Ministry of JUSTICE

# Family Justice Review: Government Response

- Reducing delay in care proceedings cases
- Mediation Information and Assessment Meetings
- Provisions for administrative divorce and dissolution of civil partnerships (uncontested cases)
- Expert Evidence in Family Proceedings

## Equality Impact Assessment

June 2012

Alternative format versions of this report are available on request from Family Justice, 020 3334 3561, jack.reynolds@justice.gsi.gov.uk.


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## Overall equalities impact summary

This equality impact assessment (EIA) relates to the government's commitment to implement the Family Justice Review (FJR) recommendations on reducing delay in public law cases, mediation, uncontested divorce and dissolution of a civil partnership, and the use of experts.

We have considered the impact of these proposals against the statutory obligations under the Equality Act 2010 and our assessment is that the overall impacts are likely to be positive for children, families and individuals.

Potential equalities impacts are likely to be in relation to age, disability, pregnancy and maternity, race, religion or belief, sex and sexual orientation. However, none of these are considered to be either directly or indirectly discriminatory as indicated in the analysis.

In terms of mitigations, we will, however, need to consider reasonable adjustments for disabled parents and children who may need longer to comply with public law proceedings. The provision of exemptions from a Mediation Information and Assessment Meeting (MIAM) will support victims of domestic violence, who are more likely to be women. Care will also need to be taken to ensure that adults with mental health issues or learning difficulties are not disadvantaged by any requirements relating to MIAMs, or by the requirement to access administrative divorce facilities.

Having had due regard to the potential differential impacts identified in this EIA, the government is satisfied that it is right to pursue these FJR proposals. To this extent the proposals are considered to be a proportionate means of achieving a legitimate aim in the reform of family justice.

The government response also accepted a number of other recommendations, and as policy is developed, specific EIAs will follow as appropriate.

## Introduction

This equality impact assessment (EIA) relates to the government's commitment to implement many of the recommendations of the independently chaired Family Justice Review (FJR). The government response to the FJR was published on 6 February 2012 (http://www.justice.gov.uk/publications/policy/moj/family-justice-review-response)

This EIA documents the analyses of equalities impacts relating to the recommendations on reducing delay in public law cases, making attendance at MIAMS a prerequisite in certain family law proceedings, administrative divorce and dissolution of civil partnerships in uncontested cases, and the use of experts. The potential equalities impacts have been examined in the course of the government's consideration of the FJR recommendations and our proposed response. They will continue to be considered as we develop and implement specific policy proposals.

This EIA will be updated in the light of relevant new evidence of equalities impacts as it becomes available and further specific policy EIAs may be developed as the policies are developed for implementation. It should be noted that some aspects of these, including the introduction of a six-month time limit for public law cases, will require primary or secondary legislation, and the government will publish relevant EIAs in relation to these at the appropriate time.

The government response also accepted a number of other recommendations and as policy is developed, specific EIAs will follow as appropriate.

We acknowledge there are a number of gaps in the research and statistical evidence we have been able to source regarding the potential impact of our proposals on a number of protected characteristics. We welcome provision of information, evidence and comment which may help to address some of these gaps in any further assessment.

We also particularly welcome your views and comments on this EIA and our assessment of the equalities impacts of the FJR proposals so far (responses to jack.reynolds@justice.gsi.gov.uk). We will be considering the equalities-related responses as the proposals are developed further and the EIA is updated in the light of any new evidence.

## Equality Duties

Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;

- Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and

- Foster good relations between different groups.

Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

Ministry of Justice (MoJ) has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and, where a potential disadvantageous effect is identified, how that is either mitigated or justified by reference to the objectives of the policy. MoJ also has a legal duty to advance equality of opportunity in the design and delivery of its policies and practices. MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

## Background

The FJR was commissioned in 2010 by the Secretaries of State for Justice and for Education and the Welsh government. It was invited to undertake a comprehensive review of the system of family justice in the light of increasing pressures on the system and growing concerns that it was not delivering effectively for children and families. It fulfilled a Coalition Agreement to conduct a comprehensive review of family law in order to increase the use of mediation when couples do break up and to look at how best to provide greater access rights to non-resident parents and grandparents. David Norgrove was appointed as the independent chair of the Review Panel.

In March 2011, the Panel published its interim report, in which they sought views on a series of proposals for reform of the family justice system. The consultation closed in June 2011, and received over 600 responses. The review panel considered the consultation responses, and on 3 November 2011 published its final report. This made 134 recommendations to tackle delays in public law cases, to encourage separating parents to reach their own agreements about the future care of their children, and their finances, and to improve outcomes for children.

The government's response to the FJR was published on the 6 February 2012, setting out our vision for how government, working with key partners, will reform the family justice system, improving it for the children and families who come into contact with it. The response is accompanied by an annex which outlines the response to each of the 134 recommendations, indicating which ones will be accepted, which ones won't and which ones require further consideration. A Young Person's Version was also published alongside the response. These documents can be found on the Justice web-site.

In considering the FJR's recommendations the government has had due regard not only to its duties under the Equality Act 2010, but has also looked to assure itself that the package of reforms it will be taking forward will help create a family justice system that works more effectively for those children that come into contact with it.

The government has been guided by a number of key principles in its consideration of the Panel's recommendations:

- that the welfare of the child remains the paramount consideration in any proceedings determining the upbringing of the child;

- that the family is usually the best place for bringing up children, except where there is a risk of significant harm;

- that in private law, specifically, problems should be resolved out of court, and the courts will only become involved where it is really necessary;

- where court is the right option, that children deserve a family court in which their needs come first;

- that both in public and private law cases children must be given an opportunity to have their voices heard in the decisions that affect them;

- that the process must protect vulnerable children, and their families; and

- that this is a task not limited in responsibility to one organisation or another, but something we must all work on together; and

- that judicial independence must be upheld as the system is made more coherent and managed more effectively.

The government's response set out our intention to make a number of important changes which the Review panel proposed – to enable the child's voice to be heard, to public law, to private law, to the workforce, and also to the system.

This EIA focuses on the following proposals:

Public law

- introducing a six month time limit and linked to this, clearer requirements to ensure that when changes to case timetabling are agreed, the impact of possible delays on children are considered;

- removing the requirement to renew Interim Care Orders (ICOs) and Interim Supervision Orders (ISOs) every four weeks;

- re-focusing the court, in its scrutiny of the care plan, onto those issues which are essential to its decision on whether an order should be made;

- expert reports only being commissioned when they are necessary for appropriate decision making in the case, and ensuring that they are focused on the determinative issues.

Private law

- Promoting the use of non-court dispute resolution services: the government will legislate to make attendance at a Mediation Information and Assessment Meeting ("MIAM") a prerequisite for anyone wishing to make an application to court in certain private law family proceedings unless a limited number of exemptions apply;

- Administrative Divorce: the government will bring forward legislation allowing uncontested divorce, dissolution of a civil partnership, judicial separation and separation of civil partners to be handled administratively in the courts by appropriately qualified persons, rather than by judges. This will help to ensure that judges can focus on those family cases that need their expert intervention.

The impact of the proposed policy changes on protected groups will continue to be considered as policy is developed. As we undertake further work we will engage with stakeholders, partners and users, to make sure those changes are done in the right way and that we pay due regard to the government's equality duties.

From April 2012, the government established a Family Justice Board to drive cross system change. The Board will provide the leadership and direction necessary to implement our ambitious plans for change. Its main focus will be on driving improvements in performance across the system and ensuring that the different parts of the system work together as effectively as possible. The Board will formally report on its work annually.

## Evidence Sources

This EIA draws upon a number of evidence sources. We have used the best quality evidence available, drawing from a range of official statistics, other relevant administrative data sets and research studies. This analytical evidence is supported by a review of the responses to the public consultation.

The primary data sources that are cited in the EIA relate to the families (children and adults) involved in family justice cases and are as follows:

- **Her Majesty's Courts and Tribunals Service (HMCTS) FamilyMan data on family related court matters**. This provides data sourced from the county court administrative system used by court staff for case management purposes. This holds information on the age and sex of children involved in public and private law Children Act cases; the sex of applicants and respondents in public and private law Children Act cases; the age of petitioner and respondents in divorce cases. The data does not cover Children Act cases in Family Proceedings Courts.[1] Data collection on ethnicity began in 2011.

- **Office for National Statistics (ONS) data on divorce** compiled from 'D105' forms used by the courts to record decrees absolute. The ONS hold data on the age and sex of petitioners and respondents.

- **Children and Families Court Advisory Support Service (Cafcass) data on adults and children involved in public law Children Act cases and private law cases involving children** that go beyond the first hearing. Information is collected on age, disability, ethnicity, religion and sex in relation to the applicant in private law cases, the respondent(s) in public and private law cases[2] and the children (i.e. subject) in cases[3]. For cases received prior to April 2010 parties to the case could have been classified as an adult, respondent or applicant[4]. Diversity information was provided for 45 per cent of people in Public and Private Law cases.

We have sought information on the characteristics of key professionals (barristers, experts, and mediators) involved in family justice. We have found only evidence in relation to barristers and solicitors. The sources we have used include:

- Information from practising barristers regardless of whether they practice in the field of family law is available from routine data collections or specific surveys. Where there is information on barristers practising in family law, or where figures are available separately for those practising in private and public areas of law, then these figures are provided.

[1] Children Act cases are also heard in Family Proceedings Courts (FPCs). Not all FPCs were using FamilyMan in 2010 and the coverage was, therefore, incomplete. Since the start of 2011 all courts (including FPCs) should be using FamilyMan.
[2] Public Law cases, being brought by Local Authorities can have more than one respondent, e.g. both parents; Private law cases can also (occasionally) have more than one respondent;
[3] Data is also collected on other people involved, in the case but not a direct party to the proceedings e.g. a new partner, a relative or a sibling.
[4] These are mutually exclusive categories. Although this classification held prior to April 2010 the Cafcass data reported here includes all cases live in 2010/11 which may have included cases begun prior to April 2010.

- **Bar Barometer Trends in the Profile of the Bar.** This provides information for practising barristers on age, sex, and ethnicity (Sauboorah, 2011).

- **Barristers' Working Lives: A Biennial Survey of the Bar 2011.** This provides information on marriage and civil partnerships, religion and sexual orientation (Pike and Robinson, 2012). A random sample of 8,000 barristers, equivalent to half of all practising barristers were sent the survey. A response rate of 38 per cent with 2,965 returns was achieved.

- We have not been able to locate any data either from routine administrative data or surveys of practising barristers for gender reassignment and pregnancy and maternity. Some data from **Barristers' Working Lives: A Biennial Survey of the Bar 2011** has been used about work/family life balance to give an indication for pregnancy and maternity (Pike and Robinson, 2012).

- Some further details about barristers working in family law is supplied from the report, **The Work of the Family Bar: report of the week-at-a-glance survey 2008** (Price and Laybourne 2009).

- **Statistics on Race and the Criminal Justice System 2010**

  Biennial report containing key statistics on the representation of Black, Asian and Minority Ethnic groups in the CJS including their representation as practitioners.

- **Statistics on Women and the Criminal Justice System 2009/10**

  Biennial report containing key statistics on the representation of men and women in the CJS including their representation as practitioners.

Data on the general population of England and Wales by gender, age and ethnicity is from the Office for National Statistics mid-year population estimates. Data on the general population by religion for England and Wales are from the Integrated Household Survey. Estimates of the general population with a disability are from the Office for Disability Issues estimates on the prevalence of disability amongst adults and children.

In addition to the statistical data sources we reviewed key published research reports, based on an initial search of EBSCOhost, Proquest and Westlaw databases and suggestions from leading academics. This was not a full systematic and comprehensive review and we welcome suggestions of further literature which is pertinent to this EIA. A full list of the reviewed research reports is given at Annex B.

We note that there is a lack of research or statistical evidence relating to a number of protected characteristics, particularly in relation to marriage and civil partnership, sexual orientation, gender reassignment or pregnancy and maternity. As part of a wider programme of work, MoJ is looking at whether and how to most appropriately fill the existing information and data gaps taking into account cost considerations.

## Consultation and Engagement

The FJR included extensive and wide ranging consultation and engagement with key stakeholders.

The first stage of the FJR included a ‘call for evidence’ which ran from June to September 2010. This enabled the Review to take evidence from everyone involved in the family justice system - parents and children, families, professionals and representative bodies - regardless of their level of expertise. Over 600 individuals and organisations submitted evidence to the review during, and following, this call for evidence. Formal evidence hearings were also held with key figures and bodies during this period. A full list of the people and organisations who the Review Panel met during this initial call for evidence stage can be found at Annex D of the interim report. This list is made up of organisations which represent a wide variety of interests and groups, including those with protected characteristics. The evidence received by the FJR during this period was summarised in, and used to inform, its interim report, which was published in March 2011.

This was followed by a three month public consultation, to which 628 further responses were received. Individual responses came from parents, grandparents and professionals in the system. Organisations included children’s charities, parental rights groups, local authorities, academics, professional bodies and law firms. A detailed analysis of all of these responses along a full list of all those organisations who responded to the consultation stage can be found Annex C of the final report of the Family Justice Review. 4 public events were also held, attended by over 250 people.

This extensive engagement process ensured that the views of a wide range of individuals and organisations, including the views of those with protected characteristics, were considered in the formulation of the Review’s final report.

As well as this, 45 children attended a specially tailored two day event to ensure their views were fed into the Review’s thinking. In addition, during the FJR’s consultation on its Interim Report, the Justice Select Committee conducted its own inquiry into the operation of the family courts. The Committee conducted its own evidence sessions, which included input from government Ministers, and produced a report on its findings. As with the interim report, this evidence was summarised in, and used to inform, the FJR’s final report, which was published on 3 November 2011.

The equality issues raised by all respondents to the various engagement events have been considered and, where relevant, incorporated into the analysis of impact in this EIA.

We acknowledge there are a number of gaps in the research and statistical evidence we have been able to source regarding the potential impact of our proposals on a number of protected characteristics. We welcome provision of information, evidence and comment which may help to address some of these gaps in any further assessment.

# Reducing delay in care proceedings cases

## Summary

Public law cases involve the most critical decisions about a child's future and it is right that the issues should be given rigorous consideration, but the government accepts cases often take far too long to go through the courts.

The Family Justice Review recommendations in relation to public law are intended to have positive impacts for children as decisions about their future will be speeded up. Quicker decisions may reduce uncertainty for children and families, and could lead to better outcomes if this improves the likelihood of them finding a stable placement. The proposals may also ensure that resources are used more efficiently, to the benefit of children. The introduction of the 6 month time limit will still allow the judge the flexibility to extend the time limit where the judge considers this is essential as he would otherwise be unable to make a final determination in the proceedings

This chapter of the EIA considers the equalities impact arising from reducing delay in public law cases. We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below. It should be noted we have limited evidence for professionals who may be impacted by the proposals.

*Direct discrimination*

The proposals to reduce delay in the system apply equally to all cases and do not treat people less favourably because of a protected characteristic. There is therefore no direct discrimination within the meaning of the Equality Act 2010.

*Indirect discrimination*

Although the proposals will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be involved in public law proceedings. On this basis we have identified the potential for differential impacts in relation to age, pregnancy and maternity, race, religion or belief and sex. We do not, however, believe that there is the potential for indirect discrimination in relation to people with these protected characteristics but rather that they will potentially benefit from the proposals through continuing to be more likely to be involved in public law proceedings.

We have also identified where people with different protected characteristics may have different outcomes as a result of the proposals. On this basis we have identified the potential for differential impacts in relation to disability since the proposals may put disabled people at a particular disadvantage due to the introduction of new time limits. This is discussed further below.

Furthermore we have identified a potential differential impact on barristers and solicitors in relation to age, religion, sex and sexual orientation. This is because barristers and solicitors with these protected characteristics may be over-represented in comparison to the general adult population and may therefore be proportionately more affected by any falls in income.

*Discrimination arising from disability and duty to make reasonable adjustments*

In so far as these proposals extend to children and care-givers who are disabled, we believe the policy is proportionate having regard to its aim, and can be justified. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope for the proposals, as that would deny them opportunity of the intended benefits. For example, some parents with disabilities may find shorter cases with potentially fewer hearings less burdensome.

Care does, however, need to be taken to ensure as far as possible that parents and children with mental health issues, learning difficulties, and other types of disability (including fluctuating ones) that impact on their communications are not put at a disadvantage due to measures taken to reduce delay. Research has shown that they may need longer to come to terms with proceedings and to understand their role. The government's proposals provide flexibility for judges to extend cases beyond the time limit. These are intended to ensure that processes allow for more time where this is essential for example where a party's disability necessitates more time for communication with an expert before a judge can make a final determination in a case.

*Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

*Advancing equality of opportunity*

We do not consider that the proposals will necessarily positively advance equality of opportunity, although we expect there will be positive overall impacts for children in the way decisions are speeded up.

In relation to disability, and taking into account the particular needs of parents with learning disabilities, mental health issues and other disabilities, we will take reasonable steps to remove or minimise disadvantages which will help advance equality of opportunity (for example the provision of flexibility for judges to extend cases beyond the time limit where a party's disability necessitates more time in the fair determination in a case; and the availability of guidance booklets to help those people who may find it difficult to understand the care proceedings process).

*Fostering good relations*

We have considered this objective but do not consider this is of particular relevance to these proposals.

*Conclusion*

Having had due regard to the potential differential impacts identified in the 'analysis' section below, the government is satisfied that it is right to put forward legislation to introduce a time limit of six months for care and supervision proceedings (with the ability for the judge to extend that deadline where an extension is necessary) and remove the need to renew ICO and ISOs every four weeks. These measures along with reducing reliance on expert reports and leaving the details of the care plan to the local authorities will play a significant role in helping make the family justice system work more effectively for the benefit of those children and families that come into

contact with it. Making reasonable adjustments for parties with disabilities will be key to ensuring they are not disadvantaged by the new time limits.

## Background

Public family law covers some of the processes by which the local authorities in England and Wales fulfil their statutory duty, under the Children Act 1989, to safeguard and promote the welfare of children who reside in their area. If a local authority considers that a child needs protection from significant harm it can initiate care or supervision proceedings in the Family Proceedings Courts. The local authority must make an application to the court and the court can only make an order where the child has suffered or is likely to suffer 'significant harm', where that harm is attributable to the care given by the parent not being what it would be reasonable to expect or attributable to the child being beyond parental control and where making the order will be better for the child than making no order at all. Aside from local authorities, the only other organisation that has authority to initiate care proceedings is the National Society for the Prevention of Cruelty to Children (NSPCC).

In recent years the time it takes for care and supervision cases to reach a conclusion within the courts has increased significantly. The latest available data (for the 3rd quarter of 2011) shows that it now takes an average of 55 weeks to dispose of a care or supervision application (i.e. the order is granted, an alternative order is granted or the application is withdrawn or refused). The total length of a case may be longer than this because there may be more than one application in a case. For example there may be an application for a supervision order and later an application for contact.

The proposals covered in this section are aimed at reducing delay in care and supervision proceedings. The FJR found that delay in proceedings:

- may deny children a chance of a permanent home, particularly through adoption;
- can have harmful long term effects on a child's development;
- may expose children to more risk; and
- cause already damaged children distress and anxiety.

The longer a child spends in temporary care arrangements, the more likely they are to form attachments to their care givers, and the more distress they are likely to feel when they are moved to another temporary or permanent placement. For the minority of children for whom adoption is the best outcome, evidence indicates that swift adoption can be beneficial. One study found that children who were adopted before their first birthday made attachments with carers that were just as secure as their non-adopted peers, but those who were adopted after their first birthday formed less secure attachments.

A time limit would provide a focus in individual cases whereas, currently, performance indicators only apply to case averages. It would provide a clear framework within which cases must normally be delivered. This is lacking in the system at present, with ever-increasing delays potentially becoming accepted as the norm, despite possible impacts on children. A time limit would also send a serious signal of intent and would provide the point around which the wider reforms to tackle delay could be focused.

ICOs and ISOs are used to place the child temporarily under the care or supervision of the local authority during care proceedings. Both have to be renewed initially after eight weeks and subsequently every four weeks. When a local authority makes an application to the court for a care or supervision order they will usually apply for an ICO or ISO at the same time. Renewal of the ICO/ISO is required until the application is completed. The renewal is usually done without a court hearing and in the magistrates' court by a justices' clerk providing certain conditions such as the parties and children's guardian consent to the request to renew the order and they or their legal representatives have signed the request. Anecdotal evidence suggests that ICO and ISO renewals are very rarely challenged. As such we believe that the renewal is often a formality, it may often bring no benefit to the parties in the case and may not be necessary for appropriate decision making in court.

Care plans are part of the information submitted by local authorities when they apply for a care or supervision order. The plan will include information such as where the child will live, plans for their education and arrangements for contact with their families. A judge will make a care order if the threshold criteria have been met (that the child is suffering or is likely to suffer significant harm) and if the judge is satisfied, taking account of the care plan, that making an order is in the best interest of the child and would be better for the child than not doing so.

Evidence offered in response to the FJR's initial call for evidence and subsequent national consultations indicated that the courts are spending increasing amounts of time scrutinising the detail of the care plans put forward by local authorities, and requiring local authorities to provide increasing amounts of information to justify the plans. The FJR suggested that the courts are, in effect, increasingly looking not just to satisfy themselves on who should parent the child but on how that parenting should be conducted. This is partly driven by the courts' legitimate concern to get things right for the child but also partly by doubts about the quality of the care planning undertaken by local authorities.

Specific data on how much court time and resource is spent scrutinising care plans is not collected. However, the FJR found that, while it remains important that the courts take account of the essential elements in care plans in reaching their decisions, the current level of scrutiny goes beyond what was envisaged at the time of the Children Act 1989. Care plans are not fixed in stone. Once children are placed into the care of the local authority, the plans inevitably evolve in response to the children's changing needs and circumstances. The FJR argued, and the Government agrees, that it may not be beneficial for the court to over-scrutinise care plans, especially if that adds to delays, causes unnecessary duplication of work and does not deliver the benefits for children which were intended.

The aim of these proposals is therefore to improve efficiency in the family courts and to reduce delay in family proceedings, ensuring cases are completed within six months and that extensions are allowed only by way of exception, to the benefit of the children involved.

## Aims and outcomes for the policy

The policy objective is to reduce the time taken in care and supervision cases, ensuring that the majority of cases are concluded within 6 months or less. This may reduce uncertainty for the children and families in these cases and could lead to better outcomes for these children if it improves the likelihood of them finding a stable placement. It may also help ensure that resources are used more efficiently through

reductions in interim orders and moving away from detailed scrutiny of the care plan by the courts.

The proposals are:

- a time limit of six months for the completion of care and supervision cases, with the court having discretion but being required to take certain circumstances into account when considering whether to extend the deadline;

- removing the requirement to renew Interim Care Orders (ICO) and Interim Supervision Orders (ISO) every four weeks;

- re-focus the court, in its scrutiny of the care plan, onto those issues which are essential to its decision on whether an order should be made.

## Methodology

In analysing the potential equalities impacts of these proposals, we have presented what we know about children and families based on the evidence we have considered. In order to attempt to identify differential impacts, we have compared available data on:

- **Children**: We have compared the characteristics of children in public law cases with demographics of children under 18 in the general population (where possible). We have also examined the wider research literature for information on (i) the characteristics of children who go through the public law system, (ii) the potential for differences in outcomes from the proposals for different groups;

- **Family members**: We have compared the characteristics of families involved in public law cases with demographics of adults aged 18 and over in the general population (where possible). We have also examined the wider research literature for information on (i) the characteristics of families who go through the public law system and (ii) for the potential for differences in outcomes from the proposals for different groups;

- **Legal professions**: We have compared the characteristics of barristers and solicitors with demographics of adults in the general population.

We have also examined relevant consultation feedback.

Where certain groups are over-represented in public law proceedings, or if we have identified that different groups may have different outcomes as a result of the proposals, we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

This analysis looks at the potential impacts of the proposals.

<u>Impact on children and other family members involved in cases</u>

The main groups impacted by these proposals are parties to public law cases (and the children about whom the case is concerned).

The proposal for a 6 month time limit should bring significant benefits to families and children involved in public law proceedings from quicker decisions and reduced uncertainty, but there is also a risk that case outcomes and the quality of decision making might be adversely affected if the six month limit results in cases being considered in less depth. Removing the requirement to renew ICO and ISOs every four weeks should release resources that could be used to help reduce delay in public law cases, for the benefit of children. Refocusing the court's scrutiny of the care plan should improve efficiency in the family justice service and help further reduce delay. This should help reduce the amount of resources required in each case from all the agencies involved and minimise the additional resources that will be required to implement the time limit. The requirement to renew the ICO or ISO at six months would correspond to the requirement to extend the case.

*Potential Age Impacts*

Table 1 (Annex A) shows the age distribution of children involved in public law applications in the County Court in England and Wales in 2010. This shows that 45 per cent are aged 4 or under. Cafcass data in Table 2 (Annex A) shows that 51 per cent of children were aged 4 or under. In comparison 29 per cent of the general population aged under 18 in England are aged 4 or under.

Cafcass data in Table 3 (Annex A) shows that among respondents, those aged 18-39 are over-represented compared to the general population of those aged 18 and over in England[5], whilst table 4 (Annex A) shows that LSC public law clients (i.e. those who accessed initial family legal advice in 2010/11) aged under 40 are over-represented compared to the general population.

These data suggest that (i) younger children are over-represented in public law proceedings in comparison to the general population aged 18 and under, and that (ii) respondents and LSC public law clients aged under 40 are over-represented in comparison to the general population. These groups are thus more likely to be affected by the proposals relative to these age groups in the general population; our assessment is therefore that there is the potential for the proposals to have a differential impact in relation to age.

*Potential Disability Impacts*

Cafcass data in Table 5 (Annex A) shows that of those that provided information on disability, 8 per cent of children in public law proceedings were recorded as having a disability. This finding must be interpreted with caution as 28 per cent of children had no disability status declared. In comparison about six per cent of all children aged under 16 in Great Britain have a disability[6].

Cafcass data in Table 5 (Annex A) shows that 14 per cent of respondents were recorded as having a disability (of those that provided information on their disability status). The same applies to the category of adults. This compares to 22 per cent of the general population of Great Britain aged 16 and over. These findings must be interpreted with caution as 23 and 29 per cent of adults and respondents did not declare their disability status and we have no way of knowing whether those who did not declare their status were different in any way from those who did. Table 6 (Annex A) shows among LSC public law clients (i.e. those who accessed initial family legal

[5] The same applies to adults – a category used by Cafcass prior to April 2011, which might include both respondents and applicants.
[6] Data is published for the following groups; under 16, working age and state pension age.

advice in 2010/11) of those that provided disability information 14 per cent of had declared themselves disabled. This finding must be interpreted with caution as 22 per cent of LSC clients did not declare their disability status and we have no way of knowing whether those who did not declare their status were different in any way from those who did.

These data suggest that children with a disability involved in public law proceedings are slightly over-represented compared to the general population, and that respondents and LSC clients with a disability are under-represented in comparison to the general population. However, because of the number of cases in Cafcass and LSC data without details relating to disability status, it is not possible to rule out whether children and family members with a disability involved in public law cases could be substantially over-represented compared to the general population.

Elsewhere, research evidence has suggested that some parents involved in care proceeding cases suffer from mental health problems and learning difficulties[7][8][9]. A study profiling the characteristics of the children and families in just under 400 care proceedings cases found that Children's Services were concerned about mothers' mental ill health in nearly a third of cases in the sample and about the mother's learning difficulties in more than one in ten cases[10]. Another study of court records relating to all 437 public law applications coming before court in Leeds and Sheffield in 2000 found that 15 per cent of the children had at least one parent with intellectual disabilities. These children were found to be less likely to be returned home following care proceedings than children of parents with no intellectual disabilities (13 of the 127 children of parents with an intellectual disability in the court sample were returned home)[11].

Parents with disabilities, and mental health and learning disabilities in particular, may benefit from proceedings lasting longer than the 6 month time limit as they may need time and help to address their difficulties in caring for their children. Anecdotal evidence has suggested that pressure to avoid delay in resolving cases might make it harder for parents with learning difficulties to meet the court's standard and expectations.[12] [13] A study among legal practitioners[14] has suggested that parents with learning difficulties may lack comprehension of the seriousness of their case. They may have difficulties in dealing with the processes involved in child care investigations, struggle to adapt to the court's timetable and could appear uncooperative and aggressive about professional intervention in their families. A lack of support for these families, combined with the pressure to avoid delays in finding stable placements for the children, may contribute to negative professional

[7] Masson Care Profiling study MoJ 2008
[8] Children's Needs - Parenting Capacity - Child Abuse: Parental Mental Illness, Learning Disability, Substance Misuse and Domestic Violence 2nd Edition J Cleaver H; Unell I and Aldgate. Forty-two per cent of cases in Hunt et al (1999)The last resort: child protection, the courts and the 1989 Children Act and forty-three per cent of cases in Brophy et al (2003)Assessing and documenting child ill-treatment in minority ethnic households
[9] ibid
[10] Masson Care Profiling Study MoJ 2008
[11] Booth and Booth Findings from a court study of care proceedings involving parents with intellectual disabilities, Journal of Policy and Practice in intellectual disabilities, volume 1, number3/4, 179-181, 2004.
[12] 'Temporal discrimination and parents with learning difficulties in the child protection system'. British Journal of Social Work, 36(6), 997-1015 Booth, T., McConnell, D., & Booth, W. (2006)
[13] Booth, T, Booth W, Parents with learning difficulties, child protection and the courts: a report to the Nuffield Foundation, 2004
[14] ibid

assessments and court perceptions of cases involving parents with learning difficulties[15].

However, some parents with disabilities may find shorter cases with potentially fewer hearings less burdensome.

Based on the evidence that suggests parents with disabilities, and mental health and learning disabilities in particular, may benefit from proceedings lasting longer than the 6 month time limit as they may need time and help to address their difficulties in caring for their children, and that this possible impact differs to those parents without disabilities, our assessment is that there is the potential for the proposals to have a differential impact in relation to disability.

*Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to identify the potential for any differential impact in relation to gender reassignment.

*Potential Marriage and Civil Partnership Impacts*

A study of court case files found that half the 386 index children included in the study were usually cared for by their mother alone before proceedings were initiated[16].

*Potential Pregnancy and Maternity Impacts*

A study of care proceedings cases in 2008[17] found 86 out of 384 cases examined involved planned interventions to protect a baby at birth or prevent parents from discharging the baby from hospital. This was usually planned during pregnancy or at the birth of a baby but could have included emergency action if the mother had not sought medical care during pregnancy.

Our assessment based on this evidence is that there is the potential for the reforms to have a differential impact in relation to pregnancy and maternity due to the high proportion of cases involving a baby at birth.

*Potential Race Impacts*

Cafcass data in Table 7 (Annex A) shows that children from the Mixed ethnic group were over-represented in public law cases, compared with the general population of those under 18 in England (9 per cent compared to 4 per cent).

Cafcass data on respondent's ethnic group indicates a distribution generally in line with the general population. (Table 8, Annex A)

Table 9 (Annex A) shows that among LSC public law clients (i.e. those who accessed initial family legal advice in 2010/11) who provided information on ethnicity, 88 per cent had declared themselves as from the White ethnic group; in line with the general population aged 18 and older. This finding must be interpreted with caution as 14 per cent of LSC clients did not declare their ethnicity.

[15] 'Temporal discrimination and parents with learning difficulties in the child protection system'. British Journal of Social Work, 36(6), 997-1015 Booth, T., McConnell, D., & Booth, W. (2006)
[16] Masson et al., Care profiling study (2008)
[17] ibid

Based on the evidence that children from the Mixed ethnic group may be over-represented in care proceedings compared to the general population, and thus they are more likely to be affected by the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to race.

*Potential Religion or Belief Impacts*

Cafcass data in Table 10 (Annex A) shows that children and respondents with no religion are over represented compared to the general population of all ages in England. These findings must be treated with caution as 21 per cent of religion data for children is missing in the Cafcass data, and data on the religious breakdown of the general population is not available by age group.

Based on the evidence that children and respondents with no religion may be over-represented in care proceedings compared to the religious make-up of the general population, and thus more likely to be affected by the proposals, our assessment is that there is the potential for the proposals to have a differential impact in relation to religion.

*Potential Sex Impacts*

Table 11 (Annex A) shows the gender distribution of children involved in public law applications in the County Court in England and Wales in 2010. This shows that 49 per cent were female, the same proportion as females in the under 18 population in England. Cafcass data in Table 12 (Annex A) shows that 49 per cent of children were female.

Cafcass data in Table 13 (Annex A) shows that 62 per cent of respondents were female, compared to 51 per cent of the general population aged 18 or older. Table 14 (Annex A) shows that among LSC clients (i.e. those who accessed initial family legal advice in 2010/11) 68 per cent were female.

Other evidence indicates mothers are more likely to be the parent involved in public law proceedings. A review of court case files relating to public law cases[18] found that in 94 per cent of 376 cases the mother was listed as a respondent, whereas the father was listed as the respondent in 76 per cent of cases (there could be several respondents in each case). In another study of court files relating to care proceedings cases,[19] around a half (192) of the 386 index children included in the study were usually cared for by their mother alone before proceedings were initiated, 13 were cared by their father alone, 145 by two parents (including 24 cared for by one parent and his/her new partner) and the remainder by relatives or foster carers[20].

A common theme from the consultation responses was the need to ensure social workers, guardians, Cafcass, mediators and court staff have the necessary skills to recognise victims of domestic, sexual and emotional abuse (both women and child victims, who are likely to be over-represented), particularly in relation to those with mental health issues, learning difficulties, drug addictions, who lack capacity or do not speak English as a first language. Developing appropriate training, guidance and standards was seen as crucial to the fair implementation of the family justice changes.

[18] Cassidy, D and Davey, S Family Justice Children's Proceedings – Review of Public and Private Law Case Files in England and Wales, MoJ, 2011
[19] Masson et al., Care profiling study (2008)
[20] Masson et al., Care profiling study (2008)

Based on the evidence that female respondents may be over-represented in care proceedings compared to females in the adult general population, and thus more likely to be affected by the proposals, our assessment is that there is the potential for the proposals to have a differential impact in relation to sex.

*Potential Sexual Orientation Impacts*

Cafcass also collect information on the sexual orientation of applicants, respondents and subjects. However, due to a high level of missing data in relation to this question, we are unable to identify the potential for any differential impact of the reforms on sexual orientation. In 2010/11, Cafcass data showed that 58 per cent of applicants, 60 per cent of respondents, 59 per cent of adults, 93 per cent of subjects and 62 per cent of 'others' in public law proceedings in England had provided no information on sexual orientation.

Professionals working in the Family Justice System

Professionals working in the system will also be impacted by the changes proposed, primarily in relation to familiarising themselves with new procedures.

Lawyers and other legal professionals are involved in all public law cases. We expect that the work involved in preparing for and attending court should remain the same as a result of the six month time limit. However this work would now have to be completed in a shorter timescale. There may be a short-term increase in resources required to process the short term increase in caseload and therefore a short-term increase in income for legal professionals.

Removing the requirement to renew ICOs/ISOs after 8 weeks and then every 4 weeks, may mean that legal professionals working in public law cases may experience a fall in income if they were previously paid for work concerning ICO/ ISO renewals.

Re-focusing the court, in its scrutiny of the care plan, onto those issues which are essential to its decision on whether an order should be made, may mean that legal professionals may experience a fall in income if the number of hearings and preparation associated with hearings is reduced.

The net impact on legal professionals would depend on what other business activities they would have undertaken instead of working on public law cases. We have therefore considered the potential for the proposals to impact on equalities in relation to legal professionals working in family law.

*Barristers and Solicitors*

*Potential Age Impacts*

Table 15 (Annex A) presents the available the data maintained by the Bar Council's Record department on the age of practising barristers in 2010. Age is unknown in 26 per cent of the records held by the LSC and this means results should be treated with caution.

In 2010, the majority of barristers (73 per cent) were aged between 30 and 49. In comparison, 40 per cent of the general population in England and Wales from which barristers are drawn were within this age group, suggesting that this age group are over-represented amongst barristers.

Table 16 (Annex A) presents the available the data maintained by the Law Society on the age of solicitors holding practising certificates in 2009. It shows that the majority of solicitors (60 per cent) with practising certificates were aged between 31 and 50, also suggesting that this age group are over-represented amongst solicitors.

*Potential Disability Impacts*

Table 17 (Annex A) presents the poor health and disability status of practising barristers at the self-employed Bar in 2007. 7 per cent of barristers at the self-employed bar considered themselves to have a disability or suffer from poor health. This is based on survey of all practising barristers conducted at the end of 2007 by the Bar Council.

Table 18 (Annex A) presents the disability status of practising barristers completing the working lives survey of the Bar in 2011. Four per cent of practising barristers considered themselves to have a disability defined as a long term health problem that affects day-to-day activities. It is noted that the different definitions of disability between the 2007 and 2011 surveys makes any comparisons unhelpful.

In comparison, 22 per cent of the adult general population in Great Britain had a disability. (Table 18, Annex A), suggesting that disabled people are under-represented amongst barristers.

*Potential Marriage and Civil Partnership Impacts*

The 2011 working lives survey suggested that two thirds of the Bar were married (65 per cent) or in a civil partnership (2 per cent). This compares to around a half of the general population aged 18 and over, suggesting that single people are under-represented amongst barristers.

*Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence, we are unable to quantify the potential for any differential impact, as no comprehensive statistical evidence is available by pregnancy and maternity.

However, some data on barristers with dependant children and whether they had ever taken any maternity/paternity leave lasting three months or more is available to give an indication of possible differential impacts for women and men (Pike and Robinson, 2012)[21]. Overall, 13 per cent of all barristers had taken maternity/paternity leave lasting three months or more but gender differences were significant (33 per cent of women and 2 per cent of men).

[21] Pike, G and Robinson, D (2012). Barristers' Working Lives: A Biennial Survey of the Bar 2011. Bar Standards Board

*Potential Race Impacts*

Tables 19 and 20 (Annex A) present the ethnic background of barristers and private practice solicitors in 2010. The ethnic background for 10 per cent of solicitors and 9 per cent of barristers was not known, and this means results should be treated with caution.

In 2010, 10 per cent of barristers (Table 19) were from a minority ethnic group, reflecting the proportion of those from minority ethnic groups in the general population (12 per cent). Table 21 shows that BME representation is highest amongst barristers at the employed Bar (15 per cent) and lowest amongst QCs (5 per cent).

In 2010, 11 per cent of private practice solicitors (Table 20) were from a minority ethnic group, reflecting the proportion of those from minority ethnic groups in the general population (12 per cent).

*Potential Religion or Belief Impacts*

Table 22 (Annex A) presents the religious affiliation of practising barristers completing the 2011 working lives survey. Religion was not stated by 10 per cent of barristers surveyed and so findings should be treated with caution.

Table 22 shows that 37 per cent of barristers had no religious affiliation, 54 per cent said they were Christian, 4 per cent Jewish, and 5 per cent other religions. In comparison, 23 per cent of the general population in England and Wales had no religion, 68 per cent were Christian and less than one per cent Jewish. This suggests that barristers with no religious affiliation are over-represented.

*Potential Sex Impacts*

Table 23 (Annex A) presents the available the data maintained by the Bar Council's Record department on the sex of practising barristers in 2010. It shows that in 2010, females accounted for 35 per cent of practising barristers. 51 per cent of the adult general population are female, and this suggests that female barristers are under-represented.

Almost 60 per cent of family barristers are female, and women are also over-represented in having specialist public law children practices (66 per cent) (Price and Laybourne 2008) and this suggests that female family barristers are over-represented.

Table 24 (Annex A) shows the position of solicitors working in private practice and holding a practising certificate by gender for 2009. This shows that, in 2009, 43 per cent of private practice solicitors were female and were therefore under-represented in comparison with the general population of England and Wales (51 per cent).

*Potential Race and Sex impacts*

A detailed analysis of profits and turnover shows considerable disadvantage for barristers from BME backgrounds, with BME women barristers particularly likely to be specialists in public law, and heavily dependent on legal aid for turnover and profit. These elements mean that they make far less money that other groups- particularly White men, who are disproportionately likely to specialise in ancillary relief and have

low dependence on legal aid, both translating into higher turnover and profit (Price and Laybourne 2008).

*Potential Sexual Orientation Impacts*

Table 25(Annex A) presents the sexual orientation of practising barristers completing the 2011 working lives survey. Sexual orientation was not stated by 11 per cent of barristers surveyed and so findings should be treated with caution.

Table 25 shows that 90 per cent of barristers indicated that they were heterosexual, 4 per cent preferred not to say, and 6 per cent said they were gay or bisexual. In comparison, 1.5 per cent of the general population are gay or bisexual, suggesting that gay or bisexual barristers are over-represented.

## Mitigation and Justification

The proposals on reducing delay include legislating for a 6 month time limit on the completion of care proceedings. Whilst this is seen to be generally beneficial for children and families, care needs to be taken to ensure that parents and children with mental health issues, learning difficulties, and other types of disability (including fluctuating ones) are not put at any unnecessary disadvantage due to the introduction of time limits as research has shown that they may need longer to come to terms with proceedings and for adequate communication at a level which can be understood.

It is not clear that introducing a 6 month time limit will speed up cases to the extent that there would be adverse impacts – more timely cases may well benefit some disabled parents, reducing the uncertainty and anxiety. To mitigate the potential for adverse impacts, reasonable adjustments will need to be made to ensure that any potential disadvantages experienced by disabled parents and children due to the introduction of time limits are eliminated or minimised. The government's proposals to provide flexibility for judges to extend cases beyond the time limit only by way of exception, will allow for more time where this is necessary.

To help those people who find it difficult to understand the care proceedings process and put in an easy to understand language HM government published the booklet Your Child Could Be Taken Into Care - Here's What You Need to Know in 2010. It was followed by a short leaflet version in 2011. Both are aimed at parents who are about to be taken to court by a local authority because of concerns over the safety and welfare of their child.

The publications, which it is intended should be given to parents at the "letter before proceedings" stage, highlight the need for parents to explore all safe alternatives with the local authority prior to the issue of care proceedings. They give parents information about court proceedings and the various stages in the process in a clear and straightforward manner. The need for legal representation is emphasised, together with information on how to access a solicitor and receive legal aid. Other useful contacts are also signposted.

In conjunction with the Association of Directors of Children's Services (ADCS) in England, the Association of Directors of Social Services in Wales (ADSS) and others in the sector, the government will develop a programme of work to capture and disseminate best practice and to foster closer collaboration and joint learning between the courts and local authorities. This will help to ensure that all authorities can draw on evidence-based practice to support their work with families both pre and post proceedings.

# Mediation Information and Assessment Meetings

## Summary

This section of the EIA considers the equalities impact arising from the proposal to make attendance at a Mediation Information and Assessment Meeting (MIAM) a pre-requisite before certain private family law proceedings may be started in a court. We have conducted detailed analyses to examine the potential for the MIAM proposal outlined above to impact on particular groups under the limbs of the Equality Act 2010.

*Direct discrimination*

The proposal will apply to all cases that fall within scope of the scheme, and does not treat people less favourably because of a protected characteristic. There is therefore no direct discrimination within the meaning of the Equality Act 2010.

*Indirect discrimination*

Although this MIAM proposal will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to be involved in private law proceedings. On this basis we have identified the potential for differential impacts in relation to age, religion or belief and sex. We do not, however, believe that there is the potential for indirect discrimination in relation to people with these protected characteristics but rather that they will potentially benefit from the proposals. We therefore anticipate the proposals will have positive benefits for children and families.

The expectation is that attendance at MIAMs will result in an increased uptake of mediation or other non-court dispute resolution services by prospective parties to court proceedings. However, care needs to be taken as some cases may require a court assisted resolution, in particular: where the parties are very hostile towards each other; where there are domestic violence victims or victims of emotional or sexual abuse; where learning disabilities, mental health issues or problems with alcohol or substance abuse require a more formal intervention to protect the needs of vulnerable persons; for those whose first language is not English who may require access to court-based translation services; and for some communities who are reluctant to use mediation.

For domestic violence cases (which are more likely to involve women as victims) there will be an exemption from the need to attend a MIAM if any prospective party has made an allegation of domestic violence against another prospective party and this has resulted in a police investigation or the issuing of civil proceedings for the protection of any party within the last 12 months.

We have identified a potential differential impact on barristers and solicitors in relation to age, religion, sex and sexual orientation. This is because barristers and solicitors with these protected characteristics may be over-represented in comparison to the general population and may therefore be proportionately more affected by any falls in income.

*Discrimination arising from disability and duty to make reasonable adjustments*

In so far as this proposal extends to disabled adults, we believe the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope for the proposal, as that would deny them access to the intended benefits. Some prospective applicants to court or respondents who have disabilities may find fewer facilities available to meet their needs at a MIAM venue, compared with at their local court. However, we propose to introduce a new version of the FM1 form which will enable the mediator to consider the ability of a client with a disability to attend a MIAM and to make reasonable adjustments based on need, or to exempt that person from the requirement to attend on the grounds that reasonable adjustments could not be made to meet the client's needs.

Those with a learning disability, on the other hand, might find it easier to engage with a MIAM and non-court dispute resolution services rather than navigating the complex rules and procedures inherent in coming to court. We recognise that care needs to be taken to ensure that adults with mental health issues, learning difficulties and other types of disability (including fluctuating ones) are not put at a disadvantage by requiring attendance at MIAMs. In these particular circumstances reasonable adjustments will need to be made to ensure that disabled adults are not put at a disadvantage during the process. Mediators will need to be skilled at assessing a client's needs and identifying cases which are not suitable for mediation or other form of non-court dispute resolution service. We will work with mediation providers, through the Family Mediation Council, to ensure that all family mediators are able to do this.

*Harassment and victimisation*

Care needs to be taken to ensure that prospective parties are not inappropriately required to attend a MIAM where, for example, there is clear evidence of domestic violence or sexual or emotional abuse. Similarly, where a MIAM is attended, in assessing whether or not mediation or another form of non-court dispute resolution service is appropriate, consideration will need to be given to the potential for harassment or victimisation between the parties involved. Mediators will need to be skilled at identifying and assessing these risks. We will work with the Family Mediation Council to ensure that all family mediators are able to do this.

*Advancing equality of opportunity*

In relation to sex, the proposal to make attendance at a MIAM a prerequisite to initiating court action could impact differentially on men in relation to Children Act 1989 applications for contact as fathers are most often the parent seeking an order for contact. The proposed change will introduce an additional stage in the process as it will make a prerequisite of the current expectation in the existing Pre-Application Protocol that a prospective applicant should attend a MIAM before issuing court proceedings. The proposal will ensure that fathers have the opportunity to consider the scope for using non-court dispute resolution services (which may be of benefit to them) and give encouragement to the other parent to attend the MIAM so that a costly court case might be avoided and better outcomes achieved.

In relation to disability, and taking into account the particular needs of prospective applicants with learning disabilities, mental health issues and other disabilities, we will take steps to minimise the possible disadvantage in the use of MIAMs. Mediators will need to be skilled at assessing, and responding to, a client's needs as well as

identifying cases which are not suitable for mediation. We will work with family mediation providers, through the Family Mediation Council, to explore how accreditation and guidance can ensure that all family mediators are able to do this.

*Fostering good relations*

We anticipate the proposal will have positive benefits in fostering good relations between men and women who receive information about non-court dispute resolution services and choose to use them. The aim of the proposal is to help prospective parties to court proceedings achieve agreement in a more amicable and less adversarial way.

*Conclusion*

Having had due regard to the potential equalities impacts of the proposal, the government is satisfied that it is right to put forward legislation making attendance at a MIAM a prerequisite to making an application to court in certain private family law cases. The proposal is intended to make the family justice system work more effectively for the benefit of those children and families that still need to come into contact with it, giving prospective applicants to court the information to consider if mediation (or other non-court dispute resolution services) provide a more suitable option to resolve their dispute and, through encouraging increased settlement of cases away from court wherever appropriate, enabling the courts to focus resources on the most complex and serious cases.

However, we recognise that we will need to give consideration to measures to ensure that victims of domestic violence or emotional or sexual abuse have appropriate exemptions and are not disadvantaged by the MIAM process. We also recognise the need to make reasonable adjustments for people with disabilities involved in MIAMs, particularly those with learning disabilities and mental health issues to ensure access to the service. In addition, we recognise the need to make provision for those people whose first language is not English.

We will also give consideration to how to best address equalities impacts in any research undertaken in relation to the resolution of private law matters, whether resolved in court or through alternative dispute resolution services such as mediation. This will help ensure that the policy is delivered fairly and in the mitigation of any unintended equalities impacts.

## Background

The proposal in this section relates to legislating for a requirement that (with specified exemptions) a prospective applicant for an order in private family law proceedings must attend a MIAM before an application to court can be made. Currently, a pre-action protocol sets out an expectation (but not a requirement) that such a meeting will be attended. The current protocol, and proposed legislation, covers private family law cases (with limited exceptions such as applications to enforce existing orders).

Private family law deals with issues following the breakdown of family relationships. The main sorts of cases affected are therefore likely to be those relating to financial issues arising on the breakdown of a relationship (known as “ancillary relief”) and private law children cases, mainly relating to the residence of, and contact with, children.

A pre-action protocol for family mediation information and assessment meetings came into effect in April 2011. Under the protocol applicants in private family law disputes (in the main, disputes relating to financial arrangements and arrangements for children following family breakdown) are expected, except in certain specified circumstances, to consider with a mediator whether the dispute may be capable of being resolved through mediation, by attending a MIAM before they apply to court. They are expected to submit a form known as an FM1 to the court with their application, confirming either that they attended a MIAM or that they are exempt from the requirement to attend. The aim of the protocol was to help individuals become aware of mediation and understand the options available to them before proceeding to court.

Evidence given to the Family Justice Review suggests that awareness and understanding of forms of alternative dispute resolution including mediation is low, with some people mistakenly believing it to be a pre-separation service to help with relationship issues. They also note that with hindsight, many litigants wish they had tried or persevered with mediation rather than go to court. This suggests there may be value in taking further steps to ensure all those involved in private family disputes who are potentially suitable for mediation receive information about it before they decide whether to begin court proceedings.

We expect that individuals with legal representation (whether privately funded or paid for by legal aid) will already comply with the current pre-action protocol as their lawyers will be aware of the requirements (and legal aid clients are obliged to comply as a condition for funding). However, anecdotal evidence suggests that not all those who are unrepresented or represent themselves (known as “litigants-in-person”) do. Some may be unaware of the requirement (especially if they rely on advice from friends and family on the process of dealing with family disputes, rather than using official information sources ). Others may be unwilling or unable to comply.

In addition, as the protocol only creates an expectation, rather than a requirement, to attend a Mediation Information and Assessment Meeting, it is possible that it is not being implemented consistently across the country, which might be felt to be unfair. A legislative requirement to attend a Mediation Information and Assessment Meeting as a precursor to starting court proceedings would mean that practice across the country would have to become consistent.

## Aim and Outcomes of the Policy

The policy objectives are to:

- ensure the public have information to help them make informed decisions about the best way to resolve their family dispute, reducing the emotional and financial costs associated with separation and divorce;

- enable the judiciary to focus on the more difficult and serious cases;

- ensure that a requirement (with appropriate exemptions) that a person wishing to make an application to court for an order in private family law proceedings will first have to attend a Mediation Information and Assessment Meeting is introduced and is applied consistently across the country;

and as a result:

- release court resources to serve the public more efficiently and effectively; and

- increase the use of dispute resolution services such as mediation for resolving family disputes where this is suitable.

The proposal is to introduce legislation requiring applicants for a court order in relevant family proceeding to submit a form (an FM1) confirming that they have attended a Mediation Information and Assessment Meeting, or are exempt. The meeting would need to be conducted by a mediator trained and accredited to the same standards that apply to the current pre-action protocol. Any applications that did not have this proof would be refused by court staff.

Where one of a limited number of specific exemption reasons apply (for example, the application is urgent; if there is a lack of available mediators; or if there have been allegations of domestic violence resulting in a police investigation or civil proceedings for the protection of any party within the last 12 months) meaning mediation is clearly inappropriate in the circumstances of the case, then either an applicant or their solicitor could exempt them from the need to attend a MIAM.

Where these exemptions don't apply, a prospective applicant would be required to contact a mediator for a determination as to whether their dispute is suitable for mediation. This could involve the mediator contacting the other client by telephone to see if they would be willing to attend a MIAM. This way the applicant could avoid attending (and possibly having to pay for) a MIAM unnecessarily if it becomes clear to the mediator that the other party isn't willing to engage in the process.

## Methodology

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Children**: We have compared the characteristics of subjects in private law FamilyMan and Cafcass cases with the demographics of children under 18 in the general population in England and Wales;

- **Families**: We have compared the characteristics of families involved in private law cases with demographics of adults aged 18 and over in the general population (where possible).

- **Legal professions**: We have compared the characteristics of barristers and solicitors with demographics of adults over 18 in the general population in England and Wales, where possible.

We have also examined relevant consultation feedback.

Where certain groups are over-represented in private law proceedings, or if we have identified that different groups may have different outcomes as a result of the proposals, we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

Parties to private law cases and their children

Creating a statutory requirement to attend a MIAM (with specific exemptions) will ensure that the requirement is applied consistently across the country. This might make the system fairer, benefiting potential applicants in general. It is possible that legislating for a requirement to attend a MIAM might affect cultural attitudes to mediation as an alternative to court proceedings for settling private family disputes. This may influence the willingness of this group to consider mediation as a viable option, and therefore increase the use of mediation among this group. They may, therefore benefit from making quicker and more flexible agreements.

The data suggests there is potential for the MIAM proposal to have a differential impact in relation to age, religion or belief and sex as people with these protected characteristics are over-represented as parties in private law proceedings compared with the general population.

*Potential Age Impacts*

CAFCASS private law data for England (Table 26, Annex A) shows that applicants and respondents aged 18 to 49 are over-represented compared to the general population.

Table 1 (Annex A) shows the age distribution of children involved in private law applications in the County Court in England and Wales in 2010. This shows that 40 per cent were aged 4 or under. Cafcass private law data for England (Table 27, Annex A) shows that 34 per cent of children were aged four or under. In comparison about 29 per cent of children in the general population in England are aged four or under.

Based on the evidence that children aged 4 and under, and applicants and respondents aged 18 to 49, may be over-represented in private law proceedings compared to the general population, and thus they are more likely to be affected by the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to age.

*Potential Disability Impacts*

Cafcass private law data for England (Table 28, Annex A) shows that for children where information on disability was available, 6 per cent were recorded as having a disability. This finding must be interpreted with caution as 30 per cent did not declare their disability status. In comparison about five per cent of all children aged under 16 in Great Britain have a disability.

In addition to the data, responses to the FJR indicated that care needs to be taken to ensure that people with mental health issues, learning difficulties and other types of disability (including fluctuating ones) are not put at a disadvantage by requiring attendance at MIAMs. In these particular circumstances reasonable adjustments will need to be made to ensure that disabled people are not put at a disadvantage during the process, in so far as possible.

*Potential Race Impacts*

CAFCASS private law data for England in Table 29 (Annex A) shows that of those that provided information on ethnicity, 84 per cent of applicants and 84 per cent of respondents were recorded as being from the White ethnic group, compared to 88 per cent of the general population.

Cafcass private law data for England shows that, where information on ethnicity was available, 81 per cent of children were recorded as being from the White ethnic group (Table 30, Annex A). This compares to 84 per cent in the population under 18 years of age in England.

Care needs to be taken as some cases may require a court assisted resolution for those whose first language is not English who may require access to court-based translation services; and for some communities who are reluctant to use mediation.

*Potential Religion or Belief Impacts*

Cafcass private law data for England (Table 31, Annex A) shows that for children subject to cases, of those who provided information on religion 34 per cent were recorded as having none, compared to 22 per cent of the general population of all ages. This finding must be interpreted with caution as 24 per cent did not declare their religion and data on the religious affiliation of the general population is not published separately for children and adults. Cafcass data also indicates 37 per cent of applicants and 34 per cent of respondents to private law cases were recorded as having no religion. In comparison 22 per cent of the general population have no religion. This finding must be interpreted with caution as 18 per cent of applicants/respondents did not declare their religion and data on the religious affiliation of the general population is not published separately for children and adults.

Based on the evidence that children, applicants and respondents with no religion may be over-represented in private law proceedings compared to the general population, and thus they are more likely to be affected by the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to religion.

*Potential Sex Impacts*

CAFCASS private law data for England (Table 32, Annex A) shows that female applicants are under-represented compared to in the general population, whilst female respondents are over-represented.

Table 11 (Annex A) shows 49 per cent of children involved in private law applications in the County Court in England and Wales in 2010 were female, the same proportion as in Cafcass data for England (Table 33, Annex A) and in the general population aged under 18 in England.

A research study undertaken by the MoJ[22], which involved reviewing 402 private law children cases found that in 60 per cent of cases the father was listed as the applicant, in 32 per cent the mother was listed as an applicant [23]. Conversely, the

[22] **'**Family Justice and Children's Proceedings: Review of Public and Private Law Case Files in England and Wales'. Ministry of Justice, Cassidy, D., and Davey, S. (2011);
[23] Cases could involve multiple applicants.

mother was listed as a respondent in 65 per cent of private law cases, and the father was listed as a respondent in 39 per cent of cases.

There was a difference depending on whether the case involved an application for residence order or contact order. For residence order applications, a similar per cent of applicants and respondents were fathers and mothers. However, for contact order applications, applicants were more likely to be fathers than mothers (77 and 20 per cent of cases respectively), while respondents were more likely to be mothers than fathers (79 and 21 per cent of cases respectively).

Based on the evidence that men may be over-represented as applicants in private law proceedings compared to the general population, and women as respondents, and thus they are more likely to be affected by certain aspects of the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to sex.

For example, a higher proportion of applicants for contact orders are non-resident parents (often fathers). Applications for a Financial Order on divorce will tend to be made disproportionately by women. The proposal to make attendance at a MIAM a prerequisite to starting court proceedings (with certain exemptions) will therefore impact on different groups depending on the type of prospective family proceeding and the proportions of applications made with reference to sex.

*Potential Sexual Orientation Impacts*

In 2010/11, Cafcass data showed that 43 per cent of applicants, 46 per cent of respondents and 92 per cent of subjects in private law proceedings in England had provided no information on sexual orientation. Due to the large proportion of cases with missing information, we are unable to identify the potential impacts in relation to sexual orientation.

*Potential Gender Reassignment, Marriage and Civil Partnership and Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to identify any potential impacts in relation the above protected characteristics.

<u>Professionals working in the Family Justice System</u>

If more people attend MIAMs, there will be more demand for mediators. An increase in demand for MIAMs would increase mediators' income from private family law cases. The net benefit of this work would depend on how profitable mediation was compared to their alternative activities.

If more people use mediation instead of court to resolve their private family disputes there may be a reduction in demand for legal representation. This depends on whether any increase in the use of mediation affects applicants who pay for representation as well as those who represent themselves. It also depends on whether those who try mediation as a result of the proposal reach a successful resolution, or whether they subsequently go to court in any case. Where agreements are reached through mediation a solicitor can provide advice and support in drawing up any agreement reached in mediation and, where appropriate, help in confirming such an agreement in a court order so that it becomes legally binding.

Although there may be a reduction in income to solicitors and barristers as a consequence of fewer cases needing legal representation at court there is likely also to be scope for greater joint working between mediators and solicitors. Solicitors may be required to provide legal advice in support of mediation and will where appropriate formalise and give legal effect to any agreement reached such as a consent order. Some barristers and solicitors are also training as mediators.

We have considered the potential for the proposals to impact on equalities in relation to mediators and solicitors and barristers working in family law.

The analysis of data on barristers evidenced earlier found that females, barristers aged 30-49, barristers with no religion and barristers who are gay or bi-sexual may be over-represented in comparison to the general population. For solicitors, those aged 31-50 and males are over-represented. Thus these groups are more likely to be affected by the proposals and our assessment is that there is the potential for the proposals to have a differential impact in relation to age, religion, sex and sexual orientation.

## Mitigation and Justification

The expectation is that the pre-requisite of attendance at a MIAM before commencing court proceedings will result in an increased uptake of mediation or other non-court dispute resolution services by those who would otherwise make applications to court. Whilst making quicker and more flexible agreements is seen to be generally beneficial for children and families, care needs to be taken as some cases may still require a court assisted resolution, in particular: where the parties are very hostile towards each other; where there are domestic violence victims or victims of emotional or sexual abuse; where learning disabilities, mental health issues or problems with alcohol or substance abuse require a more formal intervention to protect the needs of vulnerable persons; for those whose first language is not English who may require access to court-based translation services; and for some communities who are reluctant to use mediation.

The government's proposals to provide an exemption from a MIAM for domestic violence cases will help support victims (who are more likely to be women) seeking justice in family law cases. We also propose to introduce a new version of the FM1 form which will enable the mediator to consider the ability of a client with a disability to attend a MIAM and to make reasonable adjustments based on need, or to exempt that person from the requirement to attend on the grounds that reasonable adjustments could not be made to meet the client's needs.

It is important to ensure that mediators have the necessary skills and training to recognise victims of domestic, sexual and emotional abuse (both women and men as well as child victims), particularly in relation to people with mental health issues, learning difficulties, drug addictions, who lack capacity or do not speak English as a first language. In addition, we will consider with the Family Mediation Council (FMC) how their members address issues of access for people with disabilities. Developing appropriate training, guidance and standards was seen as crucial to the fair implementation of the family justice changes.

The FMC is working towards ensuring that the qualifications of those carrying out MIAMs (and any subsequent mediation) are of an acceptable standard. The FMC's members are the UK's national family mediation organisations, all of which ensure their family mediator members work to agreed minimum professional and training standards.

Minimum requirements for mediators carrying out information and assessment meetings have been agreed. We are working through the FMC towards a single accreditation scheme that will qualify those who have it to do both publicly funded and privately funded mediation. These changes aim to create a more robust accreditation and regulation structure for the family mediation profession and ensure future standards remain high.

# Provisions for administrative divorce and dissolution of civil partnerships (uncontested cases)

## Summary

We have conducted detailed analyses to examine the potential for a largely administrative process of divorce and dissolution of civil partnerships to impact on particular groups under the limbs of the Equality Act 2010. These are presented in the 'analysis' section below and the overall conclusions are given below:

*Direct discrimination*

The proposals apply to all cases and do not treat people less favourably because of a protected characteristic. There is therefore no direct discrimination within the meaning of the Equality Act 2010.

*Indirect discrimination*

These proposals will apply equally to those who share a protected characteristic and those who do not. However, those with some of the protected characteristics may be more likely than the general population to petition for a decree of divorce, or judicial separation or in relation to civil partnership, apply for a final order of dissolution, or a separation order. On this basis we have identified the potential for differential impacts in relation to age, religion or belief and gender.

We do not, however, believe that there is the potential for indirect discrimination in relation to people with these protected characteristics but rather that they will potentially benefit from the proposals through being more likely to be involved in these proceedings. We therefore anticipate the proposals will have positive benefits. However, reasonable adjustments to ensure access to the administrative facilities will need to be made for people with disabilities or whose first language is not English to enable them to apply for a decree of divorce or judicial separation, a order of dissolution of a civil partnership or a nullity order. It is not intended that people will need to physically attend the administrative centre, and any hearings required, for example if there is an issue about costs, will be held at a local court. Any divorce cases which are contested will also be transferred to a local court

We also anticipate the proposals regarding removing the requirement to provide information on financial and contact arrangements for children may benefit petitioners and applicants.as they will no longer be required to supply this information. A benefit will arise if it is the case that petitioners and applicants acquire no benefit from documenting the information in the process of petitioning for a decree of divorce, nullity or judicial separation, or applying for a final order of dissolution, nullity order or separation order relating to civil partnership. It is possible that documenting this information does facilitate agreement between separating parents though we believe in many cases there will already be agreement and in others there are other routes for achieving this.

*Discrimination arising from disability and duty to make reasonable adjustments*

In so far as these proposals extend to disabled people, we believe the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope for the proposals. However, as mentioned above, it remains important to ensure that reasonable adjustments are made to access the court administrative facilities for people with disabilities or whose first language is not English.

*Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

*Advancing equality of opportunity*

We have considered this objective but do not think it is of particular relevance to the proposals.

*Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

*Conclusion*

Having had due regard to the potential differential impacts identified below, the government is satisfied that it is right to take forward provisions for administrative divorce and dissolution of a civil partnership as a proportionate means of achieving a legitimate aim.

## Background

The proposals in this section relate to substantial reduction of judicial involvement in uncontested proceedings for a decree of divorce or, judicial separation and uncontested proceedings for the dissolution of a civil partnership and for a separation order.

The proposals also relate to reducing the information collected in petitions for divorce (or petitions for a decree of judicial separation or nullity) and applications for a final order of dissolution of a civil partnership (or applications for a separation order or nullity order), whether contested or not.

In approximately 98 per cent of cases in England and Wales the petition for divorce is uncontested: the parties to the marriage do not dispute that the marriage has irretrievably broken down. In these cases, there is no clear policy reason why the judicial functions in the divorce process cannot be delegated to an appropriately qualified person who would have the ability to refer a matter to a judge as appropriate. Despite this in order for a decree of divorce to be obtained at the moment the papers in the case must be reviewed by a judge (typically a district judge of a county court).

In addition, petitioners and applicants in the divorce, dissolution, separation and nullity processes are required to provide information regarding arrangements for maintenance and contact arrangements for children. These arrangements are currently subject to judicial consideration. However, the arrangements specified are

not binding and the judicial consideration of them rarely leads to the making of decrees or orders sought being delayed by the court. We believe this information is unnecessary as part of these processes and may duplicate other court processes. Arrangements relating to children, as well as other financial arrangements, may be settled in separate proceedings.

## Aim and Outcomes of the Policy

The aim of the proposal is to save judicial time spent looking at uncontested divorce cases (this term includes cases relating to judicial separation and dissolution and separation in relation to civil partnerships) and looking at maintenance and contact arrangements for children in those cases and also cases for a decree of nullity or nullity order (in relation to civil partnership). The intended effects are to improve efficiency and allow judicial time to be spent on other family law cases.

Two changes to the process for uncontested divorce cases are proposed.

Firstly, people petitioning for divorce will no longer have to provide details of arrangements for children as part of their divorce petition (though the application materials, whether from the court or from an on-line hub, will prompt them to consider arrangements for children as well as financial arrangements). Note that this change would apply in contested as well as uncontested divorce cases, and would also apply to cases of nullity of marriage or of civil partnership.

Secondly, if the other spouse (the one who did not originally submit a petition, known as the “respondent”) confirms that he or she does not contest that the marriage has irretrievably broken down, then an appropriately qualified person of the family court will consider the petition and other papers. If the appropriately qualified person is satisfied that the evidence establishes irretrievable breakdown of the marriage or the grounds for separation, the adviser will grant the decree nisi of divorce or decree of judicial separation. (This change would not apply to petitions for a decree of nullity of marriage or an application for a nullity order of civil partnership).

There will typically be no judicial involvement in an uncontested divorce case though the appropriately qualified person will have the ability to refer a matter relating to the case to a judge as appropriate. Judicial involvement in the process in uncontested divorce cases will be significantly reduced.

## Methodology

In analysing the potential equalities impacts of these proposals, we have considered the impact on:

- **Families**: We have compared the characteristics of applicants( including petitioners) and respondents involved in uncontested divorce cases and cases relating to nullity of marriages and civil partnerships with the demographics of adults 18 and over in the general population in England and Wales;

Where certain groups are over-represented in these proceedings, or if we have identified that different groups may have different outcomes as a result of the proposals, we have noted that the evidence we have available suggests the potential for a differential impact.

## Analysis

People petitioning for divorce. a decree of judicial separation or nullity or applying for a final order of dissolution of a civil partnership, nullity or separation order

There may be a benefit to people petitioning for these decrees or applying for these orders as they will no longer have to provide details of contact and maintenance arrangements for any children as part of their petitions or applications. This benefit would only arise if the divorce, separation or nullity process largely duplicates requirements which would already be undertaken as part of other proceedings.

On the other hand there is a risk there may be a negative impact on the people applying for these decrees or orders and their families if the removal of judicial scrutiny of maintenance and contact arrangements for children from the process affects the speed with which these arrangements are agreed or the nature of these arrangements.

The data suggests there is potential for the proposals to have a differential impact in relation to age and sex, as people with these protected characteristics are over or under represented as parties in these proceedings, compared with the general population.

*Potential Age Impacts*

Table 34 (Annex A) shows the age distribution of petitioner and respondents involved in divorce and dissolutions of civil partnerships, nullity of marriages and civil partnerships and separations in England and Wales in 2010.This shows that those aged 30-49 are over-represented compared to the general adult population.

Based on the evidence that those aged 30-49 may be over-represented as petitioners and respondents in these proceedings compared to the general population, and thus they are more likely to be affected by the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to age.

*Potential Gender Reassignment Impacts*

The number of marriages and civil partnerships in 2010 for which a decree of nullity or a nullity order has been granted on the grounds that an interim gender recognition certificate under the Gender Recognition Act 2004 has been issued to either party to the marriage or civil partner was 8. This is based on around 60 per cent of nullity cases where information is known. It is intended that petitions for a decree of nullity and applications for a nullity order will continue to be considered by a judge as at present. Petitions for a decree of nullity or applications for a nullity order are only affected by the proposals to the extent that the court will no longer consider arrangements for children during the proceedings.

*Potential Marriage and Civil Partnership Impacts*

In 2010 the number of divorces in England and Wales was 119,589[24].There were 472 civil partnership dissolutions granted in England and Wales in 2010[25]. In 2010, 300 petitions were submitted for judicial separation and 298 petitions for nullity.

[24] Divorces in England and Wales 2010, ONS, 2011.
[25] Civil Partnerships in the UK, 2010, ONS, 2011

These figures include applications in respect of nullity and separation in respect of civil partnership.

*Potential Religion Impacts*

There may be the potential for differential impacts if some religious groups are less likely to petition for a decree of divorce, nullity or judicial separation or apply for a final order of dissolution, separation or nullity. We do not have available evidence to quantify the potential for any differential impact.

*Potential Sex Impacts*

In 2010, 66 per cent of petitioners and 34 per cent of respondents to proceedings where decrees of divorce were granted were female[26]. This compares to 51 per cent of the general population being female.

Based on the evidence that men may be over-represented as respondents compared to the general population, and women as petitioners, and thus they are more likely to be affected by certain aspects of the proposals relative to the general population, our assessment is that there is the potential for the proposals to have a differential impact in relation to sex.

More women than men obtained a final order of dissolution of a civil partnership in England and Wales in 2010, 60 per cent of civil partnerships dissolved in 2010 were to female couples[27]. This compares to 51 per cent of the general population being female. By the end of 2010, 1.6 per cent of male civil partnerships in the UK had ended in dissolution, while 3.3 per cent of all UK female partnerships had ended in dissolution.

*Potential Disability, Pregnancy and Maternity and Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to identify any potential impacts in relation the above protected characteristics.

<u>Professionals working in the Family Justice System</u>

There may be a reduction in income from uncontested divorce cases (as defined above) for legal professionals. The process for applying for divorce will be simpler. This may mean that fewer people take legal advice (or people take less legal advice) when preparing their petition. The net impact on legal professionals will depend on what other business they engage in instead of dealing with an uncontested divorce cases.

We have considered the potential for the proposals to impact on equalities in relation to legal professionals working in the family justice system. We have not been able to find evidence to assess the equalities impacts.

## Mitigation and Justification

It is not anticipated that there will be any adverse outcomes for any groups from the proposals for administrative divorce or dissolution of a civil partnership. In addition to the provisions of assistance with petitions for a decree of divorce or judicial separation or applications for a final order of dissolution or a separation order through

[26] Divorces in England and Wales 2010, ONS, 2011.
[27] Civil Partnerships in the UK, 2010, ONS, 2011

an interactive hub, the facility to apply will be available by a number of media to ensure that all groups can have equal access. As at present a court hearing is unlikely to be required in any uncontested divorce, which is of benefit to people who find it difficult to attend court. Where the proceedings for divorce or dissolution of a civil partnership are contested the case will be transferred to a local court for people to attend a hearing and the equality requirements to provide services for people to attend court hearings will apply.

Care will also need to be taken to ensure that adults with mental health issues or learning difficulties are not disadvantaged through accessing the court administrative divorce facilities. It will therefore be important that reasonable adjustments are available to support applicants to apply online.

# Expert Evidence in Family Proceedings

## Summary

Expert witness evidence can be used in all family proceedings (including both public and private law proceedings). The expert's role is to make their specialist knowledge available to the court to inform its decisions in those proceedings.

The FJR made a number of recommendations for reforming the way experts are commissioned in public law cases. The government accepts the Review's recommendations, and will undertake work to put the proposals into effect. It is intended that the measures will contribute to quicker resolution of public law proceedings. This may reduce uncertainty for children and families, and could lead to better outcomes if this improves the likelihood of them finding a stable placement. The proposals may also ensure that resources are used more efficiently.

The focus of the Review's recommendations regarding experts related to public law cases and we have no evidence to suggest that private law family cases face equivalent issues with experts, including delays or unnecessary commissioning of expert evidence. However, implementation of the proposals will also cover private law cases and, if there is currently any unnecessary duplication or delay, should have a similar beneficial effect on children and families.

We have conducted detailed analyses to examine the potential for the proposals outlined above to impact on those persons with protected characteristics under the 2010 Equality Act.

Children and families are intended to benefit as a result of shorter cases. The analysis of protected characteristics of children and families in public law cases is the same as that presented earlier.

Experts may experience a fall in income as fewer reports may be commissioned, and may also be more likely to receive commissions for more concise expert reports with a narrower scope which focus expert witnesses on the determinative issues. We have not found data about the protected characteristics of experts providing evidence in family law cases.

*Direct discrimination*

The proposals apply to all cases. There is therefore no direct discrimination within the meaning of the 2010 Equality Act.

*Indirect discrimination*

These proposals will apply equally to those who share a protected characteristic and those who do not. However, those with some of the protected characteristics are more likely than the general population to be involved as parties and subjects in public and private law children cases. On this basis, we have identified the potential for differential impacts in relation to age, pregnancy and maternity, race, religion or belief and sex. However, we anticipate the proposals will have positive benefits for children and families, and these protected characteristics will not lead to different impacts among children and families in such cases, with the potential exception of disability which is discussed below.

*Discrimination arising from disability and duty to make reasonable adjustments*

In so far as these proposals extend to disabled children and families, we believe the policy is proportionate, having regard to its aim. It would not be reasonable to make an adjustment for disabled persons so that they are out of scope for the proposals, as that would deny them the opportunity of the intended benefits. However, care needs to be taken to ensure, in so far as possible, that parents and children with mental health issues, learning difficulties, intellectual disabilities and other types of disability (including fluctuating ones) that impact on their communications are not put at a disadvantage due to measures to reduce the role of experts. Cases involving disabled persons may particularly benefit from an expert opinion relating to the disability and the implications of this for care of the child. In these particular circumstances reasonable adjustments would need to be made to ensure that disabled parents and children are not put at a disadvantage, in so far as possible. The government's proposals to provide flexibility for judges to authorise expert reports where this is necessary to resolve the case should mitigate against this risk, while the intention for judges to give more clarity to experts on the questions and issues they should focus on may also help ensure experts give due consideration to any disability issues.

*Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

*Advancing equality of opportunity*

On the basis that certain groups are more likely to be parties to/subject to public and private law children cases and the overall positive benefits intended, we anticipate the proposals will have broadly positive benefits in relation to age, pregnancy and maternity, race, religion or belief and sex.

In relation to disability, and taking into account the particular needs of parents with learning disabilities, mental health issues and other disabilities, we consider that the proposals mitigate against any possible disadvantage.

*Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

*Conclusion*

Having had due regard to the potential differential impacts identified below, the government is satisfied that it is right to limit reliance on expert reports in public and private law family cases to those which the court considers are necessary to resolve the proceedings and with due regard to the impact on the welfare of the child. This ensures that interest of the child and of parents will be considered when the court is determining whether or not to permit expert evidence. The proposals are intended to make the family justice system work more effectively for the benefit of those children and families that come into contact with it, applying to all protected groups. To this extent the proposals are considered to be a proportionate means of achieving a legitimate aim.

**Background**

The FJR makes ten recommendations for reforms to the way experts are commissioned and paid for. The recommendations for reforms are focussed on public law family cases. Public law family cases are those in which local authorities have concerns about the welfare of children, and where local authorities seek a determination from the court about whether children should be taken into local authority care. Nevertheless, the same considerations can also be applied to the way experts are instructed in private law cases.

The recommendations are:

- primary legislation should reinforce that, in commissioning an expert's report, regard must be had to the impact of delay on the welfare of the child. It should also assert that expert testimony should be commissioned only where necessary to resolve the case. The Family Procedure Rules would need to be amended to reflect the primary legislation.

- the court should seek material from an expert witness only when that information is not available, and cannot properly be made available, from parties already involved. Independent social workers should be employed only exceptionally.

- research should be commissioned to examine the value of residential assessments of parents.

- judges should direct the process of agreeing and instructing expert witnesses as a fundamental part of their responsibility for case management. Judges should set out in the order giving permission for the commissioning of the expert witness the questions on which the expert witness should focus.

- the Family Justice Service should take responsibility for work with the Department for Health and others as necessary to improve the quality and supply of expert witness services. This will involve piloting new ideas, sharing best practice and reviewing quality.

- the Legal Services Commission should routinely collate data on experts per case, type of expert, time taken, cost and any other relevant factor. This should be gathered by court and by area.

- studies of expert witness reports supplied by various professions should be commissioned by the Family Justice Service.

- agreed quality standards for expert witnesses in the family courts should be developed by the Family Justice Service.

- a further pilot of multi-disciplinary expert witness teams should be taken forward, building on lessons from the original pilot.

- the Family Justice Service should review the mechanisms available to remunerate expert witnesses, and should in due course reconsider whether experts could be paid directly.

The first, second and fourth recommendations are assessed in this EIA. The other recommendations will be subject to further consideration and future EIAs, where appropriate.

The FJR highlighted the problems associated with delay in the family courts. In 2010 nearly 17,000 children were involved in applications for a care or supervision order. The latest data available (3rd quarter of 2011) shows that care and supervision applications took on average 55 weeks to be completed.

Delays can be damaging to children. The longer a child spends in temporary care arrangements, the more likely they are to form attachments to their carers, and the more distress they are likely to feel when they are moved to another temporary or permanent placement[28]. For the minority of children for whom adoption is the best outcome, evidence indicates that swift adoption can be beneficial. One study found that children who were adopted before their first birthday made attachments with carers that were just as secure as their non-adopted peers, but those who were adopted after their first birthday formed less secure attachments. [29]

We believe that the commissioning of multiple experts contributes to increased case length and cost in care proceedings. A review of a sample of approximately 400 public law case files where an order was made in 2009 found that expert reports were commissioned in 87 per cent of cases and in 74 per cent of cases more than one expert was commissioned. In these cases, the most common type of reports were Adult psychiatric (35 per cent of cases), Independent social workers (33 per cent) and Parent's psychological (33 per cent)[30].

Whilst we cannot say that the increased use of experts necessarily causes delay in public law family cases, higher numbers of experts are associated with longer cases. In the case files reviewed public law family cases involving expert reports were longer on average than cases where no expert reports were requested. Cases with no expert reports lasted an average of 26 weeks, cases where between one and three expert reports were requested took an average of 50 weeks, cases where four to six expert reports were requested took an average of 52 weeks, and cases where seven or more expert reports were requested took an average of 65 weeks.[31]

These findings corroborated an earlier study of 362 care applications in 2004. This also found that cases with more expert reports were more likely to take longer; about 60 per cent of cases where there were no experts or one expert took less than 6 months, whereas about 85 per cent of cases that had three or more experts took over 18 months[32].

[28] Davies, C and Ward, H . (2011), *Safeguarding children across services; messages from research.* https://www.education.gov.uk/publications/RSG/AllRsgPublications/Page4/DFE-RBX-10-09

[29] V an den Dries, L., Juffer, F., Van IJzendoorn, M.H. and Bakermans-Kranenburg, M.J. (2009) 'Fostering
security? A meta-analysis of attachment in adopted children.' *Children and Youth Services Review 31*, 410–421.

[30] Cassidy, D., and Davey, S. (2011). *Family Justice and Children's Proceedings – Review of Public and Private Law Case Files in England and Wales.* Ministry of Justice, London

[31] Cassidy, D., and Davey, S. (2011). *Ibid.*

[32] Masson et al. *Care profiling study* (2008) Ministry of Justice.

In some cases expert reports are necessary and beneficial to the case. However, anecdotal evidence received via the FJR consultation suggested that in other cases expert reports are not adding value to the case and are increasing delays for children.

In addition expert reports are a significant expense for the legal aid fund and for local authorities. The cost of expert reports is split between all parties in the case. Parents and children involved in public law family cases are entitled to legal aid without a means or merit test[33] so their share of these costs are met by legal aid. Information on the exact cost of expert reports is not collected by the Legal Services Commission; payments to experts are recorded as disbursements along with other expenses such as travel. In 2010-11 about £49m was spent on disbursements in special Children Act 1989 cases (such as care and supervision cases) by the legal aid fund. Anecdotal evidence suggests that about two thirds of this is spent on experts; about £33m.

Local authorities are also party to public law cases and incur expenses for expert reports. In addition the costs of some assessments, such as residential assessments, are paid entirely by local authorities.

## Aims and outcomes for the policy

The policy objective is to reduce delay in public law proceedings without having an adverse impact on case outcomes. This may reduce uncertainty for the children involved in these cases and may increase the likelihood of them finding a stable placement.

The proposals are to:

- introduce legislation to ensure judges take account of the impact of delay on the welfare of the child when giving permission to commission expert reports and only allow expert testimony when necessary to resolve the case.

- introduce legislation to require judges to specify questions that need to be addressed on the order giving permission to commission an expert witness.

## Analysis

We expect that the legislation may lead to a reduction in the number of expert reports commissioned in public law family cases and for the reports they produce to be more focussed, to the benefit of the children involved. We have no evidence that private law family cases face significant problems with unnecessary commissioning of expert reports or that expert reports are contributing to significant delays. Therefore we have assumed that the changes will not affect how experts are used in those cases. If this assumption turned out to be incorrect, the proposals would have similar impacts to those identified for public law family cases. The analysis of protected characteristics of children and families in public law cases is the same as that presented earlier. On this basis, we have identified the potential for differential impacts in relation to age, pregnancy and maternity, race, religion or belief and sex.

Experts may experience a fall in income as fewer reports may be commissioned, and may also be more likely to receive commissions for more concise expert reports with

[33] Civil legal aid is means and merits tested. It is only available to those who can't afford it, or who have a case that has a reasonable chance of winning and is worth the money it will cost to fund it.

a narrower scope which focus expert witnesses on the determinative issues. We have not found data about the protected characteristics of experts providing evidence in family law cases.

## Mitigation and Justification

The government is satisfied that the proposed reforms to the commissioning of expert witness reports outlined in its response to the FJR, which has included extensive input from all key stakeholder groups, represents a proportionate and effective set of measures to improve the operation of the family justice system. In particular, the proposed legislative measures are designed to reduce the delays associated with commissioning expert reports in public law proceedings, reducing the uncertainty faced by families and children and potentially increasing the likelihood of children eventually finding a stable placement. These measures aim to ensure that the courts explicitly consider the impact on the welfare of the child when deciding whether to permit expert evidence to be obtained or used, and that children are not subject to unnecessary assessments. In addition, we expect increased judicial involvement in determining the questions to be put to expert witnesses when they are instructed will lead to more focused reports that address the key pieces of information that the court requires in order to reach a decision. Alongside an overall reduction in the volume of reports, this should contribute to achieving better value for money from limited public funds.

We considered whether the requirement that expert evidence is restricted to that which is necessary to resolve the proceedings should be limited to public law proceedings only. Similarly, we considered whether the court should be required to consider the impact on the welfare of the child, when giving permission for an expert to be instructed, only in public law proceedings. However, such an approach would be inconsistent with the current framework (contained in the Family Procedure Rules 2010 (S.! 2955) and associated Practice Direction) which applies to all family proceedings. Different treatment of certain types of proceedings could send an unintended message that a proliferation of expert reports was somehow more acceptable in certain proceedings than in others, or that delays affecting children were less significant in some types of proceedings than in others. We have borne in mind that there can be significant welfare concerns affecting children in private law cases, such as allegations of domestic violence.

If the proposed measures have their desired effect of reducing the number (and in some cases the length) of expert reports commissioned in public law proceedings then this may lead to less income arising from this activity, and less time spent on it among experts. We do not have data that would enable us to assess the protected characteristics of expert witnesses, but were a differential impact on certain groups to be identified, we consider that this would be justifiable in the context of achieving the legitimate aims we have set out above, and in particular the expected beneficial impact on children's welfare. In addition, we consider that reducing the volume of reports which do not contribute to resolving the case is justifiable in the context of the pressure on public funds, in particular limited legal aid resources. Fewer reports overall could also help to ease supply problems and so reduce delays in those cases where expert reports are considered necessary.

The actions outlined below will mitigate some of the potential impacts that have been identified from the government's proposed approach.

We propose that in all family proceedings the court's permission will continue to be required to use expert evidence. However, the expert evidence has to be necessary

to resolve the proceedings, and used where information cannot be properly obtained from one of the parties.  Information that is integral to good quality decision making will therefore remain available to the court. This should ensure that the interests of the child and the parents will be considered when the court is determining whether or not to permit expert evidence.

To a significant degree the proposed legislative measures will build on existing requirements set out in the Family Procedure Rules 2010 and Practice Direction 25A – Experts and Assessors in Family Proceedings. These rules require the court's permission before expert evidence can be used. The expert evidence has to be that which is reasonably required to resolve the proceedings.

The government plans further work to strengthen research and the evidence base in relation to experts. This will provide a better basis on which to assess the value of particular types of assessments carried out by experts and the quality of expert reports.

The development of standards will involve joint working and consensus building with experts and their representative bodies. We expect this will provide for a dialogue with the sector over a period of some months. This process will help to ensure that any relevant equalities issues affected those who supply expert witness services are identified and addressed.

## Monitoring

We will continue to monitor data relating to the protected characteristics of children and families involved in public and private law children cases, improving data where this is practical and reasonable to do so. We will also give consideration to how to best address equalities impacts in any research undertaken in relation to these types of case. This will help ensure that the policy is delivered fairly and that any unintended negative equalities impacts are mitigated.

# Annex A – Evidence

**Table 1:** Percentage of child parties in public and private law cases in the County Court, by age, 2010

England and Wales

| Age | Public Law | Private Law | General Population (England and Wales, Under 18) |
|---|---|---|---|
| 0 | 17% | 6% | 6% |
| 1 | 8% | 8% | 6% |
| 2 | 7% | 9% | 6% |
| 3 | 6% | 9% | 6% |
| 4 | 6% | 9% | 6% |
| 5 | 6% | 8% | 5% |
| 6 | 6% | 8% | 5% |
| 7 | 5% | 7% | 5% |
| 8 | 5% | 7% | 5% |
| 9 | 5% | 6% | 5% |
| 10 | 5% | 6% | 5% |
| 11 | 4% | 5% | 5% |
| 12 | 4% | 4% | 5% |
| 13 | 4% | 3% | 6% |
| 14 | 4% | 2% | 6% |
| 15 | 3% | 2% | 6% |
| 16 | 2% | 1% | 6% |
| 17 | 1% | 0% | 6% |
| No information/Errors | 2% | 1% | n/a |

Familyman database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 2:** Subjects in Public Law cases, by age 2010/11, and population comparison

England

**Age (subject only)**

| Age | Subject | General Population (England, 0-18 only) |
|---|---|---|
| No DOB | <1% | n/a |
| 0 | 23% | 6% |
| 1 | 8% | 6% |
| 2 | 8% | 6% |
| 3 | 7% | 5% |
| 4 | 6% | 5% |
| 5 | 6% | 5% |
| 6 | 5% | 5% |
| 7 | 5% | 5% |
| 8 | 5% | 5% |
| 9 | 5% | 5% |
| 10 | 4% | 5% |
| 11 | 4% | 5% |
| 12 | 4% | 5% |
| 13 | 4% | 5% |
| 14 | 3% | 5% |
| 15 | 3% | 5% |
| 16 | 1% | 5% |
| 17 | <1% | 6% |
| 18 | <1% | 6% |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 3**: Individuals (except subjects) taking part in public law cases, by age group 2010/11, and population comparison

England

| Age Group | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, aged 18 and older) |
|---|---|---|---|---|---|---|
| Under 18 | 2% | 0% | 7% | 2% | 21% | n/a |
| 18 - 29 | 39% | 18% | 22% | 37% | 16% | 21% |
| 30 - 39 | 27% | 34% | 17% | 31% | 13% | 17% |
| 40 - 49 | 13% | 24% | 16% | 14% | 15% | 19% |
| 50 - 59 | 4% | 5% | 12% | 2% | 12% | 15% |
| 60 - 65 | 1% | 3% | 3% | 1% | 7% | 9% |
| 66+ | 0% | 1% | 0% | 0% | 15% | 20% |
| No DOB | 14% | 15% | 23% | 12% | n/a | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 4**: Legal Services Commission's Public Law clients, by age group 2010/11

England and Wales

| Client Age | (%) | Mid year population estimate 2010 (England and Wales) |
|---|---|---|
| <10 | 1% | 12% |
| >10 <20 | 9% | 12% |
| >20 <30 | 36% | 14% |
| >30 <40 | 30% | 13% |
| >40 <50 | 17% | 15% |
| >50 <60 | 5% | 12% |
| >60 <70 | 1% | 11% |
| >70 <80 | 0% | 7% |
| >80 | 0% | 5% |

Legal Services Commission

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 5**: Individuals taking part in public law cases, by disability status 2010/11, and population comparison

England

| Disability Status | Adult | Applicant | Other | Respondent | Subject | General Population (Great Britain) | |
|---|---|---|---|---|---|---|---|
| | | | | | | Children (aged under 16) | Adults (aged 16+) |
| Disabled | 10% | 5% | 6% | 10% | 6% | 6% | 22% |
| Not disabled | 67% | 67% | 64% | 61% | 66% | 94% | 78% |
| Not specified | 23% | 27% | 30% | 29% | 28% | n/a | n/a |

| Disability Status (excluding not specified) | Adult | Applicant | Other | Respondent | Subject | General Population (Great Britain) | |
|---|---|---|---|---|---|---|---|
| | | | | | | Children (aged under 16) | Adults (aged 16+) |
| Disabled | 14% | 7% | 8% | 14% | 8% | 6% | 22% |
| Not disabled | 86% | 93% | 92% | 86% | 92% | 94% | 78% |

**Table 6**: Legal Services Commission's Public Law clients, by disability status 2010/11

England and Wales

| Disability | (%) | General Population (Great Britain) |
|---|---|---|
| Declared Disabled | 11% | 19% |
| Declared not disabled | 67% | 81% |
| Not stated/unknown | 22% | n/a |

| Disability (excl not stated) | (%) | General Population (Great Britain) |
|---|---|---|
| Declared Disabled | 14% | 19% |
| Declared not disabled | 86% | 81% |

Legal Services Commission

General population estimates were taken from the Office for Disability Issues factsheet.

**Table 7**: Subjects in public law cases, by ethnic group 2010/11, and population comparison

England

| Ethnic Group | Subject | General Population (England, Under 18s) |
|---|---|---|
| White | 78% | 84% |
| Black | 5% | 3% |
| Asian | 3% | 7% |
| Mixed | 8% | 4% |
| Chinese/Other | 2% | 1% |
| Not Stated | 4% | n/a |

| Ethnic Group (excl. not stated) | Subject | General Population (England, Under 18s) |
|---|---|---|
| White | 82% | 84% |
| Black | 5% | 3% |
| Asian | 3% | 7% |
| Mixed | 9% | 4% |
| Chinese/Other | 2% | 1% |

CAFCASS database

General population estimates are from the 2009 Population Estimates by Ethnic Group, Office for National Statistics. As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 8**: Individuals (except subjects) taking part in public law cases, by ethnic group 2010/11, and population comparison

England

| Ethnic Group | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, age 18 and older) |
|---|---|---|---|---|---|---|
| White | 81% | 85% | 86% | 85% | 87% | 88% |
| Black | 6% | 1% | 0% | 3% | 3% | 3% |
| Asian | 3% | 4% | 2% | 2% | 6% | 6% |
| Mixed | 3% | 2% | 1% | 2% | 2% | 1% |
| Chinese/Other | 2% | 1% | 3% | 2% | 2% | 2% |
| Not Stated | 5% | 7% | 7% | 6% | n/a | n/a |

| Ethnic Group (excl. not stated) | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, age 18 and older) |
|---|---|---|---|---|---|---|
| White | 86% | 91% | 92% | 91% | 87% | 88% |
| Black | 6% | 1% | 1% | 3% | 3% | 3% |
| Asian | 3% | 4% | 3% | 2% | 6% | 6% |
| Mixed | 3% | 3% | 1% | 2% | 2% | 1% |
| Chinese/Other | 2% | 2% | 4% | 3% | 2% | 2% |

CAFCASS database

General population estimates are from the 2009 Population Estimates by Ethnic Group, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 9**: Legal Services Commission's Public Law clients, by ethnic group 2010/11

England and Wales

| Ethnicity | (%) | Population estimates by ethnic group 2009 (England and Wales) |
|---|---|---|
| White | 76% | 88% |
| Black | 4% | 3% |
| Asian | 3% | 6% |
| Mixed | 1% | 2% |
| Other | 3% | 2% |
| Not stated | 14% | n/a |

| Ethnicity (excl not stated) | (%) | Population estimates by ethnic group 2009 (England and Wales) |
|---|---|---|
| White | 88% | 88% |
| Black | 4% | 3% |
| Asian | 3% | 6% |
| Mixed | 2% | 2% |
| Other | 3% | 2% |

Legal Services Commission

General population estimates are from the 2009 Population Estimates by Ethnic Group, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 10**: Individuals taking part in public law cases, by religious group 2010/11, and population comparison

England

| Religion | Adult | Applicant | Other | Respondent | Subject | General Population (England, all ages) |
|---|---|---|---|---|---|---|
| Buddhist | 0% | 0% | 0% | 0% | 0% | 0% |
| Christian | 39% | 46% | 38% | 37% | 39% | 69% |
| Hindu | 0% | 1% | 0% | 0% | 0% | 2% |
| Jewish | 0% | 0% | 0% | 0% | 0% | 1% |
| Muslim | 4% | 0% | 2% | 3% | 4% | 5% |
| None | 35% | 22% | 25% | 33% | 34% | 22% |
| Not Specified | 20% | 26% | 33% | 25% | 21% | n/a |
| Other | 1% | 4% | 1% | 1% | 1% | 1% |
| Sikh | 0% | 0% | 0% | 0% | 0% | 1% |

| Religion (excl. not specified) | Adult | Applicant | Other | Respondent | Subject | General Population (England, all ages) |
|---|---|---|---|---|---|---|
| Buddhist | 0% | 0% | 0% | 0% | 0% | 0% |
| Christian | 48% | 62% | 57% | 50% | 49% | 69% |
| Hindu | 0% | 1% | 1% | 0% | 0% | 2% |
| Jewish | 0% | 1% | 0% | 0% | 0% | 1% |
| Muslim | 5% | 1% | 4% | 4% | 5% | 5% |
| None | 44% | 30% | 38% | 44% | 43% | 22% |
| Other | 2% | 5% | 1% | 1% | 1% | 1% |
| Sikh | 0% | 1% | 0% | 0% | 0% | 1% |

CAFCASS database

General population estimates are from the 2010/11 Integrated Household Survey, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 11**: Percentage of child parties in public and private law cases in the County Court, by sex, 2010

England and Wales

| Gender | Public Law | Private Law | General Population (England and Wales, Under 18) |
|---|---|---|---|
| Female | 49% | 49% | 49% |
| Male | 51% | 51% | 51% |
| Not Specified | 0% | 0% | n/a |

Familyman database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 12**: Subjects in public law cases, by gender, 2010/11, and population comparison

England

| Gender | Subject | General Population (England, Under 18s) |
|---|---|---|
| Female | 49% | 49% |
| Male | 51% | 51% |
| Not Specified | 0% | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics

**Table 13**: Individuals (except subjects) taking part in public law cases, by gender, 2010/11, and population comparison

England

| Gender | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, aged 18 and older) |
|---|---|---|---|---|---|---|
| Female | 57% | 55% | 50% | 62% | 51% | 51% |
| Male | 43% | 45% | 49% | 37% | 49% | 49% |
| Not Specified | 0% | 0% | 0% | 1% | n/a | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 14**: Legal Services Commission's Public Law clients, by Gender, 2010/11

England and Wales

| Gender | (%) | Mid year population estimate 2010 (England and Wales) |
|---|---|---|
| Female | 68% | 51% |
| Male | 32% | 49% |
| Unknown | 0% | n/a |

Legal Services Commission

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 15**: Age of practising barristers, 2010 (England and Wales) excluding not stated and population comparison

England and Wales

| Age range | Number | % all practising barristers who declared their age | Mid year population estimate 2010 (England and Wales) |
|---|---|---|---|
| 20-29 | *1,156* | 10% | 14% |
| 30-39 | *4,241* | 37% | 13% |
| 40-49 | *4,161* | 36% | 15% |
| 50-59 | *1,455* | 13% | 12% |
| 60-69 | *362* | 3% | 11% |
| 70-79 | *36* | 0% | 7% |
| 80-89 | *6* | 0% | 5% |
| Total declared | *11,417* | 100% | n/a |

Source: Sauboorah, 2011
Source for population data: ONS

**Table 16:** Age of solicitors with practising certificates, 2009 and population comparison

England and Wales

| Age | % Solicitors with PCs | General Population (England and Wales 21 -79) |
|---|---|---|
| 30 and under | 18% | 20% |
| 31-40 | 35% | 19% |
| 41-50 | 25% | 21% |
| 51-60 | 16% | 17% |
| 61-70 | 5% | 15% |
| 71 and over | 1% | 9% |
| *Base N=100%* | *114,972* | *38,760,000* |

Source: Law Society
Source for population data: ONS

Note: Calculated from available data where age was unknown for <1% (n=503) of solicitors with PCs

**Table 17:** Poor health and disability status of practising barristers at the self-employed Bar, 2007 (England and Wales)

| Health problem or disability? | Frequency (numbers) | Per cent of s-e barristers | Valid per cent | Cumulative per cent |
|---|---|---|---|---|
| Missing[1] | *66* | 1.6% | 1.6% | 1.6% |
| Yes | *291* | 7.1% | 7.1% | 8.7% |
| No | *3,751* | 91.3% | 91.3% | 100% |
| Total | *4108* [2] | 100% | 100% | |

Source: Price and Laybourne, 2010

[1] This is where a barrister responded to the survey but did not answer a particular question

[2] Self-employed barristers were the subject of the 2010 report as they made up 80 per cent of those who responded . The full sample size was 5,260.

**Table 18**: Disability status of practising barristers, 2011 and population comparison

England and Wales

| Status | Per cent of practising barristers | General adult population (Great Britain) |
|---|---|---|
| Declared disabled* | 4% | 22% |
| Declared not disabled | 96% | 78% |
| *Base N = 100%* | *2,685* | n/a |

*Declared disability means that individual self reported a long term health problem of disability that affects day-to-day activities

Source: Pike and Robinson, 2012

Source for disabilty data: ODI - Disability prevalence estimates 2009/10

Note: Calculated from total survey responses where 8% (*n=245*) did not state their disability - no raw figures available to recalculate percentages including not stated from this source.

**Table 19**: Ethnic Group (excl. not stated) for practising Bar, 2011

| Ethnic Group (excl. not stated) | Per cent of practising barristers | General Population (England, age 18 and older) |
|---|---|---|
| White | 90% | 88% |
| Black | 2% | 3% |
| Asian | 4.5% | 6% |
| Mixed | 2.50% | 1% |
| Chinese/Other | 1% | 2% |
| *Base N = 100%* | *2652* | *n/a* |

Source: Pike and Robinson, 2012

Note: Percentages for the different BME groups (for practising Bar) are estimated as some orginal figures only given as less than 1

Note: Calculated from total survey responses that 9% (*n=278*) did not state their ethnicity - no raw figures available to recalculate percentages including not stated from this source.

**Table 20:** Self-defined ethnicity of private practice solicitors (excluding not stated), 2010 and population comparison

England and Wales

| | | Self-defined ethnicity | | | | |
|---|---|---|---|---|---|---|
| **Position in firm** | **Total** | **White** | **Asian** | **Black** | **Chinese or Mixed/Other** | **Not Stated** |
| Partners[1] | 31,460 | 83% | 5% | 1% | 1% | 10% |
| Sole Practitioners | 4,012 | 71% | 11% | 4% | 3% | 12% |
| Associate solicitors | 16,317 | 80% | 6% | 1% | 4% | 9% |
| Assistant solicitors | 27,092 | 79% | 8% | 2% | 3% | 8% |
| Other private practice | 7,867 | 81% | 5% | 1% | 2% | 10% |
| **All positions** | **86,748** | **80%** | **6%** | **2%** | **3%** | **10%** |
| Total England & Wales population (18+) 2009 | 43,167,417 | 89% | 6% | 3% | 3% | - |

Notes:
The Law Society uses its own ethnic classification. This has been aggregated as follows:
- White includes: White European; British-English; British; British-Scottish; British-Welsh; British-Other; Irish; Romany Gypsy; Traveller; White Other
- Black includes: Afro-Caribbean; Black Caribbean; African; Black-African; Black-Other.
- Asian includes: Asian-Bangladeshi; Asian-Indian; Asian-Pakistani; Asian.
- Chinese or Mixed/Other includes: Asian-Chinese; Chinese-Other; Chinese; Mixed-Other; White and Asian; White and Black African; White and Black Caribbean.

[1]Partners or partner equivalents
Source: Law Society
Source for population data: ONS

**Table 21:** Self-defined ethnicity of barristers (excluding not stated), 2010 and population comparison

England and Wales

| | | Self-defined ethnicity | | | | |
|---|---|---|---|---|---|---|
| **Position in firm** | **Total** | **White** | **Mixed** | **Asian** | **Black** | **Chinese or Other** |
| QC | 1,341 | 95% | 1% | 2% | 1% | 1% |
| Self-employed Bar | 11,110 | 89% | 1% | 5% | 3% | 2% |
| Employed Bar | 2,339 | 85% | 2% | 7% | 5% | 2% |
| Total | 14,790 | 89% | 1% | 5% | 3% | 2% |
| **Total England & Wales po** | **43,167,417** | **89%** | **6%** | **3%** | **3%** | **-** |

Source: Bar Council

Published in Statistics on Race and the Criminal Justice System 2010

**Table 22:** Religion: practising Bar, 2011 (excluding not stated) and population comparison

England and Wales

| Religion (excl. not specified) | Per cent of practising barristers | General Population (England and Wales, all ages) |
|---|---|---|
| Buddhist | less than 1% | 0.4% |
| Christian | 54% | 68.4% |
| Hindu | 1% | 1.4% |
| Jewish | 4% | 0.5% |
| Muslim | 2% | 4.7% |
| Sikh | 1% | 0.7% |
| Any other | 1% | 1.1% |
| No religion | 37% | 22.8% |
| *Base N = 100%* | *2627* | |

Source: Pike and Robinson, 2012
Source for population data: ONS

Note: Calculated from total survey responses where 10% (n=303) did not state their religion - no raw figures available to recalculate percentages including not stated from this source.

**Table 23**: Gender: practising Bar, 2010 (excluding not stated) and population comparison

| Gender | Numbers | Per cent of practising barristers | Mid year population estimate 2010 (England and Wales, 18+) |
|---|---|---|---|
| Female | *5,354* | 35% | 51% |
| Male | *10,033* | 65% | 49% |
| Unknown | *0* | 0% | n/a |

Source: Sauboorah, 2011
year population estimates, Office for National Statistics.

**Table 24:** Sex: Solicitors holding a practising certificate, 2009 and population comparison

| Position in firm | Gender | |
|---|---|---|
| | **Women** | **Men** |
| Partners[1] | 25% | 75% |
| Sole practitioners | 28% | 72% |
| Associate solicitors | 54% | 46% |
| Assistant solicitors | 62% | 38% |
| Consultants | 24% | 76% |
| Other private practice | 53% | 47% |
| **All positions** | **43%** | **57%** |
| Mid year population estimate 2010 (England and Wales, 18+) | 51% | 49% |

[1]Partners or partner equivalents

Source: Law Society, Trends in the solicitors' profession, Annual statistical report 2009, Table 2.9 Position of solicitors working in private practice and holding a practising certificate as at 31 July 2009

Source for population data: ONS

**Table 25:** Sexual orientation[1,2]: practising Bar, 2011 (excluding not stated) and population comparison

England and Wales

| Sexual orientation excl. not speicifed | Per cent of practising barristers | General Population[1,2] (England and Wales) |
|---|---|---|
| Heterosexual / Straight | 90% | 93.9% |
| Gay / Lesbian | 5% | 1.0% |
| Bisexual | 2% | 0.5% |
| Other | less than 1% | 0.4% |
| Don't know / Refusal | 4% | 3.6% |
| No response[3] | n/a | 0.6% |
| *Base N = 100%* | *2,612* | |

Source: Pike and Robinson, 2012

Source for population data: ONS

[1] The total number of eligible responders to the question was 226,958 of which 216,593 provided a valid response. The question was asked to respondents aged 16 and over when they first entered all component IHS surveys, and was not asked by proxy.

[2] The 'no response' category (for the general populaiton figures) includes respondents who were aged 15 in wave 1 of the LFS/APS but are now aged 16 in the April 2010 to March 2011 field period.

[3] Calculated from the total survey responses that 11% (n=318) did not respond to this question - no raw figures available to recalculate precentages including not stated from this source

**Table 26**: Individuals (except subjects) taking part in Private Law cases, by age group 2010/11, and population comparison

England

| Age Group | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, aged 18 and older) |
|---|---|---|---|---|---|---|
| Under 18 | 1% | 0% | 6% | 0% | 21% | n/a |
| 18 - 29 | 30% | 24% | 24% | 31% | 16% | 21% |
| 30 - 39 | 33% | 40% | 28% | 40% | 13% | 17% |
| 40 - 49 | 17% | 27% | 21% | 22% | 15% | 19% |
| 50 - 59 | 10% | 6% | 10% | 3% | 12% | 15% |
| 60 - 65 | 1% | 1% | 1% | 0% | 7% | 9% |
| 66+ | 2% | 1% | 2% | 0% | 15% | 20% |
| No DOB | 6% | 1% | 7% | 3% | n/a | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 27**: Subjects in Private Law cases, by age 2010/11, and population comparison

England

| Age (subject only) | | |
|---|---|---|
| Age | Subject | General Population (England, 0-18 only) |
| No DOB | <1% | n/a |
| 0 | 4% | 6% |
| 1 | 6% | 6% |
| 2 | 8% | 6% |
| 3 | 8% | 5% |
| 4 | 9% | 5% |
| 5 | 8% | 5% |
| 6 | 8% | 5% |
| 7 | 8% | 5% |
| 8 | 8% | 5% |
| 9 | 7% | 5% |
| 10 | 7% | 5% |
| 11 | 6% | 5% |
| 12 | 5% | 5% |
| 13 | 4% | 5% |
| 14 | 2% | 5% |
| 15 | 1% | 5% |
| 16 | <1% | 5% |
| 17 | <1% | 6% |
| 18 | <1% | 6% |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 28**: Individuals taking part in Private Law cases, by disability status 2010/11, and population comparison

England

| Disability Status | Adult | Applicant | Other | Respondent | Subject | General Population (Great Britain) | |
|---|---|---|---|---|---|---|---|
| | | | | | | Children (aged under 16) | Adults (aged 16+) |
| Disabled | 4% | 6% | 5% | 4% | 4% | 6% | 22% |
| Not disabled | 64% | 73% | 55% | 74% | 66% | 94% | 78% |
| Not specified | 32% | 21% | 40% | 22% | 30% | n/a | n/a |

| Disability Status (excl. not specified) | Adult | Applicant | Other | Respondent | Subject | General Population (Great Britain) | |
|---|---|---|---|---|---|---|---|
| | | | | | | Children (aged under 16) | Adults (aged 16+) |
| Disabled | 6% | 8% | 8% | 6% | 6% | 6% | 22% |
| Not disabled | 94% | 92% | 92% | 94% | 94% | 94% | 78% |

CAFCASS database

General population estimates were taken from the Office for Disability Issues factsheet.

**Table 29**: Individuals (except subjects) taking part in Private Law cases, by ethnic group 2010/11, and population comparison

England

| Ethnic Group | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, age 18 and older) |
|---|---|---|---|---|---|---|
| White | 85% | 80% | 77% | 80% | 87% | 88% |
| Black | 2% | 5% | 1% | 4% | 3% | 3% |
| Asian | 2% | 7% | 4% | 7% | 6% | 6% |
| Mixed | 0% | 2% | 1% | 2% | 2% | 1% |
| Chinese/Other | 0% | 2% | 1% | 2% | 2% | 2% |
| Not Stated | 11% | 4% | 16% | 5% | n/a | n/a |

| Ethnic Group (excl. not stated) | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, age 18 and older) |
|---|---|---|---|---|---|---|
| White | 95% | 84% | 92% | 84% | 87% | 88% |
| Black | 2% | 5% | 1% | 4% | 3% | 3% |
| Asian | 2% | 7% | 5% | 7% | 6% | 6% |
| Mixed | 0% | 2% | 1% | 2% | 2% | 1% |
| Chinese/Other | 0% | 2% | 1% | 2% | 2% | 2% |

CAFCASS database

General population estimates are from the 2009 Population Estimates by Ethnic Group, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 30**: Subjects in Private Law cases, by ethnic group 2010/11, and population comparison

England

| Ethnic Group | Subject | General Population (England, Under 18s) |
|---|---|---|
| White | 76% | 84% |
| Black | 3% | 3% |
| Asian | 7% | 7% |
| Mixed | 6% | 4% |
| Chinese/Other | 2% | 1% |
| Not Stated | 6% | n/a |

| Ethnic Group (excl. not stated) | Subject | General Population (England, Under 18s) |
|---|---|---|
| White | 81% | 84% |
| Black | 4% | 3% |
| Asian | 7% | 7% |
| Mixed | 7% | 4% |
| Chinese/Other | 2% | 1% |

CAFCASS database

General population estimates are from the 2009 Population Estimates by Ethnic Group, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 31**: Individuals taking part in Private Law cases, by religious group 2010/11, and population comparison

England

| Religion | Adult | Applicant | Other | Respondent | Subject | General Population (England, all ages) |
|---|---|---|---|---|---|---|
| Buddhist | 0% | 0% | 0% | 0% | 0% | 0% |
| Christian | 37% | 42% | 36% | 44% | 40% | 69% |
| Hindu | 0% | 1% | 0% | 1% | 1% | 2% |
| Jewish | 0% | 0% | 0% | 0% | 0% | 1% |
| Muslim | 1% | 6% | 3% | 6% | 7% | 5% |
| None | 30% | 30% | 23% | 28% | 26% | 22% |
| Not Specified | 29% | 18% | 37% | 18% | 24% | n/a |
| Other | 2% | 2% | 1% | 2% | 2% | 1% |
| Sikh | 0% | 1% | 0% | 1% | 1% | 1% |

| Religion (excl. not specified) | Adult | Applicant | Other | Respondent | Subject | General Population (England, all ages) |
|---|---|---|---|---|---|---|
| Buddhist | 1% | 0% | 0% | 0% | 0% | 0% |
| Christian | 52% | 51% | 58% | 53% | 53% | 69% |
| Hindu | 0% | 1% | 0% | 1% | 1% | 2% |
| Jewish | 0% | 0% | 0% | 0% | 0% | 1% |
| Muslim | 2% | 8% | 5% | 8% | 9% | 5% |
| None | 43% | 37% | 36% | 34% | 34% | 22% |
| Other | 2% | 2% | 1% | 2% | 2% | 1% |
| Sikh | 1% | 1% | 0% | 1% | 1% | 1% |

CAFCASS database

General population estimates are from the 2010/11 Integrated Household Survey, Office for National Statistics.
As experimental estimates, work on the quality of these statistics is ongoing; these figures are indicative only

**Table 32**: Individuals (except subjects) taking part in Private Law cases, by gender, 2010/11, and population comparison

England

| Gender | Adult | Applicant | Other | Respondent | General Population (England, All ages) | General Population (England, aged 18 and older) |
|---|---|---|---|---|---|---|
| Female | 45% | 30% | 45% | 72% | 51% | 51% |
| Male | 55% | 69% | 52% | 27% | 49% | 49% |
| Not Specified | 1% | 1% | 2% | 1% | n/a | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 33**: Subjects in Private Law cases, by gender, 2010/11, and population comparison

England

| Gender | Subject | General Population (England, Under 18s) |
|---|---|---|
| Female | 49% | 49% |
| Male | 51% | 51% |
| Not Specified | 0% | n/a |

CAFCASS database

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

**Table 34**: Divorce Petitioners and Respondents, by age group 2010

England and Wales

| Age | Petitioner | Respondent | General Population (England and Wales, All ages) | General Population (England and Wales, aged 18 and older) |
|---|---|---|---|---|
| Under 18 | 0% | 0% | 21% | n/a |
| 18-29 | 12% | 11% | 16% | 21% |
| 30-39 | 33% | 31% | 13% | 17% |
| 40-49 | 35% | 36% | 15% | 19% |
| 50-59 | 15% | 16% | 12% | 15% |
| 60-65 | 4% | 4% | 7% | 9% |
| 66+ | 2% | 2% | 16% | 20% |
| Unknown/Errors | 9% | 10% | n/a | n/a |

Familyman database
Errors refers to cases where age at marriage was given as less than 16 or over 100. Unknown refers to cases where the age couldn't be calculated because there was no date of marriage or no age at marriage.
Age was estimated by taking the difference, in days, between the date of marriage and the receipt date of the petition, dividing it by 365 to get years, and then adding it on to the age at marriage.
These figures include dissolutions of marriages and civil partnerships, annulments of marriages and civil partnerships and judicial separations.

General Population Estimates are from the 2010 mid-year population estimates, Office for National Statistics.

# Annex B – research evidence

In addition to the statistical data sources we reviewed key published research reports, based on an initial search of of EBSCOhost, Proquest and Westlaw databases, and suggestions from leading academics. This was not a full systematic and comprehensive review and we welcome suggestions of further literature which is pertinent to this EIA. A full list of the reviewed research reports is given below.

- **'Family Justice Children's Proceedings – Review of Public and Private Law Case Files in England and Wales'. Ministry of Justice, Cassidy, D., and Davey, S. (2011)**;
    - this study involved analysis of case files for a sample of 376 public and 402 private family cases closed in 2009 to gather basic profile data on public and private law cases involving children and better understand how they progress through the system;
- **'Children's Needs - Parenting Capacity - Child Abuse: Parental Mental Illness, Learning Disability, Substance Misuse and Domestic Violence' 2nd Edition J Cleaver H; Unell I and Aldgate**;
    - This review of research includes details on the following studies that were reviewed for evidence of impact on parents with disabilities:
        - 'Stereotypes, parents with intellectual disability and child protection' a review of research on the experiences of parents with learning disabilities and their experience of the care system McConnell and Llewellyn (2002)
        - Emerson et al (2005)'Adults with learning disabilities in England 2003/4' discusses the findings of a survey of 2,893 people with learning disabilities in England;
        - Cleaver and Nicholson (2007)'Parental learning disability and children's needs: family experiences and effective practice' describes the in-depth follow-up study of 64 cases referred to children's social care services where one or both parents had a learning disability;
        - Falkov (1998) Crossing bridges: training resources for working with mentally ill parents and their children. This is part of a training pack designed to be a resource for managers and practitioners in all agencies who are working to improve services for families where mentally ill adults are living with dependent children;
        - Melzer (2003) Inequalities in mental health: a systematic review.
        - Hunt et al (1999) The last resort: child protection, the courts and the 1989 Children Act.

    - Brophy et al (2003) Assessing and documenting child ill-treatment in minority ethnic households

- **'Temporal discrimination and parents with learning difficulties in the child protection system'. British Journal of Social Work, 36(6), 997-1015 Booth, T., McConnell, D., & Booth, W. (2006);**

    - This article draws on the findings of a 2-year investigation of family courts founded by the Nuffield Foundation. Drawing on interviews with social work practitioners, the authors describe the different forms of temporal discrimination affecting parents with learning difficulties in the child protection system;

- **'Findings from a court study of care proceedings involving parents with intellectual disabilities'. Journal of Policy and Practice in Intellectual Disabilities, 1(3/4), 179-181 Booth, T; Booth, W (2004);**

    - This report summarises the findings of a 2-year investigation of family courts founded by the Nuffield Foundation. Court records relating to all 437 public law applications by local authorities under the Children Act 1989 coming before court in Leeds and Sheffield in 2000 were targeted for review;

- **'Parents with learning difficulties, care proceedings and the family courts: threshold decisions and the moral matrix'. Child and Family Law Quarterly, 16(4) 409-421.**

    - This study draws on the findings of a 2-year investigation of family courts founded by the Nuffield Foundation. It explores the views of legal practitioners about the working of the Children Act 1989 proceedings involving parents with learning difficulties and investigates what factors are weighed in the balance when decisions are made about the best interest of the child. Booth, T; Booth, W; McConnell, D (2004);

- **'Case management and outcomes for neglected children returned to their parents'. Farmer and Lutman (2010).**

    - The research in seven local authorities focused on 138 neglected children who were returned to their parents during a one-year period. All the children had been followed up for two years and this study followed them up for another three years by means of reviews of the case files and interviews with social workers, team managers and leaving care workers;

- **'Disproportionality in child welfare: prevalence of black and ethnic minority children within 'looked after' and 'children in need' populations and on child protection registers in England'. Owen, Charlie, and Statham, June (2009). London: Department for Children, Schools and Families (DCSF);**

    - This study aimed to provide further insight into differences between ethnic groups in their contact with child welfare services in England. An overview of qualitative data focusing on research undertaken in the UK, a review of findings from key US studies and secondary analysis

of three separate datasets of child welfare statistics covering children in contact with child welfare services (the Children in Need Census), children subject of a child protection plan (on child protection registers) and children looked after (the SSDA903 annual statistical return) contributed to the study;

- **'Building on the learning from serious case reviews: a two-year analysis of child protection database notifications 2007-2009'. Brandon, M., Bailey, S. and Belderson, P. (2010) London: Department for Education (DfE);**

  - A two year overview analysis of serious case reviews (SCRs) throughout England to draw out themes and trends so that lessons learnt from these cases can inform both policy and practice. This is the 5th such biennial analysis of serious case reviews, and relates to incidents which occurred during the period April 2007 - March 2009;

- **'The Work of the Family Bar: report of the Week-at-a-glance survey 2008'. Price, D and Laybourne, A. (2009). London: King's College.**

  - A multiple method study - qualitative work which formed the basis for the development of a quantitative study based on involving surveys and diary keeping was commissioned by the Family Law Bar Association to provide an evidence base for policy formulation concerning the structure of legal aid payments for advocates in family legal aid cases;

- **'Bearing good witness – proposals for reforming the delivery of medical expert evidence in family law cases, a report by the Chief Medical Officer', Department of Health, 2006;**

  - drawing on meetings with legal and health professionals, reviews of documents on medical expert witnesses, correspondence from individuals and interested parties, a survey of clinicians, this study considers the role of expert medical witnesses in relation to family law cases;

- **'Residence and contact disputes in court, volume 1'. Smart, C, May, V, Wade, A, Furniss, C. (2003).**

  - the study examined court files for 430 applications for contact and residence in 2000 in three County Courts in England.

  - Care profiling study. Masson, J (2008). Ministry of Justice

    The study examined court files for 386 cases involving 682 children. It covers the family circumstances of those in care proceedings, the work of the local authorities, the legal process and the outcome of cases.

  - Safeguarding children across services: messages from research. www.education.gov.uk/publications/RSG/AllRsgPublications/Page4/DFE-RBX-10-09

    The paper provides an overview of the key messages from fifteen

studies in a research programme jointly funded by the Department for Education and the Department of Health, to strengthen the evidence base for the development of policies and practice to improve the protection of children in England.

- A meta analysis of attachment in adopted children. Van den Dries, L, Juffer, F, Van IJzendoorn, MH and Bakermans-Kranenburg, M.J. (2009). Children and youth services review 31, 410-421

  The research addresses the question of whether adopted children are more or less securely attached than children either raised by their biological parents or children in foster care. The observational assessments showed that children adopted before 12 months of age were as securely attached as their non-adopted peers. Those adopted after their first birthday showed less attachment security than non-adopted children. Foster children showed comparable levels of attachment security to adopted children.