

Cynulliad Cenedlaethol Cymru
Y Pwyllgor ar yr Ymchwiliad i'r Achosion E.coli
yng Nghymru

The National Assembly for Wales
The Committee on the Inquiry into the E.coli Outbreaks in Wales

Dydd Iau, 17 Tachwedd 2005
Thursday, 17 November 2005

Cynnwys
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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynnddi 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 o'r Cynulliad yn bresennol: Jocelyn Davies (Cadeirydd), Jeff Cuthbert, Val Lloyd, Jonathan Morgan, Jenny Randerson, Karen Sinclair.

Swyddogion yn bresennol: Jeff Godfrey, Cyfarwyddwr Gwasanaethau Cyfreithiol; Peter Jones, Cwnsel i Wasanaethau Seneddol y Cynulliad; Dr Mike Simmons, Swyddfa'r Prif Swyddog Meddygol.

Eraill yn bresennol: Peter Clarke, Comisiynydd Plant Cymru; Dr Chris Llewellyn, Cymdeithas Llywodraeth Leol Cymru; yr Athro Hugh Pennington; Susan Perkins, Swyddog Arweiniol LACORS, Steve Thomas, Cyfarwyddwr Cymdeithas Llywodraeth Leol Cymru.

Gwasanaeth Pwyllgor: Jane Westlake, Clerc; Vaughan Watkin, Dirprwy Glerc.

Assembly Members in attendance: Jocelyn Davies (Chair), Jeff Cuthbert, Val Lloyd, Jonathan Morgan, Jenny Randerson, Karen Sinclair.

Officials in attendance: Jeff Godfrey, Director of Legal Services, Welsh Assembly Government; Peter Jones, Counsel to the Assembly Parliamentary Service; Dr Mike Simmons, Office of the Chief Medical Officer.

Others in attendance: Peter Clarke, Children's Commissioner for Wales; Dr Chris Llewellyn, WLGA; Professor Hugh Pennington; Susan Perkins, Lead Officer LACORS; Steve Thomas, Director WLGA.

Committee Service: Jane Westlake, Clerk; Vaughan Watkin, Deputy Clerk.

Dechreuodd y cyfarfod am 8.59 a.m.

The meeting began at 8.59 a.m.

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

Jocelyn Davies: Good morning, and welcome to the meeting of the Assembly's Committee on the Inquiry into the E.coli Outbreak in Wales. There are headsets for members of the public, so if anyone speaks in Welsh, it will be simultaneously translated. If you have difficulty in hearing, the headsets will also amplify those speaking in English, and it is best to have the glass globe on the headsets facing outwards. If you have any problems with the headsets, raise your hand and the usher will assist you. I ask everyone to switch off their mobile phones or pagers, because they interfere with the electronic equipment. If there is an emergency and the room needs to be evacuated, the usher will assist us.

Are there any apologies or declarations of interest? I see that there are none.

9.00 a.m.

Trafodaeth Gychwynnol gyda'r Athro Hugh Pennington
Initial Discussion with Professor Hugh Pennington

Jocelyn Davies: I welcome Professor Hugh Pennington to the committee. We are delighted that you are able to join us today. It might be helpful at this point if you were to state publicly your position in relation to the committee and the inquiry. The terms of reference for this committee are to consider the inquiry's terms of reference, and to report to the full Assembly. We can nominate someone to carry out the inquiry, and it is our intention to nominate you, but that decision and the terms of reference need to be ratified by the full Assembly.

The Inquiries Act 2005 also requires that the Assembly should consult the person it proposes to chair the inquiry about its terms of reference, and that is what we are doing today. There are one or two other things we should say about the Act, because this is the first inquiry to be carried out under it. The Act precludes any inquiry from determining any person's civil or criminal liabilities. Section 29 requires that the terms of reference must not require the inquiry to determine any fact, or to make any recommendation on a subject that is not wholly or primarily a Welsh matter.

I believe that you have received the full transcript of our last meeting, Professor Pennington, and the written submissions. Therefore, you will be aware that we will take evidence today. Do you have any comments so far, or do you wish to leave them for later? The committee is also keen to meet you informally immediately following the meeting, for which another room has been set aside, and I hope that you can join us. Would you like to make comments now or reserve them until we have heard the evidence?

Professor Pennington: I would like to make one or two general comments. I thank the committee for the confidence that has been shown in me in getting as far as we have, in terms of saying that you will nominate me to the Assembly to chair the inquiry. It is quite a daunting task, particularly on the basis of the experience I had in relation to the E.coli outbreak in Scotland in 1996-97 and the recommendations that I made at that time. I am very disappointed that we are still, in some ways, going over similar ground. That emphasises the importance of an inquiry to find out, in a sense, where we have gone wrong. When I say 'we', I mean it in a broad sense in relation to all those people who are involved in delivering safe food.

I accept that the Inquiries Act 2005 obliges us to look primarily at Welsh considerations, but my feeling is that, although that is what we will do, there may well be outcomes that will have broader consequences, because E. coli knows no national boundaries. It has been a problem in other parts of the UK, other parts of Europe and other parts of the world. Having said that the inquiry will focus on Welsh issues, I would be very surprised if we managed to keep it so well bounded that we would not make recommendations that would have a broader impact.

I accept the statement in the Inquiries Act 2005 about the inquiry essentially not being for determining guilt or culpability, but it also says that if the inquiry's findings may point in a certain direction, which is almost to be expected, that is acceptable. In the light of past public inquiries, on which the Inquiries Act 2005 is based in terms of good practice, any inquiry must not be an adversarial process but serve an inquisitorial purpose. I see its main functions as determining the facts, learning the lessons and making recommendations based on those lessons in order to, as far as is possible, prevent a similar thing happening in the future.

Jocelyn Davies: Do any members of the committee have comments or questions at this point? I see that they do not. Thank you, Professor Pennington. You are quite right to say that there will probably be implications for other parts of the UK. We are dealing here, primarily, with school meals, which is very important to us, and I am sure that the consequences will go beyond the borders of Wales.

9.05 a.m.

Cymdeithas Llywodraeth Leol Cymru
Welsh Local Government Association

Jocelyn Davies: We are just going to see if the representatives of the Welsh Local Government Association have arrived. We have a written submission from the WLGA on its views on what should be included in the terms of reference. Professor Pennington, do you have that document?

Professor Pennington: I do, thank you.

Jocelyn Davies: I assume that the representatives are here. They will be asked to speak to their paper, then we will take questions and, obviously, Professor Pennington, if you want to ask questions, just indicate, and I will call you.

Professor Pennington: Thank you.

Jocelyn Davies: We have Steve Thomas and Susan Perkins with us this morning.

Mr Thomas: Good morning.

Jocelyn Davies: Good morning. I should apologise that we have got to your contribution slightly earlier than we anticipated. It is very good of you to be with us this morning. We thank you very much for your written submission, which we have had for some time now. I welcome Steve Thomas, Dr Chris Llewelyn and Susan Perkins to committee. Does one of you intend to speak to the written submission?

Mr Thomas: We will be very short.

Jocelyn Davies: That is fine.

Mr Thomas: From our point of view, we very much welcome your invitation to contribute. We, unusually, may also have some questions for you. We welcome the inquiry. We are dealing with our colleagues in local government, who, as you know, were at the epicentre of the outbreak. From our point of view, we will be presenting more detailed evidence to the committee at a later stage, but we have raised several points on the terms of reference in a letter that we sent to you. I hope that that covers much of the ground that you are going to be covering as a committee. Being the representative body of the 22 authorities, the Welsh Local Government Association has spoken to the authorities concerned, particularly those in the south Wales Valleys. We have had discussions with the chief executives of those authorities. We would hope to come before the inquiry with some consolidated view later. We think that that is very important. I can give you the absolute assurance that, from our point of view and that of local authorities, we intend to be as candid as we can be on this. If mistakes have been made, we want to learn from them. If there are positive messages that can come out of this tragic outbreak, we also want to learn from those.

9.10 a.m.

I think that your inquiry is very important and will concentrate on some of the key services that local government employ and which the public cares most about. From that point of view, I hope that the letter that we have presented on the terms of reference will be useful. I also hope that you have seen a copy of a recent document that we produced which you called 'Food for Thought—A new approach to public sector food procurement'. We see that very much as best practice in terms of the way we go forward. I hope that the inquiry will look at some of the major recommendations in that report, because at the heart of that lie many of the issues that are central to this outbreak.

Janice Gregory: Thank you for that, Steve. In your introduction, you mentioned that you would have a more detailed submission for the committee, but, of course, that will go to the inquiry and not to this committee. We will just be discussing the terms of reference. Do any committee members have any questions? Jeff?

Jeff Cuthbert: Thank you very much for the paper that you sent in beforehand. The bullet points—certainly 1 to 4—are ones that I am not at all surprised to see there, and I am sure that they are issues that we would want to reflect in one way or another. In point number 5, you refer to the role of the media in Wales. Would you like to say a bit more about that and why you think that should be part of our terms of reference?

Mr Thomas: We have tracked the media coverage of the E.coli outbreak, and I think that there are some real issues about the way in which the media covered the outbreak in terms of some of the stories that emerged. I think that some did not necessarily inform, but rather verged on being scare stories. I think that there are some real issues around that. The most recent story that I read in a Welsh paper was about a shortage of food standards officers. That is a shortage on a UK basis; it is not necessarily a shortage in the Welsh context. That did not seem to keenly emerge from the article. I think that there are some real issues around the way in which the outbreak was reported and on the pressure put on parents during the course of the outbreak in terms of appearing on the television and in the media, and I think that the inquiry should look at that.

Jocelyn Davies: Do you want to come back on that, Jeff?

Jeff Cuthbert: No, that is fine.

Jocelyn Davies: Jonathan?

Jonathan Morgan: I have a similar point in relation to the role of the media in Wales. You may well be right, but I doubt that this could really be part of the scope of the inquiry because it is asking the inquiry to make a judgment as to whether or not the media have handled this effectively when surely it should be looking at whether food hygiene practices have been followed, and where there is a breakdown of policy and communication, which is what you have suggested in points 1 to 4. What I found curious about point 5 was the way in which you coupled it with a wider understanding of the regulatory regime. Are you referring to the lack of understanding of the regime among the media, or the lack of understanding of the regime generally? I was not quite sure why the two had been put together.

Mr Thomas: I will take your first points first, and then talk about the regulatory regime. I think that there is role for the committee in this regard. I think that local authority colleagues have felt under siege during the course of the inquiry. Take, for example, the legally correct position of Bridgend County Borough Council in deciding not to release a certain amount of information, which was portrayed in a very negative way. It did not release that information because it was not covered by the Freedom of Information Act 2000 and it would have been damaging to release some of the information. To cover that in a negative way was wrong, and I think that the inquiry may want to look into those areas.

In terms of the wider understanding of the regulatory regime, I think that there may be a lack of understanding not only within the media, but among the general public. I would dispute the stories that constantly emerged about the shortage of environmental health officers throughout this process, and, in one sense, being stacked to the roof with environmental health officers does not mean that you can prevent an E.coli outbreak. So, there are some real issues about that. My understanding of a regulatory regime is that it is an inspection regime. It does not mean that local authorities are camped on premises, but that they inspect premises. Again, there was a feeling among many people almost that local authorities should sit in food plants to monitor the daily activity of those bodies. You cannot do that; it is an inspection regime. The question of risk and what is proportionate to risk must be dealt with by the inquiry.

Jocelyn Davies: We have a great deal of sympathy with that sentiment.

Jenny Randerson: You referred just now to Bridgend, but, earlier, you said that you had been talking to local authorities in the Valleys. May I assume that you also spoke to Bridgend authority? My second question relates to item 3 on your list: procurement policy. Some organisations, which have written in with suggestions for the terms of reference, have referred to the policy and quality of school meals in a broader sense. Is that what you mean by procurement policy there?

Mr Thomas: Absolutely. From our point of view, and referring back to this document, the important point of the document is to stress the fact that procurement policy, in particular, should not be about the lowest tender, but about whole-life costs and quality. A range of quality control mechanisms are in place to ensure localised procurement and quality procurement, but that must be examined as an issue. In fact, I think that it is probably the key issue.

Karen Sinclair: I just want to pick up on what Jonathan said. He thought that perhaps point 5 was outside the scope of the inquiry.

Jonathan Morgan: I said that part of it was outside its scope.

Karen Sinclair: I just wanted to say that I strongly disagree with that because the media do have a role to play, in this sort of tragic circumstance, and they should act in a responsible manner. The fact that they do not creates fear and trepidation, which could be avoided. I am not saying that they should be totally and utterly factual—though they should—but they should not play selling-paper games, which newspapers quite often do.

Jocelyn Davies: The inquiry will definitely want to look at communicating information and, no doubt, the media will have their own views that they will want to put to the inquiry about how they get information. So I see no reason why that should be specifically excluded, although, of course, we have no powers over the media. They have their own editorial policy and they take the stance that they do. However, communicating the message is certainly something that I am sure Professor Pennington will want to look at.

Professor Pennington: There is a long, historical tradition of inquiries of this sort into food poisoning outbreaks looking at the role of the media. I could quote one that I am very familiar with, namely the Aberdeen typhoid outbreak in the 1960s when the media played a very substantial role and were criticised for it. It was not just the media; those who were talking to the media also played a very important role in determining how the outbreak was perceived, seen and handled and so on. So I would be very surprised if, at some point during the inquiry, the role of the media was not dissected.

Jocelyn Davies: I am sure that the media will be covering this inquiry, so you will have your own views on that. Of course, we politicians love the media when they give us good coverage and we hate them when they do not.

Jeff Cuthbert: So we hate them most of the time. [*Laughter.*]

Val Lloyd: There are two sides to this, as has been touched on, because the media have a very important role in passing on the information that you talked about, but there are ways of passing that information on. Perhaps it is intended to look at how it was done this time, and what could have been.

Jeff Cuthbert: Although you do not refer explicitly to it here, I dare say that you will expect us, under our terms of reference, to take account of the chief medical officer's inquiry and the police inquiry that are running now. Are there any general points that you might want to make about those inquiries and the possible impact that they may have?

Ms Perkins: If I may confirm, an officer from the WLGA's health and wellbeing team, has been seconded to help in the production of the chief medical officer's report. We are fully supportive of the chief medical officer's work in this area, and we will also work to help introduce the recommendations that emerge from that.

9.20 a.m.

Jocelyn Davies: Thank you for that clarification. Do Members have any further questions? Professor Pennington, do you have any questions for these witnesses?

Professor Pennington: No, all of the issues that I wanted to raise have been discussed.

Jocelyn Davies: When you carry out the inquiry, it seems that you will receive a substantial submission from the WLGA.

Professor Pennington: Yes.

9.20 a.m.

**Cylch Gorchwyl yr Ymchwiliad: Swyddfa'r Prif Swyddog Meddygol
Terms of Reference for the Inquiry: Office of the Chief Medical Officer**

Jocelyn Davies: We are now joined by Dr Mike Simmons. Committee members will have a paper to refer to. Dr Simmons, would you like to introduce your paper, or shall we go straight to questions? It is entirely up to you.

Dr Simmons: I do not have a lot to say. Although I followed the standard format within the paper, I do not know whether my paper adds an awful lot to what you are probably already aware of. Having looked through the transcript, minutes and papers from your first meeting, the sort of things that were discussed were the things that we would expect to see coming through from an inquiry.

I looked at this from our point of view, in terms of the urgent public health review that is going on at the moment, and looked at how that might feed into the public inquiry itself. That is what I pick up in point 4 of the second paragraph. The one area that either this committee or the inquiry itself needs to look at carefully from the beginning, having asked Professor Pennington to chair the inquiry, is how evidence can be taken from Professor Pennington himself. This man went through a huge episode in 1996-97, and then we looked to the Pennington report to inform the guidance and legislation that was put in place following that. The inquiry has to go back and look at the legislation and the guidance and at how that relates to what Professor Pennington recommended at the time. Therefore, the inquiry might want to take evidence from Professor Pennington, and needs to work out in advance how it might do that, so that it is seen in a proper way. That was my main point on the first part of my paper.

On the second part of my paper, I was asked to cover the Chief Medical Officer's review. As the paper highlights—and you have seen the terms of reference—we are essentially looking at whether there are any holes within the public health measures that are currently in place that we need to address urgently. This allows the inquiry to take a more leisurely look at all that has gone on, and a more detailed look than we can ever attempt. Largely, it is similar to what you did, Professor, for your interim report, although with less detail as you have done most of it. You were asked to report by the end of 1996, and did so with your interim report. That is largely what we have to do. We are due to report by Christmas.

We originally thought that we would do most of this by sending out a series of letters/questionnaires to the different organisations. However, time is moving on. As I think was the case in the first few months of the Pennington group's review, we are planning to invite different organisations in the week beginning 28 November, and we are setting time aside to do that so that we can have discussions with them rather than go through a lengthy questionnaire, because we think that we would run out of time. We are conscious that we want to get the report in by Christmas.

Jeff Cuthbert: Thank you for what you have just said, and for the written report that you gave us in advance. You rightly made a good point in paragraph 2, point 4.3, which I am sure we all noted. I wonder—and I would welcome Professor Pennington’s view on this—how we would take evidence from Professor Pennington’s report, when he will be chairing the very inquiry taking the evidence. Should evidence emerge as a result of our inquiry that contradicts some of the conclusions of the inquiry from Scotland, what effect might that have on our inquiry, given that Professor Pennington will be chairing it? Again I would welcome his view on that.

On a totally separate matter, you do not refer to it explicitly, but, as I asked the last witnesses, do you have any feeling at this stage on the likely impact of the police inquiry on our work?

Dr Simmons: I cogitated on how you would handle taking evidence from Professor Pennington. The only thing that occurred to me was whether, once you had set up the group, you could ask the inquiry to appoint a deputy chairman who would take on the role of the chairman at that point to question Professor Pennington with the group. In that way, he can give evidence as an expert in his own right. That would be one way forward. I gather from what I have read that you are contemplating having a QC alongside Professor Pennington, who may be the logical person to take on that role.

Jocelyn Davies: Do you want to come back on that point, Jeff?

Jeff Cuthbert: Yes. We suggested the type of structure, and discussed whether there would be other panel members or assessors. That might be an idea, and I note what you say about a deputy chair. Believe me, I am not trying to be difficult, but, in a sense, I am playing devil’s advocate and just trying to think of the possible consequences. Would such an arrangement be enough? It would still be the case that Professor Pennington is chairing the inquiry and would have overall responsibility. Would such an arrangement be adequate? I would welcome Professor Pennington’s view.

Professor Pennington: I have given a little thought to this, although perhaps not as much as I should have. How I can cross-examine myself is an interesting issue. One way forward might provide a solution, and that is that there are members of my group who are still active and who could give evidence. It may be appropriate for them to be called to give evidence from a general point of view, given what has happened in Scotland. For example, there is the retired chief medical officer in Scotland who was intimately involved in my inquiry, and who was a member of the inquiry team in a peripatetic way—that is, he came and went. He has now retired and has no particular interest one way or another, and I do not doubt that he would have things to say about the implementation of the report and the thinking that went into it. Other members of the report team are in a similar position. So, one way forward could be to interrogate the Pennington report without interrogating Pennington.

Although I was a member of the task force that has been mentioned, I did not chair it. The chair of that task force is now the chair of the Advisory Committee on the Microbiological Safety of Food. I would be rather surprised if the inquiry did not call on that advisory committee anyway. That would take care of that other Scottish initiative on E.coli and food safety. I also remind the committee that the task force was concerned primarily not with food-related issues, but with the environmental spread of E.coli, although it did look at the way in which E. coli was diagnosed in laboratories, the follow-up of patients and so on. Those are pertinent issues.

Dr Simmons: The second question related to the police inquiry. To some extent, your public inquiry will be hampered if it cannot wait until the police inquiry is complete. We are very conscious, from the review that we are doing now, that we must be very careful about what we do, and do not, write. I have proposed that, before my review goes to the chief medical officer and then to the Minister, we should run it past the eyes of the police investigatory team. The last thing that we want to do is to prejudice the police investigation.

9.30 a.m.

As I understand it, the parallel with Scotland was that its equivalent of the public inquiry was its fatal accident inquiry, which followed the police investigation. Therefore, that is a judgment that this committee will have to take. I do not know what the timescale is for the police investigation and you may be able to start the inquiry, but are you prepared to delay some of your inquiry until the police investigation is completed? That way, you are likely to see a lot more of the detail emerging around those areas that they are investigating.

Jocelyn Davies: Did you want to ask another question, Jeff?

Jeff Cuthbert: No, that is fine.

Jocelyn Davies: Jenny, did you indicate that you had a question?

Jenny Randerson: It is on a different issue, really, although I think that it would be worth following on from that by asking what Professor Pennington thinks about Dr Simmons's point on whether we should wait for the whole inquiry or part of the inquiry. Can we realistically get on with part of the inquiry before the police inquiry is complete? The police did indicate to us that this is something that could take years.

Karen Sinclair: Just as a point of information, they did actually say that within two to three months—I think—they would know whether they were going to push for a prosecution or not.

Jocelyn Davies: Before we talk in public about a briefing that we were given in private, we should say that we do not know how long the police investigation will take. It could be a couple of months or it could be years. I do not think that we should pursue that any further.

Jenny Randerson: Sorry.

Jocelyn Davies: That is okay, Jenny, but the point is that we do not know.

Jenny Randerson: No, we do not.

Jocelyn Davies: Professor Pennington, would you like to comment?

Professor Pennington: In Scotland, it was general practice that a fatal accident inquiry would wait until any criminal proceedings had been taken and a court had come to a decision. That is standard practice. I am not a lawyer, so I cannot comment any more than that; I can only tell you what the standard practice is in Scotland.

On the other side, any substantial delay in the inquiry would not be a good thing in the sense that memories tire, and public concern would not be allayed by not having an inquiry.

Jenny Randerson: To go back to the question that I was going to ask Dr Simmons, we have cases still occurring, as you point out. A whole bunch of new cases are emerging in Brecon at present. Is your team, which looked into the original outbreak, expanding its work to look at this one at the same time?

Dr Simmons: There is no intention to do so at present. That would be a change in the terms of reference. If I may comment on the recent cases in Brecon, in Wales, we expect to see something like 30 sporadic cases of E. coli O157 in any year. There is an incredibly raised awareness, rightly, at present. Therefore, parents, teachers and children are more likely to report direct symptoms. They are more likely to go to their GP and the GPs are more likely to take specimens. As a result of where we are at present, we may be picking up more of what is out there. In other words, instead of having 30 cases in a year, with this heightened awareness, we may have 40 or 50 cases which have always been there, but which are now being picked up microbiologically, or being reported through the systems.

I talked to members of the outbreak control team again last night, and they are still unable to demonstrate any link between the Brecon cases and the south Wales Valleys cases. It would be unwise for our group to start looking at what is possibly noise around the main issue, which is the outbreak that was centred on 19 September.

Jenny Randerson: I have a follow-up question to that. Bearing in mind then that you are restricting yourself to the original outbreak, you say that you expect the interim report by Christmas, but the final report might—

Dr Simmons: No, the interim report to which I refer there is the interim report of the outbreak control team. We have asked for that as quickly as it can. We have asked it, effectively, to concentrate on that large splurge of children—and a few adults—centred on 19 September. However, the inquiry will then be able to receive the outbreak control team's final report. That team will not be closed down until it is happy that the outbreak is over. What we are asking it to do is a little out of the ordinary in that we are asking for its interim report before the outbreak is finished. The Minister for Health and Social Services asked us to ask the outbreak control team whether there are any measures that we need to carry out urgently—this is before we even set up the Chief Medical Officer's review. It has a series of recommendations. What lies behind those recommendations is what it has gleaned as it has gone through the outbreak. Therefore, we need that interim outbreak report to give us the evidence behind the sort of suggestions that it was saying that we needed to ensure are in place.

Val Lloyd: I have two points, Chair. One of them, on the interim report, has just been answered comprehensively. However, I want to touch on something that was said, and you may wish to talk about it later, Chair; I had a different understanding as to the appointment of a QC. Would you prefer to come back to that?

Jocelyn Davies: I think that the consensus was that there would be legal persons supporting the inquiry, but this committee makes no decision about that. Would you like to clarify that, Peter?

Mr Jones: I think that there will need to be a counsel to the inquiry, but not necessarily a QC. That needs to be determined.

Jocelyn Davies: But we will not be making any recommendations?

Mr Jones: No, that is quite correct.

Jocelyn Davies: This is a matter that will be delegated to the First Minister.

Mr Jones: Yes.

Jocelyn Davies: Are you happy with that, Val?

Val Lloyd: Yes.

Jocelyn Davies: Karen, did you want to ask a question?

Karen Sinclair: No, my points have been covered.

Jonathan Morgan: My point on the interim report, which I was going to raise, has been raised by Jenny. I am happy with the response on that.

Jocelyn Davies: Do you have any questions, Professor Pennington?

Professor Pennington: No, I do not.

Jocelyn Davies: As you can see from our agenda, our next witness to the inquiry is the Children's Commissioner for Wales, but he is not expected to arrive until 10.30 a.m.. We had intended to break from 10.15 a.m. until 10.30 a.m.. Therefore, we can either break early, or we could possibly discuss the written responses received from school governors. If the committee wishes, we could discuss those now and get them out of the way, because we do not have witnesses for that item, it is just comments from you. Are Members happy to do it that way? I see that you are. We will probably break early, and then reconvene at 10.30 a.m. and hope that the children's commissioner has arrived by then.

9.38 a.m.

Ymatebion a Dderbyniwyd gan Lywodraethwyr Ysgolion Responses Received from School Governors

Jocelyn Davies: We have had written submissions, which I assume the committee has read. Are there any comments on these? I do not think that they go an awful long way outside what we have already received from other people, but there are some interesting points. Obviously, what caused the outbreak is a question that all the submissions want answered. Did you want to come in on this, Jeff?

Jeff Cuthbert: Yes. I would like an update on whether we have received any more submissions by now, because it is a disappointingly small number of responses. Also, many of these issues seem to be perceptions rather than facts. Is it possible to clarify where they are raising a fact, and where it is a perception? For example, the second bullet point in Cwmdar Primary School's response asks:

'Has the LEA contributed to the reduction in food supply standards by accepting lowest tenders when agreeing school meal provider contracts?'

I am not sure whether that is necessarily the case.

9.40 a.m.

Jocelyn Davies: Perhaps you would prefer for it to be put in a different way, but, certainly, the information this morning from Steve Thomas from the Welsh Local Government Association was on that very point: procurement policy. That probably comes within procurement policy; it just so happens that it has been put in the form of a question. I think that probably the reason why we have had so few responses is that school governor meetings are not easy to convene if they are not already scheduled. It could just be that the school governing bodies have not had an opportunity to convene since they were asked to submit evidence, but no doubt they will submit stuff to the inquiry. However, there seems to be a theme here. Jenny, did you want to comment?

Jenny Randerson: I am sure that it would be the case, Chair, that you would circulate to us any further ones that come in, because it is very difficult, on that practical point, to get school governing bodies together. If anything further comes in, I would like the opportunity to look at it. On Jeff's point, that is the whole point of the inquiry—to sort the perception from the reality and to check whether the perceptions are reality and whether the reality is lacking in some vital respects. We were dealing earlier with the role of the media and perceptions, and I think that it is very important, as part of the process, that we take the points of the school governing bodies on board, because they are dealing with how the public see the situation, and, by the public, I mean those who have actually been involved in it, as opposed to those of us who have just read about it. Things such as the quality of school meals, and the provision of school meals in general, have been recurring themes in so many of the responses that I think that we need to be looking at that.

Jeff Cuthbert: I am not suggesting for a second that points should be ignored. Whether they are factually accurate or perceptions, they are all important, because it is what people think. The point that I am making is that quite a number of schools were affected, as we know, and if we are going to have a good view of how the people at the sharp end in schools, namely the governing bodies, feel, it would be desirable—though we cannot insist upon it—to have a broad view. That is the only reason why I am saying that; hopefully more will come in, and I would imagine, bearing in mind the importance of this tragic outbreak, that school governors will want to take the opportunity to contribute.

Jocelyn Davies: Are there any other comments on this in particular?

Professor Pennington: It is very important that when the inquiry gets going, it is not seen, at the end of the day, as having missed or been superficial in its investigation of something, perhaps because it has not been reminded of something by people who are concerned about an issue. I would see it as very important for school governors to do their best to tell this committee exactly what they think about the remit of the inquiry and so on because, in that way, I think that the inquiry would be less likely to overlook or underestimate the importance of public concerns.

Jocelyn Davies: Certainly, questions concerning the resources that go into school meals have been expressed to us from a number of sources, and perhaps you did not like the way in which it was put with a question mark, but I think that it is perfectly appropriate that that be included, and you would welcome, while you carry out the inquiry, any evidence from school governors on any aspect of your terms of reference.

Professor Pennington: Absolutely, yes.

Jocelyn Davies: Unless there are any other comments, we have concluded this item.

Karen Sinclair: I have a brief comment. Going back to Jeff's point about a reassurance about school meals, it is about procurement; they want reassurances about procurement. It is duplicated in a question from the other school. The only one that worried me slightly was that any recommendation should be legally binding, as, of course, it cannot be. It would be a very serious recommendation from the inquiry, but I thought that that needed to be pointed out at this point. I would like to hear what you have to say about that.

Professor Pennington: Inquiries make recommendations and, historically, they have had the full force of the law, in the sense that they have been set up under the Tribunals of Inquiry Evidence Act 1921 and so on. However, I do not think that the Government is obliged to follow their recommendations; that is a political issue and, clearly, it has to go back to the politicians, just as a recommendation. It cannot be legally binding; that would be my perception of how things stand.

Jocelyn Davies: Val, do you have something to say?

Val Lloyd: Something caught my eye; as we have said—I, too, was going to bring up what Jeff brought up—when you look at it altogether, it is more or less what we have covered. It is reassuring in some ways that it has been covered, but I would like to check out the point that says that the inquiry should have the powers to subpoena and cross examine witnesses. I am not certain of the legality of this arena, under this Inquiries Act.

Jocelyn Davies: Peter can clarify that.

Mr Jones: The Act allows the chair to require evidence from anybody and to produce documents. Failing to comply with such a request could be a criminal offence under the Act.

Jocelyn Davies: Under this Inquiries Act, the inquiry panel has far-reaching powers, which amount to subpoena.

Mr Jones: Yes, though it is not strictly speaking subpoena.

Jocelyn Davies: However, it amounts to that. On the point of being legally binding, Professor Pennington, when you have politicians saying, ‘We have to have an inquiry to make sure that this never happens again’, you can understand why the public then says, ‘Well, all the recommendations therefore should be legally binding’. Perhaps we should resist from saying that or from giving the impression that having an inquiry will mean that these things will never happen again, because that is not actually the case. That will only be ensured if the recommendations are taken up, which will reduce the opportunities for these things to happen again.

Professor Pennington: There is an onus on the inquiry to make the case behind its recommendations and to make the recommendations in such a way that, if it feels strongly about them, it would expect them to be implemented. There is a responsibility on the inquiry to make the case, but it cannot ask for the recommendations to be made legally binding.

Karen Sinclair: The fact that we have taken the matter so seriously that we are having this inquiry should reassure the public. I only highlighted the fact that it could not have legal binding—

Professor Pennington: I was giving a legalistic kind of reply.

Jocelyn Davies: Are there any other comments on the school governors’ submissions? I see that there are none. We will now have a longer break than was originally intended. We hope that the children’s commissioner will be here when we come back. If he has not arrived by then, we could possibly, if Jeff Godfrey is here, do the paper on the delegations to the First Minister.

Mr Watkin: I will contact him.

Jocelyn Davies: Yes, if he could be here for 10.30 a.m., and if the children’s commissioner has not arrived, we can get on with that item. Is everyone happy with that? Thank you very much.

*Gohiriwyd y cyfarfod rhwng 9.48 a.m. a 10.29 a.m.
The meeting adjourned between 9.48 a.m. and 10.29 a.m.*

**Cylch Gorchwyl yr Ymchwiliad: Comisiynydd Plant Cymru
Terms of Reference for the Inquiry: the Children’s Commissioner for Wales**

Jocelyn Davies: We are all here and we will be forgiven for starting a minute early. We are delighted, as always, to see Peter Clarke. You have come to present evidence on what might be included in the terms of reference for the inquiry that Professor Pennington will be undertaking on behalf of the Assembly. There are a number of issues that you would like to cover. We do not have a paper from you, so I assume that you will be giving oral evidence today and then I will ask committee members if they have any questions for you.

Mr Clarke: Good morning. I hope to be fairly brief because I have read the papers and I am aware of some of the deliberations that you have already had. A number of concerns that I originally had, for the inquiry to look at, are already firmly before you. These particularly concern areas where I may have an interest, but I have little expertise. I, like others, welcome the appointment of Professor Pennington, who can provide that expertise, to look into the primary causation of the outbreak that we are talking about.

10.30 a.m.

In general, I would just like to say—I have heard the point made before you—that I think that the inquiry should be enabled to go where it needs to go in order to come to the proper conclusions, and make recommendations to the proper bodies and authorities. There are three areas that I would like to suggest that the inquiry should focus on. The first area, which will probably not come as a surprise to you, is whether the progress of the outbreak was influenced by the standard of school toilets and the capacity for children to engage in the most basic hygiene approaches of washing their hands at appropriate times during the school day. I do not know, as we sit here, whether that has played a part in this case. I have had some conversations with people who are medically qualified, who say that it could have played a part, but I think that it is something that we should look into. If necessary, the proper recommendations should be made. You will know that I have already raised this issue on a number of occasions, but it is by no means a wish on my part to have any sort of told-you-so response. I really just want to find out whether it had an effect in this instance and, if so, what should be done about it so that we can preclude it from happening again.

Secondly, I would like the inquiry to consider the provision of information and support to the parents and the pupils because, although these pupils are often young, we have had children dying and being airlifted to hospital in traumatic circumstances, and I think that this has an impact on the child community as a whole within a school and the community. I would welcome the chance to learn how we could do it better, should any such circumstance arise again.

Thirdly—again, it has been mentioned already—is looking at decision-making in terms of who decides that schools should close down and at what point, and whether guidelines should be issued to guide whoever it is that makes that decision. Clarity about who makes the decision should also form part of the guidelines because, as I understand it, governors have a role to play, as would the headteacher, maybe the local education authority, and perhaps even the Assembly itself, although I am outside my comfort area of knowledge. Guidelines could usefully be brought forward to help in the unwelcome, and hopefully unlikely, event of such an outbreak occurring again. Those are the three key things that I would like to highlight.

Jocelyn Davies: We want transparency in that decision-making process and when we have guidelines we want people to understand them. Before I call on members of the committee, I must say that your point on school toilets is important. I know that you have made comments in the past about the state of school toilets and I was shocked when my daughter told me that, because of the E.coli outbreak, her school was now supplying toilet paper in the toilets. It is a big comprehensive school, but until that point, toilet paper was banned because of the mess that was being made when students were messing around with it. I wonder how widespread it is across Wales that, normally, there is no toilet paper in the toilets.

Mr Clarke: I could go on for some time on that point. We did a survey, as you know, and produced a report, 'Lifting the Lid on the Nation's School Toilets'. We thought that it was an apt title and I think that a child chose it. About half the children to whom we spoke, and got to fill in a questionnaire at the Urdd and other places, said that their school toilets were pretty awful places. They cited that there was no toilet paper, no soap, and no place in which they could dry their hands having washed them, so they would often rub them on their clothes. The Professor will no doubt know the consequences of that better than I.

Jocelyn Davies: I can see him pulling a face right now.

Mr Clarke: They also cited blocked drains and so on. In one school that I visited, 50 per cent of the toilets were locked and out of order. I think that we are almost asking for trouble, if we do not address that.

Jocelyn Davies: Would any of the committee members like to ask a question?

Jeff Cuthbert: I agree completely on the issue of school toilets. It is a matter that needs to be looked into and there cannot really be any doubt about that—I can see its link with the outbreak. In terms of information and support for parents, I wonder if you would like to go a little deeper into that point, because I know that there are parents' groups that would want to give evidence to the inquiry, and we would need to consider how that is best provided for. Is there anything more that you would like to say on that point?

Mr Clarke: There are two elements to my concerns. The first is the amount of information that can usefully, and should usefully, be shared with parents. The second is that of reassurance. Those two are not always the same thing, as, sometimes, the information can be far from reassuring. So, from my point of view, given that I know that you are going to be looking at the information element anyway—and I read in the minutes your brief discussion about the provision, perhaps, of too much information or the wrong information too early—I can see that there are legitimate concerns and issues that need to be considered in that regard. However, I am more concerned, if you like, thinking about the emotional climate as well, with some form of support in that sense being available to parents as well as just hard facts.

Jonathan Morgan: I have two points. First, Peter, an issue was raised earlier about the role of the media in communicating the message and what has occurred with the outbreak. Do you have any concerns, as the children's commissioner, about the role of the media and the way in which public perceptions have perhaps been formed or about the way in which this is being told in newspapers, on the radio or on television?

Secondly, while it is not this committee's role to recommend the appointment of legal counsel to work with the inquiry, I know that you have experience, having led the Clywch inquiry, of having had a Queen's Counsel working with you. Is it your view that having a Queen's Counsel would be helpful, to ensure legal clarity and to provide support?

Mr Clarke: On your first point, I hope that I do not offend the media by saying that they are often a mixed blessing in these circumstances. While they are a primary means by which people can communicate with the public at large, they also often want to run with the story. That can lead, perhaps, to a tendency to exaggeration and to headlines that often do not reflect even the content of the following piece. I am not sure whether the inquiry is considering looking at that aspect, but I imagine that it would be a complicated area on which to make recommendations, given the way in which the fourth estate guards its freedom to report matters. Perhaps, therefore, it would be most productive to look at the provision of information to the media so that, at least, they are given information for which fewer interpretations can be made; that is, information that is as clear, straightforward, and concise as possible, basically. It may be, then, that those guidelines that we talked about would give guidance on who should issue the press releases and so on, and who should be the primary interface with the media. I suspect that that is probably the most that one could hope for.

On the second question, obviously, it is for Professor Pennington to decide, but as someone who chaired a public inquiry, I genuinely believe that I could not have completed it without the Queen's Counsel level of legal advice that I received. I would think that it would be very advisable to have that level of legal input, because these matters, invariably, come up with all sorts of conflicts of interest where clarity about the legal process is necessary. That is my opinion.

Jenny Randerson: Earlier this morning, we had a discussion on the issue of the overlap between this inquiry and the police inquiry, and the need to avoid in any way intruding on the freedom and ability of the police to conduct their inquiry. Yet, on the other side, we have the real imperative to get on with this, for all sorts of reasons of public confidence. Given your experience, would you say that it would be possible to do at least part of the work, starting now, and put off the other parts of the work that affect the police inquiry until later?

10.40 a.m.

Peter Clarke: Yes. You will remember that the Clywch inquiry had to adjourn on two occasions while the police carried out inquiries and investigations. I do not have the legal competence to answer that fully, but I would say that it is preferable, from the point of view of ensuring that one does not compromise any police inquiries, and that one holds back as long as possible to allow them free room for manoeuvre. On the other hand, I see the pressing need for speed and due haste in terms of setting up and conducting this inquiry. Were I in a similar position, I would try to square that circle by conversation and close liaison with the police officers conducting the criminal investigation, and be guided by them, because I think that it has to take precedence at this point in time.

Jenny Randerson: In view of what you referred to, which was what I was referring to, namely the need to defer parts of the Clywch inquiry as a result of the police investigation, did you find that manageable?

Mr Clarke: In retrospect, I would say 'yes'. It was far from what anyone involved in the inquiry wanted to happen, because it caused considerable disruption. It would have been far easier if some of the evidence had been investigated prior to my starting the inquiry, and that is why I think that it is important to try to do that in this case, if that is possible. It is extremely disruptive to have an inquiry interrupted in that way, not least because lawyers' diaries fill up and reconvening proves to be very difficult, because a certain amount of time has been put aside for other things. So, wherever possible, it is best to get a clear run for the inquiry. I do not know what else I can add, but I am sure that you have access to far better legal advice than I am able to give—my advice is just based on the experience of the Clywch inquiry.

Jocelyn Davies: That was because your inquiry unearthed things that needed to be investigated and which were not known to the police before the inquiry had started. We should clarify that your inquiry came across evidence that was then passed to the police.

Mr Clarke: That is correct. It was potentially, in its loosest sense, indicative of criminal behaviour.

Jocelyn Davies: Are there any other questions for the children's commissioner? You mentioned information that could be given to young children. What did you have in mind in that regard?

Mr Clarke: I do not know the details of the way in which it was dealt in each school in this instance, but a situation like this can be handled from one end to another of a spectrum. One end of the spectrum is that children are told nothing but the parents are told, and the children are removed from school without real explanation as to what is going on and without reassurance. The other end of the spectrum is circumstances where children can be talked to very carefully and given as much understanding of what is going on as can be shared with them. This is useful for the sole reason that it gives children the chance to contribute to their own safety and to take great care of themselves. If we, as authorities, do not take responsibility for that—I am thinking of places such as schools and school nursing services and other services that are delivered around the school—there is no guarantee that all parents will. That is why I think that it is a public concern, and one that would be good for the inquiry to look at, so that we have the better end of that spectrum, which involves giving young children information in a form that they are likely to understand, because it will help them to protect themselves.

Jocelyn Davies: Thank you for clarifying that.

10.43 a.m.

**Y Pwerau y Gellid eu Dirprwyo i'r Prif Weinidog (ac yna i Staff)
The Powers that Could be Delegated to the First Minister (and then to Staff)**

Jocelyn Davies: We have an official with us for this item, Jeff Godfrey, who has supplied a written paper. The paper is further to the discussions that we have already had, and it clarifies matters further. Mr Godfrey, would you like to talk to the paper?

Mr Godfrey: The paper builds on the discussion that we had at the committee's last meeting, at which you considered a paper from the Permanent Secretary suggesting how, in principle, the powers that are necessary for the inquiry to function might be delegated. This paper builds on the discussion a little further, in relation to how we separate the practical administrative powers that would need to be exercised to support the inquiry from issues of perhaps a more strategic nature, where the Assembly may want to reserve the decision-making role for itself to enable direction to be given to the inquiry in certain circumstances. I would emphasise again that, once the inquiry is established, it becomes a creature of the inquiry team, and particularly the chairman, in terms of controlling its conduct and operation. There is very little influence in terms of delegated powers that would affect the way in which the inquiry is conducted. So, these are the powers that are necessary to underpin it and to provide it with the necessary resources for it to function effectively.

You will see from the paper, which I hope that everyone has had the chance to read, the suggested wide delegation to the First Minister, who would then pass those powers on to staff through the Permanent Secretary. The powers that we think could be reserved for the Assembly are identified in paragraph 9.

I hope that everyone has had a chance to read the annex to the paper, which lists the powers in detail. Unfortunately, when the papers came out yesterday, that seemed to be missing, from my version at least, so I think that it is necessary to look through the totality of the powers that we are talking about being delegated. Other than that, I have little to add to the report that is in front of you, and I am happy to answer any questions.

Jocelyn Davies: Before I open it up to questions, Jeff, you had a point of clarification on the paper.

Jeff Cuthbert: Yes, it is about dates. The paper refers to our meeting of 19 October; I think that that should be 7 November.

Mr Godfrey: I am sorry. I think that I took that from a paper. I mean the 'last meeting'. You are probably right; it was not that long ago.

Jeff Cuthbert: I was sure that we discussed something later than that date.

Jocelyn Davies: I think that you are correct there, Jeff.

Jeff Cuthbert: I also have a question on this, and I think that it is fair in terms of what we have discussed. On the summary of Assembly functions, is this—?

Mr Godfrey: Yes.

Jeff Cuthbert: I am not sure whether you were here earlier and heard the discussion, but I would value your opinion on it. On section 9(1), we had a discussion about the position that Professor Pennington might be in when we come to take evidence from the earlier Pennington report in Scotland. What is your view on the way in which we could cope with that in terms of Professor Pennington's chairing this inquiry and taking evidence from his earlier inquiry? The way that that is worded might cause a problem.

Mr Godfrey: It is not an issue that I have given any thought to, but my immediate reaction to that is that the inquiry would effectively be informed by the Pennington inquiry in Scotland and anything that may have developed subsequent to that. However, in terms of its evidence in establishing facts and so on, I think that it would be looking at the facts of what happened in this particular outbreak. Clearly, the Pennington report will be a backdrop to the inquiry's consideration, but it is simply a source of information, informed by medical opinion and research, which may have taken place subsequently. So, I would not have thought that it affects the impartiality of the inquiry to come to a conclusion on what happened in this case and what further recommendations might need to be made, and steps that might need to be taken, arising out of it.

Jeff Cuthbert: I am grateful for that. It is important, at this stage, to clarify that point. As a non-legal person, I could see what appeared to be a relationship in terms of that section and subsection, and I just wanted you to clarify that.

Jenny Randerson: I have several questions. Following on from that, would the suggestion put forward by Professor Pennington earlier on—

Mr Godfrey: Sorry, I did not hear it.

Jenny Randerson: He suggested that, if necessary, the inquiry could take evidence from people who were part of the team that formed part of his inquiry and people who are now retired or in other positions and so on. Would it be a suitable way forward to, if it was felt necessary, take evidence from that inquiry, rather than using it, as you suggest, simply as a backdrop?

10.50 a.m.

Mr Godfrey: I was not suggesting that it simply takes the written Pennington inquiry and that is it. Assuming that Professor Pennington is appointed chair of the inquiry, he will be in control of the evidence taking and of how this inquiry needs to be informed in order to address the terms of reference that it has been given. So, I do not think that there will be any veto on looking at aspects of the Pennington inquiry in Scotland. Clearly, a factor in the appointment is to glean as much experience that exists from that separate inquiry as can practicably be used in the context of this one. So, in terms of what you have just said, I cannot see that there will be any issue, in principle, about approaching the earlier inquiry in that way.

Jenny Randerson: Thank you. That is very helpful. I wish to refer to paragraph 10, which refers to problems in terms of delegation if the Assembly is in recess and if there were a need to replace the chair for reasons of illness or something like that. The Assembly has powers to reconvene, if called by the Presiding Officer, under its Standing Orders, does it not? Given that, in the case of a crisis, we can reconvene, would you regard that as being a satisfactory way around that problem?

Mr Godfrey: It is not a problem that cannot be overcome. You could either recall Plenary or, if you went over the summer recess, an alternative delegation could be given to cover the recess. So, it is not insoluble; it is just a practical issue that the committee may wish to address when it provides its recommendations. So, yes, the Assembly could be reconvened.

Jenny Randerson: I think that the idea of an alternative delegation to a small group could be useful and is something that we could consider.

Moving on to paragraph 11 and the obligation to publish the report in full unless parts of it are withheld on the limited grounds that are set out in the Act, I entirely understand the problems with discussing something such as that delegation in full, but there are always controversies in terms of withholding parts of information. Given your suggestion that there could be a limited delegation to deal with reconvening, would you regard it as possible to overcome that problem by having a similar limited delegation? What I am trying to aim at is that what we do not want with this inquiry is any suggestion at the end that, although it was held in public and so on, as was the full wish, part of the report was withheld for anything that could be in any circumstances regarded as being controversial in terms of there being an element of judgment or political judgment.

Mr Godfrey: The powers to withhold information are fairly limited under the Inquiries Act 2005; you are looking at a very limited range of grounds on which that could be done in any event, which may not be appropriate. It is not possible to say at this stage, but it is perhaps unlikely that they would arise in the context of this inquiry. However, one way of dealing with that would be to look at a different form of delegation consistent with the Government of Wales Act 1998. Obviously, this committee will cease to exist once it reports back to Plenary, so there is an issue about where the delegation would be made to. However, the delegation option is available in perhaps the unlikely circumstances that those powers may need to be considered.

Jenny Randerson: Finally, Chair, paragraph 12 refers to the issue of appointing assessors. Is this something that you feel could only be done under delegation, or could a recommendation be made by this committee?

Mr Godfrey: Clearly, I am not privy to the discussions that have taken place with the committee and Professor Pennington. However, there is a need to move forward with the practical arrangements for the inquiry, which involve the appointment of a solicitor to the inquiry and a secretary, under the consideration of counsel, which there has been some debate about. I think that, with the chairman to the inquiry, there is a need to look at the issue of the inquiry panel and whether there needs to be other members on the panel or whether assessors are needed. It comes down to a judgment of what expert evidence or expert assessment may be needed by the panel, having regard to the expertise that is already on it. So, it is a very practical question, which is why it is suggested as a delegation rather than something that, discreetly, would be brought back to the Assembly in Plenary to look into.

Jonathan Morgan: In addition to Jenny's point, in terms of the composition of the inquiry panel, is it right that the First Minister would have to consult with the proposed chair of the inquiry prior to the appointment of any member?

Mr Godfrey: Yes, that is true.

Jonathan Morgan: Does that include consultation on the number of people whom the First Minister will wish to appoint and not just on the suitability of individual people?

Mr Godfrey: I think that it is about numbers. There is clearly a need to discuss how this will go forwards practically, including the delegation to the First Minister and staff and so on. There is a need to discuss that with Professor Pennington and lawyers, who have taken part in inquiries of a similar nature, in terms of what they think regarding the inquiry panel. That information would then be fed back to the person with the delegated powers to address what the composition of the inquiry panel should be and the need, if any, for assessors to support it. So, there is a series of practical issues requiring consideration in some detail before you reach a conclusion on that. That will be guided by the chairman.

Mr Jones: To clarify, before a member of the inquiry panel is appointed, there must be consultation with the chair under the Act.

Jocelyn Davies: Are there any other questions?

Karen Sinclair: I understand entirely what Jenny was exploring. However, my personal preference is to delegate the powers to the First Minister and not to try to retain powers, as we could end up overcomplicating Dr Pennington's life. I would like to know what he feels about that, because the whole idea for us is to make it as easy as possible for him to conduct this inquiry well and thoroughly and not to complicate his life. So, I just wondered how he felt about that.

Professor Pennington: I would prefer the simplest process that is commensurate with all the legal necessities and so on. Clearly, the Act obliges consultation with me, so I am quite happy about that as long as the process itself is speedy and timeous, and we get the right sort of panel at the end of the day. I think that a great deal of that responsibility falls to me to think about whether to have additional members, assessors or both, who those people should be and what expertise they represent on the inquiry team.

Jocelyn Davies: I agree with that view. When we had the original debate that refused to delegate the powers under the Inquiries Act 2005 to the First Minister, there was a wish among the majority of Assembly Members not to delegate those powers, because it was felt that the Assembly should decide when and what sort of inquiries should be held. I do not remember hearing anything about wanting to appoint the assessors and so on. I think that much of this is uncontroversial and I have full confidence in the First Minister, as I can assure you that he will be watched very closely.

Perhaps we could look at paragraph 9, where this paper usefully sets out the powers that might be reserved to the Assembly and your views on which should be reserved to the Assembly and which should definitely be delegated to the First Minister. That would be most helpful at this point, bearing in mind that most of us want simplicity. I do not know whether any of you have a view on that. Karen, it seems to me that you would like to delegate all of the powers to the First Minister.

Karen Sinclair: I wanted to ask Dr Pennington what he felt about it, really. I just think that we should do whatever makes this simplest, and it is absolutely imperative that we do not cloud the issues at all.

Jocelyn Davies: Thank you, Karen. You have had Dr Pennington's reply on that, so would you like to delegate the whole list?

11.00 a.m.

Karen Sinclair: I see no reason not to.

Jocelyn Davies: Are there any other views?

Jenny Randerson: I think that the suggestion that those powers set out in paragraph 9 are reserved to the Assembly is extremely good, simply because one would hope that none of those things would be needed at any point in the inquiry, especially if we set the terms of reference in simple terms. It would be fairly extraordinary if they had to come into play. If they were exercised by the First Minister, it would not be a simple issue; it would become complex, and a political issue, which we do not want. I would hope that the First Minister would have no problems in retaining the delegation to the Assembly as a whole for those particular points.

Jonathan Morgan: In light of the debate and the decision taken by the Assembly, if we were to say that we were content for those points listed under paragraph 9 to be delegated to the First Minister, we would, in essence, be recommending a reversal of the position that we took as a body. I would be more than happy for us to retain those items listed. Jenny makes a valid point.

Jeff Cuthbert: It is unlikely that we will need to carry out the actions covered by these five bullet points, and I do not think that we should fall out over it. I have no problems with those as suggested.

Jocelyn Davies: Do you mean that you have no problem with their being retained by the Assembly?

Jeff Cuthbert: Yes.

Val Lloyd: I think the same. The circumstances would have to be extraordinary for those to be brought into play, though I do follow the other line of reasoning, of seeing where it would be from. However, these are so extraordinary that they would need extraordinary measures and I am, therefore, quite happy to keep those with the Assembly.

Jocelyn Davies: These powers are contained in the Inquiries Act 2005 so that you can cover extraordinary things. I can understand why there might be a need to terminate the appointment of a chairman for some reason, or to suspend an inquiry—we could explore scenarios. We heard from the children’s commissioner that he suspended his inquiry twice because of evidence that was unearthed. It may be necessary to end an inquiry or to restrict public access. I have no problem in delegating those to the First Minister, because they would be used under such extraordinary circumstances that he would not do them on a whim. These things would never happen unless there were pressing reasons. However, if it is the will of the majority of this committee that these things be reserved, we would have to find a mechanism through which to exercise them. We could find ourselves in the position where we need to suspend the inquiry, or a recommendation could be made to restrict public access for some reason, perhaps because some information has come to light. These are not things that will be easily exercised by the entire Assembly.

Jeff Cuthbert: You make a fair point; I would be more than happy to go along with the guidance that you have just issued, Chair. I am not going to fall out over this, but I think that it is unlikely that any of these things will happen unless serious situations develop. On the third bullet point, suspending the inquiry, we are not in control of the police inquiry and we do not know what might come up there, so something may have to happen quickly on that one, which may be difficult for Plenary to deal with. As you suggest, maybe on this occasion, for this inquiry, it is reasonable to delegate the whole lot to the First Minister.

Mr Jones: Perhaps I should point out that, even if functions are delegated to the First Minister or whoever, there will still be a power for the full Assembly to exercise those functions. It would not prevent the full Assembly from exercising those functions.

Jocelyn Davies: Yes, of course. If you delegate a power, you still retain it and you can still exercise it yourself. We know that. For example, when the children’s commissioner had to suspend his inquiry, it was non-controversial. There was no debate at all, and it was suspended that day. I just wonder whether we would find it rather cumbersome to exercise these powers. The power to amend the terms of reference would depend on how broadly we set them. Jenny, did you still want to come back?

Jenny Randerson: I did. Perhaps the power to suspend the inquiry should be deleted from the list. I agree that the Assembly needs to think of an alternative mechanism to having everyone in the Assembly discussing it. If those powers are retained by the Assembly as a whole, the delegation to what would probably be the successor to this committee might be the way to deal with it. It would be practical to delegate the power to suspend the inquiry to the First Minister. However, I have some concerns that, if we immediately hand everything over to the First Minister, the perception will be that the Assembly is overturning its original decision so soon after it has been made.

Jocelyn Davies: As I said, I disagree with you. It is a matter of opinion. I felt that the Assembly wanted to be in control of the power to set up an inquiry and to bring about an inquiry, rather than leaving it to ministerial discretion behind closed doors, and to set the terms of reference and appoint the chair. I did not think, during the debate, that people were concerned that such powers should not be exercised by a Minister. Someone else wished to make a point on that.

Val Lloyd: It was me, but you have made it.

Jonathan Morgan: I have been going through the list and consulting the relevant sections of the Act, and, to be honest, the First Minister’s hands are fairly tied. If he decided that he wanted to suspend the inquiry, the Act sets out under what circumstances he could do so. He could not just suspend it for the sake of it. There appears to be a sufficient amount of protection.

Jocelyn Davies: So, would you be happy with that?

Jonathan Morgan: Yes. I am guided by you, actually.

Jenny Randerson: I do not want to sway the committee.

Jeff Cuthbert: I propose that we delegate the lot to the First Minister.

Jocelyn Davies: Jenny, I know that you are not content with that.

Jenny Randerson: I have some reservations, but the will of the majority is clearly different, so there we are.

Jocelyn Davies: Peter, it appears as though we need to table a motion on this. We will discuss that with the Business Minister on Tuesday, and we will table a motion to that effect.

11.09 a.m.

Trafodaeth Gyffredinol ar y Dystiolaeth a'r Casgliadau General Discussion and Conclusions on the Evidence

Jocelyn Davies: If we so choose, we could move to private session, but I do not think that that is the committee's will, and there is probably no good reason to do so. Therefore, we will move on to the structure of our report and the discussion of what should be included in the terms of reference.

Jonathan Morgan: Bearing in mind the evidence that we have taken, some of it lengthy, some brief, it would be difficult for us to be exceptionally prescriptive, which would run the risk of constraining the terms of reference and the scope of the inquiry under Professor Pennington. We need to keep it brief, if we can—a sentence or two. Obviously, we will need to think of the wording, but I think that we should start from that principle.

Karen Sinclair: Professor Pennington, allowing total freedom for your inquiry to go where it will, as it were, there is an imperative that these parents and their children get fairly swift answers and solutions, as they deserve. Do you feel that being given a blank page, almost, will cause problems in that regard or not?

11.10 a.m.

Professor Pennington: I think that the wording in these two sentences can have quite significant limits around it. Clearly, if it focuses on the September outbreak, the cause of that outbreak and the lessons that can be learned from it, that is quite a circumscribed role. Okay, doing an inquiry of that sort, we will move into other areas about E.coli biology as a whole, school meals and other such issues. However, they will all come back to the outbreak and how they relate to the outbreak.

Although your terms of reference might be quite broad superficially, the Act also has restrictions in that it has to focus on issues over which the Assembly has powers, as it were. I think that that puts quite significant boundaries around it, even if the remit is broad. If I could say why I would prefer the remit to be broad, it is sometimes quite difficult to know at this stage of an inquiry—before the inquiry is actually started—where we will go with it, even with those relatively narrow remits. One might later regret putting a restriction on it at this time by being too prescriptive. There may well be a little road that we would like to go down that might be precluded by the terms of reference. I think that that would be a mistake. I cannot give you an example, because I do not know what it would be, as, clearly, from what I have said, it is uncertain.

Karen Sinclair: The only reason why I ask that question is because there are parents who will need some sort of closure. I am not asking for any other reason.

Professor Pennington: One of the roles of an inquiry—and I have said what I see the role of an inquiry as being—is to find out the facts and to learn lessons. It is also to reassure the public that no stone is being left unturned and that nothing is being swept under the carpet, in the words of a judge who conducted another inquiry. If the inquiry does not do that it will have failed. Whatever terms of reference you set me, I would hope that I would be able to conduct an inquiry along those lines. One of the aims of the inquiry is to give that reassurance.

Jenny Randerson: I think that it is worthwhile bearing in mind the word used this morning by the children's commissioner: 'enabling'. As Professor Pennington has just said, one never knows what line of inquiry it might be necessary to take in order to fully investigate this matter. When you look at the Act, the legal constraints are considerable. We are much more likely to find frustration because the Act only allows certain lines of investigation than we are because of terms of reference. I think that we should have the simplest terms of reference possible. I will take advice from Peter Jones on this, but I believe that it is normal for inquiries to have simple terms of reference.

Mr Jones: Yes, generally, terms of reference tend to be on the short side. I would remind the committee of what the Act states about terms of reference. It is a new Act, therefore we are pioneering on this. The Act states that the inquiry can only exercise functions that are within the inquiry's terms of reference, then it defines 'terms of reference'. First, the Act states that it means:

'(a) the matters to which the inquiry relates'.

Therefore, I think that we have to identify those matters. Then it states:

'(b) any particular matters as to which the inquiry panel is to determine the facts;

(c) whether the inquiry panel is to make recommendations;

(d) any other matters relating to the scope of the inquiry that the Minister may specify'.

I think that there are certain matters that we need to look at but, at the same time, we should keep it fairly short.

Val Lloyd: It is important to stress, and this has already been mentioned by several people, the closure aspect. We need to consider the feelings of parents and their need for answers—not to sweep it away, but to be mindful that the process should not be too protracted. It behoves us all to keep that in mind. Also, on the CMO's investigation, which is already under way, and will, I am sure, inform the inquiry, there may be a case for this to be, if you like, an initial inquiry—I mean that as being broad, not as being cut off—which will make recommendations that can then be followed up. That way, we will get a full, in-depth investigation, but we will also provide some closure for those who have been affected.

Jeff Cuthbert: Val has said what I was going to say, to a large extent. The only other point that I would add is that, undoubtedly, issues will arise during the course of the inquiry about which we might want to say that they would be worthy of further work by some other body. However, we would also need to ensure that we do not duplicate work that is currently going on, such as that on nutrition and school food, which the Assembly takes seriously and is looking at. Therefore, that is a safeguard, so that we do not overburden the inquiry, and so that it is focused on cause and effect. Otherwise, I concur with what Val has said.

Karen Sinclair: I would like to know what style Dr Pennington envisages for the inquiry. I believe that it should be inquisitorial as opposed to adversarial. What do you have in mind on that?

Jonathan Morgan: Well—

Karen Sinclair: I was talking about style, Jonathan, rather than anything else.

We have never met before, Dr Pennington, and I would be interested in what you feel about that. Also, are you happy to begin work while the framework for the terms of reference is still being erected? That is something for you to consider; I would be interested to hear what you feel about that.

Professor Pennington: On your first question, I would hope that I would not be adversarial, and that I would be inquisitorial, and that the inquiry team would be inquisitorial—it would be establishing the facts. We are prohibited from apportioning blame by the Act, so that helps us to keep our minds on that particular role in that particular way. I would hope that my personal style would be a friendly but demanding style, that those who would be required to give factual information would be asked to do it effectively and efficiently, and all the rest of it, because that is the function of the inquiry.

What was your second question?

Karen Sinclair: It was about working while the framework for the terms of reference is still being erected.

Professor Pennington: I see that that has been raised as an issue, because this is a pioneering inquiry, in the sense that it will be the first one under the Act, and that the rules, or guidelines, have not yet been established. I do not find it too difficult to move without waiting for those to be formally established, in the sense that the Act builds on what has gone before, and there is a lot of good precedent out there in terms of public inquiries. If we determine to have an inquiry in public that is inquisitorial not adversarial, there are other models that we can follow, and I would be surprised if these were not used—the discussions that are going on now—to develop the guidelines. There are good models that we could follow. For example, the Bristol heart inquiry had a role similar to that of this inquiry—it had the power to cross-examine, and so on, but I do not think that anyone was cross-examined in any kind of strong way; all the evidence was given in a straightforward way. There are such models that we could follow; those are the ones that I would like to follow in the inquiry.

11.20 a.m.

Jonathan Morgan: I have a quick question for Peter. Looking at section 5 of the Act, you said that the terms of reference would include any particular matters as to which the inquiry panel is to determine the facts. Does that therefore mean that we do not have to list the areas of inquiry?

Jocelyn Davies: We would if we wanted him to find facts.

Mr Jones: I think that we need to specify and identify those matters.

Jonathan Morgan: So would all the things that we have discussed about procurement practices and the hygiene inspection regime have to be listed?

Mr Jones: I think that, if the committee particularly wanted those matters to be covered, they ought to be specified.

Jonathan Morgan: But if they were not specified, it does not stop Professor Pennington from pursuing that line of investigation?

Mr Jones: If it was a matter to which the inquiry relates, I suppose that that is dealing with the actual outbreak, so that covers all sorts of things. However, if the committee was particularly anxious to cover a particular matter, then that ought to be specified.

Jocelyn Davies: Certainly if something was a matter of dispute, you would ask the inquiry to have a finding of fact, but I do not believe that we are in that position. This Act sets out the background for any sort of inquiry that might happen under it, so it tries to cover every eventuality. I do not think that much of the evidence that we have had in front of us has been disputed; I think that there was only one issue over which there was disagreement here as to whether it should be included, and that was that of slaughterhouses and farms, I think, Karen, was it not?

Karen Sinclair: Yes.

Jocelyn Davies: It was suggested to us that one piece of evidence should be included, but Professor Pennington, you have the transcript of that meeting, and, obviously, that is quite helpful because you have all the suggestions that have been made to us, and you know that there is only one that is under any dispute whatsoever, and that was a matter of opinion as to whether you would need to do that. Would you like to express a view on that?

Professor Pennington: Yes, I read that evidence and it went into a lot of detail on the sorts of things that an inquiry could look at. I have little doubt that, at some point, the inquiry will go back, if not to the farm, to the slaughterhouse, but it is too early to say in what level of detail. It may well not be in as much detail as was being suggested, so I would be unhappy if that was excluded from the terms of reference. However, I think that it would be included in a general statement on looking at the cause of the outbreak, as I think that it would be impossible not to consider, at some point, the source of the E.coli that caused the infection. The source of the E. coli was undoubtedly some beast in the field somewhere.

Jocelyn Davies: So if we had something as broad as one sentence that allowed you to look at the circumstances that led to the outbreak and its implications for the future—and we would hope that the First Minister would not need to use the delegated powers that he has for amending the terms of reference without coming to us—would you be happy with that?

Professor Pennington: I would be very happy with something as broad as that.

Jocelyn Davies: But would you bear in mind the evidence that has been given to us and the points that people quite specifically want you to look at?

Professor Pennington: Indeed, yes. I know that these are points that are seen as important by the people who submitted them, so, clearly, they would have to be seriously considered by the inquiry.

Jocelyn Davies: Yes, because this outbreak was connected to school meals, and it is very important that we bear that in mind.

Jenny Randerson: The causal bit seems quite clear to me, but we must ensure that there is a sentence in the terms of reference that allows Professor Pennington to explore the issues on communication to the pupils, parents and the public once the investigation has taken place, and the handling of the outbreak once that has taken place. Those are issues that have come up time and again, so we must ensure that the terms of reference allow him that flexibility.

Professor Pennington: I agree very much with that. Words to take care of the handling aspect of the outbreak would be very helpful, because, clearly, that is a very important part, as others have said, with regard to closure. My impression has been that that has been a cause of concern to people and clearly needs to be looked at.

Karen Sinclair: Just picking up on the issue of going back as far as the field, I have read your report and there are, inarguably, real issues, although, as you say in your report, there are no easy answers not least that cows or cattle can carry or have E.coli, or can recover from E.coli, and it is not reported for a number of reasons, as you pointed out. That was a real reality check; I read it and said, ‘I cannot disagree with the points that you are making’. There would be no need to go over that ground again, because you have already done it, have you not? Your previous inquiry—this is where you will punch above your weight, presumably—has already done that work.

Professor Pennington: Yes it has. I would expect the report to make reference to the natural history of E.coli and what has changed, for example, since my report in 1997, because there is more science now than there was then. We will see whether it is material to this particular inquiry. I would not see it—I am just making a guess here—as a major part of any report into this particular outbreak. It would be background information, probably. At this stage, it is a little early to say. We still await the findings of the outbreak control team, and what it has come up with in terms of how the organism came into the food chain and so on. I would not want to be too defeatist about it, but that would be my expectation.

Jocelyn Davies: Karen, are you happy with that?

Karen Sinclair: That is fine.

Jocelyn Davies: Are there any other comments on this?

Jenny Randerson: Just to follow on immediately from that, the other report that we have to await is that of the police. That could well take us back to the field; we do not know. It is important that we allow Professor Pennington’s inquiry the freedom to go where it needs to go.

Jocelyn Davies: We would certainly favour that view. Jonathan, you look as if you have words on a piece of paper there.

Jonathan Morgan: I am trying to draft something, but I have not got there yet.

Jocelyn Davies: What have you got so far? Would it be something as simple as we would have an inquiry into the circumstances that led to the outbreak, its handling and any implications for the future?

Jonathan Morgan: I think so; that is basically it.

Jocelyn Davies: We could tweak the words here or there, but it would be one sentence. Is everyone—

Karen Sinclair: Can you read that again?

Jocelyn Davies: Something like this: the circumstances that led to the outbreak, its handling and any implications for the future. We could tweak it, but it would be one sentence.

Karen Sinclair: It needs to make clear that there will be clear recommendations in there for the future, does it not? That is, rather than ‘implications’.

Mr Jones: The terms of reference have to say whether there are going to be recommendations.

Jocelyn Davies: Okay.

Jeff Cuthbert: It could say ‘to make any recommendations arising’.

Jocelyn Davies: Are you happy, Karen, if we include ‘and recommendations for the future’?

Karen Sinclair: Yes. I wondered whether it should say something about the imperative to allow closure, which does not give you a timescale, but tells you that we want closure.

Jocelyn Davies: I do not think that we can tell the chairman of the inquiry how long to take.

Karen Sinclair: I was not trying to set a timescale, but to give a little nudge.

Jocelyn Davies: Professor Pennington has heard you. Obviously, once you start the inquiry, you are free of any political interference whatsoever; that is the idea behind the Inquiries Act 2005. However, you have heard the views of the committee.

Professor Pennington: Yes. The Act makes it very clear that it is there to ensure the political independence of an inquiry.

Jocelyn Davies: However, you would bear in mind the views that we have expressed, would you not?

Professor Pennington: Absolutely. Could I also be so bold as to say that I have written about the role of public inquires? It is not just about finding facts and making recommendations; it is also to bring closure and to reassure the public that at least everything that can be done, practically, is being done to make sure that this thing does not happen again. This is on top of making recommendations; the role of the inquiry is to comport itself to do that, as well as bring out recommendations that are for someone else then to implement.

Karen Sinclair: I want the inquiry to make recommendations that make this sort of outbreak highly unlikely in the future. The only way to avoid it, let us be fair, is simply not to eat, is it not?

11.30 a.m.

Jocelyn Davies: We should not say that these things will never happen again because we will give a completely false impression. However, they are recommendations for the future and you would rather that they say something more like, 'recommendations to—'.

Jeff Cuthbert: 'To reduce the likelihood of a similar occurrence' or something like that.

Karen Sinclair: 'To maximise the safety of—'.

Jocelyn Davies: Could we say, 'to maximise the safety of school meals'? No, you do not want to restrict it to that. Let us just say, 'recommendations for the future'.

Professor Pennington: Could I support you on that, Chair? If one is being more precise about what the recommendations should be, one is almost pre-empting the function of the inquiry.

Jocelyn Davies: Okay. Therefore, it will be something along the lines of 'the circumstances that led to the E.coli outbreak, its handling, its implications and recommendations for the future'. Are we all reasonably happy with that? Jeff, you do not look entirely certain.

Jeff Cuthbert: That is just my natural expression. I will mull things over, but I think that I am content at the moment.

Jocelyn Davies: If that is you content, I do not want to see you when you are grumpy.

Jeff Cuthbert: No, you do not, that is very true.

Jonathan Morgan: What does happy look like?

Jeff Cuthbert: I do not know. [*Laughter.*]

Jocelyn Davies: The rest of us look more contented than Jeff, but I think that we are all equally content. Are we all happy with the structure of the report? It will include sections on the background to the outbreak, the provisions of the Inquiries Act 2005, the establishment and operation of the inquiry, and the terms of reference. Is everyone happy with that? That is what will go to the full Assembly, with our nomination for the chair of the inquiry being Professor Pennington. Thank you to all of you.

Daeth y cyfarfod i ben am 11.32 a.m.

The meeting ended at 11.32 a.m.