How times have changed Eric Pickles MP said 'Although some guardians may exist who are prepared to stand up to social services departments and act as bastions of freedom, they are very hard to find. **Generally speaking, guardians act as cheerleaders for social services departments. They are entirely compliant, and seem incapable of doing more than being a cheering section.'**

The need for a Guardian ad Litem service was first identified in England in 1973 following the death of a child, Maria Colwell. Maria had been the subject of a care order and living in foster care with relatives. Maria's mother applied for the order to be revoked and for Maria to be returned to her care. The local authority social workers did not oppose the revocation of the order on Maria and she was returned. Maria tragically died in her parents' care and there was a Committee of Inquiry appointed to look at the lessons which could be learned from the child's death.

The Committee of Inquiry concluded-

"had the views of an independent social worker been available to the court it would have had the assistance of a second opinion which might or might not have endorsed the conclusions and recommendations contained in …(the social work) report."

The tragic events surrounding Maria's death led to many significant developments in the procedures for protecting children at risk of abuse. The recommendation that in such cases an independent social work report would assist the court in determining the best outcome for the child, was a major step.

The role of the Guardian ad Litem was extended in England and Wales to include children subject of adoption, freeing for adoption and a range of care and related proceedings. In 1989 the introduction of the Children Act expanded and enhanced the role of Guardian Ad Litem making it possible to appoint a GAL in all specified proceedings and retaining the role of the GAL in Adoption Proceedings.

The law in Northern Ireland relating to children changed in November 1996 under the Children (NI) Order 1995. Under this legislation, Guardians ad Litem were to be appointed in all cases where children were subject of specified or adoption proceedings.

GALs will be appointed by the Courts in specified family proceedings and adoption proceedings. Their role is to represent the child before the Court on what is his or her best interests and to ensure that the child's wishes and feelings are made clear to the Court. The paramountcy of the welfare of the child and the requirement that the voice of the child should be heard when decisions are being made about his or her future, are central principles of the Children Order. The GAL, therefore, has a crucial role to play in helping to ensure that, in the Courts, the Order works as Parliament intended and that the principles of the Order are reflected in practice.

The GALs are qualified Social Workers with considerable experience of child care matters and a sound understanding of family law. Their task is prescribed in Rules of Court but will, inevitably, demand that they possess a considerable analytical capability and well-developed inter-personal skills. The situations in which they will be involved will often be fraught with difficulty. GALs are called upon to make careful assessment of complex family relationships and, based upon these, to determine what is likely to be the best future option for a child. There will frequently be considerable conflict and immense stress within the family with whom the GAL is working. There may also be substantial differences in perception between the GAL and the various professionals responsible for the welfare of the child, as to where the best long term interests of the child lie.

When is a Children's Guardian appointed?

A Guardian is appointed when the court wants an independent view of what has been happening and

what should happen in the child's life. A Children's Guardian will normally be appointed in certain court proceedings under The Children Act 1989. Children's Guardians are also involved in adoption proceedings. The Guardian will contact you soon after being asked by the court to investigate the case. The Guardian's involvement finishes once the matter before the court has been dealt with.

Who are Children's Guardians ?

The Guardian will have been appointed by the court from the local CAFCASS office. These are professionally qualified social workers with considerable experience of working with children and families. They do not work for the local authority which is involved in your case.

What does the Children's Guardian do?

The most important duty of the Guardian is to safeguard the child's welfare. S/he has to help courts make decisions about what is best for children and normally needs to visit the people concerned, study the relevant case files and get to know the child(ren) involved. Once the necessary enquiries have been completed the Guardian will write reports for the court in question. The report will give the Guardian's views and recommendations and, if the child is able to express an opinion, will include a section about what the child says. The Guardian will work closely with the child's solicitor to present the case to the court. This may involve calling witnesses on the child's behalf. The Guardian may also be called to give evidence and may be cross-examined.

Who will see the Guardian's report?

The report is confidential and belongs to the court. The report will be sent to the parties in the proceedings, usually the solicitor of the child, the parents and the local authority. The report should be available in time for you to discuss it with your solicitor before the hearing. Parents who are not represented by a solicitor should still receive a copy of the report from the court on request.

What is the difference between the Guardian and the Child's solicitor?

The solicitor is responsible for presenting the child's case in court, including calling witnesses for the child. The Guardian is responsible for telling the solicitor what the Guardian thinks should happen with the child and what information should be put before the court.

What happens if the child disagrees with the Guardian's views?

A solicitor for the child may consider that the child is old enough to express a view of his/her own as to what should happen. The solicitor must then act for the child and tell the court when this differs from the recommendations of the Guardian . The Guardian will still give an opinion to the court, but not through the child's solicitor.

What if any parties, including the parents, disagree with the Guardian's views?

Parents will normally have a chance to discuss the Guardian's views and recommendations with their solicitor before the court hearing. The Guardian can also be questioned in court by the parent's solicitor, as well as the child's solicitor and the local authority's solicitor.

Taken from the DOH "Manual of Practice Guidance for GALROs"

Information Gathering
Interviewing: Child, parents, professionals, any other person with an interest in the child **Assessing Information Reading and analysing:** Case files, witness statements and documents relating to the case and evaluating the evidence **Managing the case Liaising with the court re:** Avoiding delays Section 1 (2). Allocation to appropriate court. Receive documents on behalf of the child if no solicitor is appointed. Ensure those with parental responsibility are aware of the proceedings and of their right to be represented. **Representing the child** Ascertain child's wishes and feelings Appoint + work with child's solicitor Prepare the case, including expert witness evidence Write a report and make a recommendation **Professional Developments** Attend Cafcass business and support group meetings Professional consultation Training and reading relevant journals Participate in regular review & evaluation Setting up and administering clerical systems, including typing reports and confidential storage of documents

Separate Representation of Children

The Children Act Sub-Committee completed its consultation exercise on the representation of children in public and private law Children Act proceedings, which was described in the Board's annual report for 1998/99.

The majority of respondents agreed that the present system of 'tandem' representation in public law cases, by a guardian ad litem and a solicitor, should be retained. In general terms, the welfare role of the guardian ad litem and the legal function of the solicitor complemented each other and worked well in practice. Exclusive use of the Children Panel by guardians ad litem was to be encouraged.

In private law, the general view was that a report from a competent welfare officer was a sufficient means of enabling the voice of the child to be heard in the majority of circumstances, and that the need for the role of guardian ad litem was limited to an exceptional range of cases which were adequately covered by the Official Solicitor in the High Court (but less so, because of his stretched resources, in the county court).

After considering the responses, the Sub-Committee concluded that the obligation of the guardian ad litem to appoint a solicitor in every public law case should be retained, but that the question of continuing legal representation for the child should be kept under review throughout the case, and that the court should have the power to dispense with legal representation for the child if it was satisfied that the interests of the child no longer required legal representation or if the child did not need legal

representation for any particular purpose.

The Sub-Committee agreed that the present arrangements in private law cases were broadly satisfactory, and that implementation of section 64 of the Family Law Act 1996 would not necessarily produce any substantial improvement.

What do Children's Guardians do?

Children's Guardians are there to help achieve the best possible outcomes for the child they represent. In particular they:

- appoint a solicitor for the child who specialises in working with children and families;
- advise the court about what work needs to be done before the court makes its decisions;
- write a report for the court saying what they think would be best for the child. The report must tell the court about the wishes and feelings of the child.

To do this, Children's Guardians spend time getting to know the children and members of their family. They talk to other people who know the family, such as relatives, teachers, social workers and health visitors. They attend meetings on behalf of the child, check records and read reports and statements. They may also recommend to the court that other professionals are asked to help, such as a paediatrician or a psychologist.

THE GUARDIAN AD LITEM, COMPLEX CASES AND THE USE OF EXPERTS FOLLOWING THE CHILDREN ACT 1989

Julia Brophy and Phil Bates
Thomas Coram Research Unit, Institute of Education, University of London

This study explores the views and approaches of the guardian ad litem to the use of experts in care proceedings following the Children Act 1989. It arose against a background of concerns about practices and followed the introduction of directions appointments/hearings in Children Act cases. These hearings aimed to increase court control over the timing and preparation of cases.The study utilised a vignette exercise (a hypothetical case) to explore guardians' views and approaches. The aim was to provide a common case to facilitate guardians 'thinking aloud' much 'taken for granted' everyday decision making in a case, but to 'ground' discussion in the guardian's own 'patch', that is, within the practices of the local authorities and courts in which they routinely work and the community health services on which they might call.

Results and Recommendations

- The study found high levels of agreement between guardians about issues requiring clinical expertise and considerable agreement about the philosophies and principles underscoring approaches to the use of experts. What differed were views about methods of instructing experts

and there is some room for a more strategic approach.

- Care proceedings are accurately characterised as a process in which the independence and flexibility of the guardian are key features in understanding successful case management.
- The guardian is now a key player where expert evidence is required and occupies a multi dimensional role. He/she acts as overseer, mediator, negotiator, broker and indeed gatekeeper in such cases. Some of these roles may not be entirely compatible.
- Guardians mostly instructed child psychiatrists and some tended to instruct ‘national' experts. This practice had both advantages and disadvantages for children and parents.
- There is evidence that the GALRO service is being used to alleviate serious shortcomings in the skills of other professionals (eg: solicitors acting for parents, poor instructions from some local authorities) and the services of other institutions (eg: absence of suitably trained/experienced child psychiatrists, lack of consistency in court tribunals).
- Some guardians questioned whether it should be their task to commission evidence essential to a local authority's application for a care order. Most guardians argued that it remained the responsibility of the local authority to obtain this evidence.
- Many guardians were also very cautious about the usefulness of a joint instruction with the local authority at the beginning of complex cases. This strategy was viewed as likely to compromise their independent status and impede subsequent options for creative case management where the aim was to maintaining parents' confidence and continued involvement in proceedings.
- Consideration should be given to whether the guardian is the most appropriate person to undertake each of the various tasks which constitute their work. They are increasingly used to make up for shortcomings of other professionals and institutions. Combined, there is a concern that this places an unacceptable degree of power in the hands of the guardian at a point in proceedings where many issues may remain unclear.
- Compared with proceedings prior to the Children Act, courts served two vital roles. However, indications are that the mechanism of directions appointments has not altered substantially the locus of decision making regarding the use of experts, this remains essentially ‘party driven', particularly at the very beginning of proceedings.
- Given the limited time for directions appointments, the lack of consistency in court tribunals, the limited degree of child welfare knowledge on tribunals and limited capacities to negotiate between parties, there is a need to be realistic about the extent to which courts can make a much more meaningful and cost-effective contribution than at present.
- Most guardians undertake extensive out-of-court negotiations to try and achieve agreement about the use of experts. Some of the most important discussions about using experts are taken at the very beginning of proceedings, but sometimes at the door of the court. These early discussions, nevertheless, set a tone for the case, therefore, consideration should be given to allocating more time and a formal status to this work.
- Except in exceptional circumstances courts should not grant applications for psychiatric family assessments in the absence of the guardian, and where appropriate, courts should ascertain and record whether parents have been consulted about the choice of expert.
- This study did not find a level of support for the use of joint letters of instruction to experts. Regional variations exist and practices are changing but both guardians and child psychiatrists have expressed some serious concerns about this approach. Considerable caution is therefore

necessary. A joint letter of instruction is not a panacea to the issues which arise when expert evidence is required and it can create a separate set of problems.

- Alternative models for the acquisition of expert evidence (eg: approaches in other European jurisdictions sometimes posed as more ‘inquisitorial') will not solve many of the problems raised by current practices. Appropriate appointments take time, expertise and institutional support, and evidence will still need to be properly tested. For that exercise to be effective it will sometimes be necessary to seek a peer review.
- So far as child and family psychiatric assessments are concerned, however, a number of problems have emerged, albeit a limited number of cases. One way of improving the current sequential pattern of acquiring this evidence (ie: initial assessment followed by a peer review), while also retaining the confidence and participate of parents and other professionals, would be to try a ‘dual or joint assessment'. This would entail two psychiatrists collaborating over the initial assessment, report and recommendations.

Theory and practice do not seem to meet.

The covering letter to the DFES submission highlights the Guardian's failingsin both private and public law work.Eric Pickles MP described the Guardian as the leader of

Mr. Stewart Jackson (Peterborough) (Con): Thank you, Mr. Deputy Speaker, for allowing me to participate in this vital debate, which has been marked by good sense, clarity and shared principles, as exemplified by the speech of the hon. Member for Stockport (Ann Coffey), who clearly knows what she is talking about. For the record, I will confine my remarks to part 1, concentrating on contact orders and the operation of family courts. Other hon. Members may wish to debate the more thorny subject of inter-country adoptions.

I believe that there is a consensus across the House for us to achieve an outcome that is not only practical and pragmatic, but fair and compassionate, with the paramount consideration being the welfare of children, both in theory and practice in statute. I am pleased to say that there is a political will on both sides of the House to put aside party differences and focus on getting the legislation right. We are, of course, dealing not with dry, arcane academic case law, but with people's lives and the future of our children, whose lives may be fractured or broken by the raw emotion and hurt engendered by the disintegration of their families and

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the growing phenomenon of divorce and separation. As has been mentioned, the trauma and stress of that affects about 200,000 children each year.

I see that the annunciator says that I am "Nick Herbert, Arundel and South Downs", Mr. Deputy Speaker. I am sure that *Hansard* will amend that.

Two thirds of those children are under 10 years of age. As my hon. Friend the Member for Basingstoke (Mrs. Miller) mentioned, 40 per cent. of children lose contact with the non-resident parents, often as the result of bitter and protracted disputes following separation and divorce.

We agree on much in the Bill. In particular, I welcome the Government's commitment on risk assessments in clause 7, which is supported by hon. Members on both sides of the House. There is a demonstrable need for a more effective method of enforcing contact orders. In so far as Parliament can legislate to change people's lives for the better—as Disraeli may have said in another context, "The

elevation of the people"—that is what we are trying to do today. It may not be Catholic emancipation or the abolition of slavery, but we are trying to improve people's lives and to give adults and children a better future, to ameliorate the tragedy of family disintegration.

We agree that, as legislators, we have a duty and responsibility to balance the best of what has gone before, best practice and an evidence-based analysis of the current system with a realisation that there are significant flaws in what passes for the practice of family law today, which is sometimes perceived as ineffectual and certainly perceived by many people as unfair.

I welcome much of the Bill. I support the insertion of the domestic violence perpetrator programme into the Bill and the introduction of risk assessments, especially given the points made eloquently by the hon. Member for Luton, South (Margaret Moran) about circumstances where allegations or proof of abuse are involved. It is right to reform the Children Act 1989 and I am glad that there is recognition that the principle of children maintaining contact with both parents after divorce and separation should be enunciated, even though I might think that is not expressed sufficiently robustly in the Bill.

The recognition that contact orders are meaningless in their practical application without legal sanction is also welcome. Non-compliance cannot and should not be allowed to be tolerated by the courts with impunity. If it is, we risk undermining the whole discharge of family law. The Bill's proposals establish a marker that creates a disincentive for those who would otherwise flout the will of the court. They restore balance to an area hitherto considered wholly biased against the non-resident parent. As has already been said by my hon. Friend the Member for East Worthing and Shoreham (Tim Loughton), giving the court a range of options, such as the early intervention projects, is realistic and sensible. Most importantly, it recognises that all families— parents and children—are different and that a one-size-fits-all approach is inappropriate in this particularly sensitive area. It goes without saying that I welcome the fact that Ministers have supported the decision not to proceed with tagging, which would have been a grotesque and gratuitous overreaction.

The failure—or, if I am being charitable, the non-success—of the family resolution pilots, which were launched and discontinued at a hugely disproportionate cost and which involved low take-up and a lack of compulsion, should not prevent Ministers from being imaginative, especially when reviewing the efficacy of mediation in the package of measures. However, voluntary measures will once again fail. As I mentioned when I intervened on the hon. Member for Mid-Dorset and North Poole (Annette Brooke), only a legal obligation enacted by the courts will have the desired effect. Academic evidence from Norway, the United States and other countries has shown that that is the case. I hope that that matter will be debated in Committee at length and in detail.

The wider range of options available to the courts, the improvement in the monitoring of contact and—I agree with the hon. Member for Stockport—the enactment of family assistance orders are positive steps. The idea of a legal presumption to promote contact has attracted wide support across parties.

I want to focus on a reasonably small number of areas that concern me and which remain unresolved in the Bill. At the outset I have to say—this may be controversial—that I believe that there is no contradiction between the presumption of co-parenting and the safety of the child or children subject to a contact order. I do not believe that the case has been sufficiently made that a legal presumption is, in general, in any way at odds with the interests of the child or children. I regret that the Government have not sought to strengthen the Children Act 1989 to give legal power to reasonable contact. I will come back to the word "reasonable" later.

Common sense indicates that children desire successful co-parenting after divorce and separation, and

are happier and healthier as a result of it. Those children mostly go on to be settled, responsible and decent adults and to be good parents themselves. That is borne out by research by the National Council for One Parent Families in a study by J. Hunt in 2003.

We are attempting to establish, where practicable, a strong and loving relationship between a child and both parents. Noble Lords and Ladies in the other place debated at length—I believe in relation to amendment No. 2—the word "reasonable", which is enshrined in section 34 of the 1989 Act. I would also add "meaningful" as a given. I am glad that the Minister acknowledged in her comments to the Joint Committee the use of the word "meaningful". "Substantial" was mentioned by my colleague, Baroness Morris of Bolton in the other place.

The positions taken by organisations such as Families Need Fathers and children's charities such as Barnardo's and the National Society for the Prevention of Cruelty to Children, notwithstanding its ill-judged and intemperate comments in its briefing notes, need not be irreconcilable. The presumption is an instrument that gives flexibility to the courts to tailor their decisions accordingly. Evidence shows that it would only formalise the current situation, where very few contact orders are not granted. That in no way invalidates the paramountcy principle in respect of the welfare and interests of the child.

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A corollary of this practical approach that the Government have not yet fully acknowledged is the strong argument in favour of a greater role for the child's voice to be heard in court, an argument that some Labour Members have advanced. It is one of the issues in the NSPCC briefing paper with which I agree, so it does not get everything wrong. Perhaps the Minister will touch on why section 122 of the Adoption and Children Act 2002, which provides for children to have a legal and discrete right to be participants and to have separate representation in court, remains unimplemented.

I shall make some tangential comments. There has been consensus but the partisan comments of the hon. and learned Member for Redcar (Vera Baird) obscure the issue. We all want children's voices to be taken into account. If an important piece of legislation has been on the statute book for three years and an important section of it remains unenacted, it is surely reasonable for us to ask why that is so.

Vera Baird: Why does the hon. Gentleman not tell us how to do it?

Mr. Jackson : There might be a causal link, given that the Labour party is in Government and the Conservative party is in Opposition. Three years is surely plenty of time to come up with practical and pragmatic approaches to this point, particularly as it has been said that the issue is very important in the context of the proposed legislation.

There is much evidence including that, for example, from the *Family Law Journal*, under the auspices of the National Youth Advocacy Service. Far from exacerbating the bitterness that is endemic in legal wrangles around contact order disputes, allowing the child's opinion to be heard acts as a catalyst in helping to resolve even the most long-standing and protracted difficult disputes.

On a broader issue, the paramountcy principle is only implicit in the Bill—particularly in clauses 1, 4 and 5—and is not as explicit as it was in the Children Act 1989. The Minister may want to comment on that when she replies.

I return to the sensitive subject of co-parenting and child safety. Thankfully, the awful phenomenon of child murder in contact situations is extremely rare. Although that issue is distressing, it must not obscure the case for co-parenting. More particularly, we should resist recourse to stereotypes. There is no definitive evidence that non-resident fathers per se, as a group, are a greater risk to child safety than substitute non-biological partners or non-biological mothers. In this respect, I deprecate the comments

of the NSPCC. It has undermined its kudos as a respected children's charity in putting forward arguments that have no basis in fact and no evidential back-up. Let us remember that many of the dreadful crimes that take place involve not natural or biological fathers, but men brought into the family unit in the wake of divorce or separation. They may have very poor or non-existing parenting skills. At present, unlike the natural or biological father, they are unlikely to have been risk assessed.

May I turn to the issue of compensation via community-based enforcement orders for unpaid work and financial compensation based on affordability? I

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remain unconvinced that the Government have thought through the practical consequences of the relevant provisions and their impact on CAFCASS, especially the availability of appropriate financial resources and, just as important, the uniformity of resources and facilities across the country. Under clause 7, CAFCASS officers will have a considerably enlarged portfolio of duties, and it is imperative that that does not impact on existing work flows, which are very demanding. I wish to take issue with the Minister, because there have been significant staffing shortfalls, long delays in assigning officers to children and a £4 million cut in funding. As I said in an earlier intervention, the chief executive of CAFCASS, Mr. Anthony Douglas, wrote to me in response to a written question that I had tabled, confirming that one in six private law cases that dealt with parental responsibility, contact orders and residence were unallocated to a staff member.

I pay tribute to the work done in sometimes very trying circumstances by the professional staff of CAFCASS, but there is dissatisfaction with the organisation, including complaints about inadequate time spent with children and institutional bias against non-resident parents. We should be mindful lest inadvertently we make matters worse. I am glad that the hon. and learned Member for Redcar has flagged up her concerns and cited the thematic review. The hon. Member for Mid-Dorset and North Poole (Annette Brooke), too, was concerned about the matter. Like other hon. Members, I await further details from Ministers. No doubt, the issue will be debated at length in Committee. Perhaps the Minister will clarify her rather opaque description of a new and robust statutory framework, and the way in which it will affect funding and resources. Above all, we need proper planning, proper training and a realistic business plan for future CAFCASS workflows.

In conclusion, may I make a plea on behalf of non-resident parents—usually fathers—and praise the invaluable role of the extended family in child care, especially grandparents who, as the hon. Member for Stafford (Mr. Kidney) will agree, are the unsung heroes of our sometimes difficult and dysfunctional families? Grandparents contribute 60 per cent., or £1.1 billion-worth, of child care, yet they have few if any legal rights. I truly hope that the presumption of co-parenting in the Bill and other provisions will redress the balance in favour of fathers, reduce the bitterness inherent in many family courts cases, and have a commensurate positive impact on children. At the moment, non-resident fathers believe that they are on the receiving end of a slow legal system that tends to accept the status quo as a fait accompli, appears hostile to them as a result of their absence and, we should remember, imposes significant costs on them for having the temerity to seek equity and fairness. The most recent figures show that 7,000 court orders are breached every year. At the very least, notwithstanding the recognition in the Bill that non-compliance with court orders will not be tolerated, there must be an assumption by the state that it is responsible for upholding court decisions. That burden should not fall on the impecunious shoulders of individual non-resident parents.

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Finally, on grandparents, I declare an interest. I am not a grandparent—I am far too young.

Maria Eagle: No, the hon. Gentleman is not.

Mr. Jackson: Despite her heavy cold, the Minister is as sparky as ever.

I was fortunate to secure an Adjournment debate in Westminster Hall on grandparents' access to grandchildren. The House, and certainly the Minister, will not indulge me if I rehearse the arguments that I deployed in that debate. Suffice it to say that grandparents, especially paternal grandparents, should not be the de facto victims of family breakdown. In that context, I pay tribute to the right hon. Member for Birkenhead (Mr. Field), who has done so much to keep the issue at the top of the political agenda, like all matters relating to welfare.

I hope that the Minister keeps her word on grandparents and that she will consider the lack of grandparents' legal rights following family disintegration. I hope that she will reconsider section 23 of the 1989 Act, which imposes on local authorities a statutory duty to look first at friends and family in respect of care for children, section 8, which forces grandparents to overcome two hurdles to gain access to their flesh and blood—leave to apply, then a court or care order—and section 17, regarding financial assessment for family and friends acting as carers.

For the most part, I welcome the Bill. It builds on the foundations established by the 1989 Act, which have stood the test of time. I commend the work of colleagues across all parties in the other place. Today, we have an opportunity to help in a small way to prevent the misery and heartache caused by family schism and heartbreak for thousands of children. Let us make the best of that duty and responsibility. With some small caveats, I ask hon. Members to support the Bill on Second Reading.

3.41 pm

Vera Baird (Redcar) (Lab): I was pleased to hear the hon. Member for Peterborough (Mr. Jackson) say that he broadly welcomed the Bill. Although he followed his leader in getting outraged at the NSPCC, he did not follow his leader who said at various points in his speech that the Bill was a wasted opportunity and that it was woefully inadequate. He did not quite say that it needed pulling limb from limb and putting back together again, but his comments were not very far from that. If that is the considered view of the hon. Member for East Worthing and Shoreham (Tim Loughton)—I do not know that it necessarily is—he is on his own.

The Bill has been through pre-legislative scrutiny. There were a large number of eminent, distinguished, knowledgeable and experienced people from the Conservative side on the Committee and all agreed—there was no dissent, and there was no vote even on the Committee—that the Bill was a benevolent and good measure, subject to the odd caveat, as the hon. Member for Peterborough wisely said. I, in common with the Committee, of which I was privileged to be a member, and most of the Lords in the conversations that they had about the Bill, welcome it.

The Bill's emphasis on early intervention, support, re-tasking CAFCASS away from just reporting on the history and making recommendations to becoming

more involved in resolution at an early stage, and the availability of a range of optional projects to help support the right attitude to contact is obviously the right model. Clearly, that must all be properly resourced or it will not work. The Bill offers a sympathetic and rational way forward.

I have three areas of concern, one of which arises from comments from the Opposition, rather than from the Bill—that is, the suggested presumption that there should be joint parenting. I accept entirely

that the hon. Member for East Worthing and Shoreham did not speak about an equal split, but if he is speaking about a legal presumption that both parents should be heavily engaged—co-parenting, as the hon. Member for Peterborough said—that worries me immensely. There is a very real difference between that and what Labour Members were discussing when he was speaking and graciously taking interventions—that is, an underlying assumption in the courts which, believe me, does exist and has existed as long as I have been involved in the family courts, that the welfare of the child requires as much contact with both parents as possible. That is a common-sense assumption which underpins what the courts seek to do. However, that is a far cry from a legal presumption in the Bill which states that it is presumed that there will be co-parenting.

A legal presumption can be of two kinds. It can, for instance, be an absolute one, which means that it cannot be knocked over, whatever happens. On the other hand, a legal presumption can be rebuttable—the words are archaic, but we lawyers love them—which means that it can rebutted, but the onus is on somebody to unsettle what is otherwise an edifice of uncrackable law. If one gives such rights to parents, then one is giving rights to bad parents as well as to good parents, and one is also ousting the welfare of the child as the paramount principle.

If we talked about the issue for a long time, nobody would disagree that both parents should be kept involved, if possible. However, if we were to drive the courts into a framework that disciplines them to say, "These people have rights which we cannot easily get round", we would subvert the paramountcy principle and might put children in danger.

Tim Loughton: I am sure that I am not going to agree with the hon. and learned Lady on this point. Why is this issue so different from the rest of the law, in which there is a presumption of innocence until one is proven guilty? Why can there not be an assumption that a parent is a good parent until they are proven not to be, given all the checks and balances in the courts, which this Bill will reinforce? Why would such a presumption undermine the welfare of the child?

Vera Baird: The explanation why such an approach would undermine the paramountcy principle is straightforward. In a situation in which it is not the child but the parents who are battling, the parents are obviously expressing what one might conjure up as the right of the child to have contact with dad, but it is dad who is fighting for that right, so it is his right. Once one makes that the presumption, the welfare of the child cannot be paramount, so the presumption must be ousted in some other way. In that case, one must bring to the surface the danger to the child in order to rebut

the presumption, which self-evidently means that the presumption of paramountcy is not coming first. I would never agree to that proposal, which is not only technically nonsense, but wrong. It could be extremely dangerous, too, because it would oblige courts to give too many rights to bad parents, which is not what any of us want.

Tim Loughton: Why are they wrong in America, Australia, Canada and Italy? And how has that wrongness manifested itself in gross harm to the welfare of children, because I am not aware of the evidence on that point?

Vera Baird: The hon. Gentleman is not comparing like with like. I am unaware of any legal system that includes a legal presumption of the type to which he has referred. The hon. Member for Mid-Dorset and North Poole (Annette Brooke) discussed the ability to put a presumption into the welfare checklist, but that is not a legal presumption. Most family law systems in societies resembling ours will be based on such a presumption, which is not a legally binding presumption of the kind mentioned by the hon. Member for East Worthing and Shoreham—I hope that he eventually gets why he is wrong.

Child contact is a child-protection issue, and there are dangers. This Government, more than any previous Government, have recognised domestic violence as a serious issue that has been hidden for many years, that is very hard to get the measure of and that is seriously under-reported. That point applies to male domestic violence, too, which the hon. Member for East Worthing and Shoreham and I have discussed before. I talk about domestic violence against women because the vast majority of domestic violence involves women, but there is domestic violence by brother on brother, father on brother, brother on father, gay partner on gay partner and women on men. In every situation it is a hidden problem that needs teasing out, because, as it is wrapped up in a relationship, it is not easy to speak freely about it.

In this connection, though, it mostly concerns women. The statistics suggest that 750,000 children witness domestic violence annually. Seventy-five per cent. of children who are on the at-risk register for their own safety live with domestic violence, and up to 66 per cent. of children suffer physical violence from a perpetrator who is attacking the mother but also at some point attacks the child. In the criminal justice system, the point where the parties separate is now well recognised as being one of enhanced danger when the violence tends to increase because the perpetrator appreciates that he is losing his grip and tries to use even greater force to bring the person back into the fold. However, that is not half as well recognised in the family sector. When domestic violence is recognised in family courts, it is generally regarded as having come to an end when the couple has split, not as a continuing issue. It is often undervalued because it is perceived as a tactic in a fight.

The hon. Member for East Worthing and Shoreham, whom I know does not think as his words suggest, talked about the need to be rigorous and punitive about false allegations in court. Everybody agrees with that, but he cited only false allegations of domestic violence.

That is a slightly partisan view. Of course, in heated situations where there is a child to play for, more unscrupulous parents make all sorts of allegations against one another, but there is not a high incidence of false allegations about domestic violence, although there is a great deal of it.

Those of us who sat on the Joint Committee that scrutinised the draft Bill had the benefit of the scrutiny unit statistician's figures about a whole range of related issues. In the year for which he gave us figures —I think that it must have been 2003–04—out of 40,000 contested custody cases, 13,000 concerned issues of safety, of which 5,500, or nearly half, concerned child abuse or neglect and the other 7,000 or so domestic violence. It is therefore utterly vital that the child's welfare is paramount and that that cannot be changed. I am pleased that the Government cling to that position and will continue to do so. The question is whether the Bill goes far enough to guarantee the safety of the large number of vulnerable children and domestic violence victims who are present in the statistics.

The Government would say that those worries are adequately addressed by the welfare checklist in the Children Act 1989, the extension of the definition of "harm" to include impairment due to seeing or hearing ill-treatment of another, and the new family court application forms that try to ensure that domestic violence is put at the top of the list so that cases can be verified and dealt with at the outset. However, the joint charities grouping, which consists of a large number of pressure groups concerned with children, including the NSPCC, suggests that there is no clear requirement to ensure that contact is safe. We recommended—

Mr. Deputy Speaker (Sir Michael Lord): Order. I am not sure that the hon. and learned Lady's microphone is working. Until we are sure that it is, perhaps she would like to speak up a little.

Vera Baird: I am sorry. It is rare for me to be accused of not speaking loudly enough. I referred to and commended two recommendations that we made in Committee. They consist of checking the safety of the child at every stage. I mentioned the thematic review, which showed that CAFCASS paid

> "a worrying lack of attention to safety planning in almost all the observed sessions".

I was pleased that the Minister said that CAFCASS is now receiving plenty of resources. It will have to change its culture if it is to move from report writing to active solution seeking. It needs beefing up.

The thematic review makes the point that if we have existed with a family court system in which the stars representing the social workers, the sense of both sides to a dispute and the expertise acquired has never paid sufficient attention to safety planning, that speaks volumes about keeping children's safety paramount. Even the officers charged with the task of recommending welfare outcomes have not had that requirement as high on their agenda as they should.

My second concern about the Bill is the absence of the paramountcy principle from the provisions that deal with enforcement against a recalcitrant parent. Clearly,

the point is to enforce, but orders for contact can only be prospective. The judge works out the likely way in which it will happen but events can call safety into question. For example, something could alarm the mother or make the child afraid so that it does not want to go, and she says, "I won't go through with it." At that point, enforcement is directed at dealing with her. If the paramountcy of the interest of the child is lost then, we lose a good deal of the point of the Bill. That is deeply worrying.

An individual needs to be punished but that should not undermine the paramountcy of the child. We are back to the point that the Bill is intended to tackle. The courts do not easily send a primary carer to prison because that is bad for the child and we are trying to get away from that model. The courts might express concern that, if they make someone do unpaid work at a time when they would otherwise take the child to a football match or do something nice, it undermines the welfare of the child. However, I believe that we could give the courts a strong steer and emphasise using reasonably civilised means to enforce an order, which the court remains assured is in the interests of the child. That model is compatible with the paramountcy of the welfare of the child. If that does not remain at the top of the agenda, we are worried that punishing the person will be put first and the child's welfare will be lost along the way. I hope that those who serve on the Committee can ensure that the paramountcy principle is included in the relevant provisions.

Section 122 of the Adoption and Children Act 2002 about representation for children has been mentioned. It has not been implemented and I understand some of the criticism from Conservative Back Benchers. There is no doubt that all the joint charities believe that it is crucial that the courts hear and understand the child's wishes and feelings about the circumstances to help them decide what would be safe for the child, yet the Bill neither implements section 122 nor orders separate representation when there is risk.

The lobby groups say that separate representation should be considered in all cases where there is a risk and that courts should ascertain children's views in all cases. In principle, I agree strongly. However, I ask a question that I hope will be considered in a broader context than simply that of the Bill. How do we do that?

In cases involving an older child, we can get the kid to give evidence if we have to, although that is not necessarily desirable. Such evidence could certainly feed into a social worker's report in some way. But what about the younger children? And what about the 5,500 out of every 40,000 who are subject to the

threat of child abuse or a lack of safety? They need to be able to make an input into the question of contact, and they need to be able to articulate what has happened to put their safety in danger. That can be hugely difficult.

That question is reflected in the criminal justice system, where case after case is brought involving allegations of abuse of young children, usually as a result of physical evidence, which might not be totally compelling, or concerns about the child not thriving. In other cases, a sibling might have said something, or the child might have said something to mum or dad to cause

real concern. But how can a child be facilitated to express what has happened to them, and to give that kind of evidence, which is highly material to a prosecution but equally material to the tortured issue of contact where there might have been child abuse?

There is a provision in the Youth Justice and Criminal Evidence Act 1999 for intermediaries to be supplied to help people who cannot communicate in the normal way to put their evidence before a court. That is used for a variety of vulnerable groups. I had the privilege a few weeks ago of visiting the Barnardo's Bridgeway project in Redcar. The project deals with what it calls troubled children. These are children who are suspected to have been abused. Its primary role is to unearth what has really happened, in order to help the child to deal with it and to give them counselling. It is that unearthing of what has happened, by using very clever methods, and then being satisfied as a professional that is has indeed happened, so as to know how to tackle it through the right kind of counselling, that offers a potential medium for getting complaints of child sex abuse before the courts.

I had a pretty limited opportunity to get to the depths of how those professionals work. Through the use of toys, books and pictures of a specific kind, they try to get the child to go back through the experience, to see whether they respond to anything that registers that they have had an abusive experience. For instance, rather than asking a child a complex question such as, "How did you feel when that happened to you?", they have puppets that represent different emotions. This is just one example of how ingenious these methods are and the potential that they hold. The child would be asked which puppet was there at the time of the experience, and they might hold up the sad puppet or the angry puppet to show that that was how they felt. Or they might hold up the happy puppet, which would show that there was nothing to worry about.

I am not suggesting that we use puppets in court—I think that my colleagues in the legal profession might be a bit worried about that. However, I am suggesting that we all have a big responsibility, in confronting the inability to get children's testimony in these cases, to consider how those kids are not being protected because their testimony cannot be brought forward, and to examine some of these very clever methods, including those being used in the Barnardo's Bridgeway project. We need to acknowledge that, if they represent a well researched and methodologically sound way of getting reliable information about child abuse out of a child, so that an expert can then report it in court, that could be a way forward. I do not blame the Government for not introducing that part of the earlier Bill. It is easy to say that there should be separate representation in all circumstances, but a lot of questions remain about how exactly that should be achieved.

I welcome the Bill immensely. My only reservation is whether we have put safety sufficiently at a premium. Let us cleave to the paramountcy principle at every stage, and let us not lose sight of the opportunity that the Bill offers us to open the door into the world in which some children—not all, but a substantial proportion, as the figures show—suffer from abuse and from the spin-offs of domestic violence. Let us give serious thought to how we can, from now on, try harder to get children's voices properly heard.

4.4 pm

Mr. Eric Pickles (Brentwood and Ongar) (Con): I am grateful for the opportunity to make a modest contribution to the debate. It is a particular pleasure to follow the hon. and learned Member for Redcar (Vera Baird). I hope she will forgive me if I do not pursue some of her excellent points, as I want to concentrate on a narrower aspect of the Bill, namely adoption. I want to say something about the secrecy of the family court. I think that some of the general rules on adoption concerning foreign nations are relevant to our own system. A particularly sad case in which I have been involved over the last few months has a direct bearing on how adoption works in practice, especially forced adoption, the most extreme of the many issues that we must consider.

My hon. Friend the Member for Peterborough (Mr. Jackson) described the Under-Secretary of State as sparky. I am not sure that I can follow him down that avenue, but I want to record my enormous appreciation for the courtesy that she has shown me in connection with that case and my concerns about adoption. We have had three formal meetings and many more informal meetings. The Under-Secretary has changed my views on a number of important issues. She has also reinforced some of my prejudices, which is a nice feeling—but I am genuinely grateful to her, and grief-stricken by the fact that she is plainly suffering from a heavy cold. I wish her a quick recovery.

As I have said, I am concerned about the secrecy of the family court. I tabled an early-day motion on the subject. Looking around the Chamber earlier, I noted that almost every Member present, apart from Ministers and, obviously, the occupant of the Chair, had signed it. Early-day motion 869, entitled "Workings of the Children Act 2004", stated:

> "That this House urges the Government to remove the veil of secrecy from the workings of the Children Act 2004; considers that the closed door policy of the family courts breeds suspicion and a culture of secrecy which does nothing to instil confidence in those using them, which affects not just the courts but the social services departments of local authorities; and believes that it is possible to preserve the anonymity of children involved in the proceedings without the cumbersome rules which obstruct parents from receiving advice and support, which in particular works to the disadvantage of parents with special learning difficulty."

The hon. and learned Member for Redcar spoke about the concept of the rights of the child being paramount. Her explanation was a good deal clearer than some that I have received from social services departments. However, I am less concerned with the effect on the courts than with the effect on social services. There is almost a process of Chinese whispers, whereby that noble concept becomes bastardised into an unwillingness to disclose, to justify, to listen to arguments, or even to see a need to explain decisions. The law was changed because of Members' difficulties in obtaining information from social services departments. At one time, they were threatened with contempt proceedings and prosecutions for pursuing constituency cases. Since the beginning of April last year, however, we have been able to look at case files and discuss the issues. I may be wrong but I think that I was the first Member of Parliament to take advantage of that, after a constituent who was going through the process brought it to my attention in the early part of April last year.

The change in the law seems to have wholly passed by Essex social services department. Despite the

will of the House and the change in the law, it led me through quite an elaborate dance when I wanted to get some basic information from it. At one point, it insisted that I went to court to get special permission, when by Act of Parliament I already had that right. Had it not been for my noble Friend Lord Hanningfield, who happens to be the leader of Essex county council, I do not think that I would have been able to pursue the case to the full.

I cannot go into the details of the case, but I can talk about it in the abstract and discuss the way it affects the law. It concerned the decision by Essex social services to remove two children from a family because they considered the mother to be stupid and incapable of bringing up the children because of her lack of intellect. The mother had an IQ of around 60. Social services sought to present her as stupid to the point of being unable to understand maternal feelings. In my view, she was a little slow but someone who clearly loved her two children. She was faced with an unending stream of social workers dealing with her case—at one point, I counted 16—who were pushing her in different directions. She was left bewildered and unable adequately to rebut social services' allegations. I want to say a few things about people with learning difficulties and then move to the general question of social services. I want to stay firmly within the terms of the Bill.

A problem has been identified recently with the Meadow case. I do not want to go down that route but it illustrates the fact that, sometimes, proceedings have been initiated because hospital consultants or social workers have been a little over-zealous. It is typical for the person who initiates proceedings to see the complaint through. There is a need for a separation of powers between those who take the decision to initiate an investigation and those who actually conduct it. I am worried—I will come to this a little later—about the targets for adoption and the obvious financial benefits that accrue.

The principal problem is that social services departments cannot be entirely non-partisan in the way in which they identify the issues. Few people who initiate a serious chain of events are likely to admit it when it goes wrong. The temptation is to tailor evidence to fit the complaint. That should be resisted.

I can give a few brief examples of how that happens. As I said, I think that I was almost certainly the first MP to go through the process of wading through a social services file concerned with a forced adoption. It was thick, repetitive and at times confusing. I have talked to the Minister about that. I speak as a former chairman of a social services department and was used to seeing that kind of thing. I was shocked at the sloppiness of record keeping, the shoddiness of the process and the basic injustice. In that file—this is directly relevant—there was misinformation, embellishment and inappropriate assigning of motives.

I shall give just two examples, which illustrate the general problem. In the first example, the husband did not have learning difficulties but was, by mistake, described as having them. The mistake was recognised and corrected in the file but subsequently, such allegations continued to be made, as though it was a

proven fact. More seriously, it was suggested that the child had witnessed domestic violence. It became clear that this was a single incident in which the husband, in a moment of pique, had picked up his slippers and thrown them against the wall. He is a gentle and passive man and at no time were the slippers aimed at anybody; nor was any damage caused, except, perhaps, for a slight mark on the wall. However, the file on that family states that the female child

> "has witnessed domestic violence and this will have an impact towards her development".

Following close scrutiny on my part, social workers told me that there was no evidence of any violence toward either child in the family. No doctors or casualty departments had expressed concern, and there

was no evidence of repeated accidents involving the children. Yet the allegation remained on the file.

An allegation was also made of poor parenting and I asked for various examples. I was given two. First, the female child had been given sandwiches and a packet of crisps for her lunch, and because she chose to eat the crisps first, she was too full to eat her sandwiches. That was deemed sufficiently important to be regarded as an example of poor parenting. The second example—we should bear in mind that at this point, I was pressing for another such example—involved allowing one of the children to stay up late at night to watch television. I asked whether "late" meant 10 o'clock at night, or perhaps 9 o'clock. I was told that she was allowed to stay up until 8 o'clock to watch the end of "EastEnders" or "Coronation Street". I have many middle-class friends with children of a similar age who are allowed to have crisps and to stay up until 8 o'clock. None of them is subject to a care order.

I turn to the issue of stories being embellished. By this point, the social worker was finding me a tad provocative. He said that the mother had screwed up a baby-wipe tightly in her fist and had repeatedly rubbed it against the genitals of the young male child, to the extent that they were "red raw." However, the report actually said that the mother had used heavy pressure, and that the genitals were flattened and "very red". There is a world of difference between "red raw" and discoloured.

I found distressing the way in which motives were ascribed in the report, without any obvious discipline. The father was criticised because he had refused to leave his job of some 23 years to become the full-time carer. It was said that that showed a lack of commitment. I believe that holding down a job—in his case, a humble job—for 23 years and putting bread on the table week in, week out sets a fine example to one's children. The social workers wanted the father to live off benefits. That might have been a solution, but if someone can set an example to their children by working hard, that is something to be proud of.

I want to return to the way in which the primacy rule can be bastardised. I confess that by this time I was beginning to irritate people, although I am sure that hon. Members will find that hard to believe. I found myself being lectured by a very senior person whom I shall not name, as that would be embarrassing. He said, "We have to consider the welfare of the child. That is absolutely paramount; whatever is best for the child is what we do."

I replied, "OK, but if that rule is applied generally, let's apply it to your children. If I arranged for them to live in the house of Mr. Bill Gates, they would get enormous intellectual stimulation—probably more than you can offer—and they would certainly enjoy much greater financial well-being." The very senior person did not seem to like that, which made me glad that I had not used my second choice of example—Michael Jackson.

I have talked these matters through with people who really understand them. They have said, "Look, Eric, what about the guardian? The guardian is there to look after the interests of children and to be impartial in the process."

I put that approach to various leading counsel with an interest in the matter. Although some guardians may exist who are prepared to stand up to social services departments and act as bastions of freedom, they are very hard to find. **Generally speaking, guardians act as cheerleaders for social services departments. They are entirely compliant, and seem incapable of doing more than being a cheering section.**

I had the opportunity last night to speak about such problems to the Under-Secretary and I shall give one example of the role of guardians. A leading counsel on these matters—who, by the nature of

things, acts sometimes for the local authority and sometimes for parents—told me about one occasion when he was acting for the local authority. Just before proceedings began, people started to gather round the table. He was not paying attention to who came through the door, and was about to begin his contribution when he noticed that the guardian was sitting in the room. "What are you doing here?" he asked, to which the guardian replied, "Well, you know, I'm here as part of the team."

That person should not have been in the room, because the guardian's presence could demonstrate partiality. The system needs to make sure that the different strands of the process can be separated.

I was enormously surprised to find that there is no national system for the regulation or disciplining of social workers. No royal charter exists that sets out professional standards or disciplinary procedures and thus allows peer judgment to take place. The social work profession needs to address that defect. The solution does not need to be elaborate, but peer evaluation among social workers on relevant matters is important. Without that, there is enormous variation between authorities, which can be as slack as the one involved in the Climbié case, or as tough as Rochdale in the face of ridiculous accusations of satanism.

I shall quote briefly from Andrew Scott, an admittedly newly qualified barrister who deals with these matters on a daily basis. I suspect that he may be known to some hon. Members, as he has made quite a reputation for himself. He said:

> "I don't think the public appreciates how low the threshold is. When children are taken from their parents, it is not because there is a certainty of future harm or even that, on the balance of probabilities, those children could be harmed. It is enough that there will be a possibility of future harm. If there is a 70 per cent. risk of a child being harmed and every child with that risk was taken into care then, in 100 such cases, 30 children would be taken from families where they would come to no harm. Sometimes, I wonder whether children are being protected, or whether it is social workers' careers."

Those are wise words. There may be a temptation for local authorities, possibly because of the financial advantage, to move towards adoption when other solutions may be possible.

Mr. Scott goes on to say:

> "There's an unspoken fear that children from poor backgrounds are being freed up for middle-class adopters."

I would like to give an illustration which, of all the features of the case, has really chilled me. It is about the question of duty of care. In the April before the children were finally taken with a view to an enforced adoption, there was a case conference. The second child had not yet been born. The conference was considering whether to put the child on the at-risk register. The daughter was already on it. On the basis of the facts before it, the conference decided that it was not necessary to put the young boy on the register and furthermore that it was appropriate to take the young girl off it. Somebody at that conference, notably the chairman, did not like that decision. There was no change of circumstances and no other substantial incidents had taken place. Yet the same circumstances were seen as making it appropriate to put the children into care with a view to permanent adoption.

Let me say what I think needs to be done. Those who investigate a complaint must be independent of those who initiate it and those who may in due course be called on to care for the children. A proper

code of conduct for social workers is long overdue. I certainly believe that those with special learning difficulties deserve special care. We are told that in 1 per cent. of all families one partner or the other has learning difficulties. We are also told that 20 per cent. of children in care have one parent with learning difficulties. There is some dispute over the figures, but whether they are precisely right or not, they demonstrate a problem.

The secrecy of the family courts needs to be opened up. We wait for the consultation document. I believe that there is a strong case for judgments to be published and that they can be published while retaining the anonymity of the child. I have one additional suggestion. It goes back to the Meadow case. There is a question whether the professional witnesses should be identified. If the Government take the decision that they should, I will generally support that. Once you become involved in a case you get e-mails from all over the country. Some are heartbreaking, but they all have strong emotion running through them. Very normal people sometimes become irrational. I recognise that there might be a problem obtaining witnesses if they are routinely named.

As an absolute minimum, each professional witness should be given a unique identifying number. I think that that is important—I suspect that hon. Members understand—because we need to establish a pattern so that if we get a problem with the veracity of a witness we can have another look at them.

We need to change the rules with regard to advice. Parents are put in the dreadful position of being unable to seek advice. They cannot talk to their county council or unitary authority; they cannot talk to friends or members of their family. Only recently could they come and talk to us. I can give examples of where there is a

problem. In care or adoption proceedings it is understandable that parents want to take a fair amount of time off. Under the existing rules, parents cannot tell their employer why they are absent from work without going back to the court. Psychiatric evaluations are also often necessary in such proceedings, but people cannot make full disclosure without first going back to the court. We have to find ways to solve those problems, and I wholeheartedly endorse the Committee's recommendations for greater transparency.

It might be slightly controversial to say so, but some cases resemble attempts to make bricks without straw. Once the facts have been established, the courts are reluctant to revisit those facts or their interpretation. However, if adoption has resulted from fraud or seriously erroneous evidence, we should have a procedure to enable that adoption to be overturned, although the period in which that could be done should be limited. In care proceedings, any carer who is accused of abuse should have an automatic entitlement to legal aid; the opportunity to instruct an expert of their choosing; a right of appeal against any findings; and legal aid for any appeal.

I am grateful for the opportunity to raise these issues, but I wish to make one final point. I hope to be a Member of Parliament for many years to come—[Hon. Members: "Hear, hear."] Well, that is marvellous and makes me feel wonderful. However, the case I have described will haunt me, because a grave injustice has been done and the system has let those people down. Those two young people now live in my constituency in a flat that is spotlessly clean and well maintained, with a bedroom full of toys that their children will never see. The beds are made up and presents are waiting for them. While there will be an attempt to overturn the original care proceedings, everyone understands that the likelihood of reversal is not great. When the state intervenes in people's lives, we must ensure that it does so fairly. In the case that I have dealt with over the past few months, that intervention was "intervention beyond the humane."

Mr. David Kidney (Stafford) (Lab): Child contact disputes can be tremendously painful and affect everyone involved in them. They can leave long-lasting damage in their wake, so it is in everyone's interest to keep them to a minimum. For families, it is a deeply personal and private decision whether parents should live together or separate, and, if they separate, what arrangements should be made for caring for their children. We—as the decision makers—and the agencies and courts that affect those people's lives should be very aware of the difficulties that people have in engaging with the state when they have to make those private decisions.

I have often wondered about the preparations that we make for having children. I cannot recall going on a parenting course and I have never had any help with the tricky questions that have arisen from time to time as I have raised my children. People have expected that I will naturally know what to do because I am a parent. That is the case for many people.

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As we consider how, through the Bill, we can reduce the number of painful disputes and the severity of those that we cannot eliminate, the starting point for our deliberations should be much further back. The Bill may not be able to cover some of my interests, such as a universal parenting support service, but we should remember that services for parents in difficulty are woefully inadequate. There is some preparation. The external assessment process for adopting and foster parents may prepare them for what is to come. Some people attend marriage preparation courses, during which they may give some thought to their future duties and responsibilities as parents.

I want to draw the House's attention to a little-celebrated change in the law eight years ago, whereby unmarried parents who jointly register the birth of their child both acquire the joint parental responsibility automatically accorded to married parents under the Children Act 1989. Many people have overlooked that change. I asked my local register office why we could not have a ceremony to mark the registration of a birth and was told that there was one but not many people asked for it. Such a ceremony could be an occasion for parents not only to celebrate the joy and pleasure that they will derive from parenthood, but to learn a little about their duties and responsibilities, which is relevant to our debate about parents' responsibilities for the welfare of their child when they are in dispute.

The Children Act is that rare bird—a good law passed by a Conservative Government. We should recognise the success of a long lasting, wise law. The concept of joint parental responsibility, much overlooked in today's debate, has been extremely successful. The statistic has become hackneyed in our debate today, but in nine out of 10 cases parents who separate come to their own agreement about the future care of their children, because they exercise their joint parental responsibility. Most of our focus has been on some of the cases in the other 10 per cent. The existing law is sound, but some of the practices about which we have heard today are unacceptable. We need to give thought to them in designing legislation to improve the situation.

When parents separate, children benefit from a continuing relationship with both of them, provided that it is safe. The Children Act makes the welfare of the child rather than the rights of the parent the paramount consideration for the family courts. Both parents have equal status and equal value in the eyes of the court. When I was involved in such a case as a lawyer, the court was certainly gender-neutral.

Mr. Simon Burns (West Chelmsford) (Con): Will the hon. Gentleman give way?

Mr. Kidney: I am happy to give way to the newcomer to the debate.

Mr. Burns: I am grateful to the hon. Gentleman, although I am not that much of a newcomer as I have

been in the Chamber for almost an hour.

There is a slight problem with the hon. Gentleman's use of the word "equal". When people separate and try to set up arrangements for their children, under existing law—whatever lawyers may say—it is in fact the mother who has care of the children and will decide when the

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father sees them. That is why many agreements are made without problem. Fathers fully understand that they cannot fight in the court for a 50:50 arrangement because the court will not give it to them.

Mr. Kidney: I respect the hon. Gentleman's opinion, if what he has just said is his opinion. However, I profoundly disagree with everything that he says about the assumptions that fathers and courts make. I think that he is wrong on both counts.

Mr. Burns: I do not know the hon. Gentleman's background and whether he has ever been put in such a position, but may I tell him that, for most fathers who have found themselves in that position and have had to negotiate a deal, what I have said in my earlier intervention is, in fact, the case?

Mr. Kidney: I do not want to extend this discussion, but for 20 years I was a practising solicitor in the family courts and dealt with a great many cases that involved divorce and the care of children. My experience in those 20 years was that the two situations that the hon. Gentleman describes were very infrequently relevant factors in the cases in which I was involved.

The law is clear, but the current systems for resolving disputes must be improved, which is what we set out to achieve with the Bill. There is clearly a need for specialist family services to provide support as part of the overall system with which I want to deal, and even for compulsory family services for some families, such as those in conflict, those with addictions and, perhaps, mental health difficulties, and certainly in cases of family violence.

In general, in cases where disputes that involve children occur during the breakdown of a relationship between the parents, the first port of call should be mediation. We need not wait for a breakdown in communication before mediation takes place. It is a structured process, whereby a couple are helped by an impartial third party—the mediator—to negotiate their own decisions for the long-term benefit of their children.

Research has shown that five hours of mediation can promote sustained contact and an ongoing relationship between parents and their children. A long-term study of outcomes in the USA was referred to in a briefing that we have received from National Family Mediation and which resulted in a book called, "The Truth about Children and Divorce" by Robert Emery, who says that, 12 years after the event, 30 per cent. of parents who had attended mediation were still in weekly contact with their children, as against just 7 per cent. who had been through litigation.

Mediation should be, in the words of National Family Mediation, the routine method for resolving child contact disputes early if the family have not already reached their own agreement. I agree with the Grandparents Association that mediation should also be available to grandparents and other relatives who have been involved in children's care.

I asked a question earlier about the funding of mediation, because that is relevant if there are barriers to something that could be successful and save costs downstream. Publicly funded solicitors' clients are

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required to consider mediation unless it is unsafe—for example, because of an allegation of domestic

violence—before they can go on to receive further legal help with their court cases. In the past, they may have received legal aid. For those clients, mediation is free. No contribution is required from them, and there is no suggestion of a statutory charge being placed on their property after the case has finished.

Andrew Selous : In the hon. Gentleman's experience of cases where such matters come to court, do the courts sufficiently take into account the importance to the child of grandparental and other extended family relationships, or are they not considered sufficiently seriously by the courts?

Mr. Kidney: The point that I want to pursue in a little while is that the enemies of dissatisfied parents, grandparents and wider family members are usually obstacles that are nothing to do with what the court would decide if it had a fair opportunity to make the decision. Those obstacles are things such as cost, which I am about to mention, and whether those people can get into the proceedings.

Delay in the court process is also an obstacle. By the time that a judge makes the final decision some way down the line, circumstances may have changed so much that what everyone thought would be a fair outcome a year earlier no longer seems appropriate. I want to talk about how to sweep away the obstacles of cost and delay to get a fair outcome. It is my experience that if grandparents can get themselves in front of the court, their argument gets a fair hearing.

I was explaining how a person with legal assistance gets all the mediation for free, but a person who does not qualify for legal aid gets none of it for free. A person who already thinks that that is unfair and that, if the mediation does not work, lawyers in the court case will have to be paid, will worry that mediation involves a wasted cost and will be reluctant to incur that in the first place. The first thing to address is: if mediation is such a successful route and might save lots of costs later, is it not worth investing something in the mediation process for both parties to make it an attractive solution for the early resolution of disputes?

I would need to be in the position of the Minister and her officials and have the budget in front of me to make an assessment on the actual design. There are a number of choices. We could continue to load the cost on to the parents with a system of assistance from public funds, depending on how low the parents' income was, or we could have a publicly funded system, but with contributions from some parents, in the way in which NHS dental contracts now require contributions from some patients. Either way, we need to remove the obstacle.

If mediation has not been tried or has been tried and failed, the courts will be involved. The Children Act 1989 states clearly, very early on, that any delay is likely to prejudice the welfare of the child. It is my experience that that is definitely so and, unfortunately, that that happens too often. The Under-Secretary of State for Constitutional Affairs, my hon. Friend the Member for

Lewisham, East (Bridget Prentice), in answer to a question from me, wrote that Government-commissioned research shows that

> "almost a quarter of cases lasted over a year or arose following previous proceedings".

She continued:

> "almost a quarter of cases have two or more repeat applications and about a third of these are the result of enforcement issues, while over a half are . . . driven by the need to have a previous order updated."—[*Official Report*, 28 November 2005; Vol. 440, c. 170W.]

My central argument is that such delay distorts the decisions that judges can make at the end of the case

because new situations might develop in the time that it takes to get there. Sometimes the delay in effect decides for the judge what the outcome can be. That does not seem like the fair solution that people thought that they would get when they started court proceedings much earlier.

What does the Bill do to reduce delay? On its own, it is silent about that, but it introduces a new power to direct parties to undertake a contact activity—information sessions, classes and counselling. It is possible that that could be the first thing that a court orders immediately after somebody applies for a decision. In that instance, if something comes of the information sessions, classes and counselling, it might bring about an early resolution of the dispute and achieve a satisfactory outcome for both parties. That will depend on the order being used and resourced so that things happen quickly, as well as whether the parties feel that they get sufficient help through that route to resolve their dispute. Clearly, the approach will not work if parties retain hardened attitudes.

On the resources to make the approach work, it has been mentioned in the debate that, in some parts of the country, there are contact centres and admirable voluntary schemes where such work is undertaken very well. Mention has also been made of the Children and Family Court Advisory and Support Service. I hesitate to say that CAFCASS will make that approach work because we have also heard that it has to carry out the new risk assessments, administer the reformed family assistance orders, presumably carry on its current role regarding inquiries and reports to courts and, hopefully, fully resource its public law cases, which are an important priority for it.

I do not know how many other Members have received a briefing from the probation officers' trade union—the National Association of Probation Officers—that describes a budget crisis at CAFCASS last summer, management cuts this year and a stand-still budget next year. That does not sound like the basis for CAFCASS being in a position to help us to make a success of the new orders and thereby reduce the delay that is causing so much harm in some cases. If delay continues, the current dissatisfaction, of which we are all well aware, will grow.

Some say that there is an alternative in the approach of early interventions. I found the explanation for early interventions in an article in the *Family Law Journal,* family law 455. It refers to a report of a seminar in London in April 2003 called "Early Interventions—

Towards a Pilot Project". It contains many references to the presentation that day from the Florida judge, John Lendermann, under the title "How and Why Most American States Changed to Early Interventions". His article describes how it was based on a statutory requirement for frequent and continuing contact founded on child development research. He said that children did better when both parents were kept in their lives. He added that the basis of the whole scheme is well publicised in parenting plans setting out cycles of contact in the average case.

I have some difficulty with the concept of the average case. The problem with these few cases is how highly individualised they are in terms of the needs and demands of the parties to them. Nevertheless, the judge said that the combination meant that American parents knew what sort of orders the courts might make in the absence of exceptional circumstances, and that by implication they concentrated more on making a success of the alternative. It is clear from that description, as it should be in this country, that allegations of domestic violence should be taken out of the process immediately and dealt with separately by courts.

In the judge's scheme in Florida, the remaining cases are streamed through a two-stage process. The first is that separated parents are mandated—I think that that means that they are made—to go to group parent educational classes where their post-separation responsibilities to their children and each other

are explained to them. They are given the opportunity to agree a parenting plan and exit system. For the remainder—what the judge describes as resistant parents—he says that they are obliged to attend a single session of contact-focused mediation. He says also that Florida has a standard standing temporary order, which is issued in every case, binding the parties to maintain contact prior to the first hearing. The judge describes in his article that therefore only a minority of cases, mostly involving serious issues, need further intervention. Florida's overall caseload was up and costs were down. Enforcement was a rarity and delay was negligible. Most disputes were resolved within a few weeks.

There are some difficulties in what is described. When the hon. Member for East Worthing and Shoreham (Tim Loughton), who spoke from the Opposition Front Bench, gave the House his presentation, I thought that he was trying to move towards a situation in this country where costs would be down, enforcement a rarity and delay negligible. That is an outcome that I would like very much to achieve with him. However, I do not think that the Bill will achieve all of those things. We need to consider what more might be needed.

As a summary of my view, I think that there should be robust systems for screening for domestic violence. There should be specific procedures to deal with those cases once they are identified. We should hear the families' views, including the children's views. We should certainly consider the separate representation of children in appropriate cases. We need to identify those cases where continuing contact has already been shown to be in the beginning of the case in the child's best interests, and there is a danger that that continuing contact will cease unless something is done at the early stage of the case and not at the end of it. That was the point that I wanted to raise.

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The more that I listen to this debate, the more I appreciate how crucial the new amendment in the other place could be for risk assessment, which will be undertaken if clause 7 becomes part of the Act. I have described both domestic violence cases and cases in which contact should clearly be maintained during court proceedings, otherwise it would be lost and a decision made against the court's wishes. All those things can be identified in a robust risk assessment and targeted approaches designed as a result, and I hope that that will happen in future. Children's welfare certainly includes protection from physical and psychological harm, so our systems of dispute resolution must be vigilant so that they can detect cases of domestic violence. It is important not to put parents in danger, even at the early stage, as I mentioned, of mediation, and certainly not during the proceedings. It is important not to put children at risk of harm through contact before the risk assessment is made.

The new family court application forms will protect children from domestic violence, as will the extension of the definition of harm to include impairment due to seeing or hearing ill-treatment of another. Following the amendment that was made in the House of Lords, we have gone further in the Bill and introduced risk assessments. We have made attendance on domestic violence perpetrator programmes a possible condition of contact, but we still need to ensure that there is an assessment before every step of the proceedings and that we act on the result, so that there is clear reporting and prioritising of cases.

We have limited enforcement powers, including fines and imprisonment for contempt of court, but those powers are not often used, for the reasons that hon. Members have given. The courts will be able to order community-based enforcement, unpaid work and financial compensation paid by one party to another, but there are many uncertainties about the new powers, some of which we have discussed. While I support the extension of enforcement powers, those uncertainties reinforce my strong view that we must sweep away obstacles that arise early in the process, such as delay and cost, so that we can deal with more disputes more effectively.

Part 2 deals with adoption. The Joint Committee that considered the draft Bill and the Joint Committee on Human Rights both recommended that the Bill should require the Secretary of State to pay particular regard to the United Nations convention on the rights of the child when deciding whether to impose special restrictions suspending inter-country adoptions from a particular country. I very much agree with that suggestion, which would provide an important safeguard to ensure that the power to issue special restrictions is exercised in conformity with, and in support of, the convention.

The Bill is necessary because of the difficulties relating to some contact disputes, as we well know. It goes in the right direction, as most speakers have said. It has been improved in the other place and, in my view, it could be improved still further in the House. My strong wish is that we continue this debate in Committee and hammer out a position from those that have been articulated today to make the Bill much better and much more effective in reducing those disputes.

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Andrew Selous (South-West Bedfordshire) (Con): May I begin by commending the Minister for Children and Families, my hon. Friend the Member for East Worthing and Shoreham (Tim Loughton), who spoke on behalf of the official Opposition and, indeed, all hon. Members on the tone and manner of their contributions? These are emotional issues and there are many different perspectives on them, but everyone who has spoken today has made a considered contribution. Indeed, I am heartened by the extent of consensus in the Chamber. We are all united in wanting children to be safe, both in their own home with the parent who has custody of them, and with non-resident parents. We are united as well in agreeing that it is in children's interests to have ongoing contact with both their mother and their father, although there will be some exceptions where that is not in the best interests of the child.

The first aspect that I shall consider is prevention, which is not specifically dealt with in the Bill. Again, I commend my hon. Friend the Member for East Worthing and Shoreham, who touched on trying to prevent couples from splitting up. I also commend the hon. Members for Mid-Dorset and North Poole (Annette Brooke), who referred to that, and the hon. Member for Stafford (Mr. Kidney) who mentioned the important topic of marriage preparation. We miss that all the time. It is not something for which we can or should legislate, but it is a matter of political will and a matter for greater funding priority than it is currently given.

Is it possible to reduce the workload of the family courts and of CAFCASS, which we have been hearing about? I would argue that it is. There is a growing body of evidence around the world that that is the case. Let us start in America. The community marriage policies that have sprung up there have halved—yes, halved—the divorce rate in some cities. Modesto in California and Austin in Texas are two examples. The university of Texas has undertaken independent corroboration of the effect of community marriage policies across America and estimates that they have prevented some 31,000 divorces and that the divorce rate across all those community marriage policy areas is significantly lower than in areas without it.

In Australia, there is a concerted effort to tackle the problem. We heard briefly from some hon. Friends about the family relationship centres in Australia, which play a role in making sure that the arrangements are correct for children when parents have separated. They also do important preventive work beforehand to try and help couples stay together and make marriages successful. Those organisations are not run by the state but receive some support from it. Given that the Government are considering reform of the Child Support Agency, it is interesting that the Australian child support agency is involved in helping non-resident parents to be good parents and provides materials to enable them to do that. That is a good example of the way in which, cross-departmentally, across all the agencies of Government, we could do better in this country. In Singapore and Malaysia, both Governments are taking the matter seriously. Similarly, Dubai in the middle east came to my attention

recently.

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I am trying to set up a project in my constituency. Last week, we launched our own community marriage policy and, in time, I hope to develop two community family trusts. I know that the hon. Member for Mid-Dorset and North Poole has an excellent one in her constituency doing very good work in schools. I am envious of that, and want the same in my constituency. I hope that all hon. Members might take more of an interest in such projects, so that we can reduce the flow of parents and children coming into the family court system and reduce the demands on CAFCASS. We have heard from almost everyone who has spoken today that CAFCASS will have great difficulty in coping with the extra demands placed upon it by the Bill.

Mr. Kidney: Does the hon. Gentleman remember that a couple of hon. Members spoke about the new children's centres that are planned for many parts of the country as being places where contact can take place? Does he agree that they could also make admirable focuses for parent support services? In my constituency, Stafford, I have an ambition to get Home Start to be the front-of-house service for supporting parents.

Andrew Selous: The hon. Gentleman is right that children's centres are good forums for support centres for parents, but I am discussing support for couples, which is a slightly different point. Support for parents is important, but almost the most important thing that parents can do for their children is to be kind to each other. If parents do that, it sets a wonderful example to their children and helps them to stay together, which benefits their children.

I am particularly interested in the point that my hon. Friend the Member for East Worthing and Shoreham made about the contribution of social workers in Kent. Neither the voluntary sector nor social services have a monopoly in that area, but much more could be achieved through working together.

Mr. Stewart Jackson: Does my hon. Friend support the work of the charity Parent Talk? Last week, I attended an event specifically designed to help parents cope with the difficult job of parenting that that charity put on in a primary school in one of the most deprived areas in my constituency. Support includes videos and booklets to help keep together families which are sometimes in difficult financial circumstances.

Andrew Selous: I do not know that particular charity, but it sounds excellent and I happy to commend it, given what my hon. Friend has just said about its work.

When I mentioned the work of community family trusts to the Prime Minister on the Floor of the House on 7 December, he was full of praise for their work, but the projected budgets for them across the country have been released since then, and, as the hon. Member for Mid-Dorset and North Poole said, they are not good, which concerns me. When the Under-Secretary of State for Education and Skills, the hon. Member for Liverpool, Garston (Maria Eagle) and I debated

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fatherhood in Westminster Hall, she agreed to ask her officials to examine best practice around the world. The Government could do so much more.

Annette Brooke: I am sure that the hon. Gentleman will not be surprised to hear that, despite the excellence of the community family trust in Poole, plans are being made to close the office because,

although some grants have been achieved from outside bodies, the funding is not sufficient to maintain the current excellent service.

Andrew Selous: I am sorry to hear that. The onus is on local community family trusts to try to raise as much money as they can. Some of the central support for the work of community family trusts has been cut and I hope that today's debate will enable Ministers to review some of those decisions. As the hon. Member for Stafford and others said, it is right that the focus should be on mediation, avoiding cases going to court in the first place and early intervention.

I, too, have examined the situation in Florida, which is also mentioned in the Department for Education and Skills publication, "Children's needs, parents' responsibilities":

> "Schemes to divert parents away from court have been developing, including the scheme led by Judge John Lendermann in Florida whereby parents are given information about the damaging impact of their conflict on their children and invited to work out a parenting plan with the help of a mediator. Other programmes are being developed to help and support parents by teaching about their new roles as collaborative mothers and fathers after separation."

We should be going in that direction in the United Kingdom, and I share the concerns expressed by the hon. Member for Stafford that the Bill does not explicitly state how we can do so and whether sufficient funds are available.

Clause 4 deals with the enforcement of court orders, which remains an area of great concern to me. Over the past four and a half years, several constituents have come to me to complain about this. Typically, they are good, concerned fathers who regularly pay their child support as they should, month by month. Some of them have been back to the court 30 or 40 times to try to get their disputes resolved and to have enforced the contact that they have been granted by the court after it has weighed up all the considerations. They have come to me and said that neither the court nor the police have been interested in ensuring that the contact that they were granted is enforced.

That was graphically illustrated to me in my constituency surgery about two weeks ago, when a serving company sergeant-major came to see me. He sat down in front of me and took off the fleece that he was wearing, and right in the middle of his chest was the symbol of his office as a warrant officer in the Army—a large crown. He said, "I don't believe in the antics of Fathers 4 Justice"—who, it is worth remembering, have physically changed the shape of this Chamber since we last debated these issues. He went on, "I stand for what this country stands for. I am a serving soldier and I have done everything right. I pay all the money that I am required to. I have a court order that has stamped on it the same crown that I wear as the badge of my office, yet it is not worth the paper it is written on in terms of my ability to see my children." That is an absolutely

scandalous state of affairs for a good, caring father who has every right to see his children, and whose children will be missing out on the input of a good and dedicated father. The tragedy is that the gentleman who came to see me is one of 7,000 non-resident parents every year who find that the court orders that have been granted to enable them to see their children are being breached.

My worry is that it is not sufficiently clear exactly what will happen if these contact orders continue to be breached. When I intervened on the Minister during her opening speech, she said, properly, that the matter would be left to the courts. However, as Members of Parliament, we collectively represent the High Court of Parliament. It is important that we make it absolutely clear that, where people have acted properly, the court has duly considered all the information, the non-resident father clearly has no history of domestic violence or anything similar, and the court has said that contact must happen, that

contact is in the best interests of the child and we must ensure as a Parliament that it happens. That is fundamental.

If the constituent whom I spoke about, or any other such constituent, comes back to see me after the Bill has passed into law, I will feel that I have failed him if the contact that the court has said that he should have with his children, and his children with him, is not being granted. I am sure that the Minister understands the seriousness of this. We have to ensure that the law has teeth and that where contact has been ordered it really does happen.

The difficulty will centre on what series of escalating steps—my hon. Friend the Member for East Worthing and Shoreham mentioned this—is put in place by the courts to bring that about. It is clearly sensible to have parenting intervention programmes to try to convince parents to do the right thing. I like the idea of giving compensatory time. We could also consider fines going from one parent to the other so that the child does not lose out, with perhaps some mechanism to ensure that that money is indeed spent on the child. It is a vital issue. Many non-resident parents—often fathers—give up their house and the day-to-day care of their children. In many cases, another man moves into their house and lives with their children for most of the time. If the one thing that they have been given—a right by a court to see their children—is flouted, it is a massive injustice for the children and the non-resident parents.

I echo all the points that have been made about grandparents, but why confine the comments to grandparents? Uncles, aunts, cousins and the extended family generally are vital for the development of our nation's children. Many of us have benefited from close relationships with all members of our extended family. Our view of the family is much too nuclear in this country and in several European countries. We could greatly benefit from a more southern European approach. Contact and enforcement is important not only for the non-resident parent but for all those who have loved and cared for children. For many grandparents, uncles and aunts, the children whom they will not see have been an incredibly important part of their lives. We must ensure that the matter is taken seriously for their sake, too.

I want to raise a practical point. We cannot legislate for it, so it properly does not appear in the Bill, but it concerns me and I should like to consider it. When non-

resident parents travel some way from their homes to see their children, there may not be a contact centre in which to see them. Supervised visits have to take place in a contact centre, but if the visits are unsupervised and there is no contact centre, where do they go? There is an expression, "McDads". In the summer, it may not be so bad—perhaps there is a park or another place outside on a warm day—but where, physically, do we expect non-resident parents to spend any quality time with their children? I am not looking for state provision from the Minister but I am trying to think of solutions.

Perhaps charities can help. We have heard much about children's charities today. Perhaps the NSPCC or other charities that have been slightly criticised may like to consider the problem. Perhaps churches, faith groups or anyone in a community who has space in their home and a heart for such matters could help. Perhaps arrangements could be made to put non-resident parents and their children with people who would like to open their homes to them. The non-resident parents could relax and play with their children in a familiar, family environment. That would have to be done by agreement and negotiation, but it is an important matter that some of my constituents who are non-resident parents—and non-resident grandparents—who have to travel some way have raised with me. I do not look to the Government for an answer—it is properly not within their remit—so Ministers can relax. However, I hope that they at least agree that it is an important matter to consider in the context of the care of

children with non-resident parents.

Other hon. Members have mentioned delay. "Justice delayed is justice denied" is a common saying about the law. That is nowhere more true than when children are involved. Childhood is finite and crucial. If a parent misses specific stages of a child's development, they are gone for ever. That is a tragedy. Speed is therefore important. Of course, we must get things right but speed is also vital and I hope that that will be taken fully into account.

Mrs. Maria Miller (Basingstoke) (Con): We have had a full and wide-ranging debate. We have heard that children everywhere must cope with increasingly complex and difficult family relationships. Every year, 150,000 children have to deal with the distress and upset of divorce. One in five children are likely to go through their parents' separation or divorce before they reach the age of 16. That is difficult for any child.

Indeed, parental divorce is seen by children as one of their biggest concerns and fears. We need to bear that in mind as we discuss the Bill. We have heard that great importance is put on children maintaining a relationship with both parents after separation or divorce, and that has been accepted by all speakers on both sides of the House. However, the harsh reality is that after only two short years of separation, 40 per cent. of non-resident divorced and separated parents lose contact with their children. That should set alarm bells ringing for all of us.

We have also heard arguments on both sides of the House that reinforce the fact that the Bill does not grasp the full magnitude of the social problems faced by children growing up in this country today. We must not miss the opportunity to get to the heart of the problem, because we face many challenges as we consider this very difficult and sometimes apparently intractable problem.

There needs to be a change in the way in which family law deals with establishing and maintaining contact between non-resident parents and their children, and a change in the way in which we ensure that the law is put into practice. We have heard today that many other countries are considering new and different ways of doing that, and it seems entirely appropriate that we should examine those options in more detail in Committee, to see whether we can learn anything from them. Those countries' legal systems are not dissimilar to our own, so I hope that that would not be a difficult challenge for us to undertake.

There is also common ground between the Government and the official Opposition on these matters. The Government's Green Paper clearly states:

> "After separation, both parents should have responsibility for, and a meaningful relationship with, their children, so long as it is safe."

The document goes on to say:

> "It is in the interests of the child to have a meaningful ongoing relationship with both parents".

That is important.

It should not be the role of the Government to dictate the relationship between parents and their children, but it is their role to ensure that systems are in place to provide guidance when it is needed. The Bill lacks explicit guidance on the important role that both parents can play in ensuring the well-being of their children. The Green Paper was more explicit about such provisions, but the Bill is not.

As I have said, there is common ground between the Government and the Opposition. We all agree that

the child's welfare is of paramount importance, and we must ensure that any legislation designed to support children has that at its heart. We need to debate these matters as they appear to children. I am not a lawyer, and perhaps Members of Parliament should try to speak not as lawyers but as Members of Parliament. I am married to a lawyer, and I know that it is sometimes difficult for lawyers to get out of the habit of speaking as lawyers, but that is an important challenge for us.

First and foremost, we should focus on the everyday, practical problems that children face. We should then let the judiciary decide how they are dealt with, when it comes within its remit to do so. Indeed, the judiciary itself says that family law does not fit easily into the judicial system, and some of the problems that we have discussed today suggest that that perspective is correct.

We have all agreed today that parents play a pivotal role in achieving the best outcomes for children. We have also agreed that the vast majority of non-resident parents want to stay in contact with their children, and we need to keep in the forefront of our minds that, in 90 per cent. of cases, it is perfectly safe for them to do so. However, anyone reading the transcript of today's debate might find that somewhat surprising.

The Bill attempts to encourage contact and to make the sanctions that are in place workable. We cannot help feeling, however, that it merely tinkers at the edges of a more deeply rooted problem. There is a general feeling that a lack of confidence in the family court system has resulted in many parents settling for less contact, or unreasonable contact time, as legal fees and court time

make it difficult or even impossible for non-resident parents to dispute cases. I have encountered many such instances in my constituency, and most Members who are present can probably think of one or two in theirs.

All too often, as others have said, even when parents have not had to resort to the courts, non-resident parents find it difficult to secure the time with their children that they need in order to maintain and develop the parent-child relationship. Difficult situations are often compounded by non-resident parents' living in accommodation that is not suitable for their children to visit, let alone stay in. My hon. Friend the Member for South-West Bedfordshire (Andrew Selous) made that point. A parent who has had to leave the family home may well be living in bed-and-breakfast accommodation, or other accommodation that is deeply unsuitable for a child to visit.

Lengthy and costly judicial process only serves to exacerbate the problem. As we heard earlier, the Government's own research shows that one in four contact and residence cases lasts more than a year, and a quarter of all cases involve multiple applications resulting from enforcement problems. The system often fuels existing tensions between parents, and a feeling of marginalisation for non-resident parents. Clearly none of that is in a child's best interests.

The law should make clear that we value the contribution of both parents to the future welfare of a child whenever that is safe—and, as I have said, it is safe in the vast majority of cases. If a child's relationship with his or her parent is to flourish and not wither on the vine, time is needed. We must examine ways in which the legal system can become more accessible, and can work better to bring about successful outcomes for children rather than fuelling conflict in already difficult and emotionally charged circumstances. That is why we will seek fundamental amendments to the Bill, including a legal presumption of co-parenting and an explicit statement of reasonable contact, backed up by early intervention and mediation.

We have heard a great many speeches today, which will give us some interesting topics to think about before the Committee stage. My hon. Friend the Member for East Worthing and Shoreham (Tim

Loughton) made a powerful case for some of the changes that I have talked about. That led to a useful discussion on many issues, including co-parenting and children's safety. I am sure that we shall return to them in Committee.

My hon. Friend the Member for Peterborough (Mr. Jackson) made a number of interventions as well as his speech. He made an important point about the invaluable role of extended families, particularly grandparents. As we all know, they have a noted role in child care. I expect that we shall hear more of that next week. I agree that it is important for us to understand grandparents' role in children's lives. We must also ensure that the legal approach, which at present can seem rather hostile to that group of people, is amended so that we can support them more. Perhaps we should take a leaf out of the book of Canada, the home country of one set of my own children's grandparents. I am sure that I shall gain some useful input from them in the next few days.

My hon. Friend the Member for Brentwood and Ongar (Mr. Pickles) focused on adoption, which is an important element of the Bill and should not be

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overshadowed by the debate on part 1. He drew extensively from his constituency experience, broadening the debate in a useful and helpful way. My hon. Friend the Member for South-West Bedfordshire raised the issue of preventing marriage breakdown, which I agree should be given more priority, and cited a number of examples in the United States. Divorce rates have been significantly reduced there because the importance of supporting marriage has been acknowledged. My hon. Friend the Member for East Worthing and Shoreham made an important point about not automatically assuming that a non-resident parent would be an inferior parent.

Labour Members raised issues that were raised by my hon. Friends. The hon. Member for Stafford (Mr. Kidney) talked about helping parents to be better prepared for the responsibilities of parenthood, and made a strong case for increasing mediation. Importantly, he questioned the Bill's silence on the issue of delays in court proceedings, which can be corrosive and destructive during the separation and divorce process. We should pick up on that matter in Committee.

The hon. and learned Member for Redcar (Vera Baird) talked about a number of aspects of the Bill, including CAFCASS's capacity to meet the requirements of the Bill as regards risk assessments. Importantly, she touched on the issue of safety and the hidden aspects of domestic violence, of which we should all be aware when we discuss the Bill. It is an important issue.

The hon. Member for Luton, South (Margaret Moran), who made a considered contribution, raised the important issue of domestic violence and child care and various other aspects of the Bill, including the importance of clause 7. The hon. Member for Stockport (Ann Coffey) touched on the importance of mothers and fathers and the fact they have responsibilities, which, again, we should keep to the fore.

As my hon. Friend the Member for East Worthing and Shoreham pointed out, there is a fair amount of agreement in principle on the issue of inter-country adoption, although we have some concerns about the fashioning of the new procedures and will consider that in a little more detail in Committee. We feel strongly that it is perfectly legitimate to consider overseas adoption but we share the Government's concerns about the cases of child trafficking in recent months. However, we must be vigilant that restrictions do not lead to a growth in private adoption.

In Committee, the official Opposition will seek to challenge and to encourage the Government to face head on the scale of change needed to achieve a better result for children, who are all too often caught in the middle of their parents' separation or divorce. We will encourage the Government to be bolder in the Bill to achieve those ends. We know that the Government often have regretted not having the

courage to be bolder when seeking solutions to the important problems that are faced by our country. I can reassure Ministers that we will do all we can to ensure that that is not the case in this instance.

5.33 pm

The Parliamentary Under-Secretary of State for Education and Skills (Maria Eagle): I agree with the hon. Member for Basingstoke (Mrs. Miller) that we have had

a very interesting and constructive debate. I congratulate her on what I think is her first effort at the Dispatch Box, which was extremely accomplished.

Dr. Julian Lewis (New Forest, East) (Con): The first of many.

Maria Eagle: No doubt it is but that is not a matter for me to decide.

I congratulate hon. Members on both sides of the House who have participated in an extremely stimulating, wide-ranging and well-argued debate. It is apparent from their speeches that they approach the issue with a passionate commitment to try to ensure that children caught up in the divorce or separation of couples, and the bitterness that sometimes results, are not harmed too much by that experience. There is no doubt that that commitment was apparent even if it was also apparent that there may be one or two slightly different approaches to how best to achieve that. That is no different from the tone adopted when the Bill was debated in another place and during later proceedings on it. The hon. Member for Mid-Dorset and North Poole (Annette Brooke) was right to say that proceedings on the Bill have been going on for some time. That lengthy deliberation is only correct because we need to get things right; the future of the children whom we are trying to assist depends on our doing so.

The debate did occasionally descend into slightly bad temper and we had a couple of somewhat vehement spats between the hon. Members for East Worthing and Shoreham (Tim Loughton) and for Mid-Dorset and North Poole. There was also a spat involving the hon. Gentleman and the NSPCC, which was of course unable to defend itself. However, it will doubtless find an opportunity to do so when the debate is over.

I want to sort out what I believe to have been a genuine misunderstanding—it does not happen very often—between the usual channels. The hon. Member for East Worthing and Shoreham suggested that the Government are trying to avoid giving the Opposition the time that they want for consideration in Committee, but I assure him that that is not the case. There has been a genuine misunderstanding, in that the usual channels on our side gave what was asked for, but I assure him that the Government intend to be flexible and to provide more time in Committee if required.

I shall deal with some of the points and broad themes that were raised, although I will not have time to deal with them all, given that most Members spoke at great length. It is clear that contact with both parents is in the interests of the child if it can be done in safety; indeed, there is general agreement in all parts of the House on that point. I would argue—as my hon. and learned Friend the Member for Redcar (Vera Baird) argued, perhaps more eloquently than I ever could—that case law already suggests that the courts start from the position that contact between a child and their parents is generally in the child's best interests.

The different perspectives expressed on the Floor of the House disagreed on the question whether such contact compromises the safety of the child in some instances, or the paramount interest of the child's welfare, given that such contact often breaks down. The Children Act 1989 does of course contain the

paramountcy principle, and the Government and I believe it incredibly important that that principle, which was established with the support of Members in all parts of the House, be retained. We heard from my hon. and learned Friend the Member for Redcar an excellent exposition on what changing the presumptions would mean in legal terms. It is undoubtedly true that many fathers are unable to spend the time with their children that they would like to spend, and it is right that we offer them support and encourage a positive relationship between children and both parents after separation. The Bill attempts to ensure that we do just that by providing the courts with more flexibility in enforcing contacts that they have ordered, on the basis that they are in the interest of the child. That is what the Bill is about.

However, we need to be clear that any presumption—even if couched as a principle in the absence of evidence to the contrary—represents a different legal model from the one enshrined in the 1989 Act. To place something else on a level with that which is supposed to constitute paramountcy is incompatible with the paramountcy principle. I am certain that we will continue to have legalistic and non-legalistic arguments on this issue—from lawyers and non-lawyers—as the Bill proceeds through the House, but the Government do not want to do anything to compromise the paramountcy principle.

In the main, Members in all parts of the House had something positive to say about mediation. The issue was raised of whether voluntary mediation is best, or whether mediation could—or even should—be compulsory. It is clear that voluntary mediation is best: one can lead a horse to water, but one cannot make it drink. Can we really expect people to be forced to mediate if they are not in the mood? Requiring mediation before a case can proceed, for example, could simply result in further unnecessary delay if the parties are already well-entrenched in their respective positions and are in no fit state to see that mediation might actually help. However, the Joint Committee considering the draft Bill recommended that the court should be able to direct people to attend an initial meeting with a mediator, and I think that that would be appropriate.

The hon. Member for Mid-Dorset and North Poole asked whether information about mediation was available other than in the form of leaflets. She asked whether a video was available, and I can tell her that the Government are even more modern than that, having produced a DVD on the subject. We are moving into the modern world, and the courts will have to do the same.

The hon. Member for Basingstoke said that some 40 per cent. of non-resident parents lose contact with their children within two years of separation. I have heard that figure before, but I am not sure of its provenance. I hope that the hon. Lady will be able to let me know, perhaps during the Committee stage. However, the omnibus survey by the Office for National Statistics suggests that about three quarters of non-resident parents who have been separated for between two and three years have contact with their children at least once a week, and that fewer than 10 per cent. of them have no contact at all. In respect of longer separations, the survey suggests that about 20 per cent. of children have no contact with a non-resident parent

after two years. That is still far too many, but it is fewer than the hon. Lady suggested, and we might have to return to the matter in Committee.

I am glad that hon. Members on all sides of the House mentioned the positive role played by grandparents and other members of the extended family. I agree completely with that, and note that the Bill can apply not only to resident or non-resident parents but to grandparents as well. It is not restricted to parents, so I hope that it will assist in all of these matters.

The question of resources for CAFCASS and the courts was raised. I can understand that, but the Government have always made it clear that they should have adequate funding so that they can fulfil their responsibilities under part 1 of the Bill. My right hon. Friend the former Minister for Children, who is now Minister for Employment and Welfare Reform, said as much in evidence to the Joint Committee. She stressed that the Bill's provisions will be implemented only when we are satisfied that appropriate resources are available.

My hon. Friend the Member for Stafford (Mr. Kidney) and the hon. Member for South-West Bedfordshire (Andrew Selous) both spoke about how the work loads of the family courts and of CAFCASS could be reduced. We have high hopes that the Bill will enable us to shift resources from too much report writing to more proactive and helpful interventions. I know that CAFCASS is very committed to ensuring that that happens.

The hon. Member for Brentwood and Ongar (Mr. Pickles) was extremely ingenious in managing to talk about public law and domestic adoption in connection with a Bill that deals with private law and inter-country adoption. I congratulate him on that, and I am, of course, aware of the case that he raised. I would take an extremely dim view if any local authority sought to remove children from parents simply because they were learning disabled. Some of the legislation for which I had the honour to be responsible in the previous Parliament will come into force in December, and make it even more difficult for public authorities to behave in that way than is currently the case. There is an increased awareness of these matters, and I am sure that the hon. Gentleman will continue the campaigns on behalf of his constituents for which he is known.

In conclusion, it is clear that we will have a lot more to say in Committee. We might even have a little more time in which to say it, given the accidental error in the programme motion that meant that only four sittings were originally provided for. I look forward to that discussion, as I believe that hon. Members of all parties have a genuine interest in making things better for the children of divorcing and separating couples.

That is certainly true of the Government. If every child in this country is to matter, we must make sure that those whose families separate do not suffer the consequences—that is, lack of development and self-esteem, and an inability to do their very best in future life. We are all in favour of that, and I commend the Bill to the House.

Question put and agreed to.

Bill accordingly read a Second time.

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