



Department  
for Education

# **Government Response**

**Post-Legislative Scrutiny of the Children  
and Families Act (2014)**

**February 2023**





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and Families Act (2014)**

**Presented to Parliament  
by the Secretary of State for Education  
by Command of His Majesty**

**February 2023**



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## Introduction

1. The House of Lord's Liaison Committee, through the 4<sup>th</sup> Report of Session 2021-22, recommended that a committee should be appointed to consider the Children and Families Act 2014, in relation to post-legislative scrutiny, to report by the end of November. The House of Lords Select Committee on the Children and Families Act 2014 was appointed on 19 January 2022. Its purpose was to assess whether the Children and Families Act 2014 achieved its aim of improving the lives of children and families, particularly the most vulnerable children and young people in society, and sought evidence in response to whether the Act had the following outcomes:
  - improved the situation for vulnerable children, young people and families in England,
  - enabled faster, more secure and stable adoptions,
  - made the family justice system faster, simpler and less adversarial,
  - achieved its goal of improving provision for children with special educational needs and disabilities (SEND),
  - improved the quality and availability of childcare,
  - given the Children's Commissioner the correct remit and powers, and
  - made systems function across shared parental leave, statutory shared parental pay and flexible working.

The Committee also sought to assess what the effect of the repeal of the requirement to consider ethnicity, religion, race, culture and language in England when placing a child for adoption has been.

2. Given the breadth of the Children and Families Act, the Committee's report focused on recommendations in specific policy areas. It did not make recommendations on some Parts of the Act, including children's welfare, or in relation to children and young people in England with special educational needs or disabilities, since scrutiny had previously been carried out by the Education Committee and SEND policy was subject to consultation during the course of the Committee's inquiry.
3. The Committee published its final report the 'Children and Families Act 2014: A failure of implementation' on the 6 December 2022. The report made 17 recommendations, primarily in relation to adoption, family justice and employment rights, and wider recommendations on governments approach to post-legislative scrutiny. These recommendations have been considered carefully, and this document sets out the Government's response to each of them. The government is grateful to the Children and Families Act 2014 Committee for their report, conclusions and recommendations, and, importantly, thanks the children and young people that contributed to the work of this inquiry.

## Background

4. **The Children and Families Act (2014) took forward a range of government commitments intended to improve services for vulnerable children and families across children’s social care.** The Act sought to support children in the adoption and care systems, those affected by decisions of the family courts and those with special educational needs and disabilities, whilst also supporting families with home and work life, particularly families with young children. It is a broad and multifaceted piece of legislation, which attests to the complexity of family life. The provisions it sets out sit across the responsibilities of several of His Majesty’s Government Departments, including: the Department for Education, the Ministry of Justice, the Department for Business, Energy and Industrial Strategy, the Department for Work and Pensions and the Department of Health and Social Care.
5. Specifically, the Act contained measures which sought to: remove barriers to adoption; reform family justice and the special educational needs system; and ensure that services place children and young people at the centre of decision making and support. It also contained measures which relate to the welfare of children and those which supported wider changes to childcare, including introducing a new system of shared parental leave. Furthermore, changes to the functions and role of the Children’s Commissioner for England also sought to ensure a strong advocate for children’s rights.
6. **Whilst some parts of the Act require continued focus on their implementation, there are areas where the Act has had a positive impact on children and families – ensuring they are supported, and with measurable success in improving outcomes.** Since the Adoption Support Fund was introduced in 2015, over £280 million of therapeutic support has been spent supporting over 41,000 children. This fund has enabled essential therapeutic services for adoptive and Special Guardianship Order (SGO) families. Further, ‘Staying Put’, a provision in the Act which enabled arrangements for living with former foster parents after reaching adulthood, ensured more 18-year-olds could choose to stay living with their foster families. In 2022, 62% of 18-year-olds remained with their foster families<sup>1</sup> which has enabled increased stability for young people. The Act also ensured that local authorities in England were required to appoint a person to promote the educational achievement of its looked after children, commonly referred to as Virtual School Heads. This role has brought expert leadership to the education of children in care. Their work, coupled with the other measures we have introduced, has brought a steady reduction in permanent exclusions (between 2013 to 2019, from 0.14% to 0.11%) even as the permanent exclusion rate for all pupils increased over this period (from 0.06% to 0.10%).<sup>2</sup> These are some of the positive examples where the Act has delivered its intentions.

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<sup>1</sup> [Children looked after in England including adoptions, Reporting Year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

<sup>2</sup> Outcomes for children in need, including children looked after by local authorities in England: [2013-2015 data](#) and [2016-2020 data](#)

7. **Although a memorandum for post-legislative scrutiny had not been carried out prior to 2022, government has, since the passage of the Act, continued to evaluate the state of services for children and young people through available data, assess services and quality, and have dialogue with families and young people.** Government recognises the Committee’s specific conclusions and recommendations on post-legislative scrutiny, as well as the need to further embed data collection to support ongoing evaluation and responds below. Government will seek to learn from where data has transformed practice in children’s social care, for example in relation to the Innovation Programme in the Department for Education, which the National Audit Office recognised in 2022 as demonstrating good practice.<sup>3</sup>
8. **Whilst some provisions in the Act have had a positive impact on children and families, reform is needed in children’s social care to ensure it delivers for all.** ‘The Independent Review of Children’s Social Care’,<sup>4</sup> published by Josh MacAlister in May 2022, delivered on the Government’s manifesto commitment to review the system. The Review called for a reset to ensure we have a system which can: act decisively in response to abuse; provide help to families when they need it; and ensure children in care have the stability and loving relationships they deserve. In response to this, as well as the review into the tragic deaths of Arthur Labinjo-Hughes and Star Hobson, and the Competition and Markets Authority report on the care placement market, government has now published an Implementation Strategy entitled ‘Stable Homes, Built on Love’ (2023).
9. This Strategy sets out an ambitious plan to take forward transformation, building on what works from the 2014 Act, whilst recognising that issues identified by the Lords Select Committee warrant closer examination. Government responds to each recommendation from the Committee below. It is notable that many of the Committee’s recommendations are at the heart of plans for reform, including: prioritising early intervention; enabling strong use of data; improving adoption and family justice practises; and giving greater attention and focus to alternative to care arrangements, such as kinship. We will rightly continue to place the interests of the child at the heart of our ambitious reform plans.

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<sup>3</sup> [Evaluating Innovation in children’s social care \[Department for Education\] \(NAO, 2022\)](#)

<sup>4</sup> [The Independent Review of Children’s Social Care \(Josh MacAlister, 2022\)](#)



# Response to the Committee's recommendations

## Post-legislative scrutiny

**Recommendation 1: When an Act receives Royal Assent, the government should publish a post-legislative scrutiny plan. This should include when a post-legislative Memorandum will be published, if applicable, and details of the metrics which will be used to evaluate each section and what data will need to be collected to do so.**

10. We welcome the Committee's emphasis on the value of post-legislative scrutiny and agree on the importance of having an appropriate mechanism for the proper evaluation of the impact of legislation. As noted in the Committee's report, to ensure there is a robust review process in place for Acts, all departments are subject to post-legislative scrutiny guidance set out in the Cabinet Office's 'Guide to Making Legislation'. This sets out an expectation that departments will submit a memorandum to the relevant Commons departmental Select Committee 3 to 5 years (normally) after Royal Assent.
11. There is no mandatory template for this memorandum, but it typically contains a preliminary assessment of how the Act has worked in practice, relative to its agreed objectives and benchmarks. Individual departments are responsible for planning how they will reach these deadlines for producing post-legislative memoranda. We do not consider it proportionate to require departments to publish their plan for post-legislative scrutiny, since these plans evolve over time as issues arise, issues which would otherwise be unforeseen in the period immediately following Royal Assent. However, the Committee has rightly highlighted existing obligations to publish memoranda and the need to consider - from Royal Assent - the data collection and design of evaluation methods required to do this.

## Adoption and contact

**Recommendation 2: We welcome the Government's commitment in the Adoption Strategy to increasing the number of early permanence placements where appropriate. The government should publish an assessment of the impact of the funds spent on increasing early permanence placements, as well as publishing a longer-term strategy for promoting early permanence.**

12. The government agrees with the Committee's view that early permanence placements can bring many benefits for the children involved. We are pleased that the Committee recognised that the numbers of early permanence placements have been rising since 2015 and the government's commitment, in the 'Adoption Strategy: Achieving

excellence everywhere'<sup>5</sup> (July 2021), to prioritise increasing the numbers over the next 3 years.

13. The Committee set out 2 main barriers that need to be tackled to promote early permanence placements: lack of support to Regional Adoption Agencies (RAAs) and local authorities; and inconsistent approaches taken by the courts. We are addressing both issues through the implementation of the Adoption Strategy.
14. The government has committed £3 million over the years 2022 to 2023 to 2024 to 2025 to improving early permanence practice in RAAs and local authorities. We are working with RAAs to promote early permanence and ensure we see sustainable increases in such placements over the long term. The RAA programme aims to develop the highest quality care planning processes, systems, and structures for children across RAAs and local authorities, increase the quantity of early permanence placements and reduce delay in placement by improving matching practice and processes across the country.
15. RAA leaders are working to develop national standards on early permanence services which are expected to be launched later this month (February 2023). This will help ensure agencies are taking a consistent approach across the country, based on the best local practice. These standards will be reviewed regularly to take account of new and developing practice in this area.
16. The government is funding 8 new innovative RAA projects, including trialling the use of early permanence with older children and supporting early permanence carers in the fostering phase. The Committee rightly recognises that early permanence placements require careful preparation and support for the prospective adopters, and this is a key aim of the RAA programme. As part of their work on this, RAAs are also consulting with early permanence carers and birth parents about the support they need.
17. RAA leaders have also started to deliver early permanence training for the judiciary in some areas of the country and discussions are underway to expand this through the Judicial College. The aim is to increase the judiciary's awareness of early permanence placements as a good option for some children and to achieve a more consistent approach in the courts. RAA leaders have also developed a workstream to support and provide training for local authorities Agency Decision Makers, highlighting the importance of the early identification of children who may benefit from an early permanence placement.
18. Internal and external government audit processes exist to ensure public money is being spent effectively. There is currently no plan to publish a separate assessment of the impact of RAA early permanence funding. However, RAA's will be monitoring,

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<sup>5</sup> [Adoption Strategy: Achieving Excellence Everywhere \(Department for Education, 2022\)](#)

reviewing, and evaluating the progress of each of the early permanence projects and the programme as a whole. Through regular meetings and based on data and evidence provide by each element of the programme, they will be promoting and sharing good practice with others to continuously develop practice in this area.

**Recommendation 3: To help drive whole system change at all levels, we recommend that the government create a task force dedicated to addressing ethnic and racial disparities in the adoption system. Membership should include those with appropriate skills, expertise and experience, including regional and voluntary adoption agencies, community groups and those with experience of the adoption system. It should address issues of race and ethnicity in the adoption system. This should focus on issues including increasing diversity in the workforce and on adoption panels, support for transracial adopters, training for those working with minority ethnicity adopters and adoptees and recruiting and supporting minority ethnicity adopters. The task force should be outcome focused and directly accountable to the Secretary of State for Education, and should have specific, targeted and measurable outputs.**

19. We agree with the Committee that, although we have made some progress in reducing waiting times for ethnic minority children awaiting adoption, we need to go much further. The government acknowledges the need to maintain a focus on tackling racial disparities in the adoption system and this is a key aim of the 'Adoption Strategy.
20. The government is also committed to delivering on its commitments in its report 'Inclusive Britain: government's response to the Commission on Race and Ethnic Disparities'<sup>6</sup> (March 2022) to increase the number of ethnic minority children who are adopted; reduce the time ethnic minority children wait to be adopted; and modernise data collection to ensure RAA leaders have access to data on speed of matching ethnic minority children with families.
21. However, we do not agree with the Committee's recommendation that we need to set up a new task force dedicated to addressing ethnic and racial disparities in the adoption system. This is because, in 2022, the Adoption and Special Guardianship Leadership Board (ASGLB) - an independent board that advised government on improving policy and local practice – established a task group of sector representatives focused on improving racial disparity in the adoption system. This task group, led by the then ASGLB Chair Dr Krish Kandiah, OBE, recently published the report 'Ending Racial Disparity in Adoption'<sup>7</sup> (December 2022) which set out a range of measures which should be taken to recruit black adopters and match black

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<sup>6</sup> [Inclusive Britain: government's response to the Commission on Race and Ethnic Disparities \(UK Government, 2022\)](#)

<sup>7</sup> [Ending Racial Disparity in Adoption \(Coram-i, 2022\)](#)

children, rebuild trust, and resource interracial adoption. The government is committed to implementing the recommendations in this report in full.

22. RAA leaders have also committed to developing an overarching strategy on equality and diversity issues in 2023. Addressing race disparity will be an integral part of all its programmes in order to achieve its 3 strategic priorities by 2024/25: recruitment; child's journey; and adoption support. DfE officials meet monthly with the RAA strategic leader, Sarah Johal, and her team, to review progress on their programmes and also attend the monthly meetings of RAA leaders. Sarah Johal also meets the Minister for Children, Families and Wellbeing on a quarterly basis.
23. The government is funding RAA leaders to run national and targeted recruitment campaigns, and this includes a key priority of recruiting more ethnic minority adopters. This work has resulted in an increase in the number of approved ethnic minority adopters from 450 at March 2020 to 670 at March 2022, and more members of the public from ethnic minority communities are currently going through the adoption approval process.
24. Many adopters provide brilliant love and care for children with whom they do not share the same ethnicity. The Committee rightly says that transracial adoptive placements can bring unique challenges and we agree that more work needs to be done in this area. The Adoption Strategy sets out a specific commitment to ensuring adopters get the support they need if they adopt children of a different ethnicity. RAAs leaders are looking to develop specific transracial resources for social workers and adopters, as part of their work in supporting children with their identity.
25. The Committee recommended that there should be a focus on increasing diversity in the workforce and we fully support this. Social Work England have committed to improving diversity in their report 'Equality, Diversity and Inclusion Action Plan' (January 2022).<sup>8</sup> They are working with the Principal Social Worker networks for Adults and Children and Families, Black and Asian Leadership Initiative Network and the Association for Directors of Children's Services workforce planning group, to increase diversity in social worker leadership and to facilitate improved diversity across the workforce more generally. The RAA leaders have also commissioned a bespoke Black and Asian Leadership programme for all RAA staff.
26. The Committee also recommended that those staff who work with ethnic minority communities should receive more training in cultural issues. Again, we agree, and RAA leaders have used government funding to commission a programme of Cultural Humility training for RAA staff and a separate training session for senior leaders and managers, which started during 2021 and was completed recently.
27. The Committee rightly highlights that adoption panels do not always represent the communities in their local areas. RAA leaders are committed to increasing the

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<sup>8</sup> [Equality, Diversity and Inclusion Plan \(Social Work England, 2022\)](#)

diversity of adoption panel members and have set up a specific project to do this. In the past year, 26 new ethnic minority panel members have been placed with adoption agencies. They have also commissioned Cultural Humility training modules for adoption panel chairs and advisers, which are currently being delivered.

28. Although we do not believe it would be helpful to set specific targets in these areas, as the cohort of children being put forward for adoption constantly changes, we do agree that we should closely monitor progress. We will continue to collect and publish regular information on the time it takes ethnic minority children to be adopted and review progress on the issues we have committed to in the Adoption Strategy.

**Recommendation 4: The government should re-instate the statutory register on its original terms, working with commercial service providers to build a more functional platform which combines the usability of existing services with the matching support and referral requirements of the statutory register.**

29. The government agrees with the Committee that we should be looking to continuously improve the current matching IT system delivered by Link Maker. Regional Adoption Agency (RAA) leaders have recently appointed a full-time national lead on family finding and matching and part of their role is to support RAAs to make the best use of the Link Maker system and to bring RAA leaders and Link Maker together on a regular basis to consider how to improve their system. This will include improving performance information given to RAAs and making changes based on user feedback.

30. We disagree with the Committee's recommendation to reinstate a statutory register. The previous register did not provide value for money and by 2019, over 90% of statutory adoption agencies had chosen to pay for subscriptions to alternative services, despite the Adoption Register being free. We do not believe that re-introducing a statutory register would have sufficient impact to justify the considerable costs it would involve.

31. However, improving matching is a key aim set out in our Adoption Strategy and this includes addressing many of the specific issues raised by the Committee. The government has committed £5 million over the years 2022 to 2023 and 2024 to 2025 to improve the matching of children with families. Our vision is to support RAA leaders to ensure:

- new processes and procedures speed up the sharing of adopters across RAAs for children who wait the longest
- improved data collection enables better information sharing between RAAs
- new matching methods and tools are developed, drawing on the best and emerging practice of the statutory and voluntary sectors - this will include developing national and cross RAA/VAA Activity Days and Exchange Days, to secure matches for children without delay

32. RAAs are particularly focusing on reducing the number of children who wait over 18 months from the time of the court placement order being given. Some progress has

already been made - with this number falling from 390 in March 2020 to 240 in September 2022 - but we want to see further and faster progress.

**Recommendation 5: The government should consider the expansion of the Adoption Support Fund, allowing it to be used for more than therapy and ensuring it is also focused on early intervention. We welcome the most recent multi-year settlement and encourage the government to commit to continuing to guarantee sufficient and appropriate funding several years into the future.**

33. We welcome the Committee's support for the 'Adoption Support Fund'<sup>9</sup> (ASF). The recently published report 'Evaluation of the Adoption Support Fund 2018 to 2022'<sup>10</sup> (December 2022), showed that the ASF is having a positive impact on the mental health and emotional wellbeing of children and their parents and carers.
34. The government acknowledges the need for more work on early intervention for adoptive families in need of support. That is why we previously (January 2016) expanded the scope of the ASF to allow families to receive therapy the moment a child moves in with them and before the final adoption order is issued by the family courts.
35. The ASF has an annual budget set until 2024 to 25. In line with other public services, the budget and scope of the ASF is considered as part of government Spending Reviews. In every Spending Review since its introduction, the government has increased the annual ASF budget. The government will again consider the scope of ASF, including eligible therapies and other support interventions, at the next Spending Review.
36. However, we agree with the Committee on the need to go further in improving non-ASF adoption support and early intervention. In our Adoption Strategy we committed to working with Regional Adoption Agencies (RAA) to ensure:
- the development of outcomes-based national standards for adoption support services
  - that families have access to mainstream early support, and specialist support as soon as problems escalate to build resilience and stability for the whole family
  - RAA leaders are currently developing a national standard support offer, which will include core support for every child at the point of placement
37. We are also funding the development of new multi-disciplinary approaches to supporting specific child and family needs through the development of joint RAA/NHS Centres of Excellence. These will provide joint assessment processes and procedures and joint packages of support.

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<sup>9</sup> [Adoption Support Fund, Guidance \(Department for Education, 2018\)](#)

<sup>10</sup> [Evaluation of the Adoption Support Fund 2018 to 2022, Research Brief \(Department for Education, 2022\)](#)

**Recommendation 6: We urge the government to support adoption agencies in developing and rolling-out a safe and appropriate national digital system for contact as a priority. This system should allow for faster and more intuitive contact, while ensuring contact remains moderated and safe for all.**

38. We agree with the Committee that research shows that contact can be very beneficial for many adopted children in helping them understand their past and identity, but that it needs to be carefully planned. Decisions about contact should therefore always be on a case-by-case basis, be in the best interests of the child and have the support of their adoptive parents.

39. Our Adoption Strategy commits us to improving contact in adoption. As the Committee correctly points out, contact is currently normally done via the letterbox arrangement of annual letters being sent. We agree that this type of arrangement is no longer fit for purpose. Regional Adoption Agency (RAA) leaders are currently working with the organisation Link Maker on a pilot called Letter Swap. This is an online platform to make communication easier between adoptive children and their birth families in a safe and secure environment. We will look to support the roll out of this or other similar platforms across the country.

40. However, as the testimony to your Committee made clear, some adopters would like more support with face-to-face contact, particularly as their children enter adolescence and start to raise questions about their birth family or try to find them via social media. Currently there is often insufficient support available to make contact work for all parties. That is why the Adoption Strategy sets out the commitment that over the next 3 years. *“We will work with the Regional Adoption Agency Leaders Group to develop and trial what good practice looks like, with a view to setting national standards in this area.”* RAA leaders are consulting with birth families, young people, adult adoptees and adopters on what good contact would look like from their perspective.

**Recommendation 7: The government should undertake a promotional campaign to increase take-up of the fund by those parenting under a Special Guardianship Order, beginning with renaming the fund to reflect that it is not limited to adopters.**

41. The government agrees with the recommendation for the Department to undertake more promotional work to increase Special Guardianship uptake of the Adoption Support Fund (ASF). The number of SGO families getting support is increasing, from 920 in 2019 to 20 to 1,793 so far in 2022/23 (April to November). However, we agree that more needs to be done.

42. DfE is actively working with kinship carers and representative organisations to encourage eligible Special Guardianship families to access the fund. The ASF delivery partner Mott MacDonald is working on tailored support and training to RAAs and local authorities with the lowest number of Special Guardians engaging with the fund. As part of this work, Mott MacDonald has also conducted a survey with the aim of establishing whether there are barriers at local level in accessing the fund.

43. The government acknowledges that the name of the ASF does not make it explicit that some Special Guardians are eligible for it. However, the ASF is only available to Special Guardianship families where the child was previously looked after in the care system. Therefore, renaming the fund could cause more confusion and disappointment around eligibility. The government will continue to evaluate the most effective ways to improve special guardians' uptake of ASF.

**Recommendation 8: We recommend that possible kinship carers should be identified and assessed alongside other options during pre-proceedings. This should be done in a manner which does not presume any particular outcome, with this made clear to all involved.**

44. Government has recently published 'Stable Homes, Built on Love' which recommends that a 'family first' approach should run through the core of social work practice and local authority decision making when children have a social worker. We entirely agree with the Committee that kinship carers play an important role in keeping children in their family networks, which in turn can lead to better outcomes for those children and help prevent issues escalating further. Where these issues remain unaddressed, history tells us they often lead to children entering the care of the state.

45. Professionals should be taking the earliest opportunity to explore how extended family can play a more significant role in the lives of children who have a social worker. The Implementation Strategy, Stable Homes, Built on Love, was clear that the first step towards this should usually be through implementing robust family group decision making, which should be embedded in local authority practice, and draw together all the important people in a child's life to help make decisions about how their care should be provided for. This position is mirrored in statutory guidance which encourages social workers to explore the support that extended family can offer, through the use of Family Group Conferencing and family group decision making.

46. Our view is that, wherever possible, kinship carers should be identified before pre-proceedings commence, so that they have an opportunity to help the birth family de-escalate and ultimately resolve the issues they are facing. The Implementation Strategy announced that we will be launching new Family Network Support Packages in up to 7 local authority areas over the next 2 years, which will allow us to better understand the support extended families need to achieve these outcomes. Where prospective kinship carers have not been previously identified, we agree that this family finding work should intensify during pre-proceedings. Local authorities already have a responsibility to ensure that family networks have been considered before placing a child into care; if there is potential for someone within the child/children's family network to take on the caring responsibility for the child/children, their suitability to be a kinship carer should be assessed. And we have committed to deliver and explore a suite of new ways to better support kinship carers, including through training, financial support and workplace entitlements.



The 'Family and Friends Care: Statutory Guidance for Local Authorities'<sup>11</sup> (2010) sets out a framework for local authorities and their partners to use in assessing the need for and providing support for kinship families. This guidance states that local authorities and their partners should make sure that family and friends carers are aware of relevant support services, such as family group decision making, and that these can be readily accessed by those caring for children whether or not the child/children are looked after by the local authority. We will update existing statutory guidance, such as the Family and Friends Care guidance, which was last refreshed in 2011. We will also publish a National Kinship Care Strategy by the end of 2023.

## Family Justice

**Recommendation 9: There is no easy solution to the creeping delays in family law cases, but it is clear both that more resources—and more efficient use of resources—are needed. Improved data gathering and sharing are needed to identify and tackle delays as they emerge. We recognise that the Family Justice Board faces a difficult task in trying to give guidance to the various participants within the family justice System, but we are concerned that it may nonetheless not be fulfilling its role to the full extent that is possible.**

**We consider that stable, high-level leadership of the Board is essential, and recommend the appointment of an independent Chair at a senior level, with a view to the Board being able to show greater leadership and share insights with Local Family Justice Boards and others.**

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

47. Although there is considerable amount of work taking place across the family justice system on improving timeliness, the government acknowledges there is more to be done. The timeframe introduced by the Children and Families Act (2014) brought a renewed focused and statutory responsibility which resulted in a concerted effort by all professionals in the system to keep within the 26-week time limit. We have seen timeliness worsen over the last 10 years and tackling delays remains a key priority for this government.

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<sup>11</sup> [The Family and Friends Care: Statutory Guidance for Local Authorities \(Department for Education, 2010\)](#)

48. It is important for children and families that cases are resolved in a timely fashion, which is why we are working across government and with independent partners to improve timeliness and tackle backlogs in the family courts. The government is considering a number of reforms to improve outcomes for families and children in public law proceedings and have already invested just under £1.5 million across 7 regions to improve practice in pre-proceedings as a means to reduce delays and backlogs. The President of the Family Division relaunched the Public Law Outline in January 2023, which sets out the maximum number of hearings and the time required at each stage of public family law proceedings. This is likely to have a significant impact on overall timeliness and we will continue to work closely with the judiciary to support this.
49. The government remains committed to meeting the 26-week timeframe for public law cases. This is why we are working with key partners in the system to develop a set of measures to ensure that public family law timeliness returns to the statutory 26-week timeframe as quickly as possible. Following the publication of the 'Family Justice Review'<sup>12</sup> in 2011, there was a dedicated system wide response to improve public law timescales. It took five years to see average case lengths come down close to 26 weeks (from 55 weeks in 2011, to an average of 27 weeks in 2016). Whilst delays are currently less than in 2011 (the average time for care proceedings in 2021 was 44 weeks), we believe that returning average public law case times back to 26 weeks and below will require a cross system focus and commitment over several years. Our aim this year is to bring down the average duration of cases and deliver year on year decreases.
50. The government recognises the important role monitoring data and sharing information plays in bringing down the delays in the family justice system and we are committed to reducing delay and the backlog in the family courts. As part of this, we continue to improve data transparency and understanding of the family justice system so that the right conversations can happen locally whilst improving learning loops to help drive changes in practice.
51. We plan to work together with partners across the family justice system to better inform the public and key stakeholders about current performance across family proceedings. The government will continue to work closely with delivery partners including HMCTS, Cafcass, the Judiciary, and other key stakeholders to strengthen the data we have, including for public law cases, with the aim of highlighting good practice and identifying areas for improvement. This will be captured across the new family justice system strategic plan, which is currently in development and will be monitored at the Family Justice Board<sup>13</sup> once agreed. The board will also monitor performance against key performance indicators at a national level, and we are now developing proposals for more detailed, published data on local system performance.

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<sup>12</sup> [Family justice review: final report \(Ministry of Justice, 2011\)](#)

<sup>13</sup> [Family Justice Board \(Gov.uk\)](#)

52. The Family Justice Board is responsible for bringing together sector leaders, overseeing progress in implementing reforms and providing cross-system oversight and governance of the family justice system. The Board is jointly chaired by Ministers from the Department for Education and the Ministry of Justice who can take forward the agreed recommendations of the Board.

53. We note the Committee's suggestion of an independent chair of the Board and will reflect further on what steps to take to ensure the Board is as effective as possible and where its performance can be improved. Alongside this our primary focus, at present, is making sure that the family justice system is operating as efficiently as possible. In the second half of 2022, we conducted a review into the governance of the Family Justice Board and its supporting groups and will be implementing changes this year. The government is focused on ensuring stability and delivery, by having the right delivery partners around the table working to a set of shared priorities, and that the Board regularly assesses performance against those priorities. In February 2022, the Board agreed its priorities for both public and private law, both of which are aimed at providing direction and guidance to stakeholders within the system. Both sets of priorities are focused on reducing delays and improving efficiencies across the system and is supported by a family justice cross-system strategic plan, which will reflect the efforts of partners across the system to address our priority issues.

**Recommendation 10: The government should improve its collection and sharing of data on the family justice system.**

54. As outlined in response to the previous recommendation, we are continuing to work closely with delivery partners and key stakeholders to strengthen data we have on the family justice system, with the aim of highlighting good practice and identifying areas for improvement. This will be captured in the family justice system strategic plan which will be monitored at the Family Justice Board. Our overarching aim is to increase transparency and, in turn, drive improved performance across the system, including reducing levels of outstanding cases and addressing timeliness.

**Recommendation 11: We recommend that the government produces and maintains a website which provides impartial advice for separating couples, helping them to understand the family justice system and what the courts can resolve, as well as what they cannot.**

**We urge the government to reconsider its proposals to make mediation effectively obligatory. Instead, we recommend that the MIAMs and mediation voucher schemes be replaced by a universal voucher scheme for a general advice appointment, at which point individuals can be signposted to alternative dispute resolution mechanisms, including mediation.**

**We recommend that the government urgently evaluate the impact of the removal of legal aid for most private family law cases, considering where reinstating legal aid could help improve the efficiency and quality of the family justice system.**

55. The government recognises that parents often face a challenge in knowing where to go for information when they are separating, and the government is keen to provide better information to people with private family law issues at an earlier stage. We know that access to impartial, readily available online information can be vital for separating families. Online information that sets out the full range of dispute resolution options and brings together authoritative guidance and tools from across government and the family legal support sector, would be welcomed by many families. We are committed to research which would help us develop better tools to support families following separation, and hope improving these resources will help couples make well informed decisions about their next steps before they consider an application to court.
56. Using the family courts to resolve private disputes involving children can lead to lengthy conflict between parents/carers and there is clear evidence that prolonged conflict between separating parents is harmful to children's wellbeing and life chances. Where it is safe, we therefore want all people who are seeking to resolve private family disputes and plan for their children or finances, to consider attending mediation and other forms of dispute resolution before applying to the court. For many families, reaching an agreement themselves, either independently or with the support of a suitable, trained provider of alternative dispute resolution services will be the best way of arriving at an agreeable and long-term solution, and in the best interests of any children.
57. As the Committee highlights, there are many other forms of dispute resolution which may be suitable for different families, including arbitration and collaborative lawyer-based negotiation, and we agree that it is important that families are aware of the options available to them. However, whilst we recognise the value of other forms of dispute resolution, mediation is undoubtedly the most commonly used form within the area of family justice. The success of the mediation voucher scheme,<sup>14</sup> which has been used by nearly 13,500 families since its introduction in March 2021, has shown us that around 65% of people are fully or partially resolving their issues themselves without court involvement.
58. Government recognises the positive impact mediation and other forms of dispute resolution can have on families and children. Due to this, the government is developing proposals to further support and encourage families to attempt mediation when they have private family disputes they are struggling to resolve. These proposals will shortly be subject to public consultation and as part of this process we would welcome further insights on the role of other forms of dispute resolution.

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<sup>14</sup> [Family Mediation Voucher Scheme, Guidance \(Ministry of Justice, 2021\)](#)

59. The Children and Families Act (2014) already requires that a MIAM includes consideration of “the suitability of mediation, or of any such other way of resolving disputes, for trying to resolve any dispute” to which the application to court would relate (s10(3) of the Children and Families Act 2014). The Family Mediation Council (FMC) has recently published guidance<sup>15</sup> on how FMC accredited mediators should conduct MIAMs, which is clear that other forms of out of court dispute resolution should be discussed with the parties alongside mediation. Alongside this, we are working with the ‘Family Procedure Rule Committee’<sup>16</sup> to consider ways in which the Family Procedure Rules, and supporting Practice Directions, could be amended to strengthen the operation of the MIAM requirement set out in the Act. The Family Procedure Rule Committee hopes to consult on any proposed Rule and Practice Direction changes in early 2023.
60. Legal aid is available for individuals in some private family and civil matters, including cases concerning domestic abuse or child abuse, subject to providing the required evidence and meeting the means and merits tests. The government reviewed the changes made by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012<sup>17</sup> and in 2019, published the Post-Implementation Review (PIR) of LASPO.<sup>18</sup> It is the most comprehensive assessment of the impact of LASPO on the civil and family legal aid system.
61. Alongside the PIR, we published the ‘Legal Support Action Plan’<sup>19</sup> which included the reinstatement of early legal advice for Special Guardianship Orders (SGOs) sought in private family law proceedings. This decision was based on evidence submitted to the PIR which set out that SGOs share many characteristics with public law cases, including that SGOs involve concerns regarding the welfare of the child and where efforts are being made to keep the child within their existing network of families and friends. The Legal Support Action Plan set the future direction for legal aid to ensure that one of the objectives of LASPO, to target legal aid to those most in need, continued to be met. As such, the Action Plan committed to the reinstatement of legal aid for SGOs. On 9 December 2022, the government laid a draft statutory instrument to implement this change and this has been debated in Parliament. This change is expected to take effect on 1 May 2023. It means that where a private individual wishes to become a Special Guardian, they can, subject to means and merits testing, receive legally aided advice and representation to help them make that decision. The government will continue to monitor the position regarding legal aid for SGOs in both public and private law proceedings.

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<sup>15</sup> [Good Practice Guidance for Mediation Information and Assessment Meetings \(MIAMs\) \(Family Mediation Council, 2022\)](#)

<sup>16</sup> [About us \(Family Procedure Rule Committee, Gov.uk\)](#)

<sup>17</sup> [Legal Aid, Sentencing and Punishment of Offenders Act \(Legislation.gov.uk, 2012\)](#)

<sup>18</sup> [Post Implementation Review of Part 1 of LASPO, Guidance \(Ministry of Justice, 2019\)](#)

<sup>19</sup> [Legal Support Action Plan, Guidance \(Ministry of Justice, 2019\)](#)

62. The government is currently undertaking a comprehensive review of civil and family legal aid to provide a set of evidence-based options for moving to a more effective, efficient and sustainable system. The review will cover all 11 contract categories covered by LASPO. The final report will be published in 2024.

**Recommendation 12: We recommend that, in order to formalise the voice of the child in proceedings, initial hearings should address the issue of how the voice of the child will be heard during the case.**

**We also recommend that the Family Justice Council reviews the guidance setting out the approach taken to judges meeting with children. In so far as there may be a basis for a change of approach, the Committee further recommends that the Family Justice Council and the Judicial College give thought to the training needs of judges in this area and the sharing of best practice.**

63. This government is committed to promoting the welfare of the child in all family law proceedings and recognises the important role that the wishes and feelings of children play in achieving positive outcomes for children. In private law proceedings, we are committed to trialling new approaches to strengthening the voice of the child and reassessing the methods of child engagement. We committed to this in our response to the Expert Panel's 'Harm Panel Report'<sup>20</sup> published in June 2020.

64. Since February 2022, courts in Dorset and North Wales have been trialling a more investigative approach through the Private Law Investigative Approach (Pathfinder) Pilots.<sup>21</sup> The pilots are testing a new three stage approach for dealing with applications for Child Arrangements Orders (CAOs) and certain other private family law proceedings.

65. As part of this new approach, the pilot is testing options for enhancing the voice of the child (as appropriate to their age and understanding) during the court process, by ensuring that children can express their views and experiences. In the pilots, the judge may consider meeting with the child in the case, to explain court processes and the outcome of orders in simple plain language. We will review the first 18-months of the pilot to build on early findings and gather evidence around what works for families and children.

66. We are also working with the Nuffield Family Justice Observatory and partners across the family justice system to better understand and improve the way the family justice system hears the voice of the child in private law children proceedings more broadly. This work is being taken forward under the governance of the Family Justice Board. As part of this process, we regularly involve and consult with the Family Justice Young People's Board so that they can shape policies so that they work for children by drawing upon their lived experience with the family court.

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<sup>20</sup> [Assessing risk of harm to children and parents in private law children cases \(Ministry of Justice, 2020\)](#)

<sup>21</sup> [Pioneering approach in family courts to support domestic abuse victims better \(Gov.uk, 2022\)](#)

67. In public law proceedings, the voice of the child is already actively captured in all care proceedings. Social workers working with the children subject to care proceedings, and allocated children's guardian, present children's views, wishes and feelings as part of their reports before the court. Section 1 of the Children Act (1989)<sup>22</sup> makes it clear that the welfare of the child is the paramount consideration of the court, and so the court, when making decisions about the child/children subject to care proceedings, must consider the ascertainable wishes and feelings of the child concerned. Any child who is the subject of care proceedings will be a party to those proceedings and will usually have legal representation and a children's guardian who has a duty to safeguard the interests of the child. The government is working with local authorities, Cafcass, Cafcass Cymru and the Judiciary to see what more can be done to ensure the child's voice is heard at relevant stages of their journey.

68. We thank the Committee for their recommendations on judicial guidance, aimed at the Family Justice Council and Judicial College. The judiciary of England and Wales is independent of the United Kingdom Government. To preserve that independence, the Lord Chief Justice, the Senior President of Tribunals, and the Chief Coroner have statutory responsibility for training of the judiciary, under the Constitutional Reform Act (2005), Courts and Enforcement Act (2007), and Coroners and Justice Act (2009) respectively. Training responsibilities for the judiciary of England and Wales are exercised through the Judicial College. It is for the judiciary to consider which legislation require inclusion in its training. The College regularly reviews its training and considers what new areas should be included.

69. The President of the Family Division notes the recommendation (made at paragraph 151 of the Report) and the recommendation will be submitted to the Family Justice Council for consideration.

**Recommendation 13: The government should carefully consider the findings of the review of the presumption of parental involvement and make any legislative or other changes necessary to ensure that children's welfare is always put first.**

70. In November 2020, the government launched a review of the presumption of parental involvement in child arrangements,<sup>23</sup> and certain other private law children's proceedings. The review is focusing on the application of the presumption, and the statutory exception, in cases where there are allegations or other evidence to suggest that involvement of the parent would put the child at risk of harm.

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<sup>22</sup> [Children Act, 1989 \(Legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1989/41)

<sup>23</sup> [Child protection at heart of courts review \(Ministry of Justice, 2020\)](https://www.justice.gov.uk/child-protection-at-heart-of-courts-review)

71. The evidence gathering stage of the review consists of 3 parts; a literature review, a judgment analysis as to how the presumption is applied by the court and a qualitative research project with anonymised parents. The final report from the review will be published in 2023.
72. This is an important and complex issue, and we want to ensure that any recommendations are based on a solid and thorough understanding of the ways the presumption is currently applied, and how this affects both parents and children. We thank the Committee for their interest and can reassure the Committee that the government will consider the findings from the review in detail and decide on suitable next steps, including considering whether any legislative or non-legislative changes are required in response to its findings.

## Childcare

**Recommendation 14: We endorse the Women and Equalities Select Committee's proposal to replace shared parental leave with a right to 12 weeks' paternity leave paid for four weeks at 90% of salary with no cap and for the remaining eight weeks at the statutory rate. Such a change would increase uptake, as it would be an independent 'use it or lose it' right and not require mothers to give up any of their leave. We recognise that this is an ambitious proposal, but it is the right ambition to have and one towards which we should move, beginning with the government publishing an assessment of the costs and benefits of such a policy. As part of this assessment, it should consider particularly the impact of such a scheme on small organisations and enterprises. Moreover, to support smaller businesses, we recommend leaving in place the higher rate of 103% reclaim for employers who qualify for small employers' relief (and 92% for other businesses).**

73. The government is committed to supporting the participation and progression of parents in the labour market. Great Britain has several entitlements designed to help employed parents to balance work with raising their families including Maternity Leave and Pay, Paternity Leave and Pay, Adoption Leave and Pay, Shared Parental Leave and Pay and unpaid parental leave.
74. The UK's current system of Maternity Leave is one of the most generous in the world. Pregnant women and new mothers are entitled to take up to 52 weeks of leave and up to 39 weeks of Statutory Maternity Pay (if they are eligible). This is nearly three times the minimum required by the EU which requires Member States to provide 14 weeks of paid Maternity Leave.
75. The government recognises that fathers and partners play a crucial role in the first year of their child's life, through supporting the mother, caring for and developing a relationship with the child.
76. The government remains committed to the Shared Parental Leave scheme. The scheme gives working families choice and flexibility about who cares for their child in the first year, and when. It challenges the assumption that the mother will always be the primary carer and enables working parents to share up to 50 weeks of leave and up to 37 weeks of pay in the first year of their child's life, if they wish. This enables



mothers to return to work early and share their remaining maternity entitlement with fathers and partners, allowing them to be the child's primary carer.

77. Information provided by employers to HM Revenue and Customs shows that take-up of Shared Parental Leave has doubled since the first years of its introduction, and it is now broadly in line with the government's initial estimate.
78. The introduction of Shared Parental Leave, which allowed parents to share childcare in the first year, was a significant change to the parental leave, and it will take time to bed in and for uptake to grow. Other countries that have implemented schemes designed to balance parental leave entitlements are still working to increase take-up. This includes countries which have a 'use it or lose it' leave right for fathers such as Sweden.<sup>24</sup>
79. The government is mindful of placing additional burdens on business in the current economic climate, such as the one proposed here to lengthen Paternity Leave. We strongly encourage employers to go beyond the statutory minimum if they are able to. The government has also already committed to making Paternity Leave easier to take and will set out our approach to achieve this in due course.
80. In addition to parental leave and pay entitlements, all employees have the legal right to request a contractual flexible working arrangement, provided they have worked for the same employer for at least 26 weeks. Flexible working can be used by both parents to help them balance their work and caring commitments. The government recently committed to strengthening the existing legal framework, including by making the right to request flexible working a 'day one' right, available to employees from their first day in a job.

**Recommendation 15: At a minimum, we recommend that self-employed fathers/partners be given a right to Statutory Shared Parental Pay, subject to the same conditions and at the same rate as directly employed fathers/partners. We further recommend that the Government's long-term ambition should be for self-employed fathers/partners to receive 12 weeks' Paternity Pay, paid at the same rate mothers receive maternity allowance. We acknowledge that individual circumstances may not allow this, but nevertheless believe this should be the Government's ambition which would provide a level playing field for self-employed parents, empowering them to spend time bonding with their child.**

81. The government recognises that fathers and partners play a crucial role in the first year of their child's life, through supporting the mother, and caring for and developing a relationship with the child.

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<sup>24</sup> [In Sweden in 2002, fathers took about 12 per cent of all Parental leave days used in that year; by 2021, it had increased to 30 per cent" \(Duvander and Löfgren, 2022\)](#)

82. Parental Leave and Pay is not available for self-employed parents in the same way as employed parents due to the differences between these types of employment. Statutory leave and pay entitlements are focused on allowing employed parents to take time off work, as employees do not generally have the same levels of autonomy and flexibility as those who are self-employed.
83. Families may have access to ongoing financial support provided by the government to those who need it through Universal Credit, child benefit and tax credits – available to employed and self-employed parents who meet the relevant eligibility criteria.
84. The government remains committed to ensuring that parents can participate in the labour market. There are several Private Member Bills we are currently supporting which will offer new entitlements and additional support for employed parents and families. These include:
- The Neonatal Care (Leave and Pay) Bill which will create a new leave and pay entitlement for employed parents whose children who are admitted to neonatal care.
  - The Pregnancy and Maternity (Redundancy Protection) Bill which will extend the current redundancy protection offered to mothers on maternity leave, so it also covers pregnant women and parents returning from other types of parental leave.
  - The Carer's Leave Bill which creates a new leave entitlement for employed unpaid carers, offering up to 5 days of unpaid leave per year.
  - The Employment Relations (Flexible Working) Bill which makes changes to the current legislative framework to support flexible working to become the default. The government is also taking forward secondary legislation to give employees a 'Day One' right to request flexible working.

**Recommendation 16: We recommend that kinship carers with a Special Guardianship Order be provided with the same rights to leave as adopters when a child is placed in their care to ensure parity of support.**

85. We agree that Special Guardians require additional support. As the Committee recognised in the report, the number of children under Special Guardianship Orders (SGOs) is steadily increasing. The Independent Review of Children's Social Care placed a spotlight on the support kinship carers receive and made several recommendations focused on this issue. Therefore, it is a good time to consider what support is required by this cohort of carers.
86. Government has recently made a commitment to explore a range of measures to increase the support SGOs receive as part of its Children's Social Care Implementation Strategy, Stable Homes, Built on Love – which includes training, financial support and access to workplace entitlements.
87. We have already started to support kinship carers better and to better understand their needs. Since the review was published, the Children, Families and Wellbeing Minister has met with a group of kinship carers who have reiterated concerns about the need for more support, including financial, emotional and practical support.

88. In 2021, we also announced £1 million of new funding to deliver high-quality peer support groups for kinship carers across the country. We know that becoming a kinship carer for the first time is often a frightening and bewildering experience – but that the support of peers can act as a beacon to help people through this.

89. These support groups are already building powerful communities and enabling kinship carers to connect with those who are in similar situations. Government has extended this investment into 2023, to ensure there are more than 100 peer support groups established across the country by January 2024.

**Recommendation 17: In principle, we see no obstacles to make the right to request flexible working a day-one right. We would also recommend that businesses—while maintaining the statutory business reasons to refuse employees’ requests—be encouraged to advertise jobs flexibly whenever possible, with the government leading by example.**

90. The government recognises the benefits flexible working can bring and is committed to supporting individuals and businesses to find flexible work arrangements that work for both sides. As set out in the Post Implementation Review of the 2014 Flexible Working Regulations,<sup>25</sup> the right to request flexible working is broadly functioning well in enabling the take-up of such arrangements, which can relate to working hours, working pattern and/or working location. The review found that in most instances (83%), where a statutory request is made, the request is accepted. The review also found that reported availability of flexible working is high among both employees (80%) and employers (96%).

91. The government wants to ensure that the flexible working legislation continues to be fit for purpose to support labour market participation and bring the associated economic benefits. On 5 December 2022, the government published its response<sup>26</sup> to the consultation ‘making flexible working the default’ and committed to give all employees the right to request flexible working from their first day of employment. This will ensure that an additional estimated 2.2 million people will be able to request flexible working arrangements.

92. In the response, government also committed to make further legislative changes which will support more open and constructive engagement between employers and employees to find acceptable flexible working arrangements. These changes include that: employers will be required to consult with an employee, as a means of exploring alternative options, before rejecting the request; employees will be enabled to make 2 flexible working requests a year (up from one) and will receive faster decisions on their requests; and employees will no longer be required to explain the expected impact of their requested arrangement on the employer.

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<sup>25</sup> [Post Implementation Review of 2014 Flexible Working Regulations \(Legislation.gov.uk, 2021\)](#)

<sup>26</sup> [Consultation response: Making Flexible Working the Default \(Department for Business, Energy and Industrial Strategy, 2022\)](#)

93. Research conducted by the Behavioural Insights Team has shown that offering flexible working can attract up to 30% more applicants to job vacancies.<sup>27</sup> The government accepts that there can be value in employers including information about the availability of flexible working in job adverts. However, in 2019, we consulted on whether employers should be *required* to do this. The consultation suggested that a legislative requirement would likely drive the wrong response from those employers we were most looking to influence – those not culturally ready would simply default to “no”. The government will therefore continue to encourage employers to advertise jobs flexibly on a voluntary basis, where this reflects a genuine offer of flexibility. The government will continue to promote this business case in collaboration with stakeholders on the Flexible Working Taskforce.

94. The Civil Service leads by example in this area by encouraging flexible working and offering a range of flexible working options as part of the total reward package. We are proud adopters of the "Happy to Talk Flexible Working" logo on the Civil Service Careers website.<sup>28</sup>

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<sup>27</sup> [BIT's biggest trial so far encourages more flexible jobs and applications \(Behavioural Insights Team Research\)](#)

<sup>28</sup> [Civil Service Careers Website, About Us \(Civil-service-careers.gov.uk\)](#)







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