in the Courts Service who are having to deal with these cases where litigants in person, understandably, do not know how to conduct the cases and are therefore taking more time than if they had had some sort of advice."[174] Professor Judith Masson agreed with this, saying that "there are cases going to court that lawyers would have headed off. With legal aid, a lawyer would have said, 'No, it's not worth taking this to court' or 'Try mediation'. That has been lost."[175]

138. Our witnesses recommended better signposting and education about all non-court-based resolution options, not just mediation, as a solution. Professor Hunter recommended a government maintained list of non-court options, early legal advice and preparation prior to attempting mediation, and

168 Q 8
169 Q 8 (Neal Barcoe)
170 Q 100 (Sir James Munby)
171 Sir Henry Brooke, *The History of Legal Aid 1945–2010* (September 2017), p 8: https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-6-F-1.pdf [accessed 28 November 2022]
172 Q 143
173 Q 187
174 Q 73
175 *Ibid.*

comprehensive signposting of information at all stages in the family court.[176] As noted above, Sir Andrew recommended signposting to mediation, legal professionals, and books and information about dispute resolution.[177] Similarly, Resolution recommended replacing MIAMs with a broader Advice and Information Meeting (an AIM) earlier in the separation process, and which focuses on all methods of dispute resolution.[178]

139. **Mediation can help to divert cases from court, helping parties to reach settlement and limiting the burden on court time. However, in many cases mediation is not appropriate. Some couples have genuinely intractable disagreements which require court intervention to settle. The Government's focus on mediation as a mechanism of reducing the court backlog, to the exclusion of all other forms of dispute resolution, is excessive and we have serious concern about any moves to make mediation functionally compulsory**

140. **MIAMs have been ineffective and had low engagement rates. Their singular focus on mediation combined with no requirement for the respondent to attend and a perception of MIAMs as a form of relationship counselling have hampered their success. Many couples would instead benefit from a source of clear, impartial information on separation and, if necessary, general legal advice which can direct them to non-court or court-based resolution as appropriate. Some couples, having received this information, will still have reasons to continue towards the court to try to resolve disputes. Legal representation in these cases can help improve the efficiency of these cases, but the absence of legal aid in many private law cases has precluded this.**

141. ***We recommend that the Government produce and maintain a website which provides impartial advice for separating couples, helping them to understand the family justice system and what the courts can resolve, as well as what they cannot. We urge the Government to reconsider its proposals to make mediation effectively obligatory. Instead, we recommend that the MIAMs and mediation voucher schemes be replaced by a universal voucher scheme for a general advice appointment, at which point individuals can be signposted to alternative dispute resolution mechanisms, including mediation. We recommend that the Government urgently evaluate the impact of the removal of legal aid for most private family law cases, considering where reinstating legal aid could help improve the efficiency and quality of the family justice system.***

Children and the family court system

142. Under the Children Act 1989, the family court is guided by the principle that "the child's welfare shall be the court's paramount consideration" in making decisions about them, often referred to as the 'paramountcy principle'. This consideration includes the ascertainable wishes and feelings of the child concerned, considered in the light of their age and understanding. While the principle that the child's welfare should be paramount has since been

176 Q 89
177 Q 143 (Sir Andrew McFarlane)
178 Written evidence from Resolution (CFA0078)

complicated by the presumption of parental involvement, the interests of the child should still be front and centre in family law proceedings.

143. The current guidance for judges about when they should meet children directly, and the purpose of such meetings, is set out in the '2010 Guidelines for Judges Meeting Children Who Are Subject to Family Proceedings'. The Guidelines are intended to encourage judges to enable children to feel more involved and connected with proceedings in which important decisions are made in their lives. The Guidelines give judges discretion about whether to meet children and what the purpose of the meeting should be, but stress that the child's meeting with the judge is "not for the purpose of gathering evidence". Instead, the purpose of the meeting is to "enable the child to gain some understanding of what is going on, and to be reassured that the judge has understood him/her". [179] These are guidelines for judges and practice may vary between individual judges.

144. During our session with members of the Family Justice Young People's Board, they made repeated pleas for their voice to be listened to and respected by those working in the family justice system. One member told us that their parents' divorce proceedings lasted 10 years and were only resolved when they were able to speak directly to a judge and express their wishes. Another went through multiple foster placements, and although they were always asked for their views, they felt nothing was ever done about it - their views disregarded because of their age. One member was deliberately not told information about proceedings, with the justification being that they were too young to understand, something they strongly disputed. Another was forced to have regular contact with an abusive parent despite telling the courts they did not want this to happen.[180]

145. This experience of the voice of the child being marginalised was echoed in a private evidence submission we held. An independent social worker told us: "The 'Voice of the Child' is not only not heard but is often suppressed or dismissed and children have no one external to the proceedings that they can speak to."[181]

146. Witnesses have generally told us that the experiences of children and young people is variable, and that their voice is not always welcomed or enabled. Hannah Markham KC told us that there is room for improvement and pointed to a crisis in Cafcass resourcing leading to a diminishing in the voice of the child: "we are a long way away from where we were 10 or 15 years ago, when Cafcass would have the time and the luxury—it is now a luxury—to pop in and see children more often at school, and to make them feel more included in the process".[182]

147. Cafcass is responsible for representing children in family court cases in England and plays a crucial role in ensuring the voice of the child is heard. However, Jacky Tiotto told us that "…the voices of children are still quite quiet in the system. It is still a very adult-dominated system, certainly in private law."[183] She stressed the importance of listening to children and

179 Family Justice Council, *Guidelines for Judges Meeting Children who are subject to Family Proceedings* (April 2010): https://www.judiciary.uk/wp-content/uploads/JCO/Documents/FJC/voc/Guidelines_+Judges_seeing_+Children.pdf [accessed 28 November 2022]
180 See Appendix 12.
181 See Appendix 5.
182 Q 84
183 Q 140

young people: "The proceedings are about them, their lives now and their future lives. There is nothing more important to them than whether they live with their parents and whether they spend time with them and/or how they see them."[184]

148. Lisa Harker discussed the work the Nuffield Family Justice Observatory did on children's experience of private law proceedings:

> " … children often feel very left in the dark about what is happening in their parents' separation. Children often seem to know more than their parents think about what is going on … children feel unheard in court proceedings, and this can cause them distress… we know that children want to be involved in decision-making".[185]

149. Our evidence points to a need to make sure the child's voice is heard as standard. Resolution recommended the establishment of a more formal framework to explicitly set out how the court and Cafcass will account for the voice of the child. They suggested "a statutory requirement that the issue of how the voice of the child will be heard specifically in the particular case should be addressed at the first hearing".[186] Representatives of the Family Justice Young People's Board recommended training for judges on how to speak to children.[187] We note that current policy instructs that judges should not see children for the purpose of gathering evidence, and that care must be taken to distinguish between meetings which are for the purpose of gathering evidence and those which are not.[188]

150. **The voice of the child is not always heard and respected in the family justice system. The welfare of children should be the courts' paramount consideration, and children themselves can be best placed to speak about what is in their best interest and should be involved in decisions about their futures. We have heard that children and young people don't feel that their voices were heard properly heard in court proceedings, and that they felt that decisions might have been made more quickly and more in line with their wishes if they had been able to speak to the judge directly. We are concerned that Cafcass do not have the resources to devote to soliciting and following up on children views.**

151. ***We recommend that, in order to formalise the voice of the child in proceedings, initial hearings should address the issue of how the voice of the child will be heard during the case. We also recommend that the Family Justice Council reviews the guidance setting out the approach taken to judges meeting with children. In so far as there may be a basis for a change of approach, the Committee further recommends that the Family Justice Council and the Judicial College give thought to the training needs of judges in this area and the sharing of best practice.***

184 Q 150 (Jacky Tiotto)
185 Q 84
186 Written evidence from Resolution (CFA0078)
187 See Appendix 12.
188 Family Law Week, *Re KP (A Child) [2014]* EWCA 554 [accessed 16 November 2022]

The presumption of parental involvement

152. The Children Act 1989 set the framework for how courts should decide whether and how much children spend time with separated parents. The Act states that "the child's welfare shall be the court's paramount consideration" in making decisions about them. Box 7 lists the more specific considerations set out in the Act.

Box 7: Considerations of the court when making decisions about children

- the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- his physical, emotional and educational needs;
- the likely effect on him of any change in his circumstances;
- his age, sex, background and any characteristics of his which the court considers relevant;
- any harm which he has suffered or is at risk of suffering;
- how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- the range of powers available to the court under this Act in the proceedings in question.

Source: Children Act 1989, section 1

153. Some raised concern that judges' interpretation of the Act was biased against non-resident parents, particularly fathers.[189] This concern was based on anecdotal evidence rather than systematic analysis. Indeed, an academic study of 174 cases across five county courts in 2011 found no indication of bias. It found, conversely, that courts "actively promoted as much contact as possible even in cases of proven domestic violence, often combined with welfare concerns or strong opposition from older children."[190]

154. Section 11 of the Children and Families Act 2014 amended the Children Act 1989 in a way which was intended to make clearer to separated parents that courts will take account of the principle that both parents should continue to be actively involved in their children's lives, and encourage more parents to resolve their disputes out of court by making that principle explicit in the legislation. It introduced a presumption that, unless the contrary is shown, the involvement of a given parent in the life of the child concerned will further the child's welfare. 'Involvement' means involvement of some kind, either direct or indirect, but not any particular division of a child's time. The Court can disapply the presumption if it has some evidence before it which suggests "that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement."

155. In 2011, the then Government's Family Justice Review, chaired by Sir David Norgrove, had argued: "The law cannot state a presumption of any

189 ResearchGate, 'Reading the Runes: Conflict, Culture and "Evidence" in Law-making in the UK' (April 2017), p 39: https://www.researchgate.net/publication/318703714_Reading_the_Runes_Conflict_Culture_and_Evidence_in_Law-making_in_the_UK [accessed 7 November 2022]

190 Dr Maebh Harding and Dr Annika Newnham, *How do County Court share the care of children between parents?* (May 2015), p 9: https://www.nuffieldfoundation.org/wp-content/uploads/2019/11/Full20report.pdf [accessed 31 October 2022]

kind without incurring unacceptable risk of damage to children."[191] The Ministry of Justice's expert panel report on the presumption in June 2020 suggested that this concern had become a reality. Drawing on 1200 evidence submissions, as well as focus groups and roundtables, it concluded: "the presumption is implemented inconsistently and is rarely disapplied. To the extent that the courts' pro-contact culture operates as a barrier to addressing domestic abuse, it serves to reinforce that culture."[192]

156. Professor Rosemary Hunter told us:

> "The presumption might well be true for the average child, but children in the family court are not the average child. There are significant safeguarding risks so they need an individual welfare determination. You want the court to be thinking carefully about the specific welfare needs of the individual child in the case, rather than applying the presumption."[193]

157. We heard stories consistent with the expert panel's finding that the presumption is rarely disapplied. Mothers Against Coercive Control and Violence spoke of a policy of "contact at all costs", telling us: "We find commonly that under section 11, men who have been convicted of serious offences against the mother or even against the children themselves are still given unsupervised contact with their children."[194] The organisation provided accounts of several stories of dangerous fathers being granted contact with their children, including two of fathers who had previously been convicted of sexual offences against other children. We also heard similar harrowing stories in private written evidence and in response to our survey.[195]

158. Dr Sonja Ayeb-Karlsson and Dr Adrienne Barnett argued that the presumption has "caused tremendous harm to vulnerable children and women in our society", referring us to two reports showing that the presumption has shifted the balance in favour of domestically abusive parents.[196]

159. A common complaint was that the presumption not only undermines the paramountcy of children's welfare—in the words of one member of the Family Justice Young People's Board, "putting parents' rights above children"—but, more specifically, that it puts parents' wishes before those of children, undermining the principle in the Children Act 1989 that "the ascertainable wishes and feelings of the child concerned" should be taken into account".[197] For example, an independent social worker responding to our survey described what they said was a typical case, of two daughters

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191 MoJ, *Family Justice Review* (November 2011), p 4: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf [accessed 28 October 2022]

192 MoJ, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (June 2020), p 88: https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf [accessed 28 October 2022]

193 Q 90

194 Written evidence from Mothers Against Coercive Control and Violence (CFA0113)

195 See Appendix 5 and Appendix 6.

196 Written evidence from Dr Sonja Ayeb-Karlsson and Dr Adrienne Barnett (CFA0045)

197 MoJ, *Assessing Risk of Harm to Children and Parents in Private Law Children* (June 2020), p 77: https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf [accessed 28 October 2022]

who "have both been adamant throughout that they want to live with their mother and they continue to state this, but this is ignored or dismissed."[198]

160. Professor Hunter concluded that repealing the presumption is the only option: "You can keep tinkering with the legislative wording, but ultimately we need to return to individualised welfare consideration, and so back to Section 1(1) [of the Children Act 1989], which was there all along, that the individual welfare of the child is the court's paramount consideration."[199]

161. By contrast, some witnesses told us that—while a stronger presumption would put children at risk—section 11, though having little or no effect, had not harmed children and therefore should not be repealed.

162. Mavis Maclean said that the amendment had support from a range of parties and had represented a compromise. She concluded that: "I think it is just about okay and any alteration now would just be stirring up trouble."[200] Sir James Munby agreed that although, in principle, "it is something that you should not find in a statute", it should remain as diluting or removing it would "raise a storm of protest."[201]

163. Sarah Blackmore, Joint Head of Chambers at Spire Barristers, was also broadly of this view. She told us: "I am not sure that it has had a major impact on the family court and the way the court has always approached private law cases."[202] Judges in Oxford shared this view that the presumption had not changed anything.[203]

164. Although agreeing that the presumption had had little effect, other contributors—largely those representing fathers—felt that it should be strengthened. Bob Greig, co-director and co-founder of Only Mums and Dads, said: "I do not understand what power the presumption has, because the daily emails I get from dads suggest that it is not working at all." He rejected the idea that there is a 'pro-contact culture' and argued: "no one is accounting for the harm done to those children who suddenly have a father or grandparents removed from their daily life."[204]

165. Families Need Fathers agreed: "This section has made no practical difference to the barriers facing 'non-resident parents' who have been excluded by the other parent from the child's life." Viewing the definition of 'involvement' as too weak, the organisation recommended: "a presumption that the child's welfare will be furthered by both parents playing a full and active part in the child's care and upbringing."[205] Peter Wight and Gender Parity UK went further, recommending a presumption of equal parenting time.[206]

166. Gender Parity UK suggested that there is a culture of what they deemed 'safetyism', which limits contact: "Rather than seeing safety as one concern among many, it becomes a 'sacred value' under a psychological framework

198 See Appendix 6.
199 Q 90
200 Q 99
201 *Ibid.*
202 Q 83
203 See Appendix 9.
204 Q 90
205 Written evidence from Families Need Fathers (CFA0104)
206 Written evidence from Peter Wight (CFA0037) and written evidence from Gender Parity UK (CFA0039)

similar to religiosity, and overrules other considerations to the extent that children's overall welfare interests are harmed."[207]

167. Following the report of the Ministry of Justice's expert panel, the Government is reviewing the presumption.[208]

168. **We have heard a range of views on the presumption of parental involvement and recognise that it is highly contentious. We take the view that in the majority of cases it is beneficial for both parents to be involved in a child's life. However, every case is different. Each child's welfare—including, to the appropriate extent, their wishes—must be paramount and judged according to their individual situation. Nothing should be allowed to undermine this. We are concerned by evidence that in at least some cases the rights of parents may be being put ahead of the rights and welfare of children. Nevertheless, there is a clear lack of adequate data on the effect of the presumption, both on court judgements and on how it sends a signal which affects how cases are settled out of court. We welcome the Government's review of the presumption.**

169. ***The Government should carefully consider the findings of the review of the presumption of parental involvement and make any legislative or other changes necessary to ensure that children's welfare is always put first.***

207 Written evidence from Gender Parity UK (CFA0039)

208 MoJ, 'Child protection at heart of courts review': https://www.gov.uk/government/news/child-protection-at-heart-of-courts-review [accessed 4 November 2022]

CHAPTER 4: EMPLOYMENT RIGHTS

170. Employment rights have a significant impact on the lives of many families, as well as the operations of businesses of all sizes. Despite having had only a limited amount of time to dedicate to the issue of employment rights, we recognise the importance of the changes the Act made, particularly, the impact of schemes such as shared parental leave and flexible working on small and medium business. Their impact deserves dedicated post-legislative scrutiny, accounting for both the family and business perspectives on the issues, which we have sought to give credit to.

Shared parental leave

171. Part 7 of the Act created rights to shared parental leave and statutory shared parental pay.

172. Shared parental leave allows parents to share up to 50 weeks of leave and up to 37 weeks of pay in the first year after their child is born or placed with their family. Shared parental leave can be used in blocks separated by periods of work or all at once. Parents can choose to be off work together or to stagger their leave and pay.

173. Shared parental pay is paid at the rate of £156.66 a week or 90% of average weekly earnings, whichever is lower.[209] Employers can reclaim 92% of what they paid from HMRC, with the amount rising to 103% if the business qualifies for Small Employers' Relief.[210]

209 This is the same as statutory maternity pay except that during the first 6 weeks statutory maternity pay is paid at 90% of whatever one earns (with no maximum).

210 HM Revenue and Customs, 'Get financial help with statutory pay': https://www.gov.uk/recover-statutory-payments [accessed 25 October 2022]

Box 8: Shared parental leave and pay

In order to qualify for shared parental leave and shared parental pay, the mother and the partner need to meet the eligibility criteria, give notice to their employers and give up some of their maternity or adoption leave and pay.[211]

If both birth parents wish to share parental leave and parental pay, they both must be directly employed, rather than working as contractors. They must have been employed continuously by the same employer for at least 26 weeks by the end of the 15th week before the due date and must stay with the same employer until the start of the period of parental leave. To be eligible for share parental pay, both parents must each earn on average at least £123 a week.

If it is the mother's partner who wants to take shared parental leave and shared parental pay, rather than the child's birth father, both the mother and the mother's partner must meet some eligibility requirements. The mother must have been working for at least 26 weeks out of the 66 weeks before the week the baby's due date and have earned at least £390 in total across any 13 of the 66 weeks. The mother's partner must have been employed continuously by the same employer for at least 26 weeks by the end of the 15th week before the due date and stay with the same employer until they start shared parental leave. The partner must be directly employed by their employer, rather than work as a contractor, and must earn on average at least £123 a week.

Source: BEIS, 'Shared Parental Leave and Pay': https://www.gov.uk/shared-parental-leave-and-pay [accessed 26 October 2022]

Box 9: Other family rights

Parents and recent adopters are also eligible for other family rights, including:

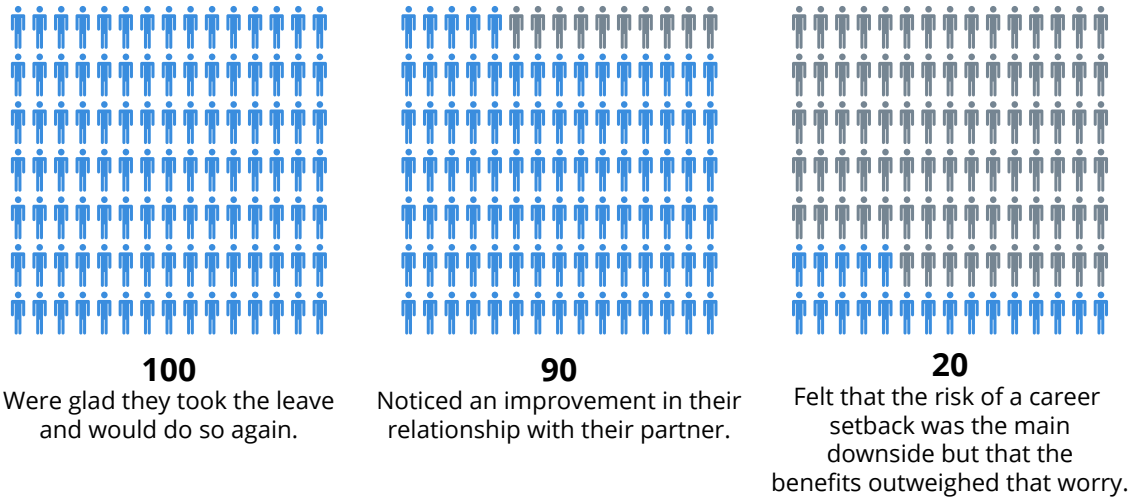
- Maternity leave and pay: New mothers who are employed have the right to take up to 52 weeks' leave and to receive up to 39 weeks' statutory maternity pay. During the first six weeks statutory maternity pay is paid at 90% of whatever one earns (with no maximum). The remaining period is paid at the rate of £156.66 a week or 90% of one's average weekly earnings, whichever is lower.
- Statutory adoption leave and pay: Adoption leave can last for up to 52 weeks. Statutory adoption pay is paid at the same rate as statutory maternity pay. For couples adopting a child, only one partner will be able to benefit from adoption leave. The partner who does not benefit from adoption leave might be eligible for paid paternity leave instead.
- Paternity leave: Partners of those who are having a baby are entitled to either one or two consecutive weeks of paid paternity leave after the child's birth. It is paid at the same rate as statutory maternity pay. Taking one or two weeks is up to the partner to decide. This also applies when a couple are adopting a child or having a baby through a surrogacy arrangement.

Source: Shoosmiths, 'Paternity and Shared Parental Leave: dispelling traditional gender roles' (9 December 2021): https://www.shoosmiths.co.uk/insights/legal-updates/paternity-and-shared-parental-leave-dispelling-traditional-gender-roles [accessed 26 October 2022]

211 To get shared parental leave and pay the mother or the partner has to take less than the 52 weeks of maternity or adoption leave and use the rest as shared parental leave; take less than the 39 weeks of maternity or adoption pay (or Maternity Allowance) and use the rest as shared parental leave.

174. Parental leave for fathers/partners has various benefits. The figure below shows positive feedback from fathers who have taken leave:

Figure 7: Views of paternity leave, % of respondents (n=126)



Source: McKinsey & Company, Shaibyaa Rajbhandari, and Gila Tolub, 'A fresh look at paternity leave: Why the benefits extend beyond the personal' (5 March 2021): https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/a-fresh-look-at-paternity-leave-why-the-benefits-extend-beyond-the-personal [accessed 26 October 2022]

175. Shared parental leave is a form of early intervention in favour of children's wellbeing and has knock on benefits for the wider economy. Joeli Brearley, founder of Pregnant Then Screwed, said:

> "If you split the unpaid labour more equally in the home, both parents are more willing to do more paid work, so there are knock-on benefits for the economy. We also know from a report published by the Swedish Government that for every month of paternity leave taken by dads, a mother's wages rise by 7%; it is a huge jump. In addition to the economic benefits […], there are enormous benefits for a child's educational attainment […] Mothers have lower rates of postnatal depression and better physical health. Dads tend to be happier."[212]

Olga FitzRoy, Founder and Campaigner at Parental Pay Equality, underlined the "beneficial impact of fathers taking parental leave on the mothers' salary - for every one month of fathers parental leave the mothers salary goes up by 6.7%."[213]

176. Jane van Zyl, Chief Executive Officer at Working Families, referred to research by the Fatherhood Institute and singled out another benefit: "where fathers spend time with children when they are much younger, it ends up with a lower rate of family breakdown."[214]

212 Q 125
213 Written evidence from Parental pay Equality (CFA0136)
214 Q 133

177. The Government's impact assessment for the shared parental pay scheme estimated that take-up would be in the range of 4% to 8%.[215] The figures below indicate the take-up of statutory shared parental pay, which is broadly in line with the Government's predictions:

Table 1: Take-up of statutory shared parental pay

Year (April to March)	Number of individuals in receipt of statutory shared parental pay
2015/16	6,200
2016/17	8,600
2017/18	9,200
2018/19	10,700
2019/20	12,600
2020/21	11,200

Source: Written evidence from DfE (CFA0001)

178. The Government has since stated that it "does not have a specific target figure for uptake of the Shared Parental Leave scheme". Such a statement appears to contrast with comments by Margot James MP, then Parliamentary Under-Secretary of State for BEIS to the Women and Equalities Committee in her oral evidence in 2017, where she said she would consider the take-up of the scheme a success if it reached 25%.[216]

179. The Government wrote to us that "more detailed figures on the uptake of Shared Parental Leave will be included in the Shared Parental Leave evaluation". Such an evaluation is still to be published. Dean Russell MP, then Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy (BEIS), told us on 17 October 2022 that the evaluation would be published "soon"[217]

180. BEIS stressed the Government's efforts in promoting the shared parental leave and pay schemes. It told us that in 2018, the Department and the Government Equalities Office ran a joint £1.5m campaign which included digital website advertising, targeted social media advertising, posters in train stations and on commuter routes, and digital content shared through both government and external partners' channels.[218] Dean Russell recognised that shared parental leave, after a "£1.5 million marketing campaign back in 2018 to promote it, where it is working now is through word of mouth".[219]

181. Most sources have been critical about the uptake figures. Charities, such as Maternity Action, called the scheme a 'shared drive failure':

215 BIS, *Modern Workplaces: Share parental leave and pay administration, Consultation – impact assessment* (February 2013), p 4: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/110692/13-651-modern-workplaces-shared-parental-leave-and-pay-impact-assessment2.pdf [accessed 24 October 2022]

216 Oral evidence taken before the Women and Equalities Committee, 22 November 2017 (Session 2017–18) Q 138 (Margot James MP)

217 Q 184

218 Written evidence from BEIS (CFA0038)

219 Q 193

> "[…] it is increasingly clear that the Government's flagship policy for driving a societal shift towards more equal parenting—the Shared Parental Leave scheme introduced in 2015—has failed. The latest available data suggest that in 2019/20, the fifth year of the scheme, take-up among eligible fathers was just 3.6%."[220]

182. Other witnesses agreed that the uptake is too low. Alexandra Hall-Chen, Senior Policy Adviser at the Institute of Directors, said: "Most of us would have expected it to be higher, if not very high, higher than the estimated 2% to 8% that the Government have cited."[221] A member of the British Retail Consortium noted: "In the past 12 months we have had only 6 colleagues that took up the shared parental leave (this is out of 12000 employees), so very low take up."[222]

183. The Government disagreed with such assessments, stating that Shared parental leave "has doubled in usage over the past few years".[223]

184. Many reasons for the low uptake have emerged. Some relate to culture, others to the Act. Joeli Brearley noted that the two are related:

> "You need to change the legislation for the culture to change around dads taking the leave. The current system does not deal with the deeply entrenched gender stereotypes we have in this country that say that dads should be bringing home the bacon and mums should be cooking it and looking after the kids. It simply gives dads access to two weeks' leave."[224]

185. She also noted that: "A large percentage of people who take shared parental leave experience discrimination […] Of those who use the shared parental leave system, 14% faced some form of discrimination".[225]

186. We also heard how, since shared parental leave requires the mother to curtail her leave to share it with a partner, this can contribute to low uptake due to entrenched norms around child caring. Jane van Zyl, highlighted that: "We live in a gendered society. Mostly, it is the expectation that the mother will take the leave […] Often, these policies have been designed with the idea that the woman is going to be the primary carer."[226] Maternity Action suggested that the current scheme would be more accurately named 'transferable maternity leave'.[227]

187. The Government has accepted that a policy such as shared parental leave requires a huge cultural change. BEIS' written evidence recognises how other countries, which have implemented schemes designed to balance parental leave entitlements, are still working to increase take-up.[228]

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220 Maternity Action, *Shared drive failure: Why we need to scrap Shared Parental Leave and replace it with a more equitable system of maternity & parental leave*, May 2021, p 1: https://maternityaction.org.uk/wp-content/uploads/Shared-Parental-Leave-briefing-May-2021.pdf [accessed 25 October 2022]
221 Q 132
222 Written evidence from British Retail Consortium (CFA0139)
223 Q 193 (Dean Russell MP)
224 Q 125
225 Q 124 (Joeli Brearley)
226 Q 132
227 Maternity Action, *Shared drive failure: Why we need to scrap Shared Parental Leave and replace it with a more equitable system of maternity & parental leave*, p 4
228 Written evidence from BEIS (CFA0038)

188. Our evidence also raised issue with the entitlement itself. Evidence from Families Need Fathers, a charity which supports dads, mums and grandparents following parental separation, points to models typical of Scandinavian nations, which "have led the way on equalising, non-transferable, parental leave" while singles out the UK as having "the biggest differential between statutory maternity and paternity leave in the world—at 52 weeks and 2 weeks."[229]

189. The complexity of the scheme has also been singled out repeatedly as a cause for concern. Maternity Action described the system as "extremely complex" and argued that "it is poorly understood, both by employers and by parents. A constant complaint from employers is that employment law is too complex and difficult to administer, especially for smaller businesses and organisations without a human resources specialist, and shared parental leave is one of the worst examples."[230]

190. The British Retail Consortium added a response from one HR team about their experience: "This is a benefit that is not taken often, and as a result we are not used to working with it and therefore it is more challenging. The biggest issue is that it is quite confusing with a lot of forms to be completed, particularly if the parents both work in the same company."[231] Olga FitzRoy agreed: "The system is very complicated. It is complicated for employers and for employees to understand."[232]

191. Similarly, Alexandra Hall-Chen, said that sometimes it is difficult to understand whether to classify fathers as employees (as the Act requires), since fathers who are agency workers or self-employed do not qualify for shared parental leave.[233] One of the most criticised aspects of the scheme is the fact that the source of shared paternity leave and pay is maternity leave itself. Leave can be shared only after the mother decides to curtail her leave in favour of her partner. It is not an independent right which if not used is lost (a use-it-or-lose-it right) as in Sweden or Iceland.[234] Maternity Action suggested that the current scheme would be more accurately named 'transferable maternity leave'.[235]

192. Contributors to our inquiry also criticised the affordability of shared parental leave and pay. Joeli Brearley highlighted how in many relationships, the father will earn more than the mother, disincentivising him from taking leave and a subsequent drop in income. She told us that 53% of people who did not use the shared parental leave system said the reason was that they could not afford it.[236] The Government admitted that one of the reasons for which uptake has not happened "may well be financial".[237] Alexandra Hall-

++229 Written evidence from Families need fathers (CFA0104)
230 Maternity Action, *Shared drive failure: Why we need to scrap Shared Parental Leave and replace it with a more equitable system of maternity & parental leave*, p 4
231 Written evidence from British Retail Consortium (CFA0139)
232 Q 124
233 Q 132
234 MenCare, *The need for fully paid, non-transferable parental leave: Leaving inequality behind and giving our children the care they need* (21 February 2018): https://www.europarl.europa.eu/cmsdata/139328/MenCare-Parental-Leave-Platform-Background-Paper-EU-Parliament-21.02.18.pdf [accessed 4 November 2022]
235 Maternity Action, *Shared drive failure: Why we need to scrap Shared Parental Leave and replace it with a more equitable system of maternity & parental leave*, p 4
236 Q 124
237 Q 193 (Dean Russell MP)

Chen noted that in companies which can offer more generous parental leave packages, uptake is significantly higher.[238]

193. The Women and Equalities Select Committee (WESC) reported on fathers and the workplace in March 2018. [239] The main recommendations were:

- making paternity leave a day-one right;
- increasing statutory paternity pay to 90% of the recipient's salary;
- the replacement of shared parental leave with a right to 12 weeks paternal leave paid for four weeks at 90% of salary and for the remaining eight weeks at the statutory rate.

194. WESC recommended that the Government undertake an analysis of the costs and benefits of the suggested policy change. The Committee acknowledged "that the initial costs of implementing such a policy would be considerable" but it believed in "significant gains to the public purse in the long term."[240]

195. ***We endorse the Women and Equalities Select Committee's proposal to replace shared parental leave with a right to 12 weeks' paternity leave paid for four weeks at 90% of salary with no cap and for the remaining eight weeks at the statutory rate. Such a change would increase uptake, as it would be an independent 'use it or lose it' right and not require mothers to give up any of their leave. We recognise that this is an ambitious proposal, but it is the right ambition to have and one towards which we should move, beginning with the Government publishing an assessment of the costs and benefits of such a policy. As part of this assessment, it should consider particularly the impact of such a scheme on small organisations and enterprises. Moreover, to support smaller businesses, we recommend leaving in place the higher rate of 103% reclaim for employers who qualify for small employers' relief (and 92% for other businesses).***

The current situation of self-employed fathers

196. Fathers and partners taking parental leave carries many benefits, however, self-employed fathers and partners do not qualify for share parental leave or maternity allowance.[241] Conversely, self-employed mothers who, in the 66 weeks before the baby is due, are registered for at least 26 weeks and earn £30 a week (or more) in at least 13 weeks, are eligible for maternity allowance. In this instance, self-employed mothers can receive between £27 to £156.66 a week for 39 weeks.[242]

197. Home for Good, a charity which works on adoption and fostering, underlined that "in February 2022, there were 4.23 million self-employed people in the UK, constituting 13% of the total workforce. […] Demographically, 35% of those who are self-employed are women and 65% are men."[243]

238 Q 132
239 Women and Equalities Committee, *Fathers and the workplace* (First Report, Session 2017–19, HC 358)
240 *Ibid.*
241 Q 124 (Olga FitzRoy) and Q 132 (Alexandra Hall-Chen)
242 DWP, 'Maternity allowance': https://www.gov.uk/maternity-allowance/what-youll-get [accessed 25 October 2022]
243 Written evidence from Home for Good (CFA0133)

198. **While self-employed mothers can make use of maternity allowance (subject to conditions), self-employed fathers and mothers' partners receive no paternity allowance. They are treated unfairly in relation both to self-employed mothers and employed fathers/partners. *At a minimum, we recommend that self-employed fathers/partners be given a right to statutory shared parental pay subject to the same conditions and at the same rate as directly employed fathers/partners. We further recommend that the Government's long-term ambition should be for self-employed fathers/partners to receive 12 weeks' paternity pay, paid at the same rate mothers receive maternity allowance. We acknowledge that individual circumstances may not allow this, but nevertheless believe this should be the Government's ambition which would provide a level playing field for self-employed parents, empowering them to spend time bonding with their child.***

Kinship care

199. A kinship carer is a friend or a relative (but not a parent) with whom a child lives full-time or most of the time. There are over 150,000 children living in kinship care in England. Box 10 lists the different types of kinship care. In Chapter 2 we discussed the challenges facing kinship carers, which also extend to their employment rights.

Box 10: Kinship care—key concepts

- Informal kinship care: when children live with kinship carers due to an informal arrangement made by their parents or other family members. Kinship carers do not have parental responsibility for the children, and they are not 'looked after' by the local authority.
- Kinship care based on a Child Arrangements Order or Special Guardianship Order: A Child Arrangements Order is a legal order where the court decides either where a child will live or who a child can spend time with and for how long. A Special Guardianship Order (SGO) is a legal order where the court appoints a carer as the 'Special Guardian' of a child until they turn 18. The Special Guardian shares parental responsibility for the child with the parents and can make nearly all the major decisions about the child without having to consult the parents.
- Kinship foster carers: when children who are 'looked after' by the local authority are placed with a foster carer who has a kinship relationship with the child. The child is considered 'looked after', and the kinship foster carer will not have parental responsibility.

Source: Kinship, 'What is kinship care?': https://kinship.org.uk/for-kinship-carers/what-is-kinship-care/ [accessed 26 October 2022]

200. The Family Rights Group highlighted the lack of legal definition of kinship care. "Without an agreed definition, kinship carers can quickly run into a myriad of confusion and misunderstanding […] kinship carers find they are having to constantly explain who they are and what they need."[244]

201. Professor Elaine Farmer, Emeritus Professor of Child and Family Studies, University of Bristol, highlighted that kinship carers tend to be more likely to be single, be in financial difficulty, be in overcrowded conditions and have

244 Written evidence from Family Rights Group (CFA0106)

a disability or chronic health condition.[245] She added: "The biggest group of kinship carers are grandparents. They disproportionately have long-term health conditions, as you might expect at a certain age."[246]

202. Dr Lucy Peake, CEO of Kinship, elaborated: "It is really important to remember that these grandparents are often women, and the retirement age for women has been going up […] We are seeing lots of kinship carers dropping out of the labour market, often for the second time. Many kinship carers, if they are doing that in their 50s or 60s, will say, 'I know that I am impoverishing myself for these children, today and for ever', because they know that they cannot build their pensions up."[247]

203. Jo Mitchell, National Service Lead, PAC-UK, told us how some kinship carers near retirement were drawing on their life saving to provide support to the children in their care. [248]

204. As discussed in Chapter 2, many kinship carers receive little or no support from the state. Professor Elaine Farmer said that "the biggest challenge facing kinship care is its invisibility […] many kinship carers bringing children up with little or no help from the state."[249] Jane van Zyl, argued for parity of rights for kinship carers: "As far as we are concerned, however you acquire your family … everybody with a family should have equal rights."[250] Even employers agreed in principle. Alexandra Hall-Chen, stated that "from an employer perspective, there is no reason why the treatment would be different."[251]

205. **Although more than 150.000 children live in kinship care in England, kinship carers currently have no legal right to paid time off from work and often have to rely on the good will of their employers. As a consequence, carers can be forced to leave the labour market. *We recommend that kinship carers with a Special Guardianship Order be provided with the same rights to leave as adopters when a child is placed in their care to ensure parity of support.***

Flexible working

206. Part 9 of the Act gave all employees with 26 weeks' continuous service the right to request flexible working arrangements. This right was previously reserved exclusively for parents and carers. Box 11 sets out the most common forms of flexible working, which includes a range of arrangements. Experts we spoke to were keen to stress that flexible working does not only mean working from home. As Jane van Zyl, Chief Executive Officer at Working Families told us, focusing exclusively on home working "would impact only on knowledge workers."[252]

245 Q 16
246 Q 18 (Prof Farmer)
247 Q 18
248 *Ibid.*
249 Q 16
250 Q 135
251 *Ibid.*
252 Q 136

Box 11: The most common types of flexible working arrangements

- Part time—one works fewer days during the week, or reduced-hour days;
- Compressed hours—full time hours are worked but over fewer days;
- Working from home—one performs some of your duties at home, or at another remote location;
- Hybrid working—this involves a mix of working from home and going into the office;
- Flexitime—one agrees with the employer when to start and end the working day, but maintains certain core hours, such as from 9am-3pm daily;
- Job sharing—one job is shared between two people and the hours split accordingly;
- Staggered hours—one has a different start, finish and break times from one's colleagues;
- Phased retirement—older workers can choose when they want to retire and make the transition towards that by reducing their hours.

Source: Georgie Frost, 'What are my rights to flexible working?', The Times (26 July 2022): https://www.thetimes.co.uk/money-mentor/article/what-are-my-rights-to-flexible-working [accessed 25 October 2022]

207. The Government stated that the aims of extending the right to request flexible working were:

    - to provide more employees with access to contractual flexible working;
    - to help employees to better reconcile their work and non-work lives;
    - to help employers to secure the business benefits of flexible working;
    - to avoid the stereotype that flexible working be seen as something 'only for parents and carers'.

208. We heard that flexible working has many benefits.[253] The Department for Business, Energy and Industrial Strategy said the policy's primary advantage for families is that being able to work part-time, having flexible start and finish times, or working from home, "can make it easier for parents to balance work and childcare needs."[254]

209. Moreover, the BEIS evaluation of the 2014 Flexible Working Regulations produced findings on the impact of flexible working for families[255]. For example:

    - the proportion of workplaces receiving requests for school term-time working increased from 11% in 2013 to 20% in 2018–19;
    - using reduced hours working arrangements has been associated with lower chronic stress among women caring for two or more children aged under 15;

253 Royal College of Nursing, 'Flexible working' (19 July 2020): https://www.rcn.org.uk/get-help/rcn-advice/flexible-working [accessed 25 October 2022]
254 Written evidence from BEIS (CFA0038)
255 *Ibid.*

- recent evidence from new mothers shows high demand for flexible working on return from maternity leave and employers offering such working arrangements benefiting from improved staff retention rates among new parents;

- around half of mothers returning to work after maternity leave changed their working patterns, such as their working hours (32%) or agreed new working arrangements (24%).

210. The outbreak of the pandemic has accelerated a culture change around flexible working, specifically homeworking and hybrid working. In February 2022, more than 8 in 10 workers who had to work from home during the coronavirus pandemic said they planned to hybrid work and the proportion of workers hybrid working rose from 13% in early February 2022 to 24% in May 2022.[256] Homeworking and flexible working arrangements tend to be most common amongst office workers in London and the South-East.[257]

211. There is a strong appetite for flexible working amongst parents. Working Families interviewed just over 3,000 working parents and carers in November 2021, and it emerged that and three-quarters of parents wanted to work flexibly.[258]

212. From the employers' perspective, Alexandra Hall-Chen, Senior Policy Adviser at the Institute of Directors, said that the vast majority of their members, in some form, were offering flexible working.[259] She added that this increase had been expedited by the pandemic. When members were asked in January 2022 what their long-term plans were around hybrid working, "around four in five said that in the long term they intended to offer some form of hybrid working—anywhere between one day a week working from home to going fully flexible."[260]

213. Nevertheless, individual employers and employees have different perspectives on remote and hybrid working patterns and returning to offices or place of work. According to data from the Office for National Statistics, while both businesses and individuals preferred a 'hybrid' working approach in the future, a significant minority (38%) of businesses expected 75% or more of their workforce to be at their normal place of work, while a large proportion (36%) of those currently homeworking thought they would spend the majority or all their time homeworking in the future.[261]

256 Office for National Statistics, 'Is hybrid working here to stay?' (23 May 2022): https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/ishybridworkingheretostay/2022–05-23 [accessed 25 October 2022]

257 Tom Calver, 'Are we past peak WFH?', *The Sunday Times* (14 August 2022): https://www.thetimes.co.uk/article/are-we-past-peak-wfh-76q6gpf5z [accessed 26 October 2022]

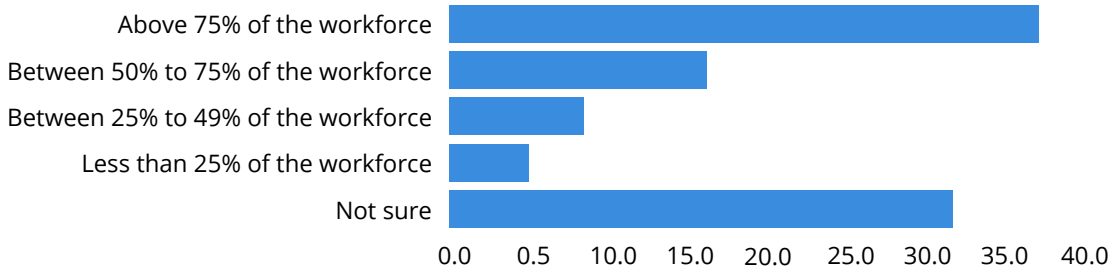
258 Q 136 (Jane van Zyl)

259 Q 136

260 Q 136 (Alexandra Hall-Chen)

261 Office for National Statistics, *Business and individual attitudes towards the future of homeworking, UK: April to May 2021* (14 June 2021): https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/businessandindividualattitudestowardsthefutureofhomeworkinguk/apriltomay2021/pdf [accessed 31 October 2022]

Figure 8: Businesses estimated percentage of workforce to return to their normal workplace on any given day, UK



Source: Office for National Statistics, 'Is hybrid working here to stay?' (23 May 2022): https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/ishybridworkingheretostay/2022–05-23 [accessed 26 October 2022]

214. Employers have eight business-related reasons to deny requests for flexible working[262]:

- extra costs that will damage the business;
- the work cannot be reorganised among other staff;
- people cannot be recruited to do the work;
- flexible working will affect quality and performance;
- the business will not be able to meet customer demand;
- there's a lack of work to do during the proposed working times;
- the business is planning changes to the workforce.

215. Experts we took evidence from were critical of the reasons available to employers to refuse a flexible working request. Joeli Brearley argue that the current reasons are nebulous, making it easy to refuse a request.[263]Dr Michelle Weldon-Johns, in written evidence, not only agreed on the point that "it is also relatively easy for an employer to refuse a request given the wide-ranging grounds for refusal" but noted that there are limited grounds for challenging a refusal through an employment tribunal.[264] Jane van Zyl added that "We find that many of the employees who talk to us have been refused with literally the eight business reasons that have been laid out, cut and pasted into an email from HR."[265]

216. Despite this, according to the Post Implementation Review of the 2014 extension (2021), more than 8 out of 10 requests were granted. Evidence also suggests there has been an increase in the average number of requests received by workplaces, from 1 in 2013 to 3.8 in 2018–19.[266]

217. Some employees may not put forward a request for flexible working due to fears of rejection or discrimination. Pregnant Then Screwed noted that 42% of working mothers believe there's no point asking for flexible

262 BEIS, 'Flexible working': https://www.gov.uk/flexible-working/after-the-application [accessed 26 October 2022]
263 Q 128
264 Written evidence from Dr Michelle Weldon-Johns (CFA0084)
265 Q 137
266 Written evidence from BEIS (CFA0038)

working because they will be rejected, while a similar number would not ask for a flexible working arrangement during a job interview out of fear of discrimination or impact on their likelihood of being hired." [267] They noted that "these worries are justified: 86% have faced discrimination and disadvantage because of their flexible working arrangements." [268] Fathers face similar issues, with data from Pregnant then Screwed showing that 24% of those fathers who haven't made a flexible working request have done so out of fear they would be treated negatively by colleagues or their employer, while 16% knew their request would be rejected. Their data also showed that 1 in 5 fathers who work flexibly have experienced negativity at work including: negative comments from colleagues or their employer, missed out on training or other opportunities, or felt their opinion was less valued.[269]

218. Joeli Brearley raised concern that many employers may feel that as they are allowing workers to work in a hybrid homeworking post-pandemic, they are "doing enough", and the number of flexible working request refusals is rising as a result.[270] She pointed to an increase in flexible working requests being rejected in 2021, with their helpline showing two-thirds (71%) of requests for flexible working were being rejected in the first year of the pandemic, almost double what they had seen pre-pandemic.[271]

219. In 2021, the Department for Business, Energy & Industrial Strategy opened a consultation on reforming flexible working regulations. The results of the consultation have not been made public yet.[272]

220. One of the most common recommendations by campaigners is for the right to request flexible working to be made a day-one right. Currently, employees can apply for flexible working only if they have worked continuously for the same employer for 26 weeks.'[273]Amongst those calling for making it a day-one-right is the Women and Equalities Select Committee, which called the 26 week threshold "unhelpful and unnecessary."[274] Jane van Zyl approved, saying: "we certainly would like to see the right to request as a day-one right because it will push employers to think about how the job can be done. We cannot think of a job that could not be done flexibly in some way."[275]

221. Representatives of employers agreed, with Alexandra Hall-Chen stating:

> "Due to the strong business case that we see and the fact that more than half our members told us that they already accept, let alone consider, requests for flexible working from employees who have not been with them for 26 weeks, it is clearly in many cases already established good practice in business. We would support the Government in making the right to request flexible working a day-one employment right."[276]

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267 Written evidence from Pregnant Then Screwed (CFA0135)
268 *Ibid.*
269 *Ibid.*
270 Q 128
271 Written evidence from Pregnant Then Screwed (CFA0135)
272 BEIS, 'Making flexible working the default' (29 October 2021): https://www.gov.uk/government/consultations/making-flexible-working-the-default [accessed 31 October 2021]
273 BEIS, 'Flexible working': https://www.gov.uk/flexible-working/applying-for-flexible-working [accessed 31 October 2021]
274 Women and Equalities Committee, *Unequal impact? Coronavirus and the gendered economic impact* (First Report, Session 2019–21, HC 385)
275 Q 137
276 *Ibid.*

Employers' consent came with the condition that the business reasons to reject a request be maintained.[277]

222. Some witnesses were concerned that making flexible working a day-one right would not lead to the necessary culture change in and of itself. Joeli Brearley took this position, stating that: "The right to request is the right to decline. I strongly believe that the proposals for moving this to a day-one right to request will do very little to change the culture around flexible working."[278] She suggested that this culture change could be achieved by having employers design jobs as flexible by default, describing the type of flexibility that is available to an employee before they apply for the job.[279] This, she stressed, would "flip the onus from the employee on to the employer. […] it means that jobs are designed as flexible from the outset. If you have a good business reason as to why that is not possible, that is okay; you do not have to advertise the types of flexibility that are available". [280]

223. In its oral evidence, the Government stated that, while they wanted to keep an open mind over making the right to request a day-one right, they needed to "look at the balance of the burden on business and the opportunities for the individual"[281] as "we must not go down the route of making it so that government is legislating too strongly about what business needs and what the employee needs."[282]

224. **Flexible working brings numerous benefits on an individual and societal level. However, employers and employees seem to disagree on how to implement the right to request flexible working arrangements. Many employers and campaigners would support making the right to request a day-one right, though some argued that instead jobs should be designed and advertised flexibly from the outset.** ***In principle, we see no obstacles to make the right to request flexible working a day-one right. We would also recommend that businesses—while maintaining the statutory business reasons to refuse employees' requests—be encouraged to advertise jobs flexibly whenever possible, with the Government leading by example.***

277 Q 137 (Alexandra Hall-Chen)
278 Q 128
279 Q 128 (Joeli Brearley)
280 *Ibid.*
281 Q 193 (Dean Russell MP)
282 Q 184 (Dean Russell MP)

CHAPTER 5: BUILDING A BETTER FUTURE FOR CHILDREN AND FAMILIES

225. The Children and Families Act 2014 cuts across a wide range of policy areas and government departments. In reviewing its implementation and effect, common themes emerged.

Mental health

226. As discussed in Chapter 1, our mandate is also to consider areas which were notably absent from the Act. The first was a policy area which the Act does not refer to, but which relates closely to many of its provisions—and to its overarching aim of improving the lives of children and families: young people's mental health.

227. Rates of probable mental disorders increased between 2017 and 2021. One in six children aged 6–16 had a probable mental disorder, whereas the rate had been one in nine. One in six teenagers aged 17–19 had a probable mental disorder, an increase from one in ten.[283]

228. According to the Local Government Association, children and young people are more likely to have poor mental health if they experience some form of adversity, such as living in poverty, parental separation or financial crisis, where there is a problem with the way their family functions or if their parents already have poor mental health.[284]

229. We asked experts why the prevalence of mental ill health has increased. Dr Elaine Lockhart, Chair of the Royal College of Psychiatrists in Scotland's Child and Adolescent Faculty, found the increase shocking but not surprising. She cited the effect of COVID-19 lockdowns, including school closures.[285] Participants in our engagement session added that lockdowns had left young people feeling like they lack control over their lives and depriving them of vital social interaction and community support networks.[286]

230. A psychiatrist we spoke to working in children and adolescents' mental health services (CAMHS) suggested that greater awareness was a factor in the increased number of diagnoses, with misbehaviour now more likely to be seen as a sign of an unmet mental health need.[287] However, Dr Lockhart noted that there is a risk of medicalising normal reactions to difficult experiences.[288]

231. Increased prevalence of mental ill health has put strain on services. Between April and June 2021, 190,271 under-18s were referred to children and young

283 NHS Digital, 'Mental Health of Children and Young People in England 2021 - wave 2 follow up to the 2017 survey' (30 September 2021): https://digital.nhs.uk/data-and-information/publications/statistical/mental-health-of-children-and-young-people-in-england/2021-follow-up-to-the-2017-survey [accessed 27 October 2022]

284 Local Government Association, 'Children and young people's emotional wellbeing and mental health – facts and figures' (January 2022): https://www.local.gov.uk/about/campaigns/bright-futures/bright-futures-camhs/child-and-adolescent-mental-health-and [accessed 1 November 2022]

285 Q 153

286 See Appendix 11.

287 *Ibid.*

288 Q 154

people's mental health services. This compares with 81,170 in the same period in 2020 and 97,342 in 2019.[289]

232. The average waiting time for children and young people to access mental health services in 2020/21 was 32 days, but this varies significantly across England. One proxy used for entering treatment is children receiving two contacts within the year. In 2020/21, only 40% of children received two contacts within a year. Furthermore, only 29% of children referred entered treatment within six weeks, and 37% of children accepted onto waiting lists were still waiting for their treatment to begin as of 2020/21.[290]

233. In our online survey, we asked how effective mental health support is. One respondent told us: "Bad. Lethal. I have a dead child. And 2 legal judgments of systemic failure for the 2 others." Several others disputed the premise of the question that there was any support at all.[291] Box 12 sets out some of the other responses we had.

Box 12: Responses to our survey

"Appalling. We've been waiting for CAMHS for 9 months so far, and no indication how much longer."

"My teenage son attempted suicide THREE times CAHMS did not help"

"Having had a 7 year old son who was so dysregulated he was trying to throw himself out of windows and grabbing knives, there was no support for him (or us). The GP, after two failed CAMHS referrals as he 'didn't meet threshold' told us 'if we could at all afford it, even if it means borrowing money' to find support privately. That CAMHS will not accept a child unless they have made 2 viable attempts on their own life."

"It's non existent apart from in extreme crisis. My son has a brain injury. He was referred in 2020, was rejected by CAHMS and is still on the waiting listed for secondary support services."

"The waiting list to access mental health services are too long, often a 2 year wait. If support plans are put in from the beginning both at home and school this would reduce the number of problems with mental health."

"Ineffective, inflexible, too little, too late. Adopted children need automatic very early and continuing support, not to be passed from professional to professional and multiple organisations."

"Appalling. Two year wait for a CAMHS referral and very little else for children in crisis."

289 Royal College of Psychiatrists, 'Record number of children and young people referred to mental health services as pandemic takes its toll' (23 September 2021): https://www.rcpsych.ac.uk/news-and-features/latest-news/detail/2021/09/23/record-number-of-children-and-young-people-referred-to-mental-health-services-as-pandemic-takes-its-toll [accessed 1 November 2022]

290 Children's Commissioner, *Children's Mental Health Services 2020/21* (February 2022): https://www.childrenscommissioner.gov.uk/wp-content/uploads/2022/02/cco-briefing-mental-health-services-2021–22.pdf [accessed 1 November 2022]

291 See Appendix 6.

> "It took 16 months for first consultation by which time my son's mental health had gotten to drastic level, he barely slept or ate, he'd lost so much weight you could see all his bones. He never left house except for occasionally going up school, he had so many scars from self harming. It was very scary time. I was told that he would be on urgent care list, which meant that he would receive treatment from the same physiatrist each visit and he would be seen twice as many times as others … this simply meant appointments every 4 weeks instead of 8!!!"
>
> "It is appalling! There is little or no coherent pre-emptive mental health care."

Source: Appendix 6

234. Al Coates, founder of the Adoption and Fostering Podcast and adoptive parent, told us: "I have a friend whose child made a viable attempt at suicide. They were put on an emergency referral to CAMHS—six months. That is an emergency referral."[292]

235. During our visit to Barnet, several students told us that they had experienced waits of two to three years for mental health support from CAMHS—suffering from anxiety, depression and panic attacks while waiting to receive a diagnosis and treatment, which affected their education. Some students had received private care but acknowledged that they were fortunate that their parents could afford this.[293]

236. The same pressures on services which lead to long wait times can also impact on the time available to dedicate to children and young people when they finally access care. During our visit to CAMHS at the Maudsley Hospital, parents and children generally felt that, although many of the clinicians they had worked with were excellent, long waiting lists meant that help didn't last as long as they would have liked because the clinician had to move onto the next patient. Some felt that decisions are too often based on paperwork without spending time with a child.[294]

237. We received similar accounts from staff at another school. They reported multiple suicide attempts on the school site, with long waits for an ambulance and little follow-up support given—the local CAMHS service having a 12–18 month waiting list.[295]

238. The pressure on CAMHS is felt in many areas. Dame Christine Lenehan, Director of the National Children's Bureau, described addressing the intersection of mental health and special educational needs as "key" to improving SEND provision.[296]

239. In oral evidence on adoption, Dr Carol Homden, Chief Executive of Coram, lamented how what she called the "broad and general insufficiency of the child and adolescent mental health services across the UK" affects adopted children who need help to overcome trauma.[297] We heard that there are long

292 Q 64
293 See Appendix 7.
294 See Appendix 13.
295 See Appendix 11.
296 Q 121
297 Q 55

waiting lists for post-adoption trauma support and post-adoption teams are asking untrained school counsellors to do life story work with children, which they do not feel qualified to do.[298] Looked after children are four times more likely to experience mental health issues than their peers.[299]

240. Hannah Markham KC, Chair of the Family Law Bar Association and Chair of Women in Family Law, also encountered the effect of CAMHS waiting lists in her work in the family courts, telling us: "CAMHS is in crisis. The mental health support for children is in dire straits at the moment across Great Britain."[300] This was echoed by members of the Family Justice Young People's Board. Several members of the group spoke of having been, or being, on long waiting lists. One had waited four years to see a counsellor and their education had suffered in the meantime. They complained that children do not become eligible for support until after proceedings have ended, even though it is often needed much earlier.[301]

241. **We are deeply concerned by the state of children and adolescents' mental health services. They are in crisis. This is a grave threat both to the success of individual provisions of the Act and to its overarching aim of enhancing the lives of children and their families. The Government, in allowing services to deteriorate to this level, has shown it has not grasped the importance and severity of this problem.**

Early intervention

242. In many policy areas, contributors to our inquiry stressed the need for early intervention. Most obviously, it is a key part of the rationale for strengthening paternity leave rights. The OECD found: "Fathers who care for children early tend to stay more involved as children grow up. Where fathers participate more in childcare and family life, children enjoy higher cognitive and emotional outcomes and physical health."[302]

243. In Oxford, members of the local Family Justice Board told us that it is often the same people having children taken removed from their care every couple of years and that they do not receive sufficient help in the interim to become capable of looking after a child. They saw early intervention as crucial to breaking this cycle.[303] We also heard from adoptive parents that children's underlying trauma is too often left untreated until it manifests in serious harm.[304]

244. Early intervention is not always seen as a priority. In relation to SEND, Dame Christine Lenehan described how "a sort of collapse in early intervention services in local authorities made the ambitions of the reforms, which were the right ones, almost look like a pipe dream." She stressed that "Most children's needs should and still could be addressed by good early intervention: good quality teaching, differentiation and good conversations

298 See Appendix 11.
299 Local Government Association, 'Children and young people's emotional wellbeing and mental health–facts and figures' (January 2022): https://www.local.gov.uk/about/campaigns/bright-futures/bright-futures-camhs/child-and-adolescent-mental-health-and [accessed 2 November 2022]
300 Q 78
301 See Appendix 12.
302 Organisation for Economic Cooperation and Development, *Parental leave: Where are the fathers?* (March 2016): https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf [accessed 2 November 2022]
303 See Appendix 9.
304 See Appendix 10.

between parents and schools and everyone else."[305] Imogen Jolley, Director of Public Law, Simpson Millar Solicitors, highlighted that early intervention reduces the likelihood of a situation devolving into a crisis situation.[306]

245. Anne Longfield CBE, former Children's Commissioner and Chair of the Commission on Young Lives, argued:

> "Treasury approaches do not work with children's lives. They are not long term. They do not look at long-term investment in the way they need to. The long-term investment of something like early intervention just has not been able to get through the Treasury decision-making, because it looks at five years at a time, or less, or three years at a time. Actually, if you look at a child's life, of the disadvantage gap at 16, 40% of it has already happened by the time the child steps into school at five."[307]

246. Jacky Tiotto highlighted the value of early intervention in family justice through early legal advice and mediation, which she say as the only way to reduce demands on the family justice system. However, she noted that early intervention does not solve the problems of those already in the system, saying "… we would have to double-run the system. We would have to fund it so that help was there for new applicants while we were dealing with the backlog that we have now, which also needs resourcing."[308]

247. A particularly striking example of how timely interventions can save money, as well as improving lives, was the case of a young person who waited more than a year for an ADHD diagnosis. Without a diagnosis or treatment, their behaviour deteriorated, and they were expelled from school. They ultimately had to have two live-in support workers, at significant cost to the local authority.[309]

248. **Early intervention saves money and saves lives. It results in better outcomes for children and young people and reduces the need for high-cost interventions later in the cycle for those already at crisis point. Despite the clear value of early intervention in many areas covered by the Act, it remained absent across many of the areas we looked at, threatening the stability of families and the health of children and young people. It is clear to us that the Government need fully to grasp this fact across many areas of the Act.**

Avoiding 'one size fits all' approaches

249. We heard complaints about 'one size fits all' policies which fail to cater for individual children's needs.

250. In relation to mental health, Dr Matt Woolgar, Consultant Clinical Psychologist at the National Adoption and Fostering Service South London & Maudsley NHS Trust told us:

> "With more complex presentations, it is much harder for a stressed system to have the resources to look at the variety and diversity of

305 Q 114
306 Q 121
307 Q 166
308 Q 143
309 See Appendix 11.

> presentations in those complex kids. That will stress any system. One way people try to cope with those problems is to simplify the services, and that means, again, that some of those more risky, complex children get squeezed out and do not get ready access."[310]

251. Participants in our discussion about mental health services at the Maudsley Hospital expressed similar concern about "box ticking exercises" taking precedence over individual needs.[311]

252. In relation to SEND, a clear manifestation of the problem with one size fits all approaches was education, health and care plans. Our evidence suggests that they work well for parents with high levels of education and resources but leave others struggling. Moreover, we heard that EHCPs could be 'all or nothing' with those who have special needs which fall short of the threshold for a plan left without adequate support.[312]

253. However, the variety in different types of families and their needs can pose serious challenges to establishing consistent and fair support mechanisms. Kinship care serves as a salient example. Although we criticise disparities between the support available for adoptive parents and that which is provided to kinship carers with special guardianship orders (SGOs), many kinship carers do not have a formal legal arrangement of this sort. The informal and often flexible and changing nature of such arrangements militate against legal definition, making it hard for the State to provide support.

Coherence and innovation in government

254. Many concerns put to us related to systems in the public sector being fragmented and with limited mechanisms to learn from and collaborate with the third sector.

255. Dr Woolgar explained the importance of agencies having a shared understanding of children's needs, telling us: "We often find there are silos or narratives around children's mental health that exist within different stakeholders and do not link together. Trying to get linked-up services when you believe different things about a child is incredibly difficult."[313] During our visit to CAMHS at the Maudsley Hospital, the young people and parents we spoke to suggested that they had received excellent care, but this was because of excellent practitioners and in spite of the systems and processes in which they must operate. Families told us they often felt like they were being passed between different siloes, each of which was required to engage in a series of box-ticking exercises rather than tailoring support for the child as much as they might have.[314]

256. Calls for coherence of care extended to social care. Our witnesses raised concern that children and their families don't receive continuity of care, undergoing numerous changes in their social workers.[315] Al Coates, told us: "It should not be that social workers dip in and dip out, but that there is continuity across a child's lifetime."[316]

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310 Q 177
311 See Appendix 13.
312 See Appendix 6 and Appendix 7.
313 Q 178
314 See Appendix 13.
315 Q 64 (Naomi Angell), Q 80 (Hannah Markham) and Q 82 (Sarah Blackmore)
316 Q 63

257. This is consistent with the repeated complaints we heard about the disconnect between education, health and care professionals supporting children with SEND, despite the intent of EHCPs having been to bring coherence. A respondent to our survey explained:

> "Education and health are not joined up at all. Despite wanting to, education professionals are not able to work with health colleagues in too many cases due to … Education and social care can work together but often it is not effective due to social workers' high caseloads which prevent the levels of engagement needed to actually make a difference."[317]

One parent we spoke to in Barnet had had to co-ordinate support 36 staff supporting their child who did not necessarily speak to each other.[318]

258. Such problems extend to policymaking in government. Anne Longfield recounted how she found "silos within silos", saying: "I have spent most of my time joining dots between different departments and different policy areas—some in the same department. I spent a lot of time making the case in different rooms. It would have been good if someone else had been doing that at the time."[319]

259. High turnover rates amongst those in positions of power, including Ministers and officials, can hamper efforts to deliver consistent and high-quality services. Sir Andrew McFarlane criticised the high rate of ministerial turnover, saying that for the Family Justice Board "quite often it is never the same two chairs from one meeting to the next."[320] Professor Rosemary Hunter noted that high turnover impedes lesson learning, saying: "external research is absorbed, taken on board and dealt with, and then there are changes in Civil Service, or changes in Ministers, and then we are all back to square one again."[321] In the 4 years since 2018, there have been 7 Children and Families Ministers (or equivalent), 8 Parliamentary Under-Secretaries of State for Justice, and 7 Parliamentary Under-Secretaries of State for Small Business, Consumers and Labour Markets.

260. We were impressed by the work the third sector does. Kadra Abdinasir, Associate Director of Children & Young People's Mental Health at the Centre for Medical Health, argued: "there has definitely been lots of learning from the voluntary and community sector and the private sector, which we consistently try to take to the State in order to show examples of good practice, and many of these things are affordable".[322]

261. Charities can support communities where the state can or will not help. Anne Longfield noted "how sceptical a lot of local communities, especially marginalised communities, are about statutory services."[323] She explained that charities "stick with people for the long term".[324] Birth parents whose children had been adopted told us that while they had not felt adequately

317 See Appendix 6.
318 See Appendix 7.
319 Q 166
320 Q 142 (Sir Andrew McFarlane)
321 Q 91 (Professor Hunter)
322 Q 156
323 Q 164
324 Q 167

supported by the State during or after adoption proceedings, they were lucky to have found charities which offered counselling, mentoring and training.[325]

The need to embrace technology and better use of data

262. A common theme of our inquiry was the need to embrace technology and make better use of data. Our witnesses felt that many current systems are insufficiently modern which hampers their effectiveness.

263. We have heard about a chronic lack of data about many areas of public life, from the effectiveness of mediation to the number of discretionary adoption pay payments made to self-employed adopters.[326] Contributors to our inquiry were roundly critical of this, noting that without adequate data, the Government cannot be confident that its policies are being implemented or working well.[327] PAUSE, an organisation which works with women who have had multiple children removed from their care, said:

> "Data collection and accountability often drive changes in systems. Currently, data on women who've experienced removals of children from their care is not collected routinely which means that it is difficult to learn lessons and improve support for women."[328]

264. Similarly, the Women's Resource Centre, told us:

> "Data is not collated or collected by family court to review good or poor practice or outcomes for women and their children. Secrecy and silencing with regard to court processes and decisions hampers monitoring and improvement."[329]

One contributor deemed the lack of data and transparency in the family justice system a "dire situation".[330]

265. We are conscious that digitisation of public services can place strain on systems while they undergo a transition away from paper-based record keeping. Sir Andrew McFarlane, President of the Family Division of the High Court of England and Wales and Chair of the Family Justice Council, told us:

266. "We are coping with all the problems you are hearing about at the same time as engaging with new technology, which is coming through the reform programme throughout the court. In the course of five or six years, we are going from a wholly paper-driven system to a completely digital system. That leads to judges, who have to input information to the system, undertaking more administrative tasks than they ought to be doing."[331]

267. Similarly, staff working at the Oxford Combined Court Centre told us that while virtual proceedings, introduced during the pandemic, had saved lawyers time and resources, they placed an additional burden on administrative staff.[332]

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325 See Appendix 8.
326 Q 98 (Mavis Maclean) and written evidence from Home for Good (CFA0133)
327 Q 149 (Jacky Tiotto)
328 Written evidence from PAUSE (CFA0007)
329 Written evidence from Women's Resource Centre (CFA0064)
330 Written evidence from Brian Hudson (CFA0134)
331 Q 144
332 See Appendix 9.

268. However, our witnesses were clear about the benefits of new technologies, including improved data collection and analytics, in improving outcomes across public services. Dame Rachel de Souza, the Children's Commissioner for England, told us:

> "Getting decent data sharing would help services and government to understand better what is happening with children… I go to counties where the police have a list of children not in school, which is not talking to the health list or the education list. One of the real things we could do is set up proper data sharing. So that is a biggie."[333]

269. **Without proper mechanisms for data collection, sharing and analysis, the Government is flying blind and is unable to track the implementation and effectiveness of its policies. Improved use of data across public services is crucial to ensure good outcomes for service users, help identify problems as they arise, and seek value for money.**

Communication with children and families

270. We heard that parents and young people would often benefit from improved communication. Sometimes, they feel overwhelmed by information which is not easily comprehensible. For example, in relation to the family courts, Professor Rosemary Hunter, Professor of Law and Socio-Legal Studies at the University of Kent, told us: "If you go on the web you are absolutely drowning. There is masses of information out there but it is almost impossible for anybody to filter it, or for a lay person to understand what is authoritative or even whether it is in the right jurisdiction."[334]

271. We were also told about how hard it is for parents and employers to understand the shared parental leave system and for parents to navigate bureaucracy relating to support for children with special educational needs and disabilities or to understand the process by which their child might be taken into care or adopted.[335]

272. One study found: "clear systems wide communication and transparency failures in relation to the overall process to obtain the relevant SEND provision for children. These failures ranged from examples of the school and Local Authorities misinforming parents, not responding to phone calls and emails to instances whereby communication between parents and the school and/or local authority had either broken down or was severely strained."[336]

273. It was noted that it tends to be middle class, highly educated parents with access to resources who can navigate complex systems whereas others are left struggling.[337]

274. There was praise for peer mentoring schemes in the context of adoption and mental health support, but a feeling that these could not be a replacement for communication from official channels.[338] Phone lines could also offer valuable support but need more investment and to be better publicised.[339]

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333 Q 175
334 Q 88
335 Q 124 (Joeli Brearley and Olga FitzRoy). See also Appendix 7 and Appendix 8.
336 Written evidence from Prof Amel Alghrani, Ms Deborah Tyfield and Dr Seamus Byrne (CFA0031)
337 See Appendix 13 and Q 98 (Sir James Munby).
338 See Appendix 10 and Appendix 13.
339 See Appendix 12 and Appendix 13.

The voice of the child and the Children's Commissioner

275. There was a consensus that it is essential that children's wishes be taken into account. This is true in decisions relating to who a child is cared by, as we discuss in chapters 2 and 3. One young person in the care system told us that social workers had often been dismissive and hard to get hold of—not taking their wishes seriously until they were well into their teens. They had seldom been asked for feedback on the support they were receiving.[340]

276. The voice of the child must be heard at the highest level of policymaking too. We were greatly impressed by the members of the Family Justice Young People's Board we met. In their discussion with us and through their other work, they have drawn on their personal—and often highly sensitive—experiences to provide advice on how the system can be improved for those who come after them.[341] We were also encouraged to hear from Andre Imich, SEN and Disability Professional Adviser at the Department for Education, that the Government runs 'SEND improvement boards' with young people.[342]

277. The Children's Commissioner has a special responsibility with their primary function promoting and protecting the rights of children in England, including promoting awareness of the views and interests of children. They must have particular regard for the rights of children living away from home or receiving social care, and other at-risk groups and must take reasonable steps to involve children in their work. Dame Rachel de Souza, the current postholder, explained that the role "is about children, and families, and bringing their views to policymakers and the Government to make sure that they are heard. If I felt that I was not being listened to or heard, I probably would call for more powers, but I have good cut-through, and no Minister or parliamentarian has turned me away."[343]

278. However, Anne Longfield, her predecessor, was critical of a lack of consultation by the Government during the COVID-19 pandemic. She said: "There were a number of times where decisions were made, where I might have been given something to garner my view from, but I do not think there was a strong enough appreciation of the protection that these children needed during that time."[344]

279. **Children need a strong voice at the highest level of government to advocate for their views and needs, providing advocacy which lasts beyond the cycle of a Ministerial appointment. The Children's Commissioner is a powerful advocate with critical powers, and it is critical that the Government continues to heed them and to consider how best the voice of children is represented at the most senior levels of government.**

280. **Throughout our inquiry, we have sought to hear directly from children, young people and their families. We were lucky to meet with children receiving mental health support and children with experience of the family justice system to hear their views on what could be improved. We are grateful for their time and insight, as they shared with us the challenges they face and how they feel let down by the very systems**

340 See Appendix 13.
341 See Appendix 12.
342 Q 4
343 Q 171
344 Q 162

designed to support them. The failure of this Act was clearest to us in the conversations with the very children it was designed to support. As it looks to develop policies affecting children and young people in the future, their welfare should be the Government's paramount concern and their views should be duly sought and respected.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. At the time of receiving Royal Assent, the Children and Families Act 2014 was described as a "landmark" piece of legislation. However, successive governments have failed adequately to monitor its implementation. In some instances, departments have made no meaningful effort to evaluate impact. This is unacceptable. (Paragraph 34)

2. *When an Act receives Royal Assent, the Government should publish a post-legislative scrutiny plan. This should include when a post-legislative memorandum will be published, if applicable, and details of the metrics which will be used to evaluate each section and what data will need to be collected to do so.* (Paragraph 35)

3. Our experience of this inquiry has convinced us of the real value of post-legislative scrutiny. The House of Lords, with its history of post-legislative scrutiny, is well placed to scrutinise Acts, but cannot singlehandedly scrutinise every Act passed. Once Parliament has passed a law, it owes it to those citizens affected to check how well the law is working. We are concerned by the disparity between the number of bills passed each year and the number of Acts scrutinised by the Government. (Paragraph 36)

4. Early permanence placements, including fostering to adopt placements, can bring many benefits for the children involved, but require careful preparation and support for the prospective adopters. The Act's requirement to consider fostering to adopt placements has had minimal impact, in part because it was not matched with the support necessary for adoption agencies and local authorities to implement the change. Inconsistent approaches by the courts in approving fostering to adopt placements have also hampered uptake. (Paragraph 55)

5. *We welcome the Government's commitment in the Adoption Strategy to increasing the number of early permanence placements where appropriate. The Government should publish an assessment of the impact of the funds spent on increasing early permanence placements, as well as publishing a longer-term strategy for promoting early permanence.* (Paragraph 56)

6. It is not clear that the change of law, removing the requirement to consider ethnicity, has changed practice. Ethnic minority children still wait too long to be adopted; a disparity which is unacceptable. There remains a shortage of prospective adopters who are prepared to adopt children from minority ethnic groups and those who do are insufficiently supported. The adoption workforce, and adoption panels, are insufficiently diverse. Failure to undertake active recruitment and inadequate pay are serious contributors to a lack of diversity in adoption panels. (Paragraph 68)

7. *To help drive whole system change at all levels, we recommend that the Government create a task force dedicated to addressing ethnic and racial disparities in the adoption system. Membership should include those with appropriate skills, expertise and experience, including regional and voluntary adoption agencies, community groups and those with experience of the adoption system. It should address issues of race and ethnicity in the adoption system. This should focus on issues including increasing diversity in the workforce and on adoption panels, support for transracial adopters, training for those working with minority ethnicity adopters and adoptees and recruiting and supporting minority ethnicity adopters. The task force should be outcome focused and directly accountable to the Secretary of State for Education, and should have specific, targeted and measurable outputs.* (Paragraph 69)

8. The move away from the national matching register to commercial service providers has led to some improvement in usability for adopters. However, the loss of compulsory referrals and practitioner support for matching has undermined the ability of children to be seen by all those who may be able to provide them a permanent home. This is an unnecessary barrier to finding loving, secure homes for children, and one the Government failed to account for. (Paragraph 77)

9. *The Government should re-instate the statutory register on its original terms, working with commercial service providers to build a more functional platform which combines the usability of existing services with the matching support and referral requirements of the statutory register.* (Paragraph 77)

10. We are concerned by the lack of post-adoption support—particularly that which is targeted at early intervention, addressing problems before they threaten the stability of placements. The Adoption Support Fund is a welcome development, but its narrow parameters, short term funding and excessively complex and bureaucratic application process hamper its effectiveness. (Paragraph 84)

11. *The Government should consider the expansion of the Adoption Support Fund, allowing it to be used for more than therapy and ensuring it is also focused on early intervention. We welcome the most recent multi-year settlement and encourage the Government to commit to continuing to guarantee sufficient and appropriate funding several years into the future.* (Paragraph 84)

12. Contact, where safe, appropriate and properly managed, can be valuable for an adoptive child, their new family and their birth family, including siblings and other relatives. However, contact orders and support can vary, and the current system of letterbox contact is outdated. The failure to modernise contact threatens to undermine the adoption system. (Paragraph 93)

13. *We urge the Government to support adoption agencies in developing and rolling-out a safe and appropriate national digital system for contact as a priority. This system should allow for faster and more intuitive contact, while ensuring contact remains moderated and safe for all.* (Paragraph 93)

14. The lack of consideration given to kinship care when the Act was passed is a clear failure, made only more critical with the rise of Special Guardianship Orders in the intervening years. We are concerned by the lack of support provided to kinship carers, whose situations are often, if anything, more challenging than those of adopters. While the extension of the Adoption Support Fund to kinship carers with a Special Guardianship Order is welcome, take-up remains low. Support for kinship carers providing care outside of an SGO is discretionary and varies significantly between local authorities, leading to an unjust distribution of support. (Paragraph 101)

15. *The Government should undertake a promotional campaign to increase take-up of the fund by those parenting under a Special Guardianship Order, beginning with renaming the fund to reflect that it is not limited to adopters.* (Paragraph 101)

16. Owing to their relationship with the child's birth parents, many kinship carers do not come to the attention of children's services and the courts as potential carers until too late in the process, in an effort to avoid 'competition' with birth parents. This can lead to unnecessary delays and rushed assessments, which are not in the best interests of the child. (Paragraph 102)

17. *We recommend that possible kinship carers should be identified and assessed alongside other options during pre-proceedings. This should be done in a manner which does not presume any particular outcome, with this made clear to all involved.* (Paragraph 102)

18. The 26 week timeframe imposed by the Act has generally been positive. It has helped to bring cultural change, highlighting that it is essential that children—particularly the very youngest children—receive timely judgements. While flexibility may sometimes be needed in the most complex of cases, the average case duration has been allowed to become too long. Particular causes for concern include resource pressures on local authorities and Cafcass, pressures on judicial time, the use of expert witnesses and a lack of data about the functioning of the family justice system. (Paragraph 121)

19. The Act's provisions on the use of expert witnesses have been welcome, and the intention to limit the unnecessary use of experts is a correct one. However, we are concerned that there may be variation in both the quality and frequency of expert witness usage across the courts. In cases where expert witnesses are necessary, the lack of ready availability of expert witnesses can pose further challenge to concluding cases in a timely manner. Improved data collection is needed to clarify the scale of the problem. (Paragraph 122)

20. *There is no easy solution to the creeping delays in family law cases, but it is clear both that more resources—and more efficient use of resources—are needed. Improved data gathering and sharing are needed to identify and tackle delays as they emerge. We recognise that the Family Justice Board faces a difficult task in trying to give guidance to the various participants within the Family Justice System, but we are concerned that it may nonetheless not be fulfilling its role to the full extent that is possible. We consider that stable, high-level leadership of the Board is essential, and recommend the appointment of an independent Chair at a senior level, with a view to the Board being able to show greater leadership and share insights with Local Family Justice Boards and others. We welcome the Government's commitment to making a significant dent in reducing delays by 2023 but call on them to quantify the reduction they are seeking, alongside specified timescales. We urge the Government to publish a target for the timeliness of public children cases, along with an associated action plan laying out how it aims to achieve this reduction and how it will measure progress.* (Paragraph 123)

21. Improved data collection and data sharing are necessary to track the performance of the family justice system, identify regional inequalities and ensure consistent outcomes for children and their families. The current absence of sufficient data on court outcomes is an evident failure of the system, and without improved data the Government is at risk of making major policy changes which have far reaching impacts on the lives of children and families without a sound evidentiary basis. (Paragraph 128)

22. *The Government should improve its collection and sharing of data on the family justice system.* (Paragraph 128)

23. Mediation can help to divert cases from court, helping parties to reach settlement and limiting the burden on court time. However, in many cases mediation is not appropriate. Some couples have genuinely intractable disagreements which require court intervention to settle. The Government's focus on mediation as a mechanism of reducing the court backlog, to the exclusion of all other forms of dispute resolution, is excessive and we have

serious concern about any moves to make mediation functionally compulsory (Paragraph 139)

24. MIAMs have been ineffective and had low engagement rates. Their singular focus on mediation combined with no requirement for the respondent to attend and a perception of MIAMs as a form of relationship counselling have hampered their success. Many couples would instead benefit from a source of clear, impartial information on separation and, if necessary, general legal advice which can direct them to non-court or court-based resolution as appropriate. Some couples, having received this information, will still have reasons to continue towards the court to try to resolve disputes. Legal representation in these cases can help improve the efficiency of these cases, but the absence of legal aid in many private law cases has precluded this. (Paragraph 140)

25. *We recommend that the Government produce and maintain a website which provides impartial advice for separating couples, helping them to understand the family justice system and what the courts can resolve, as well as what they cannot. We urge the Government to reconsider its proposals to make mediation effectively obligatory. Instead, we recommend that the MIAMs and mediation voucher schemes be replaced by a universal voucher scheme for a general advice appointment, at which point individuals can be signposted to alternative dispute resolution mechanisms, including mediation. We recommend that the Government urgently evaluate the impact of the removal of legal aid for most private family law cases, considering where reinstating legal aid could help improve the efficiency and quality of the family justice system.* (Paragraph 141)

26. The voice of the child is not always heard and respected in the family justice system. The welfare of children should be the courts' paramount consideration, and children themselves can be best placed to speak about which is in their best interest and should be involved in decisions about their futures. We have heard that children and young people don't feel that their voices were heard properly heard in court proceedings, and that they felt that decisions might have been made more quickly and more in line with their wishes if they had been able to speak to the judge directly. We are concerned that Cafcass do not have the resources to devote to soliciting and following up on children views. (Paragraph 150)

27. *We recommend that, in order to formalise the voice of the child in proceedings, initial hearings should address the issue of how the voice of the child will be heard during the case. We also recommend that the Family Justice Council reviews the guidance setting out the approach taken to judges meeting with children. In so far as there may be a basis for a change of approach, the Committee further recommends that the Family Justice Council and the Judicial College give thought to the training needs of judges in this area and the sharing of best practice.* (Paragraph 151)

28. We have heard a range of views on the presumption of parental involvement and recognise that it is highly contentious. We take the view that in the majority of cases it is beneficial for both parents to be involved in a child's life. However, every case is different. Each child's welfare—including, to the appropriate extent, their wishes—must be paramount and judged according to their individual situation. Nothing should be allowed to undermine this. We are concerned by evidence that in at least some cases the rights of parents may be being put ahead of the rights and welfare of children. Nevertheless, there is a clear lack of adequate data on the effect of the presumption,

both on court judgements and on how it sends a signal which affects how cases are settled out of court. We welcome the Government's review of the presumption. (Paragraph 168)

29. *The Government should carefully consider the findings of the review of the presumption of parental involvement and make any legislative or other changes necessary to ensure that children's welfare is always put first.* (Paragraph 169)

30. *We endorse the Women and Equalities Select Committee's proposal to replace shared parental leave with a right to 12 weeks' paternity leave paid for four weeks at 90% of salary with no cap and for the remaining eight weeks at the statutory rate. Such a change would increase uptake, as it would be an independent 'use it or lose it' right and not require mothers to give up any of their leave. We recognise that this is an ambitious proposal, but it is the right ambition to have and one towards which we should move, beginning with the Government publishing an assessment of the costs and benefits of such a policy. As part of this assessment, it should consider particularly the impact of such a scheme on small organisations and enterprises. Moreover, to support smaller businesses, we recommend leaving in place the higher rate of 103% reclaim for employers who qualify for small employers' relief (and 92% for other businesses).* (Paragraph 195)

31. While self-employed mothers can make use of maternity allowance (subject to conditions), self-employed fathers and mothers' partners receive no paternity allowance. They are treated unfairly in relation both to self-employed mothers and employed fathers/partners. (Paragraph 198)

32. *At a minimum, we recommend that self-employed fathers/partners be given a right to statutory shared parental pay subject to the same conditions and at the same rate as directly employed fathers/partners. We further recommend that the Government's long-term ambition should be for self-employed fathers/partners to receive 12 weeks' paternity pay, paid at the same rate mothers receive maternity allowance. We acknowledge that individual circumstances may not allow this, but nevertheless believe this should be the Government's ambition which would provide a level playing field for self-employed parents, empowering them to spend time bonding with their child.* (Paragraph 198)

33. Although more than 150.000 children live in kinship care in England, kinship carers currently have no legal right to paid time off from work and often have to rely on the good will of their employers. As a consequence, carers can be forced to leave the labour market. (Paragraph 205)

34. *We recommend that kinship carers with a Special Guardianship Order be provided with the same rights to leave as adopters when a child is placed in their care to ensure parity of support.* (Paragraph 205)

35. Flexible working brings numerous benefits on an individual and societal level. However, employers and employees seem to disagree on how to implement the right to request flexible working arrangements. Many employers and campaigners would support making the right to request a one-day right, though some argued that instead jobs should be designed and advertised flexibly from the outset. (Paragraph 224)

36. *In principle, we see no obstacles to make the right to request flexible working a day-one right. We would also recommend that businesses—while maintaining the statutory business reasons to refuse employees' requests—be encouraged to*

advertise jobs flexibly whenever possible, with the Government leading by example. (Paragraph 224)

37. We are deeply concerned by the state of children and adolescents' mental health services. They are in crisis. This is a grave threat both to the success of individual provisions of the Act and to its overarching aim of enhancing the lives of children and their families. The Government, in allowing services to deteriorate to this level, has shown it has not grasped the importance and severity of this problem. (Paragraph 241)

38. Early intervention saves money and saves lives. It results in better outcomes for children and young people and reduces the need for high-cost interventions later in the cycle for those already at crisis point. Despite the clear value of early intervention in many areas covered by the Act, it remained absent across many of the areas we looked at, threatening the stability of families and the health of children and young people. It is clear to us that the Government need fully to grasp this fact across many areas of the Act. (Paragraph 248)

39. Without proper mechanisms for data collection, sharing and analysis, the Government is flying blind and is unable to track the implementation and effectiveness of its policies. Improved use of data across public services is crucial to ensure good outcomes for service users, help identify problems as they arise, and seek value for money. (Paragraph 269)

40. Children need a strong voice at the highest level of government to advocate for their views and needs, providing advocacy which lasts beyond the cycle of a Ministerial appointment. The Children's Commissioner is a powerful advocate with critical powers, and it is critical that the Government continues to heed them and to consider how best the voice of children is represented at the most senior levels of government. (Paragraph 279)

41. Throughout our inquiry, we have sought to hear directly from children, young people and their families. We were lucky to meet with children receiving mental health support and children with experience of the family justice system to hear their views on what could be improved. We are grateful for their time and insight, as they shared with us the challenges they face and how they feel let down by the very systems designed to support them. The failure of this Act was clearest to us in the conversations with the very children it was designed to support. As it looks to develop policies affecting children and young people in the future, their welfare should be the Government's paramount concern and their views should be duly sought and respected. (Paragraph 280)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Bach
Baroness Bertin
Baroness Blower
Lord Brownlow of Shurlock Row
Lord Cruddas
Baroness Lawrence of Clarendon
Baroness Massey of Darwen
Lord Mawson
Baroness Prashar
Lord Storey
Baroness Tyler of Enfield (Chair)
Baroness Wyld

Declarations of interest

Lord Bach
No relevant interests declared
Baroness Bertin
No relevant interests declared
Baroness Blower
No relevant interests declared
Lord Brownlow of Shurlock Row
Patron and donor to 'Dingley's Promise'
Donor to PACT (Parents and Children Together)
Lord Cruddas
No relevant interests declared
Baroness Lawrence of Clarendon
No relevant interests declared
Baroness Massey of Darwen
Co-Chair, All-Party Parliamentary Group for Young People's Health
Officer, All Party Parliamentary Group for Children
Patron, Several organizations focused on children
Lord Mawson
No relevant interests declared
Baroness Prashar
Patron, Association of Child Protection Professionals
Patron, Peer Power
Lord Storey
No relevant interests declared
Baroness Tyler of Enfield (Chair)
Co-Chair of the APPG for Children
Chair of CAFCASS 2012–2018
Baroness Wyld
Non-Executive board member of Ofsted

A full list of Members' interests can be found in the Register of Lords Interests: https://members.parliament.uk/members/lords/interests/register-of-lords-interests

Specialist Advisors

Prof Rob George

Barrister at Harcourt Chambers practising at the Family Bar

Prof Julie Selwyn CBE

Member of the National Adoption and Special Guardianship Leadership Board (unpaid role)

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at s://committees.parliament.uk/committee/581/children-and-families-act-2014-committee/publications/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Andre Imich, SEN and Disability Professional Adviser, Department for Education	QQ 1–14
*	Sophie Langdale, Director, Children's Social Care Strategy and Practice, Department for Education	
*	Neal Barcoe, Deputy Director, Family Justice Policy, Ministry of Justice	
*	Professor Elaine Farmer, Emeritus Professor of Child and Family Studies, University of Bristol	QQ 15–25
*	Jo Mitchell, National Service Lead, PAC-UK	
**	Dr Lucy Peake, CEO, Kinship	
*	Professor Elsbeth Neil, Professor, Centre for Research on Children and Families, University of East Anglia	QQ 26–32
*	Joanne Alper, Director, Adoptionplus	QQ 33–46
*	Natausha van Vliet, Chief Executive, Parents and Children Together	
*	Mandy Davies, Assistant Service Director, Parents and Children Together	
*	Sarah Johal, National Strategic Lead, Regional Adoption Agencies	QQ 47–58
**	Dr Carol Homden, Chief Executive, Coram	
*	Alexandra Conroy Harris, Legal Consultant, CoramBAAF	
*	Naomi Angell, Consultant, Osbornes Law	QQ 59–68
*	Al Coates, Founder, Adoption and Fostering Podcast, and Adoptive Parent	
*	Professor Judith Masson, Emeritus Professor, University of Bristol Law School	QQ 69–76
*	Dr Julie Doughty, Senior Lecturer in Law, Cardiff University	
*	Lisa Harker, Director, Nuffield Family Justice Observatory	QQ 77–86

*	Sarah Blackmore, Joint Head of Chambers, Spire Barristers	
*	Hannah Markham KC, Chair of the Family Law Bar Association and Chair of Women in Family Law	
*	Bob Greig, Co-Director and Co-Founder, OnlyMums and OnlyDads	QQ 87–92
**	Professor Rosemary Hunter, Professor of Law and Socio-Legal Studies, University of Kent	
*	Mavis Maclean, CBE, Senior Research Associate, Department of Social Policy and Innovation, University of Oxford	QQ 93–102
*	Sir James Munby, former President of the Family Division and Head of Family Justice	
*	Adefunke Larigo, Founder and Chief Executive Officer, Agency Connection	QQ 103–112
**	Yoni Ejo, Chief Executive Officer, Diversity Adopt	
*	Imogen Jolley, Director of Public Law, Simpson Millar Solicitors	QQ 113–122
*	Stephen Kingdom, Campaign Manager, Disabled Children's Partnership	
*	Dame Christine Lenehan, Director, National Children's Bureau	
**	Joeli Brearley, Founder, Pregnant Then Screwed	QQ 123–130
**	Olga FitzRoy, Founder and Campaigner, Parental Pay Equality	
*	Alexandra Hall-Chen, Senior Policy Adviser, Institute of Directors	QQ 131–138
*	Jane van Zyl, Chief Executive Officer, Working Families	
*	Rt Hon Sir Andrew McFarlane, President of the Family Division and Chair of the Family Justice Council	QQ 139–151
*	Jacky Tiotto, Chief Executive, Cafcass	
*	Steve Crocker OBE, President, Association of Directors of Children's Services	
*	Kadra Abdinasir, Associate Director of Children & Young People's Mental Health, Centre for Mental Health	QQ 152–160
*	Dr Elaine Lockhart, Chair of the Royal College of Psychiatrists in Scotland's Child and Adolescent Faculty	
*	Anne Longfield CBE, former Children Commissioner and Chair of the Commission on Young Lives	QQ 161–167

*	Dame Rachel de Souza, Children's Commissioner for England	QQ 168–175
**	Dr Matt Woolgar, Consultant clinical psychologist at National Adoption and Fostering Service, South London & Maudsley NHS Trust	QQ 176–182
*	Kelly Tolhurst MP, Former Minister of State (Minister for Schools and Childhood), Department for Education	QQ 183–193
*	Sophie Langdale, Director, Children's Social Care Strategy and Practice, Department for Education	
*	Lord Bellamy KC, Parliamentary Under-Secretary of State, Ministry of Justice	
*	Neal Barcoe, Deputy Director Family Justice Policy, Ministry of Justice	
*	Dean Russell MP, Former Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy	
*	Mike Warren, Director, Labour Markets, Department for Business, Energy and Industrial Strategy	

Alphabetical list of all witnesses

*	Kadra Abdinasir (QQ 152–160)	
	Adoption UK	CFA0068
	Lorraine Agu	CFA0110
		CFA0006
	Professor Amel Alghrani	CFA0031
*	Joanne Alper (QQ 33–46)	
*	Naomi Angell (QQ 59–68)	
	Anonymous 1	CFA0023
	Anonymous 2	CFA0029
	Anonymous 3	CFA0042
	Anonymous 4	CFA0051
	Anonymous 5	CFA0055
	Anonymous 6	CFA0057
	Anonymous 7	CFA0061
	Anonymous 8	CFA0088
	Anonymous 9	CFA0090
	Anonymous 10	CFA0098
	Dr Emma Ashworth	CFA0006

	The Association of Directors of Children's Services Ltd. (ADCS)	CFA0137
*	Neal Barcoe (QQ 1–14) and (QQ 183–193)	
	Barnardo's	CFA0129
*	Lord Bellamy KC (QQ 183–193)	
*	Sarah Blackmore (QQ 77–86)	
	Professor Lucy Bray	CFA0006
*	Joeli Brearley (QQ 123–130)	
	The British Association of Social Workers (BASW)	CFA0116
	British Retail Consortium	CFA0139
	Anne Brown	CFA0004
	Dr Seamus Byrne	CFA0031
	CAFCASS	CFA0056
	Caring Together	CFA0112
	Frances Carr, Contemporary Family Magazine	CFA0092
	Children's Food Campaign	CFA0114
	Children's Rights Alliance for England	CFA0085
	J. Clarke	CFA0119
	Prof. Luke Clements	CFA0008
*	Al Coates (QQ 59–68)	
*	Alexandra Conroy Harris (QQ 47–58)	
	Consortium of Voluntary Adoption Agencies	CFA0127
	CORAM	CFA0117
	CoramBAAF's Black and Minority Ethnic Perspective Advisory Committee	CFA0115
*	Steve Crocker OBE (QQ 139–151)	
	Kathryn Croton	CFA0003
	K. Daniels	CFA0119
*	Mandy Davies (QQ 33–46)	
*	Dame Rachel de Souza, Children's Commissioner for England (QQ 168–175)	
	The Disabled Children's Partnership	CFA0067
	Diana Dobrzynska	CFA00014
*	Dr Julie Doughty (QQ 69–76)	
	H. Eaglestone	CFA0119
**	Joni Ejo CFA0124 (QQ 103–112)	CFA00124
	Dr S. Eryigit-Madzwamuse	CFA0119

	ESC Management Services Ltd	CFA0094
	Families Need Fathers	CFA0104
	Family Court Crisis	CFA0120
	The Family Justice Council	CFA0130
	Family Mediation Cymru	CFA0072
	Family Rights Group	CFA0106
*	Professor Elaine Farmer (QQ 15–25)	
**	Olga FitzRoy (QQ 123–130)	CFA0136
	M. Flegg	CFA0119
	The Food Foundation	CFA0076
	Food School Matters	CFA0073
	Gender Parity UK	CFA0039
	R. Gordon	CFA0119
	HM Government-Department for Education	CFA0001
	Dr Sophia Gowers	CFA0059
*	Bob Greig (QQ 87–92)	
*	Alexandra Hall-Chen (QQ 123–130)	
	Lisa Harker (QQ 77–86)	
	Prof A. Hart	CFA0119
	The Health Conditions in School Alliance	
	Stewart Herd	CFA0123
**	Dr Carol Homden (QQ 47–58)	CFA0075
		CFA0083
	Home for Good	CFA0133
	Howard League for Penal Reform	CFA0058
	Brian Hudson	CFA0134
**	Professor Rosemary Hunter (QQ 87–92)	CFA0138
	IAC The Centre for Adoption	CFA0128
*	Andre Imich (QQ 1–14)	
	IPSEA	CFA0069
	Haidie Jago	CFA0026
	Carla James	CFA0021
*	Sarah Johal (QQ 47–58)	
*	Imogen Jolley (QQ 113-122)	
	Dr B. Kara	CFA0119
*	Stephen Kingdom (QQ 113–122)	

	Kinship	CFA0080
	Dr Joanna Kirkby	CFA0006
	Dr Derek Kirton	CFA0060
	A. Kornas	CFA0063
*	Sophie Langdale (QQ 1–14) and (QQ 183–193)	
*	Adefunke Larigo (QQ 103–112)	
	Legal Action for Women	CFA0097
*	Dame Christine Lenehan (QQ 113–122)	
	LGSCO	CFA0077
	The Local Government Association	CFA0066
*	Dr Elaine Lockhart (QQ 152–160)	
*	Anne Longfied CBE, Chair of the Commission on Young Lives (QQ 161-167)	
	Mavis Maclean CBE (QQ 93–102	
*	Professor Judith Masson (QQ 69–76)	
*	Hannah Markham KC (QQ 77–86)	
*	Rt Hon Sir Andrew McFarlane (QQ 139–151)	
*	Jo Mitchell (QQ 15–25)	
	R. Morris	CFA0119
	Mothers Against Coercive Control and Violence	CFA0113
	Mothers Unite UK	CFA0052
*	Sir James Munby (QQ 93–102)	
	Dr Katherine Mycock	CFA0059
	NAGALRO	CFA0010
	NASEN	CFA0101
	National Network of Parent Carer Forums	CFA0043
*	Professor Elsbeth Neil (QQ 26–32)	
	NSPCC	CFA0071
	Open Nest Charity	CFA0107
	Ben Palmer	CFA0103
	Parents Against Injustice	CFA0108
	PAUSE	CFA0007
*	Dr Lucy Peake (QQ 15–25)	
	The Potato Group	CFA0046
	Pregnant Then Screwed	CFA0135
	Recover Our Kids ROK	CFA0054
	Resolution	CFA0078

	Royal National Institute of Blind People	CFA0041
	Rajan Russell	CFA0122
*	Dean Russell MP (QQ 183–193)	
	Julie Samuels	CFA0095
	Dr Sylvia Schroer	CFA0095
	SENSE	CFA0079
	SHERA Research Group	CFA0132
	Sharon Smith	CFA0087
	Special Educational Consortium	CFA0121
	Katerina Stefanova	CFA0118
	Surrey County Council	CFA0111
	TaKen UK	CFA0126
	TeamADL	CFA0131
	Katie Thornton	CFA0096
*	Jacky Tiotto (QQ 139–151)	
*	Kelly Tolhurst MP (QQ 183–193)	
	Paul Brian Tovey	CFA0125
	Deborah Tyfield	CFA0031
*	Natausha van Vliet (QQ 33–46)	
*	Jane van Zyl (QQ 131–138)	
*	Mike Warren (QQ 183–193)	
	Dr Michelle Weldon-Johns	CFA0084
	P. Wigglesworth	CFA0119
	Dr G. Williams	CFA0119
	Women's Aid Federation of England	CFA0070
	Women's Resource Centre	CFA0100
**	Dr Matt Woolgar, Consultant clinical psychologist at National Adoption and Fostering Service, South London & Maudsley NHS Trust (QQ 176–182)	CFA0140
	The Worcestershire Grandparents' Support Group	CFA0074

APPENDIX 3: CALL FOR EVIDENCE

Aim of the inquiry

The House of Lords Select Committee on the Children and Families Act 2014 was appointed on 19 January 2022 "to consider the Children and Families Act 2014". It must agree a report by the end of November 2022. The Government has undertaken to respond in writing to select committee reports, usually within two months of publication.

The Committee invites written contributions by Monday 25 April 2022.

The Committee expects to hear from invited contributors in public evidence sessions from March to September 2022 inclusive.

Background

Post-legislative scrutiny is undertaken by a select committee of the House of Lords to assess what effect an Act of Parliament has had in practice. It is an important element of the House's work to check and challenge the work of the Government. The first post-legislative scrutiny committee, on adoption law, was appointed in May 2012. Subsequent committees have considered mental capacity, extradition, equality and disability, the natural environment and rural communities, licensing and bribery. This committee will consider the Children and Families Act 2014.

The central question for this committee is whether the Children and Families Act 2014 has achieved its aim of improving the lives of children and families, particularly the most vulnerable children and young people in society.

The Children and Families Act 2014 is wide-ranging. It made several changes to the adoption system, most of which were designed to streamline the process, making it easier for adoptions to happen, whilst ensuring child safety and welfare (Part 1). It made major reforms to children and young people's special educational needs and disabilities (SEND) services which were designed to bring about greater integration and personalisation of services (Part 3). The Act also introduced provisions relating to family justice (Part 2) which sought to make the system faster, simpler and less adversarial. It made reforms to the registering of childcare agencies (Part 4) and extended the remit and powers of the Children's Commissioner (Part 6). It introduced a range of provisions aimed at advancing child welfare including greater support for young carers and parent carers and the introduction of free school meals for students in reception years one and two (Part 5). The Act also made changes to working rights to leave and pay, introducing shared parental leave and statutory shared parental pay and extending the right to request flexible working (Parts 7 and 9).

Since the Act was brought into force the number of adoptions reached a peak in 2015, but have been falling steadily since. In 2021, the number of children under local authority care who were adopted had fallen 46%.[345] The number of children leaving care through a special guardianship order overtook the number of adoptions in 2019.[346] A special guardianship order places a child or young person

345 DfE, 'Children looked after in England including adoptions': https://explore-education-statistics.service.gov.uk/find-statistics/children-looked-after-in-england-including-adoptions [accessed 25 October 2022]

346 Adoption and Fostering Academy, 'Statistics on Special Guardianship': https://corambaaf.org.uk/practice-areas/kinship-care/special-guardianship/statistics-special-guardianship [accessed 22 February 2022]

with someone other than their parent(s) on a long-term basis. In the family justice system, between July and September 2021, only 24% of care proceedings were disposed of within the 26 week limit set by the Act.[347]

The Act has an impact on the lives of a great number of children and families, often significantly. It affects the education and care children and young people receive, can determine how family separation takes place, how those in care navigate and exit the system, what support is given to families, and how they are represented in central government.

There has been no holistic post-legislative scrutiny of the Children and Families Act 2014, although the House of Commons Education Committee undertook scrutiny of Part 3 of the Act on special educational needs and disabilities,[348] and the National Audit Office produced a report on support for pupils with special educational needs and disabilities in England.[349] In light of this work, and considering the absence of in-depth scrutiny on the adoption and family justice elements of the Act, the Committee will consider all elements of the Act in some detail, with a particular focus on the adoption and family justice elements.

Questions

1. To what extent has the Act improved the situation for the most vulnerable children, young people and families in England? To the extent that it has not, is this because of the Act itself, its implementation, or challenges which subsequently emerged, whether lasting or temporary?

2. If there were to be a Children and Families Act 2022, what should it include and what might be the barriers to implementation?

3. Is the Act enabling faster, more secure and stable adoptions which are in the best interests of the child?

4. What has been the effect of provisions on fostering to adopt?

5. What has been the effect of the repeal of the requirement to consider ethnicity, religion, race, culture and language in England when placing a child for adoption? Are any further legislative or other measures needed to address disparities?

6. What effect has the suspension of the Adoption and Children Act register had on the matching process?

7. Are families receiving the right information, budgets and support to assist them post-adoption?

8. Have the reforms to the family justice system succeeded in making the system faster, simpler and less adversarial? How has the Act interacted with other reforms to the family justice system, for example the changes to legal aid?

9. Does the 26 week limit on care and placement proceedings strike the correct balance between justice and speed?

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347 MoJ, 'Family Court Statistics Quarterly: July to September 2021': https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2021/family-court-statistics-quarterly-july-to-september-2021 [accessed 24 January 2021]

348 Education Committee, *Special educational needs and disabilities* (First Report, Session 2019–2021, HC 20)

349 National Audit Office, *Support for pupils with special educational needs and disabilities in England* (Session 2017–2019, HC 2636)

10. How well have the limitations on expert evidence served children in the family justice system?

11. What has been the effect of the requirement to consider mediation?

12. How has the presumption of the involvement of both parents in the life of the child after family separation affected proceedings?

13. Has the Act achieved its goal of improving provision for children and young people with SEND, in all settings including mainstream schools, special schools and further education colleges? If changes are needed, could they be achieved under the framework of the Children and Families Act 2014 or is new legislation required?

14. Have the reforms to childcare agencies and childcare provision introduced by the Act improved the quality and availability of childcare? Are the reforms introduced by Part 5 of the Act sufficient to safeguard the welfare of children?

15. Does the Children's Commissioner have the correct remit and powers? Are the correct accountability structures in place to ensure they discharge their duties effectively?

16. Is the system of shared parental leave and statutory shared parental pay functioning adequately? Is the system of flexible working functioning adequately? In light of the changes to working styles brought about by the COVID-19 pandemic, what changes, if any, are needed to provisions in the Act on flexible working?

APPENDIX 4: CHAIR'S CORRESPONDENCE ON SEND

Letter from the Chair Baroness Tyler of Enfield to The Rt Hon James Cleverly MP, Secretary of State, DfE, 19 July 2022

I am writing to you as. Chair of the Select Committee on the Children and Families Act 2014. As you will know, the Act covers a wide range of issues. Part 3—on special educational needs and disabilities—has already received post-legislative scrutiny from the Education Select Committee in 2019. However, we did not want to neglect this important area. We therefore held an evidence session on SEND with three leading experts in the field, took written evidence, put out an online survey for parents, and visited a school and SEND community centre in Barnet. This letter is a summary of the most pressing issues which have come to light through our work and represents our response to the Green Paper.

We welcome the review and consultation as an opportunity to improve the situation of children and young people with SEND. It is dear from the evidence we have received that the system is failing many of our children and young people across England and Wales.

However, we are disappointed that the review, first announced in 2019, has taken so long to come to fruition. With no clear timeline set for the next steps following the consultation, we are concerned that the reforms to the system will continue to be drawn out indefinitely. We call on the Government to make clear how it will make use of the responses it receives to the consultation, and set out a timeline for when children, young people and their parents and carers can expect to see meaningful change in the system. Every year that passes without a well-functioning SEND system is another year of a child's education that is failing.

Our witnesses agreed that the 2014 reforms were, fundamentally, the right ones. However, it was clear that little thought was given to the implementation of the 2014 reforms, particularly how their success would be measured. As a result, entirely unsuitable metrics such as the number of conversions of statements to EHCPs became primary markers of success, rather than the educational outcomes of children and young people.

The Green Paper makes limited reference to implementation, which is as crucial as the substance of the promised reforms. At the same time as it sets out its plans for reform, we call on the Government to outline an implementation plan and define metrics for success so that these can be tracked and monitored.

There is an excessive focus in the Green Paper oil EHCPs, and not enough consideration given to supporting pupils with SEND but without an EHCP. There are many pupils receiving SEN support without an EHCP, yet this Green Paper has little to offer them. We are concerned that greater financial sustainability of the SEND system will not be achieved unless more consideration is given to early intervention and better mainstream provision for those students who need SEN support without an EHCP.

The financial strain on the system is clear. Our evidence shows that the current mechanisms of allocating funding do not match pupil need in all cases. Linking pupil funding to proxy metrics such as deprivation means that schools with high numbers of pupils with SEND can find themselves under serious financial strain. On our visit to a 'magnet' school in Barnet, with an excellent reputation for SEND

provision, we saw clearly how these schools in low deprivation areas are trying to do their best by pupils but are constrained by the funding allocation formulas.

Funding allocation needs serious consideration to reflect the concerns that have been expressed to us. Our witnesses also called for better tracking of spending to ensure the Government achieves value for money. We note that some proposals in the Green Paper, including those around banding and tariffs, are aimed at making the system more financially sustainable. We cautiously welcome these proposals, provided they can be achieved without rationing support for pupils.

Joined up working between education, health and social care remains unrealised. We were told by students that, too often, health and social care are absent partners. They also told us that their parents had to struggle against a tide of bureaucracy. On our visit to Barnet, we met one parent of a young baby who was co-ordinating support from 36 separate staff across health and social care. Long waits for diagnoses of mental health conditions can delay a child's ability to secure additional educational support.

Education, health and social care represent three crucial pillars of a child's wellbeing, and all should function to a high-standard and work collaboratively. The proposals for a set of national standards could make welcome improvements, but they should strike a balance between driving national change and remaining flexible enough to enable local innovation.

We also call on the Government to bring forward proposals to ensure all agencies abide by these standards. Our evidence has shown an absence of accountability across the system, forcing parents to dedicate their time to advocating for their children. Currently, accountability in the system is achieved primarily tribunals but this is an expensive process which places the burden on parents to fight for their child's rights. The Government's proposals to reform the tribunal system are too focused on remedying poor provision and unlawful behaviour, rather than preventing it occurring in the first place.

Balancing differing views about a child's best interest is difficult, particularly where there is disagreement between parents and schools as to whether a school would be the right fit. We have been told by schools that the pararriountcy of parental preference can result in them taking children whom they know they cannot properly support. When these placements inevitably break down it is disruptive to all involved.

Although parents are trying to secure the best possible education for their child, schools have a wealth of professional experience which informs their judgement and deserves respect. More should be done to re.:balance the views of parents and schools when determining where a child will be placed, recognising that both parents and schools have valuable insight on how a child can best be educated.

The goal of a well-functioning SEND system should be to provide a high-quality education to children and young people, enabling them to fulfil their potential. These reforms should reflect the inclusive society we wish to be. lnclusivity .benefits all pupils, promoting tolerance and an appreciation for diversity.

We look forward to your response to the consultation and to discussing issues raised by the rest of the Act, at the ministerial evidence session on Monday 12 September.

Response to the Chair Baroness Tyler of Enfield from Will Quince MP Minister of State for School Standards, 30 August 2022

Thank you for your letter dated 22 July. I welcome the continued engagement of the Select Committee on the Children and Families Act 2014 as we deliver reforms to the SEND and Alternative Provision (AP) system.

The SEND and AP green paper sets out an ambitious vision to tackle the challenges facing the current system: improving poor outcomes, improving experiences, and addressing the adversarial nature of the system, and delivering long term sustainability. The proposals have been informed by the hundreds of stakeholders, including children, young people and their families, that we listened to through the course of the SEND Review.

During the subsequent consultation, in addition to the responses we received through the e-consultation, we have attended 175 consultation events, reaching thousands of people. We are using this feedback, and continued engagement with the system, to inform the next stage of delivering improvements for children, young people, and their families. This includes exploring ways in which we can deliver better value for money, encourage better joined up working across education, health and care partners, and deliver on our vision for a more inclusive system.

We will publish an improvement plan which will outline our approach to building capacity to achieve the behaviours and culture required for the successful implementation of these policy reforms. We will write to you upon publication of this response.

The improvement plan will explain how we will evaluate progress against our stated goals to improve outcomes, build parental confidence and deliver financial sustainability to the system, and the metrics we will use to monitor success.

Thank you for your ongoing support and critical challenge.

APPENDIX 5: SUMMARY OF PRIVATE WRITTEN EVIDENCE

Summary

We received 28 pieces of written evidence which we agreed to treat as private, either at the request of submitters or on the advice of staff. These submissions refer in detail to individual cases rather than general policy issues. Almost all focussed on adoption and family justice.

Adoption

One birth parent complained that their child had been fostered by a same sex couple, despite their request that they be placed with a heterosexual couple. One also argued that local authorities seek to have children adopted for financial gain. They said: "the current rate of fees that local authorities in my area currently get to claim for each 'successful adoption' they procure, is £33,871 per child!"

We also heard from adoptive parents. One told us: "We have 2 adopted children who are now aged 9 and 8. We spent three and a half years of hell trying to get them and have had 8 years of hell since." They described having six social workers in the space of a year—an experience echoed by other contributors—and not receiving the support they needed to look after the children, who were ultimately removed from their care. They concluded: "it is an absolute nightmare, and I would advise anyone to think twice before they adopt." Another adoptive parent highlighted a lack of support for children who have suffered sexual abuse.

Family justice

Several respondents raised the issue of the cost of contact. One mother told us:

> "I was told I now had to pay for seeing my son in a contact centre. When I explained I could not afford £225 on supervised contact I was told that was because single mums on universal credit spent their benefit all in one go and didn't know how to budget."

Similarly, a father explained: "These sessions cost around £600-800 a time (for 3 hours of contact), when all costs are taken into account (including the centre, the supervision, my fuel and a day of lost earnings etc.)".

Most comments related to the presumption of parental involvement and domestic abuse. A domestic abuse victim described her first experience in court:

> "First, the Judge whose first entrance into our lives involved him striding into the court room, flicking back his gown, thumping down into his chair and where, red in the face, he roared at the hushed court room. He was shouting that he was in charge in this court, he made all final decisions and no one else.
>
> I cannot begin to tell you the impact of that scene on a woman who had spent the best part of twenty years trying to avoid getting a man angry, trying to placate, trying to find the right time, the right way to broach any subject, and here I was faced with a man with ultimate control over me, shouting and looking angry."

Other women also reported feeling humiliated or frightened by judges. One said that being a victim of domestic abuse was held against her as it was assumed it would make her less capable of parenting.

She then described meeting her Cafcass officer:

> "[I saw] the only pamphlets on reception were those of 'Fathers4Justice' and my heart sank. On sitting down in his office the Cafcass officer informed me that he had already spoken to father, knew exactly what was going on and he also told me that he felt that he didn't need to speak to either myself or my children, as he had got full scale of what was going on by speaking to my ex."

The contributor added that her children had not been sufficiently consulted about having contact with their father:

> "The [Cafcass] separated parenting course told us that on separation we should have involved our children, how we ought to put our children first, that we should have asked them what they wanted, where they wanted to live, who they wanted to be with. I repeatedly tried to tell the court this fact, that our children had never been asked. Their father had decided, I had unwillingly agreed and now the court was removing their choice. Despite the advice of their own programme, my children were never allowed to choose."

She added:

> "The mantra of the family court, as told to me by my judge and repeated by Cafcass, solicitors and social workers—If you can force your child to the dentist and to school, you can force them to see their father. The fact that the father child relationship is based on an emotional footing did not seem to occur to anyone."

An independent social worker seemed to corroborate this, arguing: "The 'Voice of the Child' is not only not heard but is often suppressed or dismissed and children have no one external to the proceedings that they can speak to." They described what they said was a typical case, of two daughters who "have both been adamant throughout that they want to live with their mother and they continue to state this, but this is ignored or dismissed." They recounted how one of the girls was then sexually abused by the father during contact and—despite an ongoing investigation into this—a judge then increased contact. Similarly, another contributor told us that the presumption had put an abusive father, rather than the child, at the centre of proceedings.

By contrast, a father argued:

> "The family court system is slow, expensive, heavily-biased towards the resident parent (nearly always the mother), overly-complicated, heavy-handed in its bureaucratic burden, risk-averse and generally entirely ineffective at enforcing a child's right to have a meaningful relationship with the non-resident parent (in a situation where there is a hostile resident parent)."

He added:

> "I have done nothing wrong to either my wife or to my children and yet she is playing the system (egged on by well-meaning but entirely partisan female domestic abuse advisors who are encouraging her man-hating 'victim mentality' based upon her one-sided tendentious and intentionally misleading accounts), continually raising the right key

> words to trigger police, social services and domestic abuse agencies into having to take action—which then invariably leads to nothing but wastes many months getting to this point."

One mother—a domestic abuse survivor—told us that the presumption should be repealed "so that the paramountcy of the child's welfare is unmuddied. It will be implicit that a child's welfare will be furthered by the involvement of their non-abusive mother or father."

The issue of legal aid was also commonly raised. Several contributors lamented reduced access to it following the Legal Aid, Sentencing and Punishment of Offenders Act 2012. One told us: "the removal of legal aid meant that I have spent every penny of savings and more, to fight my ex when it ought to have been focussing on giving my son a better life."

However, another who had received legal aid was critical of the service they received. They explained: "I was often represented by a complete stranger (freelance solicitor) who had no prior knowledge of the case. In this I would have been better off representing myself because these solicitors were useless."

APPENDIX 6: ONLINE SURVEY RESULTS

Summary

We conducted an online survey on topics relating to the Act. It was open between 16 June and 11 July and received 421 responses.

Adoption

109 respondents provided comments on adoption. Half were adoptive parents, with birth parents and professionals each making up a further fifth of responses, and just over 10 per cent of responses coming from people who had been adopted.

The most common suggestion was for more comprehensive and easily accessible post-adoption support, based on periodic assessments of the child's needs, as well as parity between support for adopters and support for kinship carers

One adoptive parent told us that they would like:

> "More post-adoption support which is accessible, less waiting time for support, quicker and easier access to adoption support fund, understanding of effects of adoption and early trauma within the mainstream education settings, support for schools for supporting adopted children… the list is endless!"

They added: "I am shocked at how poor adoption support is." Another said that they had waited 12 months for funding from the Adoption Support Fund.

A special guardian wrote:

> "Special guardianship is not fit for purpose as it stands. Too many families are left struggling with contact arrangements, volatile birth parents, being taken back to court repeatedly to try and overturn the SGO or ask for more contact. Special guardians receive little or no support and are often locked in battle with birth parents for years after the SGO is awarded, leaving special guardians exhausted and traumatised and kinship children without therapy due to ongoing contact and leaving the family little time for family time and to build connections with each other."

Other common suggestions included:

- Introducing a right to revoke an adoption upon reaching adulthood
- Speeding up the adoption process
- A greater preference for kinship care
- Greater openness, including a presumption in favour of contact

Family justice

245 respondents commented on family justice. 33 had professional involvement in the field, with the remainder having a personal interest.

Many raised the presumption of parental involvement. One respondent told us:

> "The domestic abuse act has not done enough to protect children from perpetrators of domestic abuse, after assaulting our son their father still gets access and finding of facts proved he did it and proved he abused

> me physically, emotionally, psychologically and sexually. Drugs use. It's contact no matter the cost."

Another typical response said:

> "The current system places women who've been abused at further risk of abuse by prioritising contact with both parents, even when the child doesn't want contact with the abusive parent." One response also noted a lack of support for male victims of domestic abuse.

Relatedly, the legal aid criteria for domestic abuse cases were criticised. We were told: "Legal aid being available to only one party is entirely contradictory to the ethos of parity and fairness." Several others shared this view. More broadly, many respondents lamented the lack of legal aid or overly-stringent means tests for it.

Many respondents complained about the duration of proceedings. Most felt that they are too protracted and that this harms both parents and children. One wrote:

> "The system needs a complete overall. Cases taking nearly 3 years is unacceptable. This impacts on the whole family and creates further trauma to all parents who are dealing with a horrendous situation both emotionally and financially."

However, a minority felt that the process moved too quickly to be understood.

Other common comments included:

- Criticisms of CAFCASS as ineffective or unsympathetic
- Differing views on 'parental alienation' theory
- A desire for grandparents and other family members to be consulted more
- Concern about unregulated, pseudo-experts being taken too seriously by the court

SEND

153 respondents commented on provision for children with special educational needs and disabilities. Two thirds of these were parents.

Accountability was raised by many. One said: "Currently no one has accountability for EHC plans. They are a legal framework but no one can make anyone do what is listed in them." Another similarly argued: "EHCPs are not enforced, L.A's and school are not held accountable for failing to deliver provision." They added:

> "L.A's use tax payers money to pay for legal representation at tribunal, grossly unfair when parents have to pay out of pocket and there is NO WAY at all of getting money back even when you win and if is proven the L.A was at fault."

Many also perceived a lack of coherence in the system. One said:

> "Education and health are not joined up at all. Despite wanting to, education professionals are not able to work with health colleagues in too many cases due to unavailability to health colleagues to support statutory processes and conflicting KPIs and demands from CCGs. Education and social care can work together but often it is not effective due to

> social workers' high caseloads which prevent the levels of engagement needed to actually make a difference."

Further common themes included:

- Insufficient attention being given to children who do not have an EHCP
- Schools failing to understand children's needs or take parents' views into account
- Delays in getting—and insufficient funding for—support

Employment rights

39 answered on employment rights. Three-quarters of these were parents/carers.

On shared parental leave, a couple of respondents gave positive feedback. One wrote:

> "From our perspective, shared parental leave has been very successful […] apart from some teething problems whilst our employers adjusted and developed policies, we had no issues. We really valued having this opportunity."

However, most were critical. Respondents typically argued that it is unaffordable for the higher earner to use it and that mothers losing leave when fathers take it made couples unwilling to use the scheme.

One respondent warned of the scheme's dangers in abusive relationships: "My abuser 'used' all leave - stating shared parental leave (although never actually used it for the children), I then couldn't claim the leave, so had to either use up holidays or go totally unpaid."

Other comments related to resistance from employers. One told us: "I was the first male at my employer to use Shared Parental Leave provision when it was introduced in 2017, and frankly it wasn't taken/treated seriously for a man to do so."

Several respondents suggested that fathers should be given longer paternity leave on a 'use it or lose it' basis.

On flexible working, respondents drew attention to employers' reluctance to grant requests. One told us: "I was made to feel by my employer that to request flexible working or job share would demonstrate that I was struggling to carry out my role despite being good at what I did & in effect blocked me from promotion." Another noted that they had observed significant variation in how employers interpret guidance on grounds to deny a request.

Mental health

114 answered the question of how effective support for children's mental health is.

One told us: "Bad. Lethal. I have a dead child. And 2 legal judgments of systemic failure for the 2 others." Several others disputed the premise of the question that there was any support at all.

None of the responses were positive. Comments included:

- "Appalling. We've been waiting for CAMHS for 9 months so far, and no indication how much longer."

- "My teenage son attempted suicide THREE times CAHMS did not help"
- "Having had a 7 year old son who was so dysregulated he was trying to throw himself out of windows and grabbing knives, there was no support for him (or us). The GP, after two failed CAMHS referrals as he 'didn't meet threshold' told us 'if we could at all afford it, even if it means borrowing money' to find support privately. That CAMHS will not accept a child unless they have made 2 viable attempts on their own life."
- "It's non existent apart from in extreme crisis. My son has a brain injury. He was referred in 2020, was rejected by CAHMS and is still on the waiting listed for secondary support services."
- "The waiting list to access mental health services are too long, often a 2 year wait. If support plans are put in from the beginning both at home and school this would reduce the number of problems with mental health."
- "Ineffective, inflexible, too little, too late. Adopted children need automatic very early and continuing support, not to be passed from professional to professional and multiple organisations."
- "Appalling. Two year wait for a CAMHS referral and very little else for children in crisis."
- "It took 16 months for first consultation by which time my son's mental health had gotten to drastic level, he barely slept or ate, he'd lost so much weight you could see all his bones. He never left house except for occasionally going up school, he had so many scars from self harming. It was very scary time. I was told that he would be on urgent care list, which meant that he would receive treatment from the same physiatrist each visit and he would be seen twice as many times as others … this simply meant appointments every 4 weeks instead of 8!!!"
- "It is appalling! There is little or no coherent pre-emptive mental health care."

APPENDIX 7: SUMMARY OF THE BARNET SEND VISIT

Summary

On Monday 16 May we conducted a visit to Barnet to investigate the implementation of Part 3 of the Act, which focusses on special educational needs and disabilities (SEND). The Chair, Baroness Bertin, Baroness Lawrence of Clarendon, and Baroness Wyld attended, along with the Clerk and the Policy Analyst.

Jewish Community Secondary School

The visit began at the Jewish Community Secondary School (JCoSS). We first met 10 students—ranging from Year 7 to Year 13. Some were being taught in the mainstream school while others were in the school's specialist provision (the PSRP—Pears Special Resource Provision). Admissions to the PSRP are determined by the local authority. All students in the PSRP have an education, health and care plan (EHCP). Of the mainstream students we met, some had one and others did not.

The students were unanimously positive about the support they receive from the school and were evidently proud of JCoSS. One told us that it was "top notch". However, their experiences of other parts of the SEND system were mixed.

Students told us of long delays—of up to two years—waiting for an EHCP. In particular, several students had experienced long waits, of two to three years, for mental health support from Children and Adolescent Mental Health Services (CAMHS)–suffering from anxiety, depression and panic attacks while waiting to receive a diagnosis and treatment. Some students had received private care but acknowledged that they were fortunate that their parents could afford this. Students explained that long waits for diagnoses could limit the support they could receive in school, including whether they were eligible for a learning support assistant.

More generally, students had observed that their parents had had to navigate considerable bureaucracy to obtain support for them. Some lamented that although the school supported them well, other support which was necessary to be in school—such as transport—was difficult to obtain. One student expressed frustration that so few tube stations are wheelchair-accessible.

We then met staff both from the mainstream school and the PSRP, as well as the Headteacher and the Governor responsible for inclusion. The problem of long waiting times—including of six months in a case of suicidal ideation—was again raised. Although the school has two part-time counsellors, the support they can offer is limited and demand for their time is growing. Staff explained that students often deteriorate without a diagnosis and early intervention. Among the nine local authorities from which the school takes students, there is a 'postcode lottery' to get an EHCP—with local authorities adopting different standards. Staff felt that a more standardised process would be beneficial and that more thought must be given to the complex conjunction of SEND and mental health problems.

The school had faced challenges relating to admissions. Parents' preference to send their child to JCoSS could override the school's judgement that the child would be better supported at a more specialist institution. Staff reflected that although this prevents schools from turning away SEND students unreasonably, it also prevents schools acting in good faith from declining to admit a student whom it was clear would not be able to remain long. They added that bureaucracy

prevents children from being moved elsewhere when their placement at the school has become untenable.

We heard that the funding model for SEND presents further challenges. Funding for SEND is linked to deprivation rather than the number of students with SEND. This means that a school with low deprivation but high numbers of students with SEND such as JCoSS loses out relative to a school with high deprivation but low numbers of students with SEND. This can be exacerbated by schools with a good reputation for SEND provision becoming increasingly popular with parents and thus taking growing numbers of SEND students without any increase in funding. JCoSS now has four to five times more students with EHCPs than the national average.

We heard that having a more even spread of SEND students between mainstream schools is not just about sharing the burden of supporting those students; it is also about sharing the benefits. Staff felt that being educated alongside students with special needs made other students more tolerant and appreciative of diversity.

Sense Touchbase Centre

We then visited the Sense Touchbase Centre in Barnet. Run by a charity, it supports deafblind children, young people and their families. We met a couple whose children had been helped by Sense while growing up, as well as a mother with a young child.

We heard frustration that the Children and Families Act 2014 and other legislation, codes of practice and court judgements were not understood by local authority staff—and that the local authority was unwilling to take responsibility, including by trying to 'run the clock down' until a young person was 25 and would no longer be eligible for support. EHCPs had become more about what was available than what was needed and updates to them were seldom written up.

Parents observed a lack of co-ordination between education, health and social care services. We heard of one child being supported by 36 staff and the child's mother having to co-ordinate this. Parents suggested that a requirement on health and social care staff to attend annual EHCP review meetings would be helpful, as attendance was currently sporadic at best.

Parents saw a need for independent advocates with strong powers. This would particularly help parents who lack the time or education to become experts on their rights, navigating "a spider's web of information" and trying to break through "a wall of bureaucracy". They had also encountered an expectation that at least one parent ought to give up work to become a full-time carer.

APPENDIX 8: SUMMARY OF THE BIRTH PARENTS ENGAGEMENT EVENT

On Monday 6 June we held an engagement event with parents whose children had been placed for adoption, organised by the Select Committees Engagement Team. Ten parents took part, supported by staff from Barnardo's, PAC-UK, Pause and Re:Frame. The Chair, Lord Bach, Baroness Bertin, Baroness Blower, Lord Brownlow, Lord Cruddas, Baroness Massey, Lord Mawson, Baroness Prashar, Lord Storey and Baroness Wyld were in attendance.

Participants were mostly critical of social workers, suggesting that they were insufficiently empathetic. There was a perception that social workers were working 'against' birth parents and that it would be preferable also to have independent social workers to support birth parents. One added that social services had moved their child between seven foster placements in four and a half months.

Conversely, views on solicitors and barristers were largely very positive. The group—who had almost all received legal aid, prior to the reforms of the Legal Aid, Sentencing and Punishment of Offenders Act which came into effect in April 2013–said that legal professionals had been the only people explaining things to them. Several said that they could not imagine going through the process without legal aid.

The legal process was generally felt to be confusing and especially difficult for those who are less educated or have learning difficulties. One lamented that no one had checked their comprehension of the documents they were given. Some felt that the process was too quick, leaving little time to understand what was happening or find a solicitor.

Post-adoption, many saw the contact system as inadequate and argued that reforming it should be the top priority in this area. Several reported not receiving the letters they had been promised—such as receiving one every two or three years rather than every year—and felt that it was a lottery whether adoptive parents complied. Experiences ranged from occasional letters to regular in-person contact. There was a consensus that letterbox contact should be replaced by digital communication, including other media such as photographs and voice recordings. Participants further lamented that contact is limited to birth parents, excluding other family members such as siblings and grandparents.

More broadly, there was seen to be a lack of support (or signposting to it)–both for parents and other family members—during proceedings and post-adoption. In particular, many participants noted that their mental health had suffered and that the lack of support for this hindered them both throughout the adoption process and in adjusting to life without their child. Participants spoke favourably of the help they had received from charities, including counselling, mentoring and training. However, they felt that they were lucky to have found these charities, whereas others might remain struggling on their own.

APPENDIX 9: SUMMARY OF THE OXFORD VISIT

Summary

On Monday 4 July we visited the Oxford Combined Court Centre. Lord Bach, Lord Cruddas, Baroness Lawrence, Lord Mawson and Baroness Prashar were in attendance. We met with volunteers running the Cowley Child Contact Centre, mediators, members of the local family justice board, judges, and staff of Her Majesty's Courts and Tribunals Service, as well as observing proceedings.

Cowley Child Contact Centre

The Cowley Child Contact Centre facilitates court-mandated contact between a child and a parent they do not live with. The centre holds two Saturday morning sessions a month—for an average of six families each session—and is free and staffed entirely by volunteers. It is the only contact centre in Oxfordshire. Some contact centres in other areas charge parents a fee. The Centre is not equipped to facilitate 'supervised contact'; social workers must do this, but they are overstretched and lack the capacity to.

Even though the Centre is essential to allow mandated contact to take place, it receives no funding from the Local Authority or central Government. Funds to rent the premises have come from donations, including from Cafcass and the local judiciary—who have been supportive. There is a waiting list for new parents to begin contact.

Volunteers stressed the value of the Centre's work—in particular the economic value of early intervention supporting parents and children, improving their life chances. However, they felt that this was not widely understood. The only co-ordination between the Centre and agencies supporting children and families is interaction with social workers when there is a safeguarding concern. The sector is unregulated, though contact centres can voluntarily sign up to the National Association of Child Contact Centres.

Mediators

We were joined by four local mediators, who provide their services on a commercial basis. The mediators felt that public perceptions of mediation have changed recently, with some now seeking out mediators directly rather than being referred by a solicitor—although they stressed that receiving early advice was crucial to take up. However, they argued that it is still too difficult to find information about mediation—suggesting that a central portal website could be set up to signpost options. They lamented that lawyers tend to appear before mediators on Google searches.

The mediators praised the Government's scheme to provide £500 vouchers for mediation, though there were mixed views on whether it is right that it is not means-tested. All agreed that the scheme was easy to navigate, comparing it favourably with the bureaucracy of applying for legal aid. They argued that many people find mediation productive and noted that at Mediation Information & Assessment Meetings (MIAMs) they provide advice on a range of alternative dispute resolution mechanisms and not just mediation. However, we heard that parents often rush to start court proceedings because of 6-12 month delays before getting a hearing, which can undermine attempts at mediation.

Oxfordshire Local Family Justice Board

Board members began by discussing the 26 week limit on proceedings. They told us that there were many reasons why it was not being met, including because of the Local Authority struggling to get cases ready due to resource limitations, NHS waiting lists for medical assessments standing at 27 weeks, and cases with litigants in person taking longer. More funding for mediation and legal aid was suggested as a way of speeding up the system.

Board members felt that although it is important to have the 26 week timeframe in mind, some cases cannot and should not be completed in that time—such as when longer is needed for there to be a chance of reuniting a child with their birth parents. It was noted that many cases are offered a final hearing within 26 weeks but go on longer due to essential adjournments, as cases 'take on a life of their own' with new developments.

One board member told us: "the whole system is creaking quite badly". This sentiment was shared by the group, who argued that only individuals' commitment, including working overtime, kept proceedings going. One member told us that although they are part-time they still work five days a week and sometimes in the evenings and at weekends. Challenges raised include finding solicitors willing to work for legal aid rates and the shortage of expert witnesses, some of whom felt badly treated when criticised in court. There was also seen to be a shortage of judges and social workers. The Local Authority was buying in independent social workers to avoid breaching the ratio of 25 children to 1 social worker.

We heard about a lack of support for kinship carers and, to a lesser extent, adoptive parents—with it suggested that the breakdown of special guardianship and adoption placements is an emerging trend. Board members also felt that parents who have had a child taken from them are not sufficiently supported. This relates to a broader theme: the importance of early intervention. Board members told us that it is often the same people having children taken away from them every couple of years and that they do not receive sufficient help in the interim to become capable of looking after a child. They added that adoptive parents generally consent only to annual letterbox contact but that social media was making unauthorised contact easier.

Judges

The 26 week limit was seen to have brought a welcome culture change, although further guidance on what constitutes a good reason to extend would be welcome. Judges identified the lack of resources for Local Authority social workers as the main barrier to staying within it. Sometimes, children could be passed between six or seven social workers. Judges explained that allegations of domestic abuse—in as many as 60 to 80 per cent of cases—are a further cause of delay as they must be investigated prior to turning to welfare considerations.

Judges added that the courts are slowed by having too few staff—with judges' time increasingly taken up by administrative work—and that fewer cases are settling because of the trend towards litigants representing themselves. Early advice was seen as crucial, to explain the role of the court to potential litigants and direct them to charities or mediation. However, views differed on the effectiveness of MIAMs. It was suggested that alternative dispute resolution has been limited in its uptake beyond London and the surrounding area.

It was felt that the presumption of parental involvement did not add to the pre-existing law, whereas the section on expert witnesses had been helpful. There was concern about the equality of arms in domestic abuse cases, where the alleged victim receives legal aid but the alleged perpetrator does not. It was also suggested that there should be formal support for contact centres and—more broadly—an increase in funding for the implementation of the Act.

Her Majesty's Courts and Tribunals Service (HMCTS)

Staff agreed that judges are taking on more administrative work. Although more staff had been recruited, their time is taken up by the extra administrative work which virtual proceedings require. It was felt that virtual proceedings saved lawyers time and resources but are a greater cost to the court and resulted in fewer cases settling.

Staff observed a trend of litigants in person asking HMCTS staff for help. However, staff are unable to provide much help as they are not legally trained. Staff added that there has been a move towards centralised enquiry functions, so members of the public now phone a central call centre rather than speaking directly to staff in Oxford. It was not known how service users feel about this.

APPENDIX 10: SUMMARY OF THE ENGAGEMENT SESSION WITH ONE ADOPTION SOUTH YORKSHIRE

Adoption session

In the sessions on 11 July we were joined by staff and adoptive parents from One Adoption South Yorkshire, a regional adoption agency.

Adopters felt that more needed to be done to prepare potential adopters for the adoption process. They felt that some were put off by the length of the process and the bureaucracy. Several reported having struggled initially to make sense of the process. One said that attending an open evening was helpful because honest advice was given and it provided a single source to signpost to other resources. Several had taken part in peer mentoring schemes; they felt that these schemes were valuable but were a 'DIY' attempt to provide support which was not forthcoming from official channels. They added that it is important to seek diversity in adopters and that some social workers would benefit from more training in cultural issues when working with prospective adoptive parents from ethnic minority backgrounds.

Adopters explained that there is significant variation between local authorities in support provided, including in the provision of 'settling in grants'. They also noted challenges in adopting a child from a different area—resulting in the child going to the bottom of the waiting list for school places and NHS treatment.

The inadequacy of post-adoption support was lamented. In particular, some regretted that the Adoption Support Fund cannot be used to help with remedial education or physical sensory therapy. Other issues raised include adopters' post-adoption depression and the limited support given by social workers out of regular working hours. Adopters would have liked more guidance on how to deal with schools—feeling that schools don't always understand children's needs. One argued that the pupil premium should be attached to children and be transferable to independent schools.

A key theme was early intervention. Adopters agreed that problems—and especially underlying trauma of adopted children—are too often left untreated until they result in serious harm.

Adopters saw the benefits of contact with birth parents and siblings but said that letters often went unanswered. One adoptive parent had asked for their child to have contact with their birth parents but had the request refused. They felt that at least a minimal level of contact was necessary to give children a sense of identity. There was enthusiasm for moving contact from letters to an online portal. However, there was concern about the "shambles" contact was becoming, with teenagers able secretly to reconnect with birth parents via social media.

APPENDIX 11: SUMMARY OF THE ENGAGEMENT SESSION ON MENTAL HEALTH

Mental health session

In the sessions on 11 July we met with a CAMHS psychiatrist, a SENCO and a Head of Pastoral Support from a mainstream secondary school, and the Inclusion Manager and Home School Link Worker from a special secondary school.

Participants observed a rising prevalence and severity of mental health problems, including self-harm and eating disorders. Staff from the mainstream school reported multiple suicide attempts on the school site, with long waits for an ambulance and little follow-up support given. They told us that the local CAMHS service had a 12-18 month waiting list and that the school was funding additional pastoral support from other parts of its budget. However, we heard that school counsellors are so inundated that they can only triage students. Their support is also limited to term time, meaning that students' conditions can deteriorate over school holidays.

The CAMHS psychiatrist suggested that greater awareness was one reason for growing demand on services, as misbehaviour was increasingly being seen as a result of unmet mental health needs. They argued that mental health problems are too often allowed to escalate to crisis point. Instead, there should be a focus on prevention and early intervention with greater investment in schemes such as youth clubs which help young people to build resilience and provide them with support networks. It was further suggested that the police, schools and GPs too often fail to identify mental ill health in young people from ethnic minority backgrounds and that when they do families are sometimes unsupportive because of cultural stigma.

Participants agreed that the COVID-19 pandemic and associated lockdowns had exacerbated mental ill health, leaving young people feeling like they lack control over their lives and depriving them of vital social interaction and community support networks.

We heard of young people waiting two to three years for autism or ADHD diagnoses, leaving their behaviour and educational attainment deteriorating while they wait for support or treatment. One young person waiting more than a year for an ADHD diagnosis had been expelled from school and had to have two live-in support workers. The CAMHS psychiatrist felt that a timely diagnosis and medication could have prevented this, providing a better outcome for the young person while saving money.

Participants lamented that support systems for children in care or who have been adopted are often very slow moving, with social workers not always available. There are long waiting lists for post-adoption trauma support and post-adoption teams are asking untrained school counsellors to do life story work with children, which they do not feel qualified to do. More broadly, support is siloed between local authorities and NHS trusts.

APPENDIX 12: SUMMARY OF THE ENGAGEMENT SESSION WITH THE FAMILY JUSTICE YOUNG PEOPLE'S BOARD

On Wednesday 7 September we held an engagement event with five members of the Family Justice Young People's Board, aged between 16 and 22. The Board comprises 79 members between 7 and 25 years old who have experience of—or an interest in—the family justice system. It is convened by Cafcass, two of whose co-ordinating staff were also present. The Chair, Lord Bach, Lord Brownlow, Lord Cruddas, Baroness Lawrence, Baroness Prashar, and Baroness Wyld were in attendance.

Participants discussed problems relating to proceedings taking too long or being repeated. One said that they had endured more than 10 years of different cases. Another had experienced four years. Both felt that their not being listened to had made proceedings go on longer than they needed to. One said that this was because a parent they did not wish to live with had made repeated applications for custody.

Participants expressed concern about the rights of parents being allowed to override the rights of children. One recounted them and their sibling having been severely distressed by being forced to have contact with a parent they did not wish to see. They opposed the presumption of parental involvement as it puts parents' wishes before children.

Participants agreed that parental involvement was a laudable general goal. However, it was felt that involvement should only take place if it is in the child's best interests and consistent with their wishes. They felt that every case was different and there should not be a one size fits all approach.

More broadly, participants felt that both judges and social workers could do more to seek and act on children's wishes. Sometimes children are asked their wishes but they are not respected. Participants felt that under-staffing meant social workers could not follow up on a child's stated wishes, or were unable to build rapport before being moved on. They also said on occasion failings by individuals were responsible. It was also suggested that contact and living arrangements for children should be revisited as a matter of course to ensure that they are still in their best interests. Participants felt that their wishes were being disregarded or not solicited because of their age, and recommended specific training for judges on how to speak to children.

We heard that children in the family justice system can have serious mental health problems and that there is a lack of support, both at the time and in the long term—including into adulthood. Participants spoke of having been, or being, on long waiting lists. One had waited four years to see a counsellor and their education had suffered in the meantime. They added that children do not become eligible for support until after proceedings have ended—stressing the importance of early intervention and mental health support being offered throughout proceedings. One suggested that at the end of long waits, only generic support may be offered, pointing to a lack of specialist trauma counselling as a failing of the system. Another suggested that, even if resources are not available for more specialist appointments, more self-help resources and phone lines could be provided. Others added that attention must be given to cultural barriers in some ethnic communities which make addressing mental health problems particularly challenging.

APPENDIX 13: SUMMARY OF THE VISIT TO A CAMHS CLINIC

On Monday 24 October we visited children and adolescents' mental health services (CAMHS) at the Maudsley Hospital in South London. The Chair, Lord Bach and Lord Mawson were in attendance.

We held two discussions, the first with two young people, four parents, and four members of staff; the second with a young person, an adoptive parent, and five members of staff. Recurring themes are set out below. Although we were hosted by CAMHS and focussed on mental health, many comments related to other agencies and policy areas including special educational needs and disabilities and the care system.

Early intervention. We heard that young people often do not receive help until their mental health reaches a crisis point, such as having to go to A&E. Moreover, sometimes special educational needs are sometimes only diagnosed after a mental health crisis. We heard that girls' needs can be at particular risk of being overlooked, as problems may not be so obvious from their behaviour, although there is perhaps greater stigma attached to mental ill health in young men. It was suggested that more could be done to educate children about social, emotional and mental wellbeing at an early age.

Patient experience. One parent told us that sometimes practitioners "forget the humanity that is required." Parents and children generally felt that, although many of the clinicians they had worked with were excellent, long waiting lists meant that help didn't last as long as they would have liked because the clinician had to move onto the next patient. Some felt that decisions are too often based on paperwork without spending time with a child. One young person told us that they would have liked more face-to-face meetings rather than letters and phone calls. More broadly, children's voices being heard was thought to be key. One young person in the care system told us that social workers had often been dismissive and hard to get hold of—not taking their wishes seriously until they were well into their teens. They had seldom been asked for feedback on the support they were receiving.

Accessibility of information. Communication could be improved. This includes being told where a child is on a long waiting list. More generally, at times parents felt overwhelmed by information which they had difficulty processing. At other times, including immediately after a diagnosis, they felt abandoned with little guidance or signposting to further support. Parents would have liked more pro-active follow-up from practitioners. One young person suggested that helplines could be better publicised.

Support for families. Parents and clinicians highlighted that young people's mental ill health puts strain on their families as well as themselves. Parents did not always feel they had personally received enough support at a very tough time for them. We heard about how families sometimes mentor each other and that there could be scope for more such work.

Disconnected systems. One of the most common criticisms was about fragmentation and dysfunction in systems. The young people and parents we spoke to suggested that they had received excellent care but this was because of excellent practitioners and in spite of the systems and processes in which they must operate. One told us that they would like individual clinicians to be more empowered to make decisions. Families often felt like they were being passed between different siloes, each of which was required to engage in a series of box-ticking exercises

rather than tailoring support for the child as much as they might have. However, schools were singled out for praise: providing continuity and bridging the gap between different agencies. There was praise for the Department for Education's Alternative Provision Specialist Taskforce Pilot, which brings together specialists in health, education, social care, youth services and youth justice in schools.

Education, Health and Care Plans. We were told of the difficulty of getting an EHCP. One participant suggested that, although they were supposed to increase parental choice, EHCPs only work for middle class parents who have the resources to appeal to tribunals, hiring private psychiatrists and lawyers. Schools are not always supportive. There was also concern about a lack of support for those who have special needs but do not meet the threshold for an EHCP.

Challenges for children in care. It was also noted that early intervention can be essential to address trauma for adopted children from their early years with birth parents. We heard how contact with birth families can exacerbate trauma and a concern that this is not always taken into account when arrangements are made. There was a further concern about continuity of care, both in relation to children being moved too often between families and having several social workers.

We are very grateful to all those who gave up their time to speak to us. We would particularly like to thank the young people and parents we met for sharing their experiences with us.