

## Standing Committee B

The Committee consisted of the following Members:

Chairmen:

†Mr. Jimmy Hood, Mr. Mike Hancoc

Brooke, Annette (Mid-Dorset and North Poole) (LD)  
†Cawsey, Mr. Ian (Brigg and Goole) (Lab)  
†Coffey, Ann (Stockport) (Lab)  
†Eagle, Maria (Parliamentary Under-Secretary of State for Education and Skills)  
Evennett, Mr. David (Bexleyheath and Crayford) (Con)  
†Grogan, Mr. John (Selby) (Lab)  
Hughes, Beverley (Minister for Children and Families)  
†Jackson, Mr. Stewart (Peterborough) (Con)  
†Johnson, Ms Diana R. (Kingston upon Hull, North) (Lab)  
†Keeble, Ms Sally (Northampton, North) (Lab)  
†Kidney, Mr. David (Stafford) (Lab)  
†Loughton, Tim (East Worthing and Shoreham) (Con)  
†Miller, Mrs. Maria (Basingstoke) (Con)  
†Moran, Margaret (Luton, South) (Lab)  
†Russell, Christine (City of Chester) (Lab)  
†Williams, Mark (Ceredigion) (LD)  
†Wright, Jeremy (Rugby and Kenilworth) (Con)  
Emily Commander, Committee Clerk

† attended the Committee

Column Number: 149

**Tuesday 21 March 2006**  
**(Morning)**

**[Mr. Jimmy Hood in the Chair]**

**Children and Adoption Bill [Lords]**

**Clause 6**

*Provision as to family assistance orders*

**10.30 am**

Question proposed, That the clause stand part of the Bill.

**Jeremy Wright** (Rugby and Kenilworth) (Con): I want to make several brief comments about clause 6, which deals with family assistance orders, and to raise again a concern that I raised on a preceding clause about the extra burden that it may put on the Children and Family Court Advisory and Support Service officers and their Welsh equivalents.

It is fair to point out that paragraph 72 of the explanatory notes states:

“We anticipate that there may be some resource implications associated with the reformed orders”—

meaning, family assistance orders—

“though this may be offset by a reduction in work associated with ongoing court proceedings where family assistance orders are used to facilitate and support contact arrangements.”

In other words, it appears that the Government anticipate that, where they go well, the extra family assistance orders will often pay for themselves, by enabling expensive court proceedings to be avoided. None the less, it seems to Conservative Members that some account ought to be taken of the fact that they may not always pay for themselves—indeed, in many cases they will not. It is clear from clause 6 that the intention in the Bill is that family assistance orders, rather than being an exception, should become the norm. One can see perfectly sensible reasons why that should be so, and no doubt there will be many situations in which the intervention of a family assistance order will be extremely productive. However, it is of concern that if they are to be used much more often and much more regularly, there will be substantial cost implications, given the extra work that CAFCASS and its Welsh equivalent will have to do.

It is also clear from the clause that the duration of the order will no longer be a minimum of six months but will become a minimum of 12. Again, that work load will be extended over a longer period, which is also a matter of concern.

I should be grateful for some reassurance from the Minister that consideration has been given not just to costs to CAFCASS, which may be offset by savings in court proceedings, but to what may happen if those costs are not offset and where the money is to be found

**Column Number: 150**

given the comments that have been made about the burdens on CAFCASS officers arising from other provisions in the Bill and their existing responsibilities.

The other concern that I want to raise, and on which I invite the Minister to comment relates to the original provision dealing with family assistance orders—section 16 of the Children Act 1989, subsection (3) of which clearly indicates that family assistance orders cannot be made unless the court

“has obtained the consent of every person to be named in the order other than the child.”

I should be grateful if the Minister could confirm whether, with extensions to family

*assistance orders, that provision will remain. I should be grateful for reassurance.*

**The Parliamentary Under-Secretary of State for Education and Skills (Maria Eagle):** *May I begin by saying what a pleasure it is to be back. I have had the opportunity to read in Hansard the proceedings that I missed. I was touched to see that good wishes were sent in my direction by the Chair and members of the Committee and I thank them for that. I feel a lot better.*

*As the hon. Gentleman rightly said, clause 6 amends section 16 of the Children Act 1989, which makes provision for family assistance orders requiring a CAFCASS officer, Welsh family proceedings officer or a local authority officer*

*“to advise, assist and (where appropriate) befriend any person named in the order.”*

*We are grateful to the Joint Committee on the draft Bill for considering the issue in detail and we welcome its recommendation that family assistance orders be reformed through this Bill, which is something on which I know the judiciary were keen. We agreed with the Committee that we should extend the situations in which orders could be made by removing the requirement for there to be exceptional circumstances. That was becoming the case in common law in any case, so it seemed sensible to tidy things up.*

*We also agreed that we should extend the order’s maximum duration—it is a maximum duration, rather than a minimum duration as the hon. Gentleman seemed to suggest—to 12 months. That is to say not that it has to be 12 months but that it can be up to 12 months. It may be that the job can be done before the 12 months are up. So extending the maximum duration does not necessarily mean that all family assistance orders will run to the new maximum duration—some may, some may not.*

*The measures are designed to enable family assistance orders to be used with greater effectiveness. They were introduced in recognition of the fact that more time is sometimes needed to resolve the problems that led to the making of the order in the first place and that the fact that a family’s circumstances are not exceptional should not prevent them from being included where that would be helpful.*

*As our response to the Joint Committee made clear, we were unable to accept its recommendation to remove the requirement to obtain consent from all those named in the order before it was made. Although we appreciate that that suggestion was intended to make family assistance orders available in more cases,*

**Column Number: 151**

*we do not believe it would be constructive to make an order to advise, assist and, where appropriate, befriend somebody who was quite unwilling to be advised, assisted or befriended—consent is important. To deal with the hon. Gentleman’s final point, the requirement for the named parties’ consent remains, and the changes to section 16 of the 1989 Act will not affect that.*

*That section provides that the people named in the family assistance order, rather than all parties to the case, need to give consent. So where one parent withholds consent, that would not prevent the family assistance order from being made if the other party consented and if it would be useful in the view of the court for the order to be there. The changes that clause 2 made to the 1989 Act will permit the courts to require CAFCASS to monitor compliance with a contact order. That will not, of*

course, require the consent of the parties, but the family assistance order will.

The hon. Gentleman made some specific points about the burdens on CAFCASS. He suggested that the changes in clause 6 would make family assistance orders the norm, rather than the exception. They are the exception now, and there has been an average of 600 cases over the past three years—the figure has wavered at about that level. So family assistance orders are clearly not the norm now, and we do not believe that the changes in the Bill will make them the norm. Indeed, we do not expect them to be used an awful lot more than they currently are, although we will obviously have to keep an eye on the situation once the Bill is passed and we can see what the practical impact is. However, common law is already moving in the direction that I described, and the Bill seeks to tidy things up in relation to common law practice as it is developing.

**Jeremy Wright:** I understand the Minister's point, but she will accept that it is clear from the clause that removing the

“requirement that circumstances of case be exceptional”

gives the courts a clear steer that the Government want them to make family assistance orders in more cases. Is not the logical conclusion that more will be made and that the courts will find that they are a useful tool to ensure that contact takes place as it should?

**Maria Eagle:** In removing the requirement for exceptionality, which is already being undermined by common law practice, we expect the courts to exercise their judgment and to see whether a family assistance order might prove useful in the circumstances before them. Obviously, we have to keep an eye on what happens in practice, but following our discussions with interested parties—particularly the judiciary—we do not expect there to be a huge leap in the number of cases. However, we will have to see. If there is a huge leap, that will have implications for resources, and we shall have to deal with that at the time. At present, we do not expect there to be a sudden surge in cases. We are just tidying up practice and putting the statute in line with what is developing in the common law.

**Column Number: 152**

The clause allows the courts to use family assistance orders more generally and flexibly to help families overcome difficulties and to improve and maintain contact. Given my answers, I hope that the Committee will feel able to allow the clause to stand part of the Bill.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

## **Clause 7**

### *Risk assessments*

**Mrs. Maria Miller (Basingstoke) (Con):** I beg to move amendment No. 45, in clause 7, page 12, line 14, leave out ‘cause’ and insert ‘reasonable grounds’.

**The Chairman:** *With this it will be convenient to discuss the following amendments:*

No. 36, in clause 7, page 12, line 15, after 'harm', insert

*'at any time during proceedings.'*

No. 53, in clause 7, page 12, line 20, at end add—

*'(4) All risk assessments undertaken pursuant to subsection (2) shall proceed on the presumption that the child's interests are best served through reasonable contact with both his parents unless a good reason to the contrary is shown.*

*(5) When deciding whether there is reason to suspect that a child is at risk of harm, an Officer of the Service or a Welsh proceedings officer may only make a risk assessment where he has reasonable grounds to suspect that there is a significant risk of significant harm.*

*(6) An officer of the service or a Welsh proceedings office may only make a risk assessment where he has reasonable grounds to suspect that the significant risk involves a risk—*

*(a) to the child's physical safety, or*

*(b) of sexual abuse.*

*(7) In all other circumstances than those outlined in subsections (5) and (6), the Officer of the Service or a Welsh proceedings officer shall not undertake a risk assessment except where directed to do so by a court.*

*(8) In any risk assessment based upon the likelihood of recurrence of previous events or previous risks it shall be a requirement that no reliance is placed upon previous events or previous risks in the absence of a finding of fact that those events or risks actually occurred.'*

**Mrs. Miller:** *I apologise in advance for my state of disrepair this morning; the bugs are migrating from one side of the Committee to the other—although in my case I fear that a four-year-old child may have more to do with it. Perhaps we should all be very British and blame it on the weather.*

*The amendments deal with the inclusion of risk assessment in the Bill, an addition made, I believe, in the Lords. When the amendment was discussed in the other place, it was stressed—and I agree—that it was a useful and important addition to the Bill to ensure that domestic violence and child abuse could be properly assessed as soon as they were raised as issues during the relevant processes.*

*In many ways, the inclusion of the clause provides a balance to the enforcement elements of the Bill. We want to ensure that the Bill is enacted in the best interests of the child. We have already debated the role of risk assessments. When we debated amendment*

**Column Number: 153**

*No. 34, the Minister for Children and Families agreed with some of our arguments that risk assessments would not always be helpful; we had asserted that risk*

assessments would not always be in the best interests of the child.

Amendment No. 34 was tabled so that risk assessments would be put in place whenever an enforcement order was required. In response to that amendment, the Minister said:

“it would be too onerous on the court and would constitute considerable delay to require a risk assessment every time the court seeks to make an enforcement order, as many contact orders will be breached for reasons that have nothing to do with the safety implications of the order.”—[Official Report, Standing Committee B, 16 March 2006; c. 95.]

Risk assessments are not always a useful tool but where they are an important tool to have at our disposal for those instances when we believe that the child is at risk.

We have to put risk assessments in place carefully because they have direct implications for the welfare of the child; delaying contact with a non-resident parent has obvious emotional consequences, so we should have to the fore of our minds the idea that risk assessments should be used only when it is in the best interests of the child. We support the amendments under discussion precisely because they have the welfare of the child at their heart.

Amendment No. 36 is simple and straightforward.

**Ann Coffey** (Stockport) (Lab): Before the hon. Lady moves on to the next amendment, will she tell me what she thinks the difference is between the phrases “reasonable grounds to suspect” and “given cause to suspect”?

**Mrs. Miller:** I was going to cover that point after discussing amendment No. 36, which I think is more straightforward. Amendment No. 45 requires quite a bit of thought.

Amendment No. 36 is a useful addition; it clarifies that a child can be at risk at any point in time. As we have discussed before, it is important that the child’s welfare is of paramount concern at all times during the proceedings. Although we would never feel it appropriate to use compulsory risk assessments, which was suggested in amendment No. 34, we believe that amendment No. 36 offers a degree of clarity. Perhaps the Minister could offer her thoughts on that as well.

On amendment No. 45, as I said, the role of risk assessments is important and always—[Interruption.]

**The Chairman:** Order. I wonder whether the hon. Member for Stockport (Ann Coffey) would assist me in chairing the Committee by allowing me to listen to the hon. Lady moving her amendment.

**10.45 am**

**Mrs. Miller:** Thank you, Mr. Hood.

As drafted, proposed new section 16A(2) of the 1989 Act reads:

“If, in carrying out any function to which this section applies, an officer of the Service or a Welsh family proceedings officer is given cause to suspect that

*the child concerned is at risk of harm”.*

**Column Number: 154**

*“Cause” is a vague term. We have to consider how the Bills that we debate will be implemented by those who have the practical job of implementing the law that we pass. I am not sure how helpful it would be to a CAFCASS officer or a Welsh family proceedings officer in trying to look after the best interests of the child if he has to assess whether he is given cause to feel that the child’s safety is at risk. Perhaps when the Minister responds to this discussion—it is a useful discussion, because “cause” is a vague term—she will say what the threshold is for cause. We have had long debates about the word “reasonable”, so it would be useful if the Minister could give us her thoughts on the word “cause”.*

*To give the Minister an idea of where I am coming from, it might be useful to explain by way of example. For instance, if a mother decided not to wash her children’s toys in disinfectant every week, it could be argued that there was cause to believe that she was putting her children at risk, as we all know that cleanliness is important, particularly for young children. Although I would not for a moment say that that was an important element in the safety of a child, it is a cause to believe that the child’s safety is at risk. Will the Minister help us to understand better how the word “cause” can be prevented from leading to some perverse outcomes when CAFCASS officers have to use it as a threshold for deciding whether a risk assessment is required?*

*The amendment calls for the phrase “reasonable grounds” to be inserted—I debated whether “grounds” was an important addition, but “reasonable grounds” is a term in legalese, so the amendment was tabled in that form. The most important feature is the word “reasonable”. To return to my example, it is not at all reasonable to think that a mother would be putting her child at risk if she did not disinfect her child’s toys every week, but it would be a cause to believe that the child had been put at risk. We may be putting CAFCASS officers in a difficult situation. Perhaps the Minister will help us to understand the thinking behind the use of the word “cause” rather than “reasonable grounds”, which might be clearer for all concerned.*

**Mr. David Kidney (Stafford) (Lab):** *May I suggest that there are two processes in the clause? One is the trigger for a risk assessment and the second is the risk assessment itself. Would it not be more appropriate for the reasonable grounds to be part of the risk assessment and for the trigger to be something lower?*

**Mrs. Miller:** *I am not sure that I agree. I am talking about the trigger for a risk assessment. As I said, it is important that we should not put risk assessments in place when they are not required. In this instance, we might put ourselves in the shoes of the person who is charged with the safety of the child. If a vague term such as “cause” is given as the trigger or threshold in judging whether a risk assessment should be put in place, I suggest that risk assessment will be undertaken more regularly than necessary and, indeed, more regularly than would be in the best interest of the child.*

**Column Number: 155**

**Ann Coffey:** Does the hon. Lady accept that social workers who work every day of their lives with legislation designed to protect children, and who have the principle of their welfare at heart, make judgments every day about when or when not to intervene? She is perhaps being slightly over-cautious, because in the end the decision about when to take certain action must be left to the professional judgment of the workers who are involved. We cannot legislate for each action by a social worker, and when it should happen.

**Mrs. Miller:** I appreciate that the hon. Lady has far more practical experience than I do, and her point is right: we must leave it to people on the ground, in many instances, to use their expertise in this context. I thoroughly endorse what she says. I suppose the point I am raising, to which I hope the Minister will respond positively, is that we do not want to put those people into a difficult situation, in which they are not allowed to use their judgment because the threshold for the use of a risk assessment is set so low that they feel compelled to put one in place when it is not needed. Perhaps someone with fewer years of relevant experience than the hon. Lady would require more guidance and help.

**Ann Coffey:** I am sorry to go on about this, but there is a system in which officers' work is overseen by more experienced officers, and it is within a body of expertise that such decisions are made. I want to reassure the hon. Lady that CAF/CASS officers have the experience to enable them to take appropriate action.

**Mrs. Miller:** I thank the hon. Lady, but it is the role of the legislature and our role as a Committee, to ensure that the threshold for a risk assessment is set at an appropriate level. My point is that the word "cause" may not be helpful in assessing that level, although I appreciate that in reality those charged with the practical implementation of the law could, in one way, put it to one side. However, I should hope that the wording would be as helpful as possible and would not be a hindrance. I want to press the Minister on that point and obtain reassurance about it.

**Ms Sally Keeble (Northampton, North) (Lab):** Does the hon. Lady think that her example is a trigger for a possible cause for concern; if not, what does she think might be a trigger? I am concerned that the level she has identified is a very slight one. What does she think would be a realistic trigger for cause for concern?

**Mrs. Miller:** The provisions that we are considering are about triggers to risk assessments, and the example that I gave dealt with what would trigger an assessment. As "cause" is such a loose and general term, the example was intended to show that a situation that really posed no risk to a child could in theory trigger a risk assessment—although, as the hon. Member for Stockport said, the professional expertise of those on the ground would in practical reality come into play.

Nevertheless, I do not think that there is any room for legislation that is not tight and well thought through. The word "cause" may have been well

**Column Number: 156**

thought through, and I am sure the Minister will elaborate on that, but to me it seems a very loose term. As to the question asked by the hon. Member for Northampton, North (Ms Keeble) about what would constitute a cause for the purposes of a risk assessment, I would always defer to those with professional expertise about what was happening on the ground in a given situation, because a risk in one situation may not be a risk in another. It is a moveable feast. We want to ensure that there is no reason for spurious reasons to be given for risk assessment to take place. That is at the core of the amendment. In maintaining the paramountcy of the welfare of the child

*we must strike a balance, and it would not be in the child's best interests if risk assessments were called for too readily.*

*Although amendment No. 53 is in this group, I do not wish to incur the Committee's wrath or displeasure by any further discussions on the subject because we exhausted debate on it in our deliberations last week, although the Minister was not here. Probably the discussions stand, although I reiterate that the amendment is entirely in line with the paramountcy of the welfare of the child as discussed last week. However, we have rehearsed those arguments to their fullest.*

**Mr. Kidney:** *It is a pleasure to see you back in the Chair for our proceedings, Mr. Hood. My name is on amendment No. 36, together with those of my hon. Friend the Member for Luton, South (Margaret Moran) and my hon. and learned Friend the Member for Redcar (Vera Baird). I am grateful to the hon. Member for Basingstoke (Mrs. Miller) for her support for the aim behind the amendment, which is simply to make the important clarification that a risk assessment is not a single-point exercise.*

*I heard one of our generals in Iraq on the radio this morning saying that withdrawal from Iraq was not a singular-event process. His turn of phrase and mine are both intended to show that in some circumstances events are dynamic and change over time. It is important to keep a finger on the pulse and to see whether the change requires a new approach. There may be times in proceedings when there has been a previous risk assessment and it has been decided that no action is needed, but later in the proceedings new information or circumstances come to light that make it appropriate to carry out a further risk assessment. Alternatively, there may be a case in which there is initially nothing to suggest that there is any cause for concern—and a risk assessment has not therefore been carried out—during the course of which something comes to light that suggests that it is now appropriate to carry out a risk assessment. Therefore, in relation to the phrase in proposed new subsection (2),*

*“cause to suspect that the child concerned is at risk of harm”,*

*the cause to suspect might arise at a later stage than the beginning of the proceedings.*

*As the hon. Lady said, the clause was added in the House of Lords, and it is desirable to consider whether the Committee can improve the wording. Risk assessments could become an important part of court proceedings relating to family and children, if we get*

**Column Number: 157**

*the design right at the beginning. It could be a significant development, so it is important to get it right. The amendment simply makes it clear that cause to suspect can arise at any time in the proceedings and not at one point somewhere near the beginning.*