



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Deisebau
The Petitions Committee**

Dydd Iau, 17 Ionawr 2008

Thursday, 17 January 2008

Cynnwys
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Andrew R.T. Davies	Ceidwadwyr Cymreig Welsh Conservatives
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Bethan Jenkins	Plaid Cymru The Party of Wales
Val Lloyd	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Alun Davidson	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Stefan Sanchez	Clerc Clerk

Dechreuodd y cyfarfod am 12.31 p.m.
The meeting began at 12.31 p.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **Val Lloyd:** Good afternoon, everyone. Welcome to the first meeting of the Petitions Committee of 2008. I hope that you all had a relaxing break, though it now seems an age ago. I will wait for the members of the public to come in before I start to welcome them. You all know how to evacuate the room, so I need not tell you again.

[2] It is taking some time for the public to enter the gallery, so we had better start. I would like to welcome them, but they have not arrived yet. However, they are very welcome, and I am sure that the ushers will remind them about the headsets. Translation services are available on channel 1, and I ask everyone to turn off mobile phones, BlackBerrys and whatever other up-to-date gizmos you had for Christmas. If we need to be evacuated, please follow the ushers. I have not received any apologies, and there are no substitutions. Do any members have a declaration of interest to make? No. Thank you.

12.33 p.m.

Deisebau a Gyflwynwyd i'r Pwyllgor gan y Llywydd ar ôl y Cyfarfod Blaenorol
Petitions Referred to the Committee by the Presiding Officer since the Previous Meeting

[3] **Val Lloyd:** We have three new petitions, and we will take those first, in the order that you see on the agenda. We will start with petition P-03-076, from the Welsh Kidney Patients Association, for a law on presumed consent. The papers are before us, and they are very clear. The petitioners want us to consider whether we will ask the Government to seek legislative powers under the Government of Wales Act 2006 to change the current opt-in system of

organ donation to one of presumed consent, or opt-out. Do any Members wish to contribute?

[4] **Michael German:** May I just ask a question, Chair, on the paper that is before us? My question is about the review currently being undertaken by the Health, Wellbeing and Local Government Committee. Is it a review into whether we have the legislative competence to give effect to the petitioners' request, or a review into the merits of that request? In other words, is it looking at whether presumed consent is a good thing, or at the legal aspect of devolving these powers?

[5] **Val Lloyd:** I do not know, but I can give you my opinion. The review has not yet started—we are still working on a previous review. I sit as a member of that committee, and my understanding is that we will look at this in the round; any recommendations will depend on what comes to light in the review. I am not pre-judging the outcome of the review, but it will be wide in scope.

[6] **Michael German:** It strikes me, therefore, that these petitioners will have a view on the work of that review, and that ought to be heard by the Health, Wellbeing and Local Government Committee. Rather than leaving this until after the review, perhaps we should refer the petitioners to the other committee, and encourage it to take evidence from them. Then the health committee could report back to us when it has finished its review.

[7] **Val Lloyd:** I am sure that I can speak for the Chair of the health committee insofar as the petitioners will have been asked to give evidence, because the organisation that they represent is well known in the field. I am sure that, when the written consultation began, they will have responded in that way. So, your suggestion is perfectly reasonable and sensible—in effect, we would formally reconsider the petition after the committee has completed its review. Do you all consent? I see that you do. Thank you.

[8] I am sorry that I am slow turning through my papers—I have a problem with my hand. We move on to our second new petition, P-03-087, which urges the Welsh Assembly Government to reconsider its energy policy, particularly in relation to giant wind turbines. It makes three points: there should be a ruling on the distance permitted between turbines and homes, schools and hospitals in Wales; there should be a full review of the technical advice note 8 guidelines on the siting of wind turbines; and a full cost-benefit analytical comparison should be ordered on potential energy developments. There are some further comments on that last point.

[9] Are there any comments from Members?

[10] **Bethan Jenkins:** I think that we should refer this to the Minister for the Environment, Sustainability and Housing. I think that we should ask her for a clarification of what is happening, because I understood that there was to be a review of TAN 8. So, we could keep the petition open and come back to it when the Minister for environment has replied.

[11] **Val Lloyd:** I also understand that 'One Wales' mentions a review of TAN 8, and referring this to the Minister is a sound idea. Are there any further comments?

[12] **Michael German:** Just that we could copy that letter to the committee, saying that we have referred this petition to the Minister. The committee may want to take the Minister's comments into account when it considers the issue.

[13] **Val Lloyd:** Yes. Is everyone agreed? I see that you are. Thank you.

[14] Our third petition is P-03-094, and it is a petition to keep Edwardsville swimming baths open. The petition calls for the Assembly 'to do all it can' to assist the petitioners in

keeping swimming pools such as this open for continued use. The petition received a number of signatures; obviously, for our purposes, as long as it receives 10, it is perfectly legitimate. Included in the papers is a letter from the Welsh Assembly Government on the subject.

[15] I now open this up for discussion.

[16] **Michael German:** I think that a bit of clarification would be helpful before we decide to hear the petitioners. In the broader context, their petition is very good, but in this particular instance, we are told in the letter from the Welsh Assembly Government dated 6 December that the reason that this particular swimming pool could not be kept open was because it was not compliant with the requirements of the Disability Discrimination Act 2005. We have subsequently received an e-mail from the petitioners saying that it is compliant. It might be suitable simply to find out whether that argument holds water or not, so that we are looking at this in the broader context. Then, it seems to me that the first sentence of the third paragraph of the Government's letter states:

12.40 p.m.

[17] 'We understand that this decision was taken by the local authority to improve the quality of and access to its leisure facilities.'

[18] That is part of the issue that the petitioners are raising, namely how facilities of this nature should be provided in general rather than only in this particular case. I am open to what other Members have to say about inviting the petitioners to come to talk to us about the issues of equality and access to swimming facilities generally.

[19] **Val Lloyd:** I hear what you say. We need to identify the exact disabled facilities, because the letter from the petitioners refers to a hoist. However, that would be used only for getting someone in and out of the water, and a range of disabled facilities are needed, not least individual toilets and changing rooms. Different types of facilities are needed too, depending on the disability. It is not just a matter of catering for people with mobility problems; there could be an issue for people with sight impairments, for example, with raised areas around the edge of pools. With regard to Edwardsville, I was a bit hazy about the geography of the Merthyr area, so I made a telephone call; Edwardsville is some six miles south. I checked that because I noticed that part of the package of the proposed new swimming pool is a trial of free local transport.

[20] **Bethan Jenkins:** It would be good to get some more information on that, because when we met the petitioners they said that it would be impossible for them to get to the Rhydycar centre in Merthyr, because of the transport issues. Therefore, further information on that pilot from the council would be useful. In Aberfan, they were also saying that they were refusing—

[21] **Val Lloyd:** Yes, but that is not in the petition. The petition refers to Edwardsville, and we must focus on what is before us.

[22] **Michael German:** We are drawing our evidence from the letter from the Government's sports policy unit. Perhaps we should seek clarification from the council, that unit, the Minister, or all of those.

[23] **Val Lloyd:** We should seek clarification from them all, because it is relevant to the new facilities too. Ultimately, this is the local authority's decision. However, it is incumbent upon us to find further information regarding the range of disabled facilities proposed at the new complex and the potential for transport links for the surrounding areas, and for Edwardsville in particular.

[24] **Andrew R.T. Davies:** From reading the papers I am mindful of the Torfaen scenario; those petitioners came to the committee. Here we are again; another swimming pool is set to close, albeit in a different authority in different circumstances. However, this situation is far more positive in that enhanced facilities are promised, including transport. It would be meaningful to investigate a little further, but I am not 100 per cent sure what outcome could be achieved.

[25] **Val Lloyd:** I agree, because, in this instance, it seems that the local authority has a wider programme. However, as the petitioners have presented the petition in an open way, we should consider it in that way and take it from there. I appreciate and agree with what you say.

[26] **Michael German:** The broader issue, which is outside the issue of this one council, is that of keeping local swimming pools open. It is a policy issue, and we could ask the Minister to tell us what the Government's policy is on swimming facilities. Does the Government have a policy on swimming? Does it give some sense of how far people would be expected to travel to facilities, what sort of access should be available and so on? The Government must have a policy on access to swimming. Perhaps we can add that to the list of things that we need to look into.

[27] **Val Lloyd:** Yes, we could ask what guidelines the Welsh Assembly Government gives to local authorities on this. We would get a full picture in that way.

[28] **Andrew R.T. Davies:** Am I right in thinking that the petition title is specific to keeping Edwardsville swimming baths open?

[29] **Val Lloyd:** Yes you are.

[30] **Andrew R.T. Davies:** It is regrettable in some respects that the petition does not call on the Assembly to do all it can to assist petitioners in keeping open swimming pools, such as the one in Edwardsville. There seems to be a general concern about accessibility to swimming pools. This is the second such petition that we have received; perhaps there is a pattern in local authorities at the moment of consolidating access to leisure facilities.

[31] **Val Lloyd:** Probably, but if you look at this in a historical context many places in Wales had swimming pools by public subscription. However, people have gained wider access to transport—although that is not the case for everyone—and they want access to a wider range of facilities, and as a result there is a trend of moving towards closure of pools. It has happened in my area and, I think, in many other areas. So, are we content?

[32] **Mr Sanchez:** So, we are writing to the Minister?

[33] **Val Lloyd:** Yes. Those are the new petitions that we have received, bearing in mind that we have had the Christmas recess.

12.46 p.m.

Yr Wybodaeth Ddiweddaraf am Ddeisebau Blaenorol Updates on Previous Petitions

[34] **Val Lloyd:** The first petition before us concerns the Ffos y Fran site. We have received a response. We gave this petition initial consideration in September, and decided to refer it to the Minister for Environment, Sustainability and Housing. We received an interim

letter from the Minister in November, which told us that she would consider the position. We now have a letter from an official in the Welsh Assembly Government's planning decisions branch, which, helpfully, has provided us with a copy of a decision letter dated 6 December. I hope that you all have received a copy of that. That letter outlines the Welsh Assembly Government's decision not to revoke or modify permission for the Ffos y Fran site. Are there any comments?

[35] **Michael German:** For information, I understand that the letter has been sent to a barrister; you can see his name on the top of the letter from the Government. I understand that the petitioners are now considering a legal route. This was simply a request from the barrister acting on behalf of local people to the Government to consider revocation. The petitioners are now considering a legal route. In that case, if this will be the subject of legal proceedings, it does not seem appropriate for us to take part in any way as we might interfere with those proceedings, unless I can be advised otherwise.

[36] **Val Lloyd:** I think that we should move to close this petition, but I will ask for legal advice.

[37] **Ms Jackson:** I was not aware that the addressee was a barrister acting on behalf of the petitioners and/or other residents of Ffos y Fran. As a general point, I know that you are all tired of my saying that you should not do this or that because you do not have sufficient information before you to consider a particular request, but this letter is an excellent illustration of what I have been saying. It demonstrates the sort of information that you require in order to come to a decision in some instances. I thought that I should mention that in passing. At the moment, we do not know what the petitioners' intentions are in respect of this letter. If it becomes subject to legal proceedings our Standing Orders on sub judice will kick in with regard to anything that the Assembly does in relation to this matter. I could not comment further without more information.

[38] **Michael German:** Before we formally close the petition, it might be worthwhile asking the petitioners what their intentions are now that the Government has said no. Then we would know whether they are taking a legal route, in which case we would know that it would be sub judice and we could close it.

[39] **Val Lloyd:** I think that we can close it now. How the petitioners intend to move this forward is a matter for them, but I think that we have reached the end of what we can do; there are no avenues left to us.

12.50 p.m.

[40] **Bethan Jenkins:** If we waited, what could we do after any legal process? Could we do anything?

[41] **Val Lloyd:** Well, no. Once it has gone through the courts there would be a legal judgment—I stand to be corrected on this; I am saying it off the top of my head. Once there is a legal judgment, the petitioners could act on that judgment. However, that is a different route from bringing a petition to us. We have investigated this as far as we are able, and it has now reached a conclusion with us, from our reading of this. I am not in a position to argue with this response; it seems to me that we must close the petition in light of that. If the petitioners go down a different avenue, the legal route, they will be given a legal opinion, and it is up to them to pursue that as they wish.

[42] **Ms Jackson:** Further, if there were to be proceedings, the Government would be party to those. The outcome of the proceedings would affect the Government. If actions were suggested or ordered through proceedings, those would be for the Government.

[43] **Andrew R.T. Davies:** This letter means that this has been taken as far as is possible in this institution. Surely, the next step is what the courts are for. If an individual or a group of individuals feels aggrieved by a decision, it can then challenge it through the law. We cannot do anything more on this. The signature at the bottom of that letter was made under the authority of the Minister for Environment, Sustainability and Housing.

[44] **Michael German:** All I was suggesting was that we ask the petitioners whether they think there is anything further that we can do within the scope of the action that they are taking.

[45] **Val Lloyd:** That is outside the scope and the remit of this committee. Therefore, I agree with Andrew that we should close the petition. Are there any further views on that? I do not hear any, so it is the committee's recommendation to close the petition. We will inform the petitioners.

[46] We move on to the petition on the Swansea-Mumbles railway and consideration of the feasibility study. The reference number is P-03-066. This petition came before the committee on 20 September, and we agreed to write to the City and County of Swansea Council to request a copy of the latest feasibility study, which it has sent to us. It concluded that there is scope for the development of a light rail system in Swansea, that the Mumbles corridor is one of those identified as having the most potential for that development, that even the most suitable corridors, in engineering terms, are difficult to justify economically, and that the benefits of light rail need to be considered in light of the current bus-based strategy. As a consequence the report recommends that a further investment in bus services and facilities be undertaken on the main corridors. It also recommends further investigation of a city-centre loop ultra-light system. It goes on to talk about the costs, but also the need to introduce a protected corridor. Did you all manage to read this? I had sort of read it before. It is interesting to note that the report was handed to the council in January 1999, so I assume that the study was done in 1998.

[47] **Andrew R.T. Davies:** It was July 1998.

[48] **Val Lloyd:** Yes, it was a considerable time ago.

[49] **Michael German:** The recommendation that we are asked to consider is for the commissioning of an analysis of the way in which circumstances may have changed since then, which is probably wise.

[50] **Val Lloyd:** I suggest that we ask the Members' research service to do that.

[51] **Andrew R.T. Davies:** It is a comprehensive document and it needs to be updated in light of the changes in Swansea.

[52] **Michael German:** I am grateful to the Members' research service for volunteering. *[Laughter.]*

[53] **Val Lloyd:** I think that the views of the service were canvassed by the secretariat. I think that is very brave; I was amazed. *[Laughter.]* However, it is a perfectly reasonable proposition to look at this again because it is getting on for 10 years since the feasibility study was done.

[54] We turn now to the petition relating to Bryngwyn Cattle Market. We have now received a response from the Minister. Again, this petition was considered in September. The Minister has concluded that the proposed development does not raise issues that would

warrant taking the determination of the application out of the hands of the local planning authority. Are there any comments?

[55] **Michael German:** It has passed from this institution now. It is going legal, as they say.

[56] **Val Lloyd:** We will therefore close the petition in light of the Minister's response.

[57] That takes us to our next petition, which is P-03-071, on Ysgol Gyfun Garth Olwg. We have two extra pieces of information. We will move on to those shortly. Last time, we asked Joanest to provide us with a legal opinion, which she has done in writing. I will now ask her to speak on that.

[58] **Ms Jackson:** Thank you, Chair. As I said in the paper, it is a commentary; it is factual and sets out what the law was before 2005, and what it now is post 2005. I have not sought to analyse the circumstances, or make any judgments or recommendations.

[59] Prior to 2005, the legislation in relation to instruments of Government was set out in Schedule 12 to the School Standards and Framework Act 1998. This Schedule set out what was required to be included in an instrument of Government, procedures for making instruments and for reviewing instruments. Where one party wished a particular matter to be included or varied, then if the governing body suggested it and the LEA agreed, that was how the LEA would make the instrument. If the LEA sought some variations, it would put that to the governing body. If there was agreement, then it would be made. If there was disagreement, then governing bodies would be given a reasonable opportunity to put forward their views. In the absence of agreement, the LEA was able to make the instrument in the way that it saw fit.

[60] In October 2005, the Government made the Government of Maintained Schools (Wales) Regulations 2005. This followed the repeal of Schedule 12 to the 1998 Act. The regulations replicate the provisions as regards instruments of Government contained in Schedule 12, including the provisions about the local authority being responsible for resolving disputes about information to be included in the instrument and for having the final say in how the instrument is made.

[61] Prior to 2005, there was a requirement to have regard to any guidance issued by the Secretary of State—the responsibility for which then passed to the Assembly, and is now the responsibility of the Welsh Ministers. There was a circular, which is always referred to as circular 6/99. I have quoted some paragraphs from that in the paper. That guidance was not withdrawn when the 2005 regulations were made. It appears that the guidance did not entirely make it clear that the local education authority had the final say as regards the content of an instrument of Government. I now understand that the Government has issued a letter to governing bodies, headteachers, and directors of education in Wales concerning the withdrawal of circular 6/99. Although I cannot be definite about this, I understand that further guidance concerning instruments of Government and various other matters is currently being prepared. Are there any questions, rather than me carrying on and on?

1.00 p.m.

[62] **Michael German:** First, do we know the exact date that the instrument was made? That would be helpful so we know whether it falls under the pre-2005 or post-2005 legislation. That would be a first test bed—to know which legislation we are talking about. More importantly—and perhaps I am tempting you here—page 3 of the letter on the withdrawal of circular 6/99, paragraph 5, from the Schools Management Division, seems to be the critical one because it says that the guidance on the 1998 provisions was incorrect. In

other words, the guidance was not appropriate to the law. I do not understand what happens in this case. The guidance has not been replaced, but it is stated that guidance on the legislation from 1998 cannot be applied to the 2005 regulations. That must be a legal interpretation. Presumably, it is saying that the guidance—which is a form of regulation in its own right; that is, a form of legislation—that was available prior to 2005 and up until 1 December when it was withdrawn, should not have been in place anyway. Therefore, should people have taken any notice of it? This is a crucial matter. The guidance was clear, but seemed to contradict the Act prior to 2005. The date of the signing of the instrument of Government seems to be critical with regard to which Act it falls under, as is whether or not the guidance that was issued was unlawful or was incorrect, which is the term that it is used here. What applies in law? Would it have been the Act or the guidance?

[63] **Joanest Jackson:** I do not know when this particular instrument was made. Either the Act or the regulations would have applied. Those would take precedence over any guidance, because the guidance is something that one has regard to or takes account of.

[64] **Val Lloyd:** I refer you to the excellent additional information provided by the school. It is set out in its appendix 51. That will give you an answer to that point as well as your point about the letter, which I was going to refer to after the guidance. It is set out quite clearly in appendix 51. It broadly agrees with what Joanest has just said.

[65] As the letter has been mentioned, I agreed that Bethan could circulate it, or rather that the secretariat could circulate it on Bethan's behalf. It came through late yesterday evening.

[66] **Bethan Jenkins:** I was just wondering where that was. I do not know whether you have had a copy, taking circular 6/99 back. Have you had a copy, Mike?

[67] **Michael German:** Is it this one?

[68] **Bethan Jenkins:** Yes.

[69] **Val Lloyd:** It was sent by e-mail late yesterday afternoon.

[70] **Bethan Jenkins:** I am a bit confused as to how the situation has been misinterpreted, and I would perhaps ask whether we could bring in the body concerned with this to explain why they have misinterpreted it and to explain this matter further.

[71] **Val Lloyd:** It is very clear as it is. I also think that the guidance that we have received is very clear.

[72] **Joanest Jackson:** To be fair to the Government, it has held up its hand and said that it was a mistake. I am not really sure how much further you could take this. The governing body would have received this letter and I assume that it will take its own advice as to how it might wish to proceed vis-à-vis the LEA and/or the Government on this point.

[73] **Michael German:** Are you saying that the Government made a mistake and put in place guidance which was inappropriate, inaccurate or, in its blunt terms, 'incorrect'? Would the only comeback on that be a legal route to challenge on the basis of incorrectness?

[74] **Ms Jackson:** It is possible. I have to be careful what I say, because I do not want anything I say to be construed as trying to advise either the governing body of the school or suggesting courses of action for the Government. It would be necessary for it to consider what has happened and you could go back and look at things such as legitimate expectation and various other matters in administrative law to see how they would go. I would be very surprised if it is not doing that at the moment.

[75] **Michael German:** It seems that what we have here is a school, its governors and community arguing with the local authority on two pieces of legislation, one of which we now know takes precedence over the other, but both of them thinking that they were operating within the law as it was, and the Government coming back and saying ‘Sorry, the law that we have put in place was incorrect’.

[76] **Val Lloyd:** It was not a law—the law was the regulations, and what was wrong was that the guidance had not been withdrawn on the previous regulations. The guidance, circular 6/99, referred to the 1998 Act, and when the 2005 Act came in the Government should have made new guidance on the regulations. The regulations were made properly but the old guidance had not been withdrawn and was then incorrect because there were new regulations. The regulations take precedence.

[77] **Michael German:** My understanding is that this guidance was incorrect from the circular 6/99, and not from 2005. It was incorrect from the beginning.

[78] **Ms Jackson:** It appears to have been so.

[79] **Bethan Jenkins:** That is the guidance that was given to the school, and that is what the school has adhered to.

[80] **Val Lloyd:** Whatever, it is not a case for us; it is a case for the school and the local authority.

[81] **Michael German:** We probably have had the local authority and the school governing body operating in good faith. I was always told that guidance is legislation, but of a lesser order. The hierarchy is Acts, regulations and then guidance. Both sides have operated in good faith, and it has taken until 1 December 2007 for the Government to realise that it has this conflict. The Government has had full cognisance of this throughout, because we saw the correspondence from Government throughout the whole period, and it has not been able to offer a clear set of advice on the basis of its own guidance, so it seems to me that the problem lies with the legislation and the way it was done, rather than with the local authority and the governing body. So, somehow or other, redress will need to be made. My original question to Joanez was, ‘What happens when the Government is incorrect in its interpretation of its own laws’?

[82] **Ms Jackson:** Guidance is not always legislation—it depends on whether or not it is referred to as statutory guidance. Very often, it is basically just that—it is something that the local authority would have to have ‘regard to’, which is a phrase that comes up time and again. So, it is not necessarily law. Governing bodies, LEAs or any organisation that is subject to regulations or statutory provisions should first go to those statutory provisions. You cannot say, by analogy, that the explanatory notes that the Government publishes alongside Acts of Parliament are a part of the law—they are there to assist the reader, and they will make it clear that that is the case.

1.10 p.m.

[83] The Government has held its hands up and said, ‘We were wrong, we will put it right.’ At least, I believe that it has said that it intends to put it right. As I said, there are different outcomes of situations where advice was wrong. The outcome differs depending on what the situation is. It would depend on what they would like to do about it, which I am afraid I cannot comment on, or advise on a course of action that could be taken.

[84] **Val Lloyd:** I believe that this is now for the redress of the courts; it is beyond our

remit.

[85] **Michael German:** On Joanest's last point, it may be sensible, before we come to a final conclusion, to ask what the petitioners' view is now in light of the Government's letter of 1 December.

[86] **Val Lloyd:** No, we cannot do that. Our remit is that, if we are given a petition, the petition asks us to do something. This petition—and I do not have the exact word—expressed 'dissatisfaction' with how it has gone. We have investigated it as far as we can go. We have now discovered that the school may need to take a different avenue, and I believe that, in the light of that, we have to close the petition that was before us.

[87] **Bethan Jenkins:** The school was given the wrong information. Surely, it is then our obligation as a Petitions Committee, when something like this comes before us, to reflect on it and to try to ensure that it does not happen again. It would only be respectful to ask the petitioners what their opinion is; this came out in December after any discussion had taken place with the school, and it based its whole argument on circular 6/99—perhaps it is not very strong in legal terms, but that is how it based their argument. That is where the loophole lay in the system. Therefore, for us to close it, with the Government having changed its perception on what it was giving out as guidance, would be problematic.

[88] **Val Lloyd:** We are not a court of law. I take some exception to your saying that this is 'disrespectful'. I do not believe that I am being disrespectful in any way. I am giving my honest opinion on where we are with it, and suggesting what I think would be a reasonable course of action, while still leaving an approach open for the school. I do not believe that the approach that you are suggesting is a course of action that is suitable for this committee. However, I prefaced my remarks by saying that that would leave the school in a position to take another course of action.

[89] **Andrew R.T. Davies:** Looking at the weight of evidence that has come through, the whole thing seems to be a commonsense approach, but it does not always happen as a consensual approach. People have been working on the basis of two different bits of paper. Through the petition coming before this Petitions Committee, an element of evidence has been gathered; equally, this letter that has now come through has crystallised the point that the regulations and rules that were governing the process have been found lacking, or their clarity has been found lacking. However, I agree with the Chair that it is not the role of the Petitions Committee to do more.

[90] To be fair, from the petitioners' point of view, we have got as good an outcome as can be got for this petition. The petitioners' argument is greatly strengthened now by our finding this information out for them. I believe that the school should be able to keep its name—that is a personal view. However, as an elected Member, I have to look at the evidence as it sits before me and come to a decision based on that. When we walk through the committee room doors, we have to look at what is before us, rather than what our hearts may tell us. If common sense prevailed, consensus would rule the day, and the school could determine its own destiny. However, I believe that we have gone as far as we can, and we have given the school ammunition, with this letter and with the evidence gathered, and I hope that we have been found to be productive in what we have done on its behalf.

[91] **Val Lloyd:** That was what I meant. I was not suggesting that we take a disrespectful approach; I was suggesting that we do this based on the premise that you have just outlined.

[92] **Bethan Jenkins:** I wish to make a final point. In some cases, when we have received a petition, if there is a discrepancy in policy terms or if we have picked up on a problem, we have said that the Petitions Committee could look at it again in future. That is the only reason

why I thought we could look at it again. We have obviously found a discrepancy here, which I hope the Government now realises it must address, and I hope that it will work positively with the school to address that situation.

[93] **Val Lloyd:** I am sure that it will. The letter that you brought to us has been instrumental in doing that, as have the deliberations of the whole committee.

[94] So, we agree to close this particular petition. However, another issue has arisen that we need to discuss in this regard, namely the letter from Lord Gwilym Prys-Davies, which I agreed could also come before us, in which he voices his support for the petition. You have a copy of the letter. He offers us several recommendations. In summary, he says that he wishes the regulations to be amended to ensure that, in the event of a dispute arising between the governing body and the local education authority in respect of the school's name, the will of the governing body will prevail, subject to its not being perverse. I wish to open that up for discussion.

[95] **Andrew R.T. Davies:** That seems to be the best argument. The governing body is responsible for the school and the governing body should rule. I would fully support that, but I am not 100 per cent sure how the Petitions Committee can deal with it. Perhaps we could send a letter to the Minister for education to highlight that fact. It has always been my belief, as a school governor, that the school governing body should run the school that it represents as it sees fit, with the support of the local education authority. It is the governing body and it represents the pupils who have ownership of the school.

[96] **Michael German:** If you bang the table like that, Andrew, people will find it very difficult to hear what is being said.

[97] Would that not encourage others to send a petition that is worded in that way?

[98] **Val Lloyd:** You are putting ideas into people's minds, or words in their mouths.

[99] **Michael German:** It was a rhetorical question, Chair, but it seems to me that it could be a way of proceeding.

[100] **Val Lloyd:** I think that we should ask the Welsh Assembly Government to consider the letter when considering the revision of current guidance. I remind you that the petition that came to us originally was against the changing of the school's name, and not changing the law that governs the naming of schools. That is what I meant about being specific about closing the petition and looking for other avenues. So, shall we choose that option of writing to the Minister as I have identified? I see that you are happy with that. So, we have closed the main petition, but we will write that letter to the Minister. Thank you for your advice on that, Joanest.

[101] We will now move on to petition P-03-074 on Nant Cylla. As you may remember, the petitioner opposed the application made by Redrow Homes to the Environment Agency for a licence to discharge sewage into the Nant Cylla watercourse.

[102] **Michael German:** A key issue raised during the discussion of this petition was the Environment Agency's policies in respect of discharging into small rivers. That came up in the petition, but we did not actually pursue that further, as regards whether its policy was correct or whether it was going to amend it. Could we write to the Environment Agency to ask whether, in light of this, it proposes to change its policy?

[103] **Val Lloyd:** I understand where you are coming from and I have some sympathy with that point of view, but we must follow the logic that we used with the previous petition, and

the petition does not ask us to do that. The petitioners brought a specific incident to our notice, and we dealt with that with a good result, but we were not asked to take anything else forward.

1.20 p.m.

[104] **Andrew R.T. Davies:** I think that that petition is now closed, is it not?

[105] **Val Lloyd:** I think that it has to be closed. On a personal level, I would be very interested to know whether the Environment Agency has changed its policy, but we were not asked to take that forward.

[106] **Michael German:** It is another thing to encourage someone to write another petition.

[107] **Val Lloyd:** That would be up to them. They could write to the Environment Agency and perhaps that would be more pertinent. So, we close that petition. The next one is P-03-086 on holiday-home owners being charged double council tax. Joanest, I am making you work very hard today.

[108] **Ms Jackson:** This all happened after the last committee, and I could not believe how busy you kept me over Christmas. As requested, I set out the legal position in respect of the raising of council tax. It boils down to the fact that current legislation allows local authorities to make determinations as regards discounts, but no provision emanates from the Local Government Finance Act 1992 to allow the levying of council tax at a higher rate than that which is achieved by the application of the formula in the Act. That is, councils can determine to take the tax levels down, but there is no way in which they can go up.

[109] **Michael German:** There were a couple of words missing from the last few paragraphs, which I found rather strange, but I think that I worked out what they were and put them in. However, those paragraphs seemed to indicate that you would need an LCO to grant these powers, because they come within the relevant field. If we wanted to give effect to this petition, would we have to seek an LCO? If so, how would you get that LCO? Is that the right approach? It may be that the only place to take the petition is the committee that considers local government matters, to see whether it thinks it a good idea to make an approach for an LCO on this matter.

[110] **Val Lloyd:** I sit on that committee.

[111] **Michael German:** We could always do it ourselves, Chair, if you are overworked elsewhere.

[112] **Val Lloyd:** The petition has to go where it needs to go. Sorry, I should not have been so personal. Does anybody else have any views on it?

[113] **Bethan Jenkins:** That is the only option unless the petitioner seeks the powers through an individual Assembly Member proposed LCO?

[114] **Andrew R.T. Davies:** I have a view on it, but I am more concerned with the doubling of the tax. I do not see the logic in doubling the tax. *[Laughter.]*

[115] **Val Lloyd:** I am trying not to take a view on it; I am trying to just look at it objectively. I am not certain whether it would work or not, but the petition is before us and I try to consider every petition without my personal point of view coming into it. However, I do not know where we should go with this. I suppose that it boils down to passing it on. We could have an interim position, and ask the Assembly Government—

[116] **Ms Jackson:** I am sorry to interrupt, but if I recall correctly, did the petition not include some suggestions as to what might be done with any increased funds raised by the council?

[117] **Val Lloyd:** Yes, it suggested building affordable housing.

[118] **Andrew R.T. Davies:** It mentions affordable housing for local first-time buyers.

[119] **Ms Jackson:** Was there not some confusion as to whose land that was supposed to be, and whether a charitable trust was involved?

[120] **Val Lloyd:** Yes, but they then re-jigged the petition so that it was presented in general terms. That is right. The original petition did not say where it was to be, and it implied that there was a land disagreement.

[121] **Michael German:** Chair, just as a matter of administration, because the petitions are going to keep coming back to us, I wonder whether we ought to have a repeat copy of the petitions as part of the papers that we are given, so that we will at least have the wording before us and we will know what we are talking about.

[122] **Val Lloyd:** Rather than our taking the wrong way forward, I suggest that the petition comes back to us for further clarification. We should have this as an agenda item the next time around. We are meeting in a fortnight's time, so that would be reasonable and we could then pursue that.

[123] Petition P-03-089 is the letter of clarification from Powys Community Schools Action, which,

[124] 'calls upon the Welsh Assembly Government to "sustain the communities of Powys" and to "halt and reverse the pressure on Powys County Council to close the schools"'.

[125] There is a letter from the school's action committee, I suppose.

[126] **Michael German:** If I recall rightly, we asked the petitioners to be clearer about their ambitions in this petition and they have laid out three things in the letter that they want to see happening. I wonder whether this is a suitable case for calling the petitioners in to explain to us their three requests: a moratorium on all closures; a review of all aspects of community schools; and a rural education policy.

[127] **Val Lloyd:** I think that there were some inaccuracies in the original letter. It says there,

[128] 'Officers of Powys County Council told governing bodies of the schools... that this was something which the Council *had* to do; that if it did not do so, the Welsh Assembly Government would impose a similar programme of closures and would, meanwhile, withhold grants'.

[129] **Michael German:** I have heard that before, and not just from this local authority. Some local authorities say that, under guidance from the Welsh Assembly Government, they have to reduce their numbers of empty places and that if they do not do that they will be penalised financially.

[130] **Val Lloyd:** They would be penalised financially because the numbers for their schools would be fewer. It is not a case of penalising; it is a case of getting your grant

according to the basis for that grant.

[131] **Michael German:** Whatever, but this is a reinterpretation of that point, and I have heard it very often.

[132] **Val Lloyd:** It is a way of phrasing it, is it not?

[133] **Michael German:** Yes.

[134] **Val Lloyd:** You get grant according to numbers and whatever else is operational for that grant.

[135] **Bethan Jenkins:** Should we not first ask Jane Hutt for a clarification of that policy?

[136] **Val Lloyd:** Yes, perhaps we could do that.

[137] **Bethan Jenkins:** We would then have a basis for what is being said.

[138] **Val Lloyd:** That is a reasonable idea. We could get clarification and then move towards getting the petitioners in.

[139] **Andrew R.T. Davies:** I think that we should do those things in parallel, because this is such a short term. I believe that it is agreed that it would be desirable to have the petitioners in, so perhaps we could put that in motion as well as getting the clarification from Jane Hutt. Blink and you will miss this term.

[140] **Val Lloyd:** We have another meeting in a fortnight's time. We need to have the information back from the Minister. Perhaps we could provisionally ask the petitioners to come to the first meeting after half term, which is the meeting after next. Do you think that we would have the information from the Minister by then?

[141] **Mr Sanchez:** I would have thought so.

[142] **Val Lloyd:** I think that that is reasonable, and then we will be in a better position to take this forward.

[143] **Andrew R.T. Davies:** We are talking about only three weeks' time, are we not?

[144] **Val Lloyd:** Yes, you are quite right. We do not want it to roll on, and this is a very short term.

1.28 p.m.

Papur i'w Nodi Paper to Note

[145] **Val Lloyd:** We now move on to the update paper on our previous positions. I will go through it page by page. I will just call the number of the page out, and, if you want to raise anything, please shout out. Page 1. Page 2. Page 3. I draw your attention to page 4. Are we still awaiting further information regarding Rhyl flats?

[146] **Mr Sanchez:** Yes, we are. She is going to get back to us very shortly, and we expect that information to be ready by the next meeting.

[147] **Val Lloyd:** On page 5, are we still waiting for the Minister to respond on the

retrospective work permits for foreign nurses?

[148] **Mr Sanchez:** Yes, we are.

[149] **Andrew R.T. Davies:** What is the delay with that? That came before us quite some time ago. It was during the first week in October, was it not?

[150] **Mr Sanchez:** I do not know what the delay is. We will chase it up, and we have that down as an action point.

1.30 p.m.

[151] **Val Lloyd:** Page 6.

[152] **Mr Sanchez:** It was before my time. [*Laughter.*]

[153] **Val Lloyd:** He cannot be held responsible.

[154] **Michael German:** On Sustrans, Chair, I have to turn backwards and forward two pages for this, I do not know what the final—where are we?

[155] **Andrew R.T. Davies:** The December meeting.

[156] **Michael German:** Yes. Does it go backwards? No; it does not. We discussed this at the December meeting. Where is the rest of it? I cannot see it. There is more to it than this, because we suggested action, and I cannot find the rest of the action.

[157] **Mr Sanchez:** I think that we are awaiting the response from—

[158] **Michael German:** I have it. I am sorry; it is two pages further on. I do not know why I did not see it. It says, 'Awaiting response from Sustrans'.

[159] **Val Lloyd:** Sustrans was going to have some discussions with the two people who objected to the petition. I received a very late e-mail from Lee Waters, saying that they had met—as far as my memory goes, it said that they had met, but it did not give any further information, did it?

[160] **Michael German:** I think that he e-mailed me yesterday afternoon to say that they had met and that they had reached a position by which they both agree that seeking a legislative competence Order was correct, although they were not necessarily agreed on what the implementation would be once you had the competence here, which is what the Measure that would follow from it would be. In other words, they have agreed that they want the power here, but they do not necessarily agree about what will be done with it.

[161] **Val Lloyd:** That is very kind of him, but he did not send that to the Chair.

[162] **Michael German:** No. I was going to suggest that we ask him to put that in writing, either to you as Chair or through the clerk.

[163] **Val Lloyd:** From my recollection, I did receive an e-mail, but it was not as comprehensive as that; it was a one-line e-mail to say that they had met.

[164] **Michael German:** That would solve the problem, if they have agreement on having the powers, because all they were seeking was an LCO, and not a Measure.

[165] **Val Lloyd:** Okay, everybody? Good. Is there anything further on petition P-03-078 for a review of screening programmes. The next page starts with P-03-083. What about the first one on the response received by the committee from the Cardiff Stop the War Coalition?

[166] **Mr Sanchez:** The response was to a request for further information from the petitioner, and he responded by saying that he simply wanted to use this as a vehicle to raise awareness. We wanted that response before bringing it to committee, so we will look to put that on the next agenda.

[167] **Val Lloyd:** Thank you. Is there anything else on that page, anyone? There seem to be some very interesting ones coming in. Are there any comments on any of the others? I see that there are not. Thank you; that brings the meeting to an end. Our next meeting is a fortnight today.

*Daeth y cyfarfod i ben am 1.33 p.m.
The meeting ended at 1.33 p.m.*