



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Pwyllgor Deddfwriaeth Rhif 2
Legislation Committee No. 2

Dydd Iau, 22 Ebrill 2010
Thursday, 22 April 2010

Cynnwys
Contents

- 3 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 3 Mesur Arfaethedig y Gymraeg (Cymru)—Sesiwn Dystiolaeth
The Proposed Welsh Language (Wales) Measure—Evidence Session

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'r pwyllgor yn bresennol
Committee members in attendance

Lorraine Barrett	Llafur (yn dirprwyo ar ran Lynne Neagle) Labour (substitute for Lynne Neagle)
Val Lloyd	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Rhodri Morgan	Llafur Labour
Gareth Jones	Plaid Cymru The Party of Wales
Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Brynle Williams	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Emyr Lewis	Cyfreithiwr Lawyer
Yr Athro/Professor Williams	Colin Ysgol y Gymraeg, Prifysgol Caerdydd School of Welsh, Cardiff University

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Owain Roberts	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.29 a.m.
The meeting began at 9.29 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Val Lloyd:** Welcome to this morning's meeting of Legislation Committee No. 2. We are not expecting the fire alarm to be tested this morning, so if you hear it sound, please leave by the exits. Please ensure that your mobile phones and all such devices are turned off because they interfere with the recording equipment. The National Assembly for Wales operates through the media of the Welsh and English languages. The translation is available on channel 1 of your headsets and the amplification of the original audio is on channel 0.

9.30 a.m.

Mesur Arfaethedig y Gymraeg (Cymru)—Sesiwn Dystiolaeth
The Proposed Welsh Language (Wales) Measure—Evidence Session

[2] **Val Lloyd:** This morning, the committee is scrutinising the Proposed Welsh Language (Wales) Measure. The committee's role is to consider and report on the proposed Measure and we have to do so by the deadline set by the Business Committee, which has been revised to 23 July. The purpose of today's meeting is to take evidence in relation to the proposed Measure. Owing to unforeseen circumstances, the representative of the Law Society is unable to join us this morning. However, we are fortunate still to have Mr Emyr Lewis, whom I welcome to the committee. Mr Lewis is a lawyer and the United Kingdom's member on the Council of Europe's committee of experts, which is investigating the compliance of states with the European charter for regional or minority languages. You are very welcome, Mr Lewis. We shall go straight into questioning, if you are ready. I will take the first question. Do you agree with the general intent of the proposed Measure?

[3] **Mr Lewis:** Yr wyf yn bwriadu siarad yn Gymraeg. Yr wyf yn ystyried fy hun yn gyfaill beirniadol i'r Mesur arfaethedig. Ei fwriad yw cryfhau sefyllfa'r Gymraeg, sydd i'w groesawu. Nid yw'r Gymraeg a'r gyfraith wastad wedi gyrru ymlaen â'i gilydd dros y canrifoedd, ac nid oes dwywaith bod y Gymraeg wedi dioddef yn sgîl nifer o ddeddfau a phenderfyniadau barnwrol ers sawl canrif. Mae deddfu gan y Cynulliad Cenedlaethol yn gyfle i ddod â diwedd i'r hanes cynhennus hwnnw rhwng y Gymraeg a'r gyfraith—ac yr wyf yn hoff o'r ymadrodd Americanaidd 'closure' yn y cyd-destun hwn. Gellir gwneud rhywbeth gwerthfawr wrth ddod â 'closure' i'r ffordd y mae'r Gymraeg wedi'i heithrio o feysydd swyddogol am gyhyd.

Mr Lewis: I intend to speak in Welsh. I consider myself to be a critical friend of the proposed Measure. Its purpose is to strengthen the position of the Welsh language, which is to be welcomed. The Welsh language and the law have not always rubbed along over the centuries, and there is no doubt that the Welsh language has suffered as a result of a number of laws and judicial decisions over many centuries. The National Assembly as a legislature offers an opportunity to bring that contentious history between the Welsh language and the law to an end—and I am fond of the American expression 'closure' in this context. We can achieve something valuable by having 'closure' on the way in which the Welsh language has been excluded from official domains for so long.

[4] Wedi dweud hynny, yr wyf yn pryderu am gymhlethdod a maint y Mesur arfaethedig, ac mae angen craffu arno'n ofalus. Ac ateb eich cwestiwn, mae deddfu er lles yr iaith Gymraeg yn rhywbeth i'w groesawu.

Having said that, I am concerned about the complexity and length of the proposed Measure, and it needs to be scrutinised carefully. To answer your question, legislating for the benefit of the Welsh language is to be welcomed.

[5] **Michael German:** May I start, Mr Lewis, with the official status of the Welsh language? I note the comments in your paper about the legal, psychological and social effect of an official status. Could you tell us why you think that the proposed Measure does not provide for official status for Welsh or English?

[6] **Mr Lewis:** Mae adran 1 y Mesur arfaethedig yn ymdrin â statws yr iaith. Mae'n bwysig ein bod yn cymryd cam yn ôl i ddeall nid yn unig y cwestiwn o statws swyddogol, ond hefyd fod statws cyfartal yn bwysig, sef bod gan y Gymraeg a'r Saesneg statws cyfartal. Mae'r ddwy elfen honno'n hanfodol. O ran yr hyn a nodwyd yng nghytundeb 'Cymru'n Un'—rhaglen Llywodraeth Cymru'n Un—am gadarnhau

Mr Lewis: Section 1 of the proposed Measure deals with the status of the Welsh language. It is important that we take a step back not only to understand the question of official status, but also that equal status is important, namely that the Welsh and English languages have equal status. Both elements are vital. As for what is noted in the 'One Wales' agreement—the programme of the One Wales Government—on confirming the

statws swyddogol y Gymraeg, mae adran 1 yn rhestru nifer o ddarpariaethau a geir mewn deddfwriaeth sydd eisoes yn bodoli, gan ddweud, ‘Dyma rai o’r pethau sy’n cadarnhau sefyllfa swyddogol y Gymraeg’. Nid wyf yn gweld llawer o ddiben i’r adran hon, dim ond rhestru adrannau mewn deddfau eraill y mae. Yn wir, yn nes ymlaen yn y Mesur arfaethedig, mae un o’r rheini’n cael ei dirymu. Mae’n deillio o Ddeddf yr Iaith Gymraeg 1993, ac mae’r Rhan honno o’r Ddeddf yn cael ei dirymu yn nes ymlaen yn y Mesur arfaethedig. Mae rhywbeth yn od ac yn lletchwith am hyn; cymaint yn haws fyddai dweud yn blwmp ac yn blaen bod y Gymraeg a’r Saesneg—ac mae’n bwysig sôn am y ddwy iaith—yn ieithoedd swyddogol yng Nghymru, a bod eu statws yn gyfartal. Mae hwn yn beth syml iawn i’w ddweud; mae’n dryloyw ac mae pobl yn mynd i’w ddeall. Mae’r ffaith fod hynny yn wir yn mynd i ddod â’r ‘closure’ y cyfeiriais ato a bydd yn golygu y byddwn yn gallu rhoi diwedd ar unrhyw amheuaeth ynghylch statws y Gymraeg yng Nghymru.

[7] **Michael German:** The preamble to the proposed Measure talks about making further provision about the ‘official status of the Welsh language’, as if it assumes that there is already an official status for the Welsh language. Could you tell us, simply in legal terms, what that implies in terms of rights, duties and so on?

[8] **Mr Lewis:** Mae’r cwestiwn hwnnw yn un da, oherwydd gellir dadlau ei fod yn golygu dim byd, neu fe ellir dadlau ei fod yn golygu popeth. Credaf y bydd o help i ni edrych ar yr iaith Saesneg. Pe bai rhywun yn ceisio dadlau nad yw’r iaith Saesneg yn iaith swyddogol yn y Deyrnas Gyfunol, yr wyf yn credu y byddent yn cael trafferth, ond nid oes Deddf yn dweud ei bod yn iaith swyddogol ac nid oes achos llys wedi dweud hynny. Fel cynifer o bethau sydd wedi deillio o’r cyfansoddiad Prydeinig, rhywbeth sydd wedi esblygu fel rhan o’r gyfraith gyffredin yw statws swyddogol yr iaith Saesneg. Nid wyf eisiau eich diflasu yn awr, ond ceir clasur o enghraifft yng ngeiriau’r barnwr, Lord Widgery, mewn un achos llys, a oedd i bob pwrpas yn cadarnhau mai Saesneg oedd iaith naturiol y llysoedd, er nad oedd yn dibynnu ar unrhyw gynsail cyfreithiol i ddweud hynny. Os edrychwn ar y peth o’r persbectif hwnnw, i bob pwrpas yr ydym yn dweud bod yr iaith Gymraeg yng Nghymru—o fewn y libart y gall y Cynulliad Cenedlaethol

official status of the Welsh language, section 1 lists a number of provisions within existing legislation, stating, ‘These are some of the things that strengthen the official position of the Welsh language’. I do not see much point in this section, because all that it does is list sections of other laws. Indeed, later in the proposed Measure, one of those is repealed. It derives from the Welsh Language Act 1993, and that Part of the Act is repealed later on in the proposed Measure. There is something strange and awkward about this; it would be far easier to state clearly that the Welsh and English languages—and it is important to mention both—are official languages in Wales, and that they have equal status. It is a very simple statement; it is transparent and people will understand it. The fact that that was true would bring us that closure that I spoke of, and would mean that we could get rid of any doubt about the status of the Welsh language in Wales.

Mr Lewis: That is a good question, because it could be argued that it means nothing, or it could be argued that it means everything. I believe that it would help us to consider the English language. I believe that one would have difficulty in arguing that English is not an official language in the United Kingdom, but there is no Act that says that English is the official language and no court case that says so. As with many things that have emanated from the British constitution, the English language’s official status is something that has evolved as part of common law. I do not wish to bore you, but a classic example emerges in the words of a judge, Lord Widgery, during one court case, that confirmed, to all intents and purposes, that English is the natural language of the courts, even though he did not rely on any legal precedent for saying so. If we look at the situation from that perspective, to all intents and purposes we are saying that the Welsh language in Wales—within the National Assembly’s legislative remit—is an

ddeddfu ynddo—yn iaith swyddogol i'r un graddau â'r iaith Saesneg; bod y ddwy yn gyfartal ac yn swyddogol.

official language to the same extent as English; the two languages are equal and official.

[9] Ceir cyd-destunau eraill lle mae arwyddocâd i'r gair 'swyddogol', yn arbennig ym maes cyfraith ryngwladol. Mae gwefannau Llywodraeth Prydain yn dweud mai iaith swyddogol y Deyrnas Gyfunol yw Saesneg; mae'r datganiad yn cael ei wneud i'r byd. O fewn cyd-destun yr Undeb Ewropeaidd a'r siarteri cyfraith ryngwladol eraill, Saesneg yw iaith swyddogol y Deyrnas Gyfunol, sydd, wrth gwrs, yn cynnwys Cymru. Diolch i'r Llywodraeth bresennol yng Nghymru, bu datblygiad o ran ceisio cryfhau sefyllfa'r Gymraeg fel iaith swyddogol o fewn y gyfundrefn Ewropeaidd, ac mae datblygiadau tebyg wedi digwydd mewn perthynas â ieithoedd cynhenid brodorol lleiafrifol Sbaen.

There are other contexts where the word 'official' has significance, especially in international law. The British Government's websites say that the official language of the United Kingdom is English; that statement is made to the world. In the context of the European Union and other charters of international law, English is the official language of the United Kingdom, which, of course, includes Wales. Thanks to the present Welsh Government, there has already been some development in terms of strengthening the Welsh language's position as an official language in the European system, and similar developments have taken place in relation to the indigenous native minority languages of Spain.

[10] Mae'n ddrwg gennyf; yr wyf wedi mynd oddi ar y trywydd. Y cwestiwn oedd: beth y mae 'swyddogol' yn ei olygu? Yn syml iawn, mae'n golygu'r iaith neu'r ieithoedd y mae llywodraeth a chyrrff swyddogol a chyhoeddus yn gweithredu ynddynt, a'r ieithoedd y maent yn barod i ymwneud â'r cyhoedd ynddynt yn swyddogol.

I apologise; I have digressed. The question was: what does 'official' mean? Put simply, it means the language or languages that government and official and public bodies operate in, and the languages in which they are willing to engage officially with the public.

[11] **Michael German:** I want to pursue the first sentence of the preamble. Although the preamble in the proposed Measure talks about further provision about the 'official status of the Welsh language', if I have understood you correctly, you seem to be saying that there has never been any legal statement that Welsh is an official language, so there is no previous legislation to back up that statement, or, if there is, perhaps you could identify it.

9.40 a.m.

[12] In order to achieve the ends that you seek, how would you amend this legislation? Would it be a very straightforward, simple, one-sentence matter? Perhaps you could just rehearse the line for me.

[13] **Mr Lewis:** I ddelio gyda'ch cwestiwn cyntaf, nid wyf wedi darllen pob Deddf. Serch hynny, yr wyf yn weddol sicr nad oes unrhyw ddatganiad bod yr iaith Gymraeg yn iaith swyddogol, nac ychwaith ei bod yn gydradd â'r Saesneg o ran statws. Mae nifer o ddatganiadau statudol sydd wedi gwahardd defnydd o'r iaith Gymraeg mewn cyd-destunau cyhoeddus a cheisio gwneud yn iawn am hynny yr ydym yn awr.

Mr Lewis: To deal with your first question, I have not read every Act. Despite this, I am reasonably confident that there are no declarations that Welsh is an official language or equal to English in terms of status. There are a number of statutory declarations that have prohibited the use of the Welsh language in public settings and we are trying to compensate for that now.

[14] I ddelio gyda'ch ail gwestiwn, yn bersonol, yr wyf yn hoff o'r hyn sydd i'w weld yn yr Atodlen i Ddeddf Canada 1982 fel patrwm ar gyfer yr iaith Gymraeg. Mae cyfeiriad at hynny yn fy nhystiolaeth. Rhowch eiliad imi gadarnhau ym mha adran y mae. Mae'n ddrwg gennyf; nid wyf wedi cynnwys rhifau'r tudalennau. Edrychwch ar dudalen 3 o'm nodyn—mae gennyf ormod o gywilydd i alw'r ddogfen hon yn dystiolaeth. Darllenaf y rhan berthnasol o'r nodyn yn y Saesneg gwreiddiol.

To deal with your second question, personally, I favour what is in the Schedule to the Canada Act 1982 as a pattern for the Welsh language. There is a reference to that in my evidence. Please allow me a moment to confirm which section it is in. I am sorry; I have not included the page numbers. Look at page 3 of my note—I am too ashamed to call this document 'evidence'. I will read the relevant part of the note in the original English.

[15] 'English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.'

[16] Mae darpariaeth arwyddocaol sy'n cyflawni'r un peth yn nhalaith ddwyieithog New Brunswick. Gan fod New Brunswick yn dalaith, yn hytrach na gwladwriaeth, gellir gwneud cymhariaeth rhwng y sefyllfa honno a sefyllfa Cymru.

There is a significant provision that achieves the same thing in the bilingual province of New Brunswick. As New Brunswick is a province, rather than a nation state, it is possible to compare that situation and the one facing Wales.

[17] **Rhodri Morgan:** Fel mater o ddiddordeb, a ydyw'n dweud yr un peth yng nghyfansoddiad talaith Québec?

Rhodri Morgan: Out of interest, does it say the same thing in the constitution of the province of Québec?

[18] **Mr Lewis:** Ni wn am hynny, mae'n ddrwg gennyf, ond gallaf ddod yn ôl i chi ar hynny ac ar unrhyw beth yr hoffech ei wybod nad wyf yn ei wybod yn awr.

Mr Lewis: I do not know, I am sorry to say, but I can come back to you on that and on anything that you would like to know that I do not know now.

[19] Mae datganiadau tebyg yn bodoli mewn cyfundrefnau eraill sy'n deillio o'r Gymanwlad, sy'n dweud yn syml bod ieithoedd yn rhai swyddogol. Er enghraifft, datgenir bod Inuktitut yn iaith swyddogol yr Inuit yng Nghanada, a datgenir mewn Deddf yn Seland Newydd bod Maori yn iaith swyddogol. Felly, i'r rhai sy'n nerfus ynglŷn â'r syniad o ddatgan bod rhywbeth yn swyddogol heb fynd ati i ddiffinio'n fanwl beth yw ystyr 'swyddogol', dywedaf fod cynsail i hynny o fewn deddfwriaeth Prydain ac o fewn deddfwriaeth y Gymanwlad. Mae digonedd o gynsail i hynny mewn deddfwriaeth nad yw'n dilyn y patrwm Prydeinig o ddeddfu, ond ni chychwynnwn i lawr y llwybr hwnnw am y tro. Ni ddylai pobl fod yn nerfus ynglŷn â gwneud hyn; nid wyf yn ymwybodol bod hyn wedi arwain at unrhyw dministr cyfreithiol. Yn sicr, gallwn weld o achosion yr Inuit a'r Maori ei fod yn rhan o'r broses o unioni hen gam—maent

There are similar declarations in other systems that stem from the Commonwealth that state simply that languages are official ones. For example, it is stated that Inuktitut is an official language of the Inuit in Canada, and Maori is declared an official language in an Act in New Zealand. Therefore, to those who are nervous about the idea of declaring that something is official without defining in detail what 'official' means, I say that there is a precedent for that within British legislation and within Commonwealth legislation. There is plenty of precedent for it in legislation that does not follow the British pattern of legislating, but we will not start down that path now. People should not be nervous about doing this; I am not aware that this has led to any kind of legal meltdown. Indeed, we can see that in the case of the Inuit and the Maori as part of the process of righting historical wrongs—they have suffered greater injustices than the Welsh—and I think that it

wedi cael mwy o gam na'r Cymry—a chredaf ei fod yn hanfodol yn y cyd-destun hwn. Credaf y byddai'r farn honno yn cael ei rhannu gan nifer fawr o bobl yng Nghymru—nid yn unig gan siaradwyr Cymraeg, ond y di-Gymraeg hefyd sy'n teimlo'r cam y mae'r iaith Gymraeg wedi ei ddiodef dros y blynyddoedd.

is critical in this context. I believe that that view would be shared by many across Wales—not only Welsh speakers, but non-Welsh-speakers who feel the injustice that the Welsh language has suffered over the years.

[20] **Val Lloyd:** Mike, before you come in again, Rhodri wants to come in.

[21] **Rhodri Morgan:** Yr wyf yn awyddus i ofyn cwestiwn ar bwynt penodol. A fyddai'r cyfreithwyr sy'n cynghori'r Llywodraeth wedi penderfynu peidio diffinio adran 1 yn y modd yr ydych chi wedi ei awgrymu, sef datgan mai'r Gymraeg a'r Saesneg yw ieithoedd swyddogol Cymru a bod statws cyfartal gan y ddwy iaith, oherwydd byddai hynny'n golygu fod statws swyddogol yr iaith Saesneg yn wahanol yng Nghymru i'r hyn yr ydyw yn Lloegr, yr Alban a Gogledd Iwerddon?

Rhodri Morgan: I am eager to ask a question on a specific point. Would the lawyers who advise the Government have decided against defining section 1 in the way that you suggest, namely declaring that English and Welsh are the official languages of Wales and that both languages have equal status, because that would mean that English's official status would be different in Wales to its status in England, Scotland and Northern Ireland?

[22] Yn Lloegr, Gogledd Iwerddon a'r Alban, nid oes statws swyddogol ysgrifenedig gan yr iaith Saesneg—mae'r statws hwnnw'n hollol ddibynnol ar ddefod ac arfer ac ar y gyfraith gyffredin. Fodd bynnag, yng Nghymru, byddai statws swyddogol ysgrifenedig wedi'i ymgorffori mewn deddfwriaeth. Byddai hynny, felly, yn creu hollt o fewn y Deyrnas Gyfunol. Dim ond tybio yr wyf ynghylch hyn—nid wyf yn gwybod am ffaith fod hynny'n wir—ond efallai mai dyna'r rheswm pam fod cyfreithwyr y Llywodraeth hon wedi penderfynu peidio â chorddi'r dyfroedd o ran creu gwahaniaeth rhwng statws yr iaith Saesneg yng Nghymru a'i statws yng ngweddill y Deyrnas Gyfunol. A gredwch fod hynny'n bosibl?

In England, Northern Ireland and Scotland, the English language does not have official, written status—its status depends on custom and practice and on common law. However, in Wales, official, written status would be enshrined in law. That would, therefore, create a split within the United Kingdom. That is just an assumption, as I do not know this for a fact, but perhaps that is the reason why the Government's lawyers have decided not to put the cat among the pigeons and create a difference between the status of English in Wales and its status in the rest of the United Kingdom. Do you believe that that is possible?

[23] **Mr Lewis:** Mae'n bosibl—mae'n ddrwg gennyf, ond gwelaf fod Mr Williams am gyfrannu.

Mr Lewis: It is possible—I am sorry, but I see that Mr Williams wants to come in.

[24] **Brynle Williams:** Yr ydym yn sôn am statws yr iaith. Yr oedd Rhodri yn tynnu sylw at—

Brynle Williams: We are talking about the status of the language. Rhodri drew our attention to—

[25] **Mr Lewis:** Mae'n ddrwg gennyf, ond yr oeddwn yn meddwl eich bod eisiau ychwanegu at hynny. A hoffech imi ddelio â'r pwynt hwnnw yn gyntaf?

Mr Lewis: I am sorry, but I thought that you wanted to add to that. Do you want to me to deal with that point first?

[26] **Rhodri Morgan:** Atebwch fi yn gyntaf.

Rhodri Morgan: Answer me first.

[27] **Mr Lewis:** Yr ateb yw, 'Nid wyf yn gwybod'. Hoffwn gael y drafodaeth honno gyda'r cyfreithwyr sy'n dweud hynny. Y cwbl a ddywedaf yw hyn: ni welaf fod gwneud hyn yn gwanhau nac yn newid statws yr iaith Saesneg yng Nghymru o gwbl. Nid yw'n gwneud statws yr iaith Saesneg yn fwy gwan. Yr oeddwn wastad wedi meddwl mai un o bwrpasau datganoli oedd sicrhau y gallai pethau weithio'n wahanol yng ngwahanol rannau o'r Deyrnas Gyfunol. Ni welaf ba niwed na difrod i'r setliad datganoli, nac i unrhyw ran arall o'r Deyrnas Gyfunol, a wna'r ffaith fod y ddeddfwrfa Gymreig yn gwneud datganiad eglur bod yr iaith Gymraeg a'r iaith Saesneg yn gyfartal. Os oes pobl sy'n gallu cynnig i mi—

Mr Lewis: The answer is, 'I do not know'. I would like to have that discussion with the lawyers who say that. All I would say is this: I do not see that doing this weakens or changes the status of the English language in Wales at all. It does not weaken the status of the English language. I had always believed that one of the purposes of devolution was to ensure that things could sometimes work differently in different parts of the United Kingdom. I do not see what detriment or harm the fact that the Welsh legislature is making a clear statement that the Welsh language and the English language have equal status would do to the devolution settlement or to any other part of the United Kingdom.

[28] **Rhodri Morgan:** Nid yr ochr honno yw'r broblem, ond yr ochr arall, onid e? Hynny yw, rhoi statws swyddogol ysgrifenedig yng Nghymru i'r iaith Saesneg, ond nid yn Lloegr, yr Alban nac yng Ngogledd Iwerddon.

Rhodri Morgan: It is not that side that is the problem, but the other one, do you not agree? That is, bestowing official, written status on the English language in Wales, but not in England, Scotland or Northern Ireland.

[29] **Mr Lewis:** Ni allwn roi statws swyddogol i'r iaith Gymraeg heb ei roi i'r iaith Saesneg hefyd. Mae'n rhaid inni drin y ddwy iaith yn gyfartal; mae hynny'n hanfod yn y maes arbennig hwn. Rhaid trin meysydd eraill yn wahanol, ond yn y maes hwn, mae'n rhaid inni drin y ddwy iaith yn gyfartal. Os ydych yn derbyn bod angen datganiad bod yr iaith Gymraeg yn iaith swyddogol yng Nghymru, mae'n dilyn yn rhesymegol, er mwyn trin y ddau'n gyfartal, bod yn rhaid gwneud yr un peth i'r Saesneg. Os oes rhywun yn gallu dangos imi pam fod hynny'n broblem yn ymarferol neu'r canlyniadau gwael a allai ddeillio o hynny, byddwn yn ailystyried y peth. Fodd bynnag, ar hyn o bryd, heb gael y drafodaeth honno, mae'n ddrwg gennyf, ond ni allaf eich helpu yn hynny o beth.

Mr Lewis: We cannot bestow official status upon the Welsh language without giving it to the English language as well. We have to treat both equally; that is essential in this particular field. There are other fields that should be treated differently, but in this field, you have to treat both languages equally. If you accept that you need a statement that the Welsh language is an official language in Wales, it follows logically that, in order to treat both equally, you have to do the same for the English language. If anyone can demonstrate how, in practice, that would cause a problem or what bad consequences might flow from that, I would reconsider it. However, at present, without having had that discussion, I am afraid that I cannot help you in that regard.

[30] **Brynle Williams:** Yr ydym yn sôn am statws yr iaith yng Nghymru. A yw hyn yn dangos y ffordd i'r iaith Aeleg yn yr Alban, sy'n cryfhau cryn dipyn? A fydd yr Albanwyr eisiau'r un statws ar gyfer yr Aeleg? A ydym yn agor y llifddorau? Credaf

Brynle Williams: We are talking about the status of the language in Wales. Does this show the way for the Gaelic language in Scotland? Will the Scots want the same status for Gaelic? Are we opening the floodgates? I think that that would be a good thing, to be

fod hynny'n beth da, a bod yn onest. Mae'r un peth yn wir yn Iwerddon am fod ei hiaith frodorol yn cryfhau. Mae'r bobl yn gweld yr hyn yr ydym yn ei wneud yng Nghymru ac yn sylweddoli ei fod yn beth dda a bod yn rhaid ei dderbyn. A wyf ar y trywydd cywir yn hynny o beth ai peidio?

[31] **Mr Lewis:** Mae'n wir bod yr hyn a wnaed er lles y Gymraeg fel iaith leiafrifol dan fygythiad yn cael ei edmygu nid yn unig ym Mhrydain ac yn Iwerddon, ond yn Ewrop a thu hwnt. Mae'r gwaith y mae'r Llywodraeth a Bwrdd yr Iaith Gymraeg wedi'i wneud yn cael ei weld yn aml fel enghraifft o arfer da, yn enwedig yn y maes hyrwyddo, o ran sut i fynd ati i ddiogelu iaith dan fygythiad.

9.50 a.m.

[32] O ran yr union gwestiwn o ieithoedd swyddogol, mae'r Wyddeleg yn iaith swyddogol yn yr Iwerddon, ond nid yng Ngogledd Iwerddon. Mae Senedd yr Alban wedi pasio Deddf sy'n debyg i Ddeddf yr Iaith Gymraeg 1993 i ddiogelu'r iaith Aeleg. Nid oes datganiad o statws swyddogol yr iaith honno yn y Ddeddf honno. A fydd yr Alban yn dilyn Cymru? Nid wyf yn gwybod. Mae'n bosibl iawn y bydd, wrth inni agor y drws hwnnw, ond, wrth gwrs, mae'n rhaid inni beidio ag anghofio bod sefyllfa'r iaith Aeleg yn llawer gwannach nag un yr iaith Gymraeg. Dim ond rhyw 60,000 o siaradwyr sydd mewn cenedl o dros tua 5 miliwn, o'i chymharu â thua 500,000 i 600,000 o siaradwyr mewn gwlad o 2.5 miliwn hyd at 3 miliwn. Felly, mae'r hyn yr ydych yn gallu ei wneud gyda'r iaith Aeleg, oherwydd nifer y bobl a'r manau y'i siaradir hi yn y pau swyddogol, yn gyfyngedig o'i gymharu â'r hyn yr ydych yn gallu ei wneud gyda'r Gymraeg.

[33] **Gareth Jones:** Hyd yn hyn, nid wyf wedi pryderu rhyw lawer am y statws, oherwydd yr ydym yn edrych ymlaen yn fwy at dwf yr iaith Gymraeg ac i'w hesblygiad a datblygiad naturiol. Fodd bynnag, yr ydych wedi tynnu sylw y bore yma at rywbeth nad oeddwn wedi'i ystyried yn llwyr. Yr oeddwn yn gwybod fod gwaith da yn digwydd yn Ewrop o ran ieithoedd lleiafrifol, a hoffwn

honest. The same thing is true for Ireland as its indigenous language is growing stronger. People see what we are doing in Wales and realise that that is a good thing and that they must, therefore, accept it. Am I on the right track in that respect or not?

Mr Lewis: It is true to say that what has been done for the benefit of the Welsh language as a minority language that is under threat is admired not only in Britain and Ireland, but in Europe and further afield. The work that the Government and the Welsh Language Board have done is often seen as an example of good practice, particularly in the field of language promotion, and of how to go about safeguarding a language that is under threat.

On the precise question of official languages, Irish is an official language in Ireland, but not in Northern Ireland. The Scottish Parliament has passed an Act similar to the Welsh Language Act 1993 to protect the Gaelic language. There is no declaration of official status for that language in that Act. Will Scotland follow Wales? I do not know. It is very possible that, in our opening that door, it will do so, but, of course, we must not forget that the situation of the Gaelic language is much weaker than that of the Welsh language. There are only some 60,000 speakers in a nation of approximately 5 million, compared to about 500,000 to 600,000 speakers in a country of 2.5 million to 3 million. So, what you can do with the Gaelic language, because of the number of people and places in which the language is spoken in the official domain, is limited as compared with what you can do with the Welsh language.

Gareth Jones: So far, I have not been overly concerned about the status, because we are looking forward more to the growth of the Welsh language and to its natural evolution and development. However, you have drawn attention this morning to something that I had not considered fully. I knew that good work was going on in Europe with regard to minority languages, and I would like to see

weld statws y Gymraeg yn gwella yng Nghymru. Fodd bynnag, dywedoch ei fod wedi'i ddatgan yn benodol yn Ewrop mai Saesneg yw iaith swyddogol y Deyrnas Unedig ac, os felly, mae'r Gymraeg yn sicr o dan anfantais, oherwydd mae'n cael ei ddefnyddio yma. Yr ydych felly yn atgyfnerthu'r achos dros gael statws swyddogol. Gwelaf y rheswm yn awr dros frwydro i gael statws swyddogol i'r iaith Gymraeg, oherwydd mae'r ffactor Ewropeaidd yn bwysig i ni ac i'r dyfodol.

the status of the Welsh language improve in Wales. However, you said that it was specifically stated in Europe that English is the official language of the United Kingdom, and, if so, Welsh is surely disadvantaged, because it is used here. You are therefore strengthening the case for obtaining official status. I can now see the reason to fight for official status for the Welsh language, because the European factor is important to us and for the future.

[34] A ydych yn dweud os nad oes statws swyddogol i'r iaith Gymraeg o fewn y Deyrnas Unedig y byddwn o dan anfantais yn Ewrop? Mae hwnnw'n bwynt o bwys sylweddol.

Are you saying that if the Welsh language does not have official status within the United Kingdom we will be disadvantaged in Europe? That is a point of considerable importance.

[35] **Mr Lewis:** Saesneg yw iaith swyddogol y Deyrnas Gyfunol i'r graddau mai yn Saesneg y mae'r Deyrnas Gyfunol yn cyflawni ei busnes rhyngwladol. Mae'n annhebygol o gyflawni'r busnes hwnnw'n Gymraeg, er yr oeddwn yn deall bod nifer o siaradwyr Cymraeg yn bresennol pan arwyddwyd un o'r cytundebau mawr rhyngwladol hyn. Efallai bod pobl o Awstralia ac America ac ati wedi defnyddio'r Gymraeg gyda'i gilydd, ond mae'r cwestiwn o iaith swyddogol yn y cyd-destun Ewropeaidd yn deillio o'r ffaith fod achosion llys wedi cadarnhau bod modd cymryd camau er lles ieithoedd lleiafrifol sydd dan fygythiad na fyddai'n bosibl os nad oeddent yn ieithoedd swyddogol. Er enghraifft, mae achos Groener yn erbyn Gweriniaeth Iwerddon yn delio ag hynny. Fodd bynnag, yn gyffredinol, am unwaith, nid y deilliannau ymarferol sydd yn fy mhryderu, ond y deilliannau ysbrydol, emosïynol a seicolegol. Dyna yw'r peth pwysicaf yn fy marn i. I adleisio'r hyn a ddywedoch, nid yw Deddf yn mynd i achub, diogelu na hyrwyddo'r iaith— ewyllys pobl sy'n gwneud hynny.

Mr Lewis: English is the official language of the United Kingdom to the extent that the UK undertakes its international business through the medium of English. It is unlikely to carry out that business in Welsh, although I understand that a number of Welsh speakers were present when one of these big international agreements was signed. Perhaps people from Australia and America and so on did use Welsh together, but the question of an official language in the European context arises from the fact that court cases have confirmed that action can be taken to benefit minority languages that are under threat that would not be possible if they were not official languages. For example, the Groener case against the Republic of Ireland deals with that. However, in general, for once, it is not the practical outcome that concerns me, but the spiritual, emotional and psychological outcomes. That is what is most important, in my opinion. To echo what you said, an Act is not going to save, safeguard or promote the Welsh language—the will of the people does that.

[36] **Val Lloyd:** I ask Members to be a little briefer, given that we have so many areas to cover. Although this is very interesting, we will not cover the gamut of all that we want to cover unless you are brief. Lorraine Barrett is next.

[37] **Lorraine Barrett:** The Minister told the committee that section 1 also signals to any court considering issues in relation to the Welsh language that the Welsh language enjoys official status in Wales. To what extent would you agree with that statement?

[38] **Mr Lewis:** Cytunaf â hynny i raddau **Mr Lewis:** I agree with that to a limited

cyfyngedig. Byddai llys yn sicr yn edrych ar adran 1 o'r Mesur arfaethedig pe bai'r cwestiwn yn codi ynghylch statws yr iaith Gymraeg yng Nghymru. Fodd bynnag, byddai'n fwy tebygol i wneud hynny pe bai datganiad eglur a diamwys ynglŷn â statws yr iaith.

extent. A court would certainly look at section 1 of the proposed Measure if the question of the status of the language in Wales were to arise. However, it would be more likely to do that if there was a clear and unambiguous statement regarding the status of the language.

[39] **Lorraine Barrett:** Does the fact that Wales shares a jurisdiction with England present problems in establishing in law, unambiguously, Welsh as an official language?

[40] **Mr Lewis:** Nid ydyw yn fy marn i, oherwydd ni fyddwn yn dadlau bod modd i'r Cynulliad ddeddfu y tu allan i diriogaeth Cymru. Hefyd, nid oes pŵer o dan Atodlen 5 i Ddeddf Llywodraeth Cymru 2006 i ddeddfu mewn perthynas â defnydd o'r iaith Gymraeg yn y llysoedd; mae'r pŵer hwnnw yn Llundain o hyd. Felly, nid wyf yn gweld bod problemau yno. Mae Deddf eisoes yn bodoli sy'n trin yr iaith Gymraeg yn wahanol yn llysoedd Cymru nag yn llysoedd Lloegr, ac nid yw hynny wedi chwalu undod awdurdodaeth Cymru a Lloegr—mae'n parhau i fod yn un awdurdodaeth gyfreithiol. Ni welaf broblem.

Mr Lewis: It does not, in my opinion, because I would not argue that the Assembly could legislate outside of Wales. Also, there is no power under Schedule 5 to the Government of Wales Act 2006 to legislate in relation to the use of the Welsh language in the courts; that power remains in London. Therefore, I do not see any problems there. An Act already exists that treats the Welsh language differently in Welsh courts from English courts, and that has not destroyed the unity of the jurisdiction of England and Wales—it is still one legal jurisdiction. I do not see a problem.

[41] **Val Lloyd:** In your written submission, you indicate that it would be appropriate to confirm in the proposed Measure that anything done through the medium of Welsh in Wales is as legally valid as it would have been had it been done through the medium of English. Is there any doubt about that?

[42] **Mr Lewis:** Fel y dywedais, nid wyf wedi darllen pob Deddf, felly ni wn a oes leoedd o hyd lle byddai dilysrwydd yn dibynnu ar yr iaith ysgrifenedig. Mae hon yn hen ddadl sy'n mynd yn ôl i Ddeddf yr Iaith Gymraeg 1993, lle gofynnwyd am ddatganiad o ddilysrwydd cyfartal. Mae'n un o'r pethau sy'n tacluso ac yn gwneud pethau'n eglur ac sy'n gosod carreg sylfaen ar gyfer statws i'r iaith Gymraeg. Byddwn yn argymhell cadarnhau hyn yn y Mesur arfaethedig, rhag ofn fod amheuaeth.

Mr Lewis: As I said, I have not read every Act, so I do not know if there are still areas where validity depends on the written language. This is an old argument that goes back to the Welsh Language Act 1993, where a statement of equal validity was requested. It is one of the things that tidies up, clarifies and lays the foundation for status for the Welsh language. I would recommend confirming this in the proposed Measure, in case there is any doubt.

[43] **Rhodri Morgan:** Wedi darllen eich tystiolaeth, tybiaf eich bod yn erbyn cael gwared ar Fwrdd yr Iaith Gymraeg ond o blaid creu'r swydd newydd o gomisiynydd dros yr iaith Gymraeg. A fedrwyd ymhelaethu ar eich rhesymau dros fod o blaid creu'r comisiynydd newydd ond yn erbyn cael gwared ar y cwango, sef bwrdd yr iaith?

Rhodri Morgan: Having read your evidence, I assume that you are against getting rid of the Welsh Language Board but are in favour of creating the new post of a Welsh language commissioner. Can you elaborate on your reasons for supporting the creation of the new commissioner but against abolishing the quango, that is, the language board?

[44] **Mr Lewis:** Nid wyf yn emosiynol

[45] **Mr Lewis:** I am not emotional about

ynglŷn â sefydliadau fel y cyfryw, ond credaf fod rhaid cadw y swyddogaethau hyn hyd braich wrth y Llywodraeth. Croesawaf sefydlu swydd y comisiynydd, oherwydd y bydd yn rheolydd hyd braich ac y bydd ganddo neu ganddi bwerau sy'n llenwi'r bwlch ym mhwerau rheoleiddio presennol Bwrdd yr Iaith Gymraeg, sef yr hawl i orfodi tystion i roi tystiolaeth, sef y prif wendid. Mae hefyd y cwestiwn o osod sancsiynau, ond rhown hynny i'r naill ochr am y tro. Golyga hyn y bydd gan y comisiynydd, o fewn thema'r iaith Gymraeg, yr un math o bwerau â'r chomisiynwyr dros bobl hŷn a dros blant.

[46] I ddod at eich ail gwestiwn, nid oes dwywaith bod gwaith hyrwyddo a gwaith cynghori Bwrdd yr Iaith Gymraeg, a'r gwaith arall y mae wedi'i wneud, sy'n mynd law yn llaw yn aml â rheoleiddio, wedi newid y dirwedd o ran defnydd o'r iaith Gymraeg yn y sector gyhoeddus, a hefyd o ran yr agweddau cyffredinol yn y gymdeithas tuag at ddwyieithrwydd a'r iaith Gymraeg. Mae hynny'n wych.

10.00 a.m.

[47] Mae hyn wedi cael ei wneud yn rhannol oherwydd ei fod lled braich oddi wrth y Llywodraeth. Mae dwy fantais i hynny. Yn gyntaf, nid yw pethau'n cael eu gwneud am resymau gwleidyddiaeth plaid. Un o'r pethau gwych sydd wedi digwydd ym maes yr iaith Gymraeg yw bod cymaint o gonsensws wedi bod ar draws y pleidiau gwleidyddol yng Nghymru ynglŷn â'i dyfodol ac ynglŷn â'i pharchu. Yr ail fantais yw drwy beidio â bod o fewn y Llywodraeth a drwy gael ei ariannu fel corff ar wahân, mae wedi gallu meithrin a magu arbenigedd sydd wedi gallu aros yno. Mae'r economegwyr iaith, ystadegwyr iaith a chynllunwyr iaith o fewn y bwrdd wedi datblygu a meithrin eu sgiliau oherwydd eu bod heb gael eu symud o gwmpas neu orfod wynebu'r bygythiad o gael eu symud o gwmpas o fewn y gwasanaeth sifil.

[48] Deallaf y teimlad annifyr am gwangos a rhannaf lawer o'r amheuaeth yn eu cylch a'r modd y'u penodir, ond mae'n werthfawr cael hyrwyddydd dros yr iaith

institutions as such, but I believe that these functions must be kept at arm's length from the Government. I welcome the establishment of the post of commissioner, because it will be an arm's-length regulator and he or she will have powers that will plug the gap in the current regulatory powers of the Welsh Language Board, namely the right to compel witnesses to give evidence, which is the main weakness. There is also the question of imposing sanctions, but I will put that to one side for the moment. This means that the commissioner, within the Welsh language theme, will have the same kind of powers as the commissioners for older people and for children.

To turn to your second question, there is no doubt that the promotion and advisory work of the Welsh Language Board, and its other work, which often goes hand in hand with regulation, has changed the landscape in terms of the use of the Welsh language in the public sector, and also in terms of the attitudes in society in general towards bilingualism and the Welsh language. That is excellent.

This has been done partly because it is at arm's length from the Government. There are two advantages to that. First, things are not done for party political reasons. One of the excellent things that have happened in the Welsh language field is that there has been such consensus across the political parties in Wales on the future of the language and on respecting it. The second advantage is that by not being within the Government and by being funded as a separate body, it has been able to nurture expertise and retain it. The language economists, language statisticians and language planners in the board have developed and honed their skills because they have not been moved around or had to face the threat of being moved around within the civil service.

I understand the unease about quangos and I share much of the doubts about them and how they are appointed, but it is valuable to have a promoter of the Welsh language that is

Gymraeg sy'n annibynnol ar y Llywodraeth ac sydd yn gallu gwneud y gwaith da hynny. Mae bod yn annibynnol ar y Llywodraeth yn beth gwerthfawr. Mae'n niwtral. A yw hynny'n ateb eich cwestiwn? Nid wyf yn dweud bod yn rhaid iddo fod yn Fwrdd yr Iaith Gymraeg, ond gwelaf y swyddogaeth fel un sy'n werth ei chynnal y tu allan i'r Llywodraeth.

[49] **Rhodri Morgan:** Fodd bynnag, os ydych yn bwrw ymlaen â chael cwango i wneud y gwaith hyrwyddo ac i fagu'r arbenigedd ym mhob un o'r meysydd ieithyddol hyn, mwy na thebyg bydd gennych uned o fewn y Llywodraeth ac uned lled braich oddi wrth y Llywodraeth. Byddai uned iaith o fewn y Llywodraeth ac uned iaith arall o fewn y cwango yn gwneud gwaith tebyg. Byddai'r gwaith a wnaed o fewn y Llywodraeth a'r gwaith a wnaed yn y cwango yn gorgyffwrdd. Wedyn byddai pobl yn holi pam fod dwy uned yn pysgota yn yr un pwll, fel petai. Beth yw'r pwynt o gael dau gorff yn gwneud gwaith un?

[50] **Mr Lewis:** Pe bai'n arwain at wastraff byddwn yn cytuno gyda chi, ond gallai hynny fod yn ddeinameg a oedd yn gweithio er lles. Cytunaf nad oes pwynt cael dau gorff yn gwneud yr un gwaith, ond, ar y llaw arall, gwelaf werth mewn cael corff lled braich. Byddai rhywun yn disgwyl bod rhyw fath o swyddogaeth yn ymwneud â hyrwyddo'r iaith Gymraeg o fewn Llywodraeth Cymru hefyd.

[51] **Rhodri Morgan:** Rhyw fath, ie. Ni ddylai Llywodraeth yng Nghymru fod yn heb arbenigedd yn llwyr. Dylid cael uned iaith o fewn y gwasanaeth sifil. Fodd bynnag, a allwch weld y perygl o gael dau gorff gyda gwaith sydd yn gorgyffwrdd?

[52] **Mr Lewis:** Gallaf. Pe bai modd neilltuo'r swyddogaeth honno o fewn y Llywodraeth drwy Ddeddf, efallai byddwn yn fodlon gyda hynny, ond fy mhryder yw y bydd fel gwymon yn y môr gwleidyddol.

[53] **Rhodri Morgan:** Mae hynny'n arwain at fy ail brif gwestiwn, sef pa mor annibynnol ar Weinidogion, y Llywodraeth neu weision sifil y dylai'r comisiynydd fod? Sut ydych chi'n ystyried swyddogaeth y

independent of the Government and that can do that good work. Being independent of the Government is valuable. It is neutral. Does that answer your question? I am not saying that it has to be the Welsh Language Board, but I see the function as one that is worth retaining outside of the Government.

Rhodri Morgan: However, if you go ahead with having a quango to do the promotional work and to develop expertise in each of these language-related fields, it is more than likely that you will have an unit within the Government and a unit at arm's length from the Government. There would be a language unit within the Government and another within the quango doing similar work. The work done within the Government and within the quango would overlap. People would then ask why there were two units fishing in the same pond, as it were. What is the point of having two bodies doing the work of one?

Mr Lewis: If it were to lead to waste, I would agree with you, but that could also be a beneficial dynamic. I agree that there is no point in having two organisations doing the same work, but, on the other hand, I see the value in having an arm's-length body. One would expect there to also be some kind of function dealing with the promotion of the Welsh language within the Welsh Government.

Rhodri Morgan: Of some kind, yes. The Government in Wales should not be devoid of expertise. There should be a language unit within the civil service. However, can you see the risk of having two bodies with work that overlaps?

Mr Lewis: Yes. If that function could be ring-fenced within the Government by means of an Act, I might be content with that, but my concern is that it will be at the mercy of the political tide.

Rhodri Morgan: That leads me to my second main question, namely how independent of Ministers, the Government or civil servants should the commissioner be? How do you regard the function of the

comisiynydd, ac i ba raddau y dylai ef neu hi fod yn annibynnol ar Weinidogion?

[54] **Mr Lewis:** Mae'n rhaid imi gyfaddef nad wyf wedi talu digon o sylw i'r cwestiwn a yw'n iawn bod y comisiynydd yn gweithredu'r pwerau rheoleiddio ai peidio, neu a ddylai corff arall wneud hynny, boed yn gwango neu yn Lywodraeth. Hoffwn feddwl am hynny'n fwy dwys. Fodd bynnag, gan dderbyn am y tro y byddai'r comisiynydd yn gwneud y ddau beth, hynny yw, y swyddogaethau hyrwyddo a rheoleiddio.

[55] Fel rheoleiddiwr, byddai'n well gennyf pe na bai'r comisiynydd yn cael ei benodi gan y Prif Weinidog. Ar hyn o bryd, mae comisiynwyr eraill yn cael eu penodi gan y Prif Weinidog, ond mae modd newid hynny drwy is-ddeddfwriaeth—nid oes angen Mesur i newid hynny. Fodd bynnag, mae'r comisiynydd hwn yn wahanol i'r comisiynwyr eraill, oherwydd bydd y comisiynydd hwn, yn y pen draw, yn medru gosod sancsiwn ar Weinidogion Cymru. Mae'n beth od bod y Weithrediaeth yn penodi rhywun fyddai'n gallu rheoleiddio'r Weithrediaeth a'i chosbi. Byddwn yn teimlo'n fwy cysurus pe bai'r comisiynydd yn cael ei benodi mewn modd tebyg i'r ombwdsmon neu'r archwilydd cyffredinol. Hynny yw, gan y Cynulliad Cenedlaethol.

[56] **Rhodri Morgan:** Darllenais eich tystiolaeth ysgrifenedig ar y pwynt hwn, ond nid oedd yn hollol glir. Yr oedd yn ymddangos eich bod yn awyddus i osod y cwestiwn, ond nid ei ateb, er eich bod wedi ei ateb yn llawer mwy cadarn y bore yma. Os deallaf y dystiolaeth yr ydych newydd ei rhoi, yr ydych yn cymharu'r comisiynydd iaith ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru neu'r archwilydd cyffredinol, sydd yn gallu craffu ar waith y Llywodraeth ac ambell waith roi tipyn o grasfa i'r Llywodraeth, ac nid â'r comisiynwyr eraill, megis Comisiynydd Pobl Hŷn Cymru a Chomisiynydd Plant Cymru. A wnewch eich safbwynt yn glir? A ydych yn ei gymharu â'r ombwdsmon a'r archwilydd cyffredinol, neu ddim ond yn gofyn y cwestiwn?

[57] **Mr Lewis:** Bu imi ofyn y cwestiwn yn fy nhystiolaeth oherwydd fy mod yn

commissioner, and to what extent should he or she be independent of Ministers?

Mr Lewis: I must confess that I have not paid sufficient attention to the question of whether it is right that the commissioner should implement the regulatory powers or not, or whether another body should do that, whether that is a quango or Government. I would like to give more thought to that. However, accepting for the time being that the commissioner would do both things, that is, the promotion and regulatory duties.

As a regulator, I would prefer the commissioner not to be appointed by the First Minister. At present, other commissioners are appointed by the First Minister, although it is possible to amend that through subordinate legislation—there is no need for a Measure to amend that. However, this commissioner is different to other commissioners, because this commissioner, ultimately, will be able to sanction Welsh Ministers. It is odd that the Executive should appoint a person who would be able to regulate the Executive and penalise it. I would feel more comfortable if the commissioner were to be appointed in a similar way to the ombudsman or the auditor general. That is, by the National Assembly for Wales.

Rhodri Morgan: I read your written evidence on this point, but it was not entirely clear. It appeared that you were keen to ask the question, but not to answer it, although you have answered it more definitely this morning. If I have understood the evidence that you have just given, you now compare the language commissioner with the Public Services Ombudsman for Wales or the auditor general, who can scrutinise the work of the Government and who sometimes can give the Government a bit of a thrashing, but not with other commissioners, such as the Commissioner for Older People in Wales and the Children's Commissioner for Wales. Could you make your position clear? Are you comparing it to the ombudsman and the auditor general, or are you just posing the question?

Mr Lewis: I put that as a question in my evidence because I tend to avoid definitive

tueddu i osgoi datganiadau pendant ac oherwydd y Cynulliad fydd yn gwneud y penderfyniad hwn yn y pen draw. Fy marn i yw y dylai'r Cynulliad benodi'r comisiynydd yn hytrach na'r Gweinidogion. Credaf fod yr un peth yn wir am y comisiynwyr eraill, ond nid dyna'r drefn. Wrth geisio cyfiawnhau fy safbwynt o dan y drefn bresennol, y prif wahaniaeth yw y gall y comisiynydd iaith osod sancsiynau ar y Llywodraeth—rhoi crasfa iddi, a defnyddio'ch geiriau chi. Yn y cyd-destun hwnnw, mae'n ymddangos yn fater o egwyddor gyfansoddiadol ac y byddai'n gwneud mwy o synnwyr i'r elfen ddemocrataidd yn hytrach na'r elfen weithredol i benodi'r swyddog hwn.

[58] **Rhodri Morgan:** Beth yw rôl y dinesydd yn y broses a ble mae'r dinesydd yn ffitio i mewn? A gredwch fod hawliau'r dinesydd wedi cael tegwch wrth i'r Mesur arfaethedig gael ei ddrafftio?

[59] **Mr Lewis:** Mae hwnnw'n gwestiwn mawr. Fel cyfreithiwr, credaf fod y gair 'hawl' yn golygu bod gennych yr hawl i wneud rhywbeth sy'n draddodadwy mewn rhyw ffordd a chael rhyw fath o rwymedi yn y pen draw. Nid yw'r Mesur arfaethedig yn gwneud hynny.

10.10 a.m.

[60] Ble mae'r dinesydd yn ffitio i mewn? Gall dinasyddion wneud cwyn i'r comisiynydd os na chedwir at delerau hysbysiadau cydymffurfio, fel y'u gelwir, sef y cynlluniau iaith. Gall y comisiynydd gynnal ymchwiliad, paratoi adroddiad a gwneud argymhellion. Os oes nifer fawr o amodau eraill wedi'u cyflawni, gall y comisiynydd osod sancsiwn ar y corff cyhoeddus. Serch hynny, hyd y gwelaf i, nid oes cyfle yn y Mesur arfaethedig hwn i'r dinesydd, heblaw rhywun sydd yn rhoi tystiolaeth, gymryd rhan bellach. Mae'r Mesur arfaethedig hwn mor gymhleth ac y mae'r darpariaethau hyn mor drwm, fy mhryder i yw y bydd siaradwyr Cymraeg cyffredin—pobl sydd yn dymuno defnyddio'r iaith Gymraeg a'r rhai sydd yn dymuno dysgu'r Gymraeg—yn meddwl bod y peth yn ddryswig fiwrocataidd. Hefyd, mae ymwneud rhywun yn dod i ben ar y pwynt lle mae'n gwneud cwyn. Yr wyf yn pryderu y bydd pobl yn gweld hynny'n

statements and because the Assembly will make this decision in the long run. My opinion is that it is the Assembly and not Ministers that should appoint the commissioner. I believe that the same is true of the other commissioners, but that is not the way things are. In trying to justify my standpoint under the current order, the main difference is that the language commissioner could impose sanctions on the Government—to give it a bit of a thrashing, to borrow your phrase. In that context, it appears to be a matter of constitutional principle and it would make more sense for the democratic element rather than the executive element to appoint this official.

Rhodri Morgan: What is the role of the citizen in the process and where does the citizen fit in? Do you believe that the rights of the citizen have been treated fairly in the drafting of the proposed Measure?

Mr Lewis: That is a big question. As a lawyer, I believe that the word 'right' means that you have the right to do something that is justiciable in some way and eventually to have some sort of redress. The proposed Measure does not do that.

Where does the citizen fit in? Citizens can make a complaint to the commissioner if the terms of the compliance notices, as they are called, namely the language schemes, are breached. The commissioner can carry out an inquiry, prepare a report and make recommendations. If a great many other conditions have been fulfilled, the commissioner can impose sanctions on the public body. However, as far as I can see, there is nothing in this proposed Measure that would enable the citizen, apart from someone giving evidence, to participate further. This proposed Measure is so complex and these provisions are so heavy, my concern is that ordinary Welsh speakers—those who want to use the Welsh language and those who want to learn the Welsh language—will feel that it is a bureaucratic jungle. Furthermore, involvement will stop at the point where a complaint is lodged. I am concerned that that will be something of a turn-off to the citizen

ddiflas o safbwynt y Mesur arfaethedig hwn.

in respect of this proposed Measure.

[61] **Rhodri Morgan:** Beth yw'r ateb, felly?

Rhodri Morgan: What is the solution, then?

[62] **Mr Lewis:** Rhywbeth llawer symlach, yn fy marn i. Os ydym am gadw at hwn—a dyna y mae'r Llywodraeth am ei wneud, yn ôl yr hyn a ddywed—un model diddorol yw'r hwn a geir yn Iwerddon. Yn ôl y model hwnnw, gall y Llywodraeth weithredu drwy reoliadau. Yn y pen draw, hoffwn weld rhai sefyllfaoedd lle y mae gan berson ryw iawn yn deillio o fethiant i ddarparu gwasanaethau. Ni chredaf fod hynny'n bosibl, yn ymarferol nac yn ddymunol ymhob cyd-destun, ond gall fod mewn rhai cyd-destunau penodol, yn enwedig y rhai sydd yn ymwneud, er enghraifft, â gwasanaeth iechyd sylfaenol neu wasanaethau cymdeithasol i'r henoed, yn arbennig. Gallaf feddwl am enghreifftiau o fewn y teulu lle methwyd â darparu gwasanaeth a ddylai fod wedi digwydd yn y rhan hwnnw o Gymru. Hoffwn weld rhyw ffordd o wneud iawn â'r unigolyn sydd wedi dioddef—rhaid bod yr unigolyn wedi dioddef, a dylid sicrhau rhyw ffordd o wneud iawn yn y cyd-destun hwnnw, boed hynny'n orchymyn i ddarparu'r gwasanaeth er lles yr unigolion, y gellir ei orfodi drwy'r llysoedd, os oes rhaid, neu yn iawn ariannol mewn amgylchiadau priodol. Dyna un ffordd o glymu'r dinesydd i mewn yn fwy a sicrhau eich bod yn rhoi hawliau.

Mr Lewis: Something far simpler, in my opinion. If we are going to stick with this—which is what the Government says it wants to do—one interesting model would be the one in Ireland. Under that model, the Government can operate through regulations. Ultimately, I would like to see some circumstances in which an individual receives some sort of redress for a failure in the provision of services. I do not think that that is possible, practical or desirable in all contexts, but it can be in certain circumstances, particularly those related, for example, to a primary health service or social services for the elderly, in particular. I can think of examples involving my own family in which there were failings in the provision of a service that should have been provided in that part of Wales. I would like to see some way of providing redress to an individual who has suffered—the individual must have suffered and some means of redress must be ensured in that context, be that an order to provide a service for the benefit of the individual, which would be enforceable through the courts, if necessary, or financial redress under the appropriate circumstances. That is one way of bringing the citizen further into this and ensuring that you provide rights.

[63] Yr ail beth yr hoffwn ei weld fyddai rhywbeth llawer symlach o ran y dyletswyddau. Tri pheth y mae eu hangen eu gwybod: beth yw'r dyletswyddau, pwy sydd yn gorfod cydymffurfio â hwy, a'r hyn sydd yn digwydd os na chydymffurfir â hwy. Hoffwn weld rhywbeth sydd yn datgan y tri pheth hwnnw yn symlach. Yn fy nhystiolaeth, fel rhyw fath o eiriolwr y diafol, yr wyf wedi taflu i mewn rhyw ddyletswyddau bach syml sydd yn dweud pethau megis, 'Rhaid i bob corff a benodir, wrth ymwneud â'r cyhoedd yng Nghymru, ohebu yn Gymraeg ac yn Saesneg, yn unol â dymuniad y sawl y gohebir ag ef'. Ar y diwedd, byddai'n rhaid ychwanegu'r geiriau, 'i'r graddau y bo hynny'n rhesymol ac yn gymesur', gan fod y Gorchymyn cymhwysedd deddfwriaethol yn eich clymu i

The second thing that I would like to see is something far simpler in terms of the duties. There are three things that you need to know: what the duties are, who has to comply with those duties, and what happens if they do not comply with them. I would like to see something that states more clearly what those three things are. In my evidence, to play devil's advocate, I have thrown in some simple duties, which state things like, 'Each specified body, in dealing with the public in Wales, must correspond in Welsh and English, in accordance with the wishes of the correspondent'. At the end, you would need to add the words, 'to the extent to which it is reasonable and proportionate', as the legislative competence Order requires you to include that. That is what I would like to see, but I am aware that that would require a

wneud hynny. Dyna fyddai'n well gennyf ei weld, ond yr wyf yn ymwybodol bod hynny'n golygu newid sylfaenol i'r Mesur arfaethedig sydd ger eich bron. Yr wyf wedi ceisio dod ati o safbwynt y cwestiwn, 'Beth allwn ei wneud i weithio gyda'r Mesur arfaethedig hwn?'.

fundamental change to the proposed Measure that you have before you. I have tried to approach this from a position of asking, 'What can we do to work with this proposed Measure?'.

[64] **Val Lloyd:** Thank you. I need to remind everyone that we are three quarters of the way through the session and that we are not even halfway through the range of questions that we have. I now call on Mike German.

[65] **Michael German:** Turning to sections 3 and 10 of Part 1, which is on the functions of the commissioner versus the powers of the commissioner, do you think that they are consistent with each other? In other words, do the powers match the functions?

[66] **Mr Lewis:** Mae'n ddrwg gennyf, **Mr Lewis:** I am sorry, but which sections? ond pa adrannau?

[67] **Michael German:** I am referring to sections 3 and 10 of Part 2, namely the functions and powers of the commissioner.

[68] **Mr Lewis:** Mae'n rhaid imi ddweud nad wyf wedi edrych yn fanwl ar, na gwneud cymhariaeth fanwl rhwng, y ddwy adran hynny, ond byddwn yn hapus i wneud hynny a darparu tystiolaeth ysgrifenedig bellach pe baech yn dymuno, neu os oes rhywbeth penodol yr ydych am edrych arno.

Mr Lewis: I must admit that I have not looked in detail at, or made a detailed comparison between, the two sections, but I would be happy to do so and provide further written evidence if you wish, or if there is anything specific that you wish to look at.

[69] **Michael German:** That would be helpful to us. Using your international experience, can you tell us what the correlation is between the functions and powers in general terms of languages in other parts of the world?

[70] **Mr Lewis:** 'No one size fits all' yw'r ateb, gan fod cynifer o wahanol sefyllfaoedd. Fodd bynnag, gallwn bwyntio at gyfundrefnau eraill megis yn Iwerddon, Canada a Seland Newydd lle mae comisiynwyr iaith yn bodoli, ond maent i gyd yn wahanol i'r comisiynydd a fwriedir fan hyn. Byddwn yn dweud mai'r agosaf yw'r model Gwyddelig.

Mr Lewis: The answer is that no one size fits all, as there are so many different situations. However, we can highlight other arrangements, such as those in Ireland, Canada and New Zealand where language commissioners exist, but they are all different to the sort of commissioner proposed here. I would say that the closest is the Irish model.

[71] **Michael German:** I will highlight one of the functions, namely the promotion of the Welsh language. Your paper notes your concern that the function is passing from the Welsh Language Board to the Welsh Assembly Government, rather than to the commissioner. Will you expand on that?

[72] **Mr Lewis:** Fel yr eglurais gynnu wrth drafod gyda Mr Morgan, mae fy mhryder yn deillio o'r perygl y bydd yr arbenigedd yn mynd ar goll o fewn y Llywodraeth, a'r posibilrwydd y bydd y

Mr Lewis: As I explained previously in my discussion with Mr Morgan, my concern derives from the risk that the expertise will be lost in the Government, and the possibility that the Government will be at the mercy of

Llywodraeth fel gwymon yn y môr, gyda blaenoriaethau ariannu a pholisi ac ymladd rhwng adrannau yn peri i bobl dda gael eu symud o gwmpas, neu bod y blaenoriaethau yn diflannu. Nid unig ffocws y Llywodraeth yw'r iaith Gymraeg, a iawn hynny.

the tides, so that funding and policy priorities and fighting between departments will lead to good people being moved about, or that the priorities will just disappear. The Welsh language is not the Government's sole focus, as is only right.

[73] **Michael German:** Taking it a stretch further, if you have a commissioner who is an advocate for the Welsh language and the arbitrator as well, because he is the regulator, does that not create inconsistency?

[74] **Mr Lewis:** Yr wyf yn gweld y broblem. Hyd yn hyn, yr ydym wedi ei chael bob ffordd—mae Bwrdd yr Iaith Gymraeg wedi bod yn cyflawni'r ddwy swyddogaeth, ac wedi bod yn gwneud hynny yn dra llwyddiannus. Yn y pen draw, dyna sy'n bwysig, sef yr hyn sydd yn llwyddo. Fodd bynnag, os ydym am gael rhywun sy'n rheoleiddio sy'n llawer cryfach ei bwerau, mae angen edrych yn ofalus iawn ar y cwestiwn yr ydych wedi ei godi. Nid oes gennyf ateb parod i chi, ond yr wyf yn gweld y broblem.

Mr Lewis: I see the problem. Thus far, we have had it both ways—the Welsh Language Board has exercised both functions, and has done so very successfully. Ultimately, that is what is important, namely what succeeds. However, if we are to have a regulator with far stronger powers, we need to look very carefully at the question that you have raised. I do not have a ready answer for you, but I see the problem.

[75] **Lorraine Barrett:** As a lawyer, can you comment on the significance of the Welsh language commissioner being empowered to become involved in a judicial review or legal proceedings as provided for in section 7 of the proposed Measure, or provide legal assistance under section 8 of the proposed Measure?

[76] **Mr Lewis:** O ran yr adran gyntaf y gwnaethoch ei chrybwyll, pe bai statws yr iaith Gymraeg neu ddefnydd o'r iaith Gymraeg yn codi mewn achos llys, yr wyf yn cymryd y byddai hawl gan y comisiynydd i ymyrryd. Mae pwerau tebyg gan gomisiynydd iaith Canada, ac mae wedi ymyrryd mewn nifer o achosion. Fodd bynnag, mae'r hinsawdd ieithyddol yn llawer mwy dadleuol yng Nghanaada nag ydyw yng Nghymru—mae mwy o geclu a chyfreitha dros yr iaith yng Nghanaada nag y bu yn draddodiadol yng Nghymru, ac am y rheswm hwnnw mae'r comisiynydd yn ymyrryd yn weddol aml.

Mr Lewis: With regard to the first section that you mentioned, if the status of the Welsh language or the use of the Welsh language were to be the subject of a court case, I assume that the commissioner would have the right to intervene. The language commissioner of Canada has similar powers, and has intervened in many cases. However, the linguistic climate is far more controversial in Canada than it is in Wales—there is far more bickering and litigation over the language in Canada than there has traditionally been in Wales, and therefore the commissioner intervenes quite regularly.

[77] O ran eich ail gwestiwn, yr wyf yn cymryd bod hwn yr un math o bŵer ag sydd gan y comisiynwyr eraill mewn achosion unigol, lle bo unigolion wedi dioddef cam ac mae modd i'r comisiynwyr ariannu cynrychiolaeth gyfreithiol. Mae angen bod yn ofalus wrth ddefnyddio'r pŵer hwn, achos ni allwch fod yn rhyw fath o fwrdd 'legal aid' ar gyfer pobl sy'n honni eu bod wedi cael

With regard to your second question, I assume that this is the same type of power as other commissioners have in individual cases, where it is possible for the commissioners to fund legal representation for individuals who have suffered some injustice. You have to be careful in using this power, because you cannot be some kind of legal aid board for people who allege that they have suffered an

cam. Byddwn yn tybio y byddai'r comisiynydd ond am ddefnyddio'r math hwnnw o bŵer mewn amgylchiadau lle mae egwyddor sylfaenol i'w gosod a fyddai er lles cyffredinol, yn hytrach na bod yn eiriolwr dros bob person sydd yn honni ei fod wedi cael cam.

injustice. I would suppose that the commissioner would only use that type of power in circumstances where there is a fundamental principle to be established for the common good, rather than be an advocate for everyone who alleges that they have suffered an injustice.

10.20 a.m.

[78] **Lorraine Barrett:** Just to expand on that point a little, do you think it appropriate that the language commissioner, who plays a role in the imposition of standards, should also be empowered to become involved in legal proceedings in respect of the application of those standards?

[79] **Mr Lewis:** Fel Mr German, yr ydych wedi mynd at wraidd y peth: yr ydym un ai yn derbyn y '*fudge*' neu'n dewis peidio. Mae wedi gweithio'n dda hyd yma. Y cwestiwn yw a all oroesi mewn cyfundrefn newydd, lle mae'r pwerau rheoleiddio'n gryfach. Fel y dywedais, nid oes gennyf ateb parod i hynny.

Mr Lewis: Like Mr German, you have gone right to the heart of the matter: either we accept the fudge or we choose not to. It has worked well so far. The question is whether it can survive in a new system, where the regulatory powers will be stronger. As I said, I do not have an easy answer to that.

[80] **Brynle Williams:** Let us now move to the advisory panel to the Welsh language commissioner, namely Part 3, sections 22 and 23. The section makes provision about the appointment of the advisory panel and gives effect to Schedule 4, which makes further provision about its members. Do you think that it is necessary to have an advisory panel to assist the commissioner? Could you explain your answer?

[81] **Mr Lewis:** Yn sicr, byddai angen i'r comisiynydd gael rhywun y gallai siarad â hwy, neu fe fyddai'n swyddogaeth unig iawn, yr wyf yn ofni. A oes angen panel ymgynghorol ffurfiol o dan statud? Mae gan y panel swyddogaethau mewn perthynas â gosod safonau iaith; mae swyddogaeth ffurfiol i'r panel o fewn y mecanwaith statudol. Felly, o edrych ar hyn o safbwynt y Mesur arfaethedig, oes, mae angen y panel. Yn sicr, bydd angen i'r comisiynydd gael cyngor arbenigol ynghylch materion cyfreithiol, materion sy'n ymwneud â chynllunio iaith, a materion polisi. Byddwn yn disgwyl i'r math hwnnw o gyngor ddod oddi wrth y staff, a dweud y gwir, ond mae'r panel yn debyg i banelau cynghorol y mae Gweinidogion wedi'u sefydlu i'w cynghori. Mae'r model hwn o banel cynghorol o arbenigwyr i ddarparu cyngor i un o weision neu Weinidogion y Llywodraeth, neu rywun arall, yn gysyniad sydd wedi esblygu yng Nghymru, a thybed ai rhyw estyniad ohono yw hyn. Hynny yw, a yw'n beth da i rywun gael rhywun—fel y person a oedd yn sibwrdd yng nghlust Cesar—i gymedroli neu

Mr Lewis: Certainly, the commissioner would need someone to talk to, or it would be a very lonely function, I fear. Is there a need for a formal advisory panel under statute? The panel has functions in relation to setting language standards; the panel has a formal role within the statutory mechanism. Therefore, looking at this from the point of view of the proposed Measure, yes, there is a need for the panel. Certainly, the commissioner would need to receive expert advice in relation to legal matters, matters relating to language planning, and policy matters. I would expect that kind of advice to come from the staff, to be honest, but this panel sounds similar to advisory panels that Ministers have established to advise them. The model of an advisory panel of experts providing advice to Government officials or Ministers, or anyone else, is a concept that has evolved in Wales, and I wonder whether this might be an extension of that. That is, would it be beneficial to have someone—like the person who whispered in Caesar's ear—to provide moderation or to advise on what is happening?

gynggori'r hyn sy'n digwydd?

[82] **Brynle Williams:** Diolch am yr ateb hwnnw. Hoffwn symud ymlaen i Ran 4, ar safonau. **Brynle Williams:** Thank you for that response. I want to move on to Part 4, on standards.

[83] Could you explain why the imposition of standards, as provided for in the proposed Measure, does not establish linguistic rights for individuals?

[84] **Mr Lewis:** Fel yr oeddwn yn dweud gynnu, yn fy marn i, er mwyn cael hawl, mae angen rhywbeth sy'n gyfreithadwy ac sy'n arwain at ryw fath o ddeiliant, er budd y sawl sy'n meddu ar yr hawl honno—rhyw fath o rwymedi neu iawn. Dyna pam. Nid yw'r safonau yn gwneud hynny. Maent yn syrthio'n brin. **Mr Lewis:** As I mentioned earlier, in my opinion, in order to establish a right, you need something that is justiciable and that leads to some sort of outcome, for the benefit of the holder of that right—some sort of redress or compensation. That is why. The standards do not achieve that. They fall short.

[85] **Brynle Williams:** The Minister told the committee,

[86] 'We are talking about the duties placed on bodies, which are described as standards in the proposed Measure...that is the means by which British law gives rights to individuals. If there is a duty, the individual can expect to receive that service in Wales in Welsh or in English, and, therefore, has rights because if he or she does not receive the service according to the definition, he or she is entitled to appeal to the commissioner, who has a duty to investigate and to take appropriate steps'.

[87] What is your view on the interpretation of rights being derived from the standards?

[88] **Mr Lewis:** Os wyf wedi deall y Gweinidog yn iawn, y mae'n dweud bod yr hawl i fynd at y comisiynydd yn ddigon o rwymedi, neu iawn, ynddo'i hun, ac nid oes angen iawn pellach ar y dinesydd. Yr wyf yn digwydd anghytuno â'r Gweinidog ar y pwynt hwnnw. **Mr Lewis:** If I have understood the Minister correctly, he is saying that the right to go to the commissioner is in itself sufficient redress, or compensation, and that the citizen does not need further compensation. I happen to disagree with the Minister on that point.

[89] **Brynle Williams:** Aside from the question of language rights, to what extent do you think that the standards framework proposed will improve on the current system of language schemes in providing services in Welsh?

[90] **Mr Lewis:** Dyna'r cwestiwn mawr. Yn y pen draw, gallwn siarad am y Mesur arfaethedig, y darpariaethau a'r mecanwaith am byth, ond yr hyn sy'n bwysig yw bod pobl yn derbyn gwasanaethau Cymraeg lle bo angen. 'Nid wyf yn gwybod' yw'r ateb i'ch cwestiwn; yr wyf yn gobeithio, ond nid oes clem gennyf. **Mr Lewis:** That is the big question. At the end of the day, we could talk about the proposed Measure, the provisions and the mechanism forever. However, what is important is that people receive services in Welsh where they are needed. 'I do not know' is the answer to your questions; I hope so, but I have no idea.

[91] **Brynle Williams:** The written evidence of the Law Society said that the proposed Measure should give a clear and detailed outline of the substance of standards. Do you agree with that view?

[92] **Mr Lewis:** Byddai'n help mawr pe **Mr Lewis:** It would be a great help if the

bai'r Llywodraeth yn rhannu ei gweledigaeth o safonau iaith, gan roi ambell safon iaith i ni, a phe bai hefyd yn rhannu ei gweledigaeth o'r hysbysiadau cydymffurfio i ddangos sut ydynt yn wahanol i gynlluniau iaith. Swydd y comisiynydd yw creu'r rhain gyda'r Llywodraeth, ond teimlaf y byddai cael rhyw sampl o fwriad y Llywodraeth yn rhoi llawer mwy o hyder inni allu deall sut y bydd pethau'n well. Byddai cael esiamplau eglur o fewn y Mesur arfaethedig yn well byth, ond os na allwn gael hynny, hoffwn gael dealltwriaeth o'r hyn sy'n digwydd. Fel y dywedais, byddai'n well gennyf weld datganiadau eglur yn y Mesur arfaethedig.

[93] **Brynle Williams:** Rhaid bod rheswm dros hynny.

Government shared its vision of language standards, and give us a few examples, and also if it were to share its vision of compliance notifications to demonstrate how they are different from language schemes. It is the commissioner's job to create these with the Government, but I feel that having a sample of what the Government intends would give us much more confidence to understand how things will be better. Having clear examples in the proposed Measure would be better still, but if we cannot have that, I would like an understanding of what is happening. As I said, I would prefer to see clear statements in the proposed Measure.

Brynle Williams: There must be a reason for that.

[94] Is the fundamental principle underlying the Welsh language scheme under the 1993 Act—namely that, in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality—reflected in Part 4 of the proposed Measure?

[95] **Mr Lewis:** Ydy, i raddau, oherwydd pwrpas Rhan 4 yw sicrhau gwasanaethau Cymraeg mewn rhai sefyllfaoedd. Mae'r prawf wedi newid rhywfaint. Nid ydym yn sôn am '*reasonably practical and appropriate in the circumstances*' bellach, ond am ofyniad 'afresymol neu anghymesur'. Yr un math o egwyddor sydd ar waith, ond un peth a'm tarodd neithiwr wrth fynd drwy hwn, ac un o'r pethau sydd angen edrych arno'n ofalus yw'r effaith ar wasanaeth y llysoedd yng Nghymru pe diddymir y Rhan honno o Ddeddf yr Iaith Gymraeg. Mae gan wasanaeth y llysoedd gynllun iaith o dan Ddeddf 1993 sy'n gweithredu'r egwyddor o statws cyfartal '*in the administration of justice*', yng ngeiriau Deddf 1993. Os ceir gwared yn llwyr ar Ddeddf yr Iaith Gymraeg, a'r darn sy'n ymwneud â '*the administration of justice*', ni fydd pŵer gan y Cynulliad Cenedlaethol—ni fydd y pŵer yn bodoli yng Nghymru—i ddelio â chynllun iaith gwasanaeth y llysoedd, oherwydd ni all y Cynulliad Cenedlaethol ddeddfu mewn perthynas â'r defnydd o'r Gymraeg yn y llysoedd. Mae hwnnw wedi'i eithrio o'r Ddeddf. Rhywbeth a'm tarodd neithiwr oedd hwnnw, wrth feddwl am yr union fath o gwestiwn yr ydych yn ei ofyn. Mae'n ddrwg gennyf am daflu '*firecracker*' arall atoch—ac efallai fy mod i'n anghywir.

Mr Lewis: Yes, to an extent, because the purpose of Part 4 is to safeguard Welsh-language services in some situations. The test has changed somewhat. We are no longer talking about 'reasonably practical and appropriate in the circumstances', but about 'unreasonable or disproportionate' requirements. The principle is the same, but one thing that struck me when going through this last night, and one thing that needs to be looked at carefully is the effect on the courts service in Wales if that part of the Welsh Language Act is abolished. The courts service has a language scheme under the 1993 Act that implements the principle of equal status '*in the administration of justice*', in the words of the 1993 Act. If the Welsh Language Act were repealed in its entirety, including the piece that covers '*the administration of justice*', it would mean that the National Assembly would not have the power to deal with the courts service's language scheme—that power will not exist in Wales—because the National Assembly cannot legislate on the use of the Welsh language in the courts. That has been excepted from the Act. That was just something that struck me last night when thinking about the exact kind of question that you have asked. Sorry to throw another firecracker at you—and perhaps I am wrong.

[96] **Val Lloyd:** I remind Members that we need to make a decision at this point, because we are out of time for this section of the meeting. I do not know what Members' commitments are, but I am prepared to carry on this session with Emyr Lewis for another quarter of an hour, if that is all right; otherwise, we would have to write to him with those questions that have not yet been posed. What are Members' views on this?

[97] **Brynle Williams:** We should carry on, Chair.

[98] **Lorraine Barrett:** Using your international experience, how does the mechanism of standards set out in Part 4 compare with mechanisms for the promotion of the use of minority languages in any other European jurisdictions with which you are familiar, particularly ones that may be broadly comparable to Wales?

10.30 a.m.

[99] **Mr Lewis:** Ni wn am unrhyw sefyllfa sy'n union yr un peth â hon. Mae rhan olaf eich cwestiwn yn cadarnhau'r pwynt. Hynny yw, nid oes gan unman arall batrwm y gellir ei ddefnyddio er mwyn mapio'r Gymraeg yn y sefyllfa honno. Mae Gwlad y Basg yn debyg, ond mae ei hanes yn wahanol iawn i hanes Cymru ac felly mae'r ddeinameg wleidyddol yn wahanol iawn yno. Mae Iwerddon yn debyg, ond mae sefyllfa'r Wyddeleg yn llawer gwannach na sefyllfa'r Gymraeg, yn enwedig mewn meysydd economaidd. Un o gryfderau'r Gymraeg yw bod y dosbarth gweithiol wedi'i defnyddio yn iaith feunyddiol. Mae hynny wedi rhoi cryfder i'r Gymraeg nad yw'n bod mewn ieithoedd lleiafrifol eraill. Mae'n anodd iawn cyffredinoli, felly.

Mr Lewis: I know of no situation that is exactly like this one. The final part of your question illustrates the point. That is, no other place has a pattern that we could use to map the Welsh language in such a situation. The Basque Country is similar, but its history is very different from the history of Wales, and so the political dynamic is very different there. Ireland is similar, but the position of the Irish language is far weaker than that of the Welsh language, particularly in economic fields. One of the strengths of the Welsh language is that the working class has used it as its everyday language. That has given the Welsh language a strength that is not found in other minority languages. It is very difficult to generalise, therefore.

[100] Nid oes dim byd fel safonau, ond mae fframweithiau eraill o hyrwyddo a diogelu'r iaith. Mae'r cysyniad o hawliau ieithyddol yn weddol brin yn gyffredinol. Mae llawer mwy o enghreifftiau o wadu rhyddid pobl i siarad iaith. Er enghraifft, mae prif Ddeddf iaith Slofacia yn datgan mai yn Slofaceg yn unig y caniateir gwneud rhai pethau yn y wlad. Mae 0.5 miliwn o bobl sy'n siarad Hwngareg fel iaith gyntaf yn byw yn y de, ac mae'r sefyllfa ieithyddol yn rhan o'r tensiwn rhyngwladol sy'n bodoli rhwng y ddwy wlad. Felly, mae'r enghreifftiau o wahardd yn llawer fwy amlwg na'r enghreifftiau o hyrwyddo.

There is nothing that compares to standards, but there are other frameworks to promote and safeguard a language. The concept of language rights is quite rare, generally. There are many more examples of people being denied the freedom to speak a language. For example, the principal language Act in Slovakia states that only Slovak may be used to do certain things in the country. There are 0.5 million people who speak Hungarian as their first language living in the south, and the language situation forms a part of the tension between the two countries. So, examples of prohibition are much more prominent than examples of promotion.

[101] **Lorraine Barrett:** To what extent will the mechanism of standards contribute to the satisfaction and implementation of the UK's obligations in respect of the Welsh language under the European charter for regional or minority languages?

[102] **Mr Lewis:** I ddechrau, yr oeddwn yn tybio a ddylwn wrthod ateb y cwestiwn hwn, ond yn hytrach pwysleisïaf mai fy marn bersonol yw pob dim yr wyf yn ei ddweud heddiw, ac nid wyf yn gwisgo unrhyw het, ac eithrio bod yn siaradwr Cymraeg sydd hefyd yn digwydd bod yn gyfreithiwr.

Mr Lewis: At the outset, I was wondering whether I should refuse to answer that question, but, instead, I will emphasise that everything that I say today is my own personal opinion, and I am not here as anything other than a Welsh speaker who also happens to be a lawyer.

[103] Ni fydd y mecanwaith yn mynd yn groes i'r siarter—mae hynny'n ddigon amlwg. Mae'r siarter yn cynnwys rhai darpariaethau lle mae pwyllgor yr arbenigwyr a phwyllgor y Gweinidogion wedi gwneud argymhellion i Lywodraeth Prydain, gyda'r nod o gryfhau'r sefyllfa yng Nghymru. Mae argymhelliad penodol ym maes gofal iechyd a chymdeithasol. Mae'n deg dweud bod angen gwneud trefniadau gwell o ran darparu gwasanaethau Cymraeg.

The mechanism is not going to contravene the charter—that much is evident. The charter includes some provisions where the experts' committee and the ministerial committee have made recommendations to the British Government, with the aim of strengthening the situation in Wales. There is a specific recommendation relates to the health and social care field. It is fair to say that better arrangements are needed for the provision of Welsh-language services.

[104] Mae'n bosibl y byddai'r safonau iaith yn arwain at sefyllfa well, ond mae hynny'n dibynnu ar gynnwys y safonau ac ar sut y cânt eu gweithredu. Ni wn a fydd hyn yn digwydd, ond yr wyf yn gobeithio hynny. Fel y dywedais yn gynharach, yr wyf yn gyfaill beirniadol.

It is possible that the language standards will lead to a better situation, but that all depends on what the standards contain and on how they are implemented. I do not know whether this will come about, but I am hopeful that it will. As I said earlier, I am acting as a critical friend.

[105] **Val Lloyd:** Mr Lewis, could you please expand on your suggestion that a statutory duty be included in the proposed Measure, along the lines that named bodies should treat the Welsh and English languages equally in respect of certain activities?

[106] **Mr Lewis:** Wrth ymateb i sylwadau Mr Morgan yn gynharach, am hwn yr oeddwn yn sôn. Mae angen datganiad symlach o'r dyletswyddau gwahanol—sef pwy sy'n gyfrifol amdanynt, beth ydynt, a beth sy'n digwydd os na cânt eu cyflawni—sy'n fwy hygyrch i'r dinesydd. Serch hynny, yr wyf yn derbyn nad yw'r sefyllfa mor syml â hynny. Hynny yw, mae man canol rhwng y datganiad syml iawn o ddyletswyddau iaith a'r mecanwaith cymhleth sydd wedi'i ddrafftio.

Mr Lewis: In responding to Mr Morgan's comments earlier, this is what I was talking about. We need a more simple statement on the different responsibilities—who is responsible for them, what they are, and what happens if they are not delivered—that is more accessible to the citizen. Nevertheless, I accept that the situation is not as simple as that. That is, there is some middle ground between the very simple statement of language responsibilities and the complex mechanisms as drafted.

[107] **Val Lloyd:** In your written submission to us, you suggest that the statutory duty to treat the Welsh and English languages equally would be subject to the limitation that such equality of treatment would not be required where it is 'unreasonable or disproportionate'. Could you tell us under which circumstances that might apply?

[108] **Mr Lewis:** Byddwn i'n dweud nad yw'r fath amgylchiadau'n bodoli o gwbl, ond mae'n rhaid defnyddio'r geiriau hynny yn sgîl yr LCO. Mae'r LCO yn eich cyfyngu: ni allwch osod dyletswyddau ar neb oni bai bod

Mr Lewis: I would say that no such circumstances exist at all, but those words have to be included because of the LCO. The LCO limits you: you cannot place responsibilities on anyone unless there is

rhyw fecanwaith yn eu galluogi i'w herio. Ni fyddwn eisiau dechrau rhestru amgylchiadau lle na fyddai'n rhesymol nac yn briodol defnyddio'r iaith Gymraeg. Yr wyf yn ei chael yn anodd meddwl am rai.

some mechanism that allows them to challenge them. I would not want to begin listing circumstances in which it would not be reasonable or appropriate to use the Welsh language. I find it difficult to think of any.

[109] **Val Lloyd:** In relation to the transition from language schemes to standards, can you explain your concerns more fully and why you think that a commission would resolve this?

[110] **Mr Lewis:** Nid oes rhaid iddo fod yn gomisiwn. Awgrym yn unig yw hynny. Fy mhryder yw—ac yr wyf wedi gweld hyn o brofiad—pan fo ailstrwythuro yn digwydd yn y sector gyhoeddus, er enghraifft, ailstrwythuro'r gwasanaeth iechyd, defnyddir llawer o egni ac arian yn y broses honno. Mae'r adnoddau sydd eu hangen ar gyfer hynny yn fwy na'r adnoddau sydd eu hangen ar gyfer busnes fel arfer, felly. Bydd cyfnod yn dod pan fydd y safonau hyn yn cael eu datblygu a'u gosod, ac ni fyddant yn gallu cael eu gorfodi nes bod yr hysbysiadau cydymffurfio wedi cael eu setlo. Bydd hynny'n cymryd amser; rhaid inni beidio â thwylo ein hunain ynghylch hynny. Bydd gosod y gyfundrefn rheoleiddio newydd yn ei lle, yn enwedig gan ei bod mor gymhleth, yn cymryd amser. Bydd yn cymryd blynyddoedd.

Mr Lewis: It does not have to be a commission. That is merely a suggestion. My concern—and I have seen this from experience—is that when restructuring takes place in the public sector, for example, the restructuring of the health service, a great deal of energy and money is used in that process. The resources needed for that are greater than those needed for business as usual, therefore. A time will come when these standards will be developed and put in place, and they will not be able to be enforced until the compliance notices have been settled. That will take time; we should not kid ourselves about that. Putting the new regulatory system in place will take time, especially as it is so complex. It will take years.

[111] Yn y cyfamser, bydd cynlluniau iaith yn dal i fodoli. Fy mhryder yw na fydd y cyrff a reoleiddir, neu rai ohonynt, yn cymryd y cynlluniau iaith o ddifrif, ac, felly, ni fyddant yn cymryd eu dyletswyddau tuag at yr iaith Gymraeg o ddifrif, gan wybod bod rhywbeth arall ar y gorwel.

In the meantime, language schemes will continue to exist. My concern is that the bodies that are regulated, or some of them, will not take the language schemes seriously, and, therefore, they will not take their duties with regard to the Welsh language seriously, knowing that something else is on the horizon.

[112] Mae gennyf awgrym yn unig er mwyn delio â'r ddwy broblem. Pam diddymu Bwrdd yr Iaith Gymraeg? Pam na ellid cadw'r endid cyfreithiol, newid ei enw yn 'gomisiynydd' neu'n 'gomisiwn yr iaith Gymraeg', a chael comisiynydd, prif gomisiynydd, a dirprwy gomisiynydd, fel sydd yn y Mesur arfaethedig? Drwy wneud hynny bydd yn haws sicrhau olyniaeth o ran y gwaith, bydd yn haws plethu'r ddwy ffrwd o reoleiddio gyda'i gilydd, a hefyd, er nad wyf yn sicr ynghylch hyn, gallai fod yn llawer rhatach. Gellid defnyddio'r arian a arbedir er mwyn hyrwyddo'r iaith Gymraeg, neu ar gyfer beth bynnag y dymuna'r Llywodraeth yn yr amseroedd caled hyn.

I have a suggestion only as to how to deal with both problems. Why abolish the Welsh Language Board? Why not retain the legal entity, change its name to 'the commissioner' or 'the commission for the Welsh language', and have a commissioner, chief commissioner and deputy commissioner, as in the proposed Measure? That would make it easier to ensure continuity in the work, it would be easier to dovetail the two regulatory streams, and also, although I am not certain about this, it could be much cheaper. The money saved could be used to promote the Welsh language, or for whatever the Government wants to use it for in these difficult times.

[113] **Gareth Jones:** Trof at Ran 5, sy'n ymwneud â gorfodi safonau. O gofio'r pryderon a fynegwyd yn eich cyflwyniad ysgrifenedig am y comisiynydd arfaethedig—sef yr hoffech weld mwy o le yn y gyfundrefn hon i'r dinesydd sydd wedi dioddef cam—i ba raddau y mae'r dulliau yn Rhan 5 yn ymateb i'ch pryderon? I'r graddau nad ydynt yn ymateb yn llawn i'ch pryderon, pa ddulliau eraill y byddech yn eu hargymhell?.

Gareth Jones: I turn to Part 5, which deals with enforcing standards. Bearing in mind the concerns that you expressed in your written submission about the proposed commissioner—that is, that you would like to see this system do more for the wronged citizen—to what extent do the mechanisms in Part 5 respond to your concerns? If they do not respond to your concerns fully, what other mechanisms would you recommend?

[114] **Mr Lewis:** Fel yr wyf eisoes wedi crybwyll, yr hawl sydd gan y dinesydd ar hyn o bryd yw i wneud cwyn. Gallai'r dinesydd deimlo'n well o wybod bod gan y comisiynydd yr hawl i roi amser caled i'r corff cyhoeddus ac i osod sancsiynau neu ei ddirwyo. Byddai hynny, o bosibl, yn ddigon o iawn i rai pobl. Ni chredaf fod hynny'n creu hawliau fel y cyfryw. Os y bwriad yw i greu hawliau, mae angen cael rhyw fath o ddeilliant sy'n gwneud iawn i'r sawl a ddiodefodd. Rhaid pwysleisio bod hyn yn gymwys dim ond os yw rhywun wedi methu â chydymffurfio mewn ffordd sy'n peri dioddefaint, ac ni fyddai gan rywun sy'n hawlio mewn amgylchiadau afresymol neu anghymesur unrhyw hawl o dan yr hyn yr wyf yn ei awgrymu.

Mr Lewis: As I have already mentioned, at present, the citizen has the right to make a complaint. The citizen might feel better knowing that the commissioner has the right to give the public body a hard time and to impose sanctions or to fine it. That might be sufficient redress for some people. I do not think that that creates rights as such. If the intention is to create rights, there needs to be some kind of outcome that compensates the wronged citizen. It has to be emphasised that this applies only if someone has failed to comply in a way that has caused suffering, and someone who claims in unreasonable or disproportionate circumstances would not have any right under what I am suggesting.

[115] **Gareth Jones:** Trof at Ran 6, ar y rhyddid i ddefnyddio'r Gymraeg. Mae'n rhoi'r hawl i'r comisiynydd ymchwilio i ymyriadau honedig penodol â'r rhyddid i siarad yr iaith. Gwyddoch am adran 100, sy'n diffinio 'cyfathrebiad Cymraeg', ac adran 102, lle mae cyfeiriad at berson D yn ymyrryd â rhyddid person arall ac yn y blaen. A allwch egluro pam y credwch y dylai Rhan 6 o'r Mesur arfaethedig gael ei dileu?

Gareth Jones: I turn to Part 6, on the freedom to use the Welsh language. It gives the commissioner the right to investigate certain alleged interferences with the freedom of people to speak the language. You know of section 100, which defines 'Welsh communication', and section 102, where there is a reference to person D interfering with another person's freedom and so on. Could you explain why you think that Part 6 of the proposed Measure should be removed?

10.40 a.m.

[116] **Mr Lewis:** Mae pwynt lle mae rheoleiddio iaith ynddo'i hun yn troi'n ymyrraeth. Yr ydym yn sôn am hawliau pobl i gynnal sgwrs yn y Gymraeg gyda'i gilydd. Mae darn erchyll yn y LCO sy'n galluogi Cynulliad Cenedlaethol Cymru i osod cyfyngiadau ar ryddid pobl i gynnal sgwrs yn y Gymraeg gyda'i gilydd. O'r man hwnnw y mae hwn wedi deillio. Credaf mai'r unig

Mr Lewis: There is a point at which regulating a language in itself becomes interference. We are talking about people's right to hold a conversation in Welsh with each other. There is a horrific part of the LCO that enables the National Assembly for Wales to place restrictions on the freedom of people to hold a conversation in Welsh with each other. That is where this has arisen

reswm mae hynny yno yw er mwyn delio ag achos Thomas Cook. Ni wn os ydych yn gyfarwydd â'r achos hwnnw, ond honnir bod y cyflogwr wedi gwahardd dwy aelod o staff a oedd yn siarad Cymraeg a'i gilydd yn y swyddfa rhag siarad Cymraeg ym mhresenoldeb y rheolwraig. A yw hynny'n gyfreithlon? Cwestiwn o gyfraith camwahaniaethu a chyfraith cyflogaeth ydyw. Mae dyletswydd ar unrhyw un sy'n gweithio i rywun arall i gydymffurfio â dymuniadau rhesymol y cyflogwr. Y cwestiwn yw a oedd hyn yn rhesymol. Mae modd datrys hynny drwy dribiwnlysoedd. Efallai bod angen diwygio'r Ddeddf camwahaniaethu er mwyn ei wneud yn glir na fyddai rhywbeth o'r fath yn rhesymol, ond, yn anffodus, yr hyn gafwyd yn lle hynny oedd y darn hwn yn y Mesur arfaethedig sy'n ymddangos fel eich bod yn mynd ati i reoleiddio sgysiaiu.

[117] Rhoddaf sefyllfa ddamcaniaethol i chi fel enghraifft, er nad yw mor ddamcaniaethol ag hynny. Mae dau berson mewn swyddfa sy'n siarad Cymraeg gyda'i gilydd. Mae person arall yn y swyddfa honno, nad yw'n un o'r bosys, sy'n dweud, 'Nid wyf yn hoffi'r ffaith eich bod yn siarad Cymraeg—mae'n anghwrtais. Stopiwch wneud hynny; nid wyf am ichi wneud hynny. Nid wyf yn deall yr hyn yr ydych yn ei ddweud.' Gallai'r ddau arall ddweud, 'Beth ydych yn ei feddwl wrth ddweud "anghwrtais"? Chi sydd yn anghwrtais. Mae gennyf y rhyddid i siarad Cymraeg gyda pherson arall. Yr ydym yn ddau berson sy'n dymuno siarad Cymraeg gyda'n gilydd. Pwy ydych chi i ymyrryd yn ein rhyddid ni i ddefnyddio'r iaith yr ydym yn dymuno ei defnyddio, neu i wneud unrhyw beth arall yr ydym yn dymuno ei wneud gyda'n gilydd sydd o fewn y gyfraith?' Ni chredaf ei fod yn briodol o gwbl i unrhyw swyddog neu Lywodraeth i ymyrryd yn y math hwnnw o drafodaeth. Rhaid datrys y math hwnnw o beth ar lawr gwlad o fewn y gymuned ac o fewn cymdeithas. Fy mhryder i ynghylch yr hyn a fwriedir yw ei fod yn ymddangos fel cam cyntaf—nid dyna'r bwriad, ond dyna sut mae'n ymddangos—tuag at ddechrau dyfarnu ar y sefyllfaoedd lle mae hi, a lle nad yw hi, yn briodol i bobl sy'n dymuno siarad Cymraeg gyda'i gilydd i wneud hynny. Nid wyf am inni gychwyn ar hyd y lôn hwnnw.

from. I think that the only reason that that is there is to deal with the Thomas Cook case. I do not know whether you are familiar with that case, but it is alleged that the employer banned two members of staff who spoke Welsh to each other in the office from speaking Welsh in the presence of the manager. Is that lawful? It is a question of discrimination law and employment law. There is a duty on anyone who works for someone else to conform with the reasonable wishes of the employer. The question is whether this was reasonable. That can be resolved through tribunal. Perhaps the discrimination Act needs to be amended to make it clear that something of that sort would not be reasonable, but, unfortunately, what we got instead of that was this part of the proposed Measure that looks as if you are going to regulate people's conversations.

I will give you a hypothetical situation as an example, although it is not that hypothetical. There are two people in an office who speak Welsh to each other. The other person in the office, who is not one of the bosses, says, 'I do not like the fact that you are speaking Welsh—it is discourteous. Stop doing it; I do not want you to do it. I do not understand what you are saying.' The other two people could say, 'What do you mean "discourteous"? You are the discourteous one. I have the freedom to speak Welsh to another person. We are two people who wish to speak Welsh to each other. Who are you to interfere with our freedom to use the language that we want to use, or to do anything else that we want to do with each other that is within the law?' I do not think that it is appropriate at all for any official or Government to intervene in that kind of discourse. That kind of thing must be resolved on the ground within the community and society. My concern about what is intended is that it appears to be a first step—that is not the intention, but that is how it appears—towards deciding on the situations in which it is, and in which it is not, appropriate for people who wish to speak Welsh to each other to do so. I do not want us to start down that road.

- [118] **Gareth Jones:** Mewn ffordd, yr ydych wedi ateb fy ail gwestiwn ar hyn, sef a yw'r fframwaith cyfreithiol presennol yn ddigonol o ran hynny o beth.
- Gareth Jones:** In a way, you have answered my second question on this, namely whether the current legal framework sufficient in that regard.
- [119] **Mr Lewis:** Ydyw, gan fwyaf, o ran Deddfau hawliau dynol a Deddf camwahaniaethu. I'r graddau nad yw'n ddigonol, byddai'n well diwygio'r Deddfau hynny yn hytrach na chreu'r gyfundrefn hon.
- Mr Lewis:** It is, mostly, in terms of the human rights and discrimination Acts. To the extent that it is not sufficient, then it would be better to amend those Acts than create this system.
- [120] **Gareth Jones:** Credaf eich bod wedi egluro eich bod yn credu y byddai'r dulliau hyn yn golygu ymyrraeth ffurfiol mewn sefyllfaoedd lle na fyddai hynny'n briodol.
- Gareth Jones:** I think that you have explained that you think that these methods would mean formal intervention in situations where that would not be appropriate.
- [121] **Mr Lewis:** Fel yn yr enghraifft a roddais i chi.
- Mr Lewis:** Such as in the example that I gave you.
- [122] **Gareth Jones:** Pan ofynnwyd iddo pam fod y Mesur arfaethedig yn cyfeirio at y rhyddid i siarad Cymraeg yn hytrach na'r hawl i siarad Cymraeg, dywedodd y Gweinidog:
- Gareth Jones:** When asked why the proposed Measure refers to the freedom to speak Welsh rather than to the right to do so, the Minister told the committee:
- [123] 'Mae gan bawb ryddid i siarad Cymraeg—neu unrhyw iaith arall, hyd y gwn i—gyda'i gilydd. Dyna'r sefyllfa. Os ydych yn ceisio creu hawl i rywun siarad Cymraeg, y perygl yw y byddech yn creu dosbarth o leoedd lle nad oes gan rywun hawl i wneud hynny.'
- 'Everyone has the freedom to speak Welsh—or any other language, as far as I know—with one another. That is the situation. If you try to establish a right for someone to speak Welsh, the danger is that you would create a class of places where someone does not have the right to do so.'
- [124] I ba raddau yr ydych yn cytuno â'r Gweinidog?
- To what extent do you agree with the Minister?
- [125] **Mr Lewis:** Nid wyf yn siŵr fy mod i'n deall yr hyn oedd gan y Gweinidog dan sylw.
- Mr Lewis:** I am not sure that I understand what the Minister had in mind.
- [126] **Gareth Jones:** Iawn. A fedrwch ymhelaethu o gwbl?
- Gareth Jones:** Okay. Could you elaborate on that at all?
- [127] **Mr Lewis:** Nid wyf yn ei ddeall. Byddwn yn dymuno iddo egluro ychydig yn fwy manwl yr hyn yr oedd yn ei olygu ac wedyn byddwn yn hapus i ddelio gydag hynny.
- Mr Lewis:** I do not understand it. I would want him to explain in more detail what he meant and then I would be happy to deal with that.
- [128] **Gareth Jones:** Fodd bynnag, dyna'r math o sgwrs sy'n codi o'r Mesur arfaethedig hwn: rhyddid, hawliau a statws ac yn y blaen.
- Gareth Jones:** However, that is the kind of discussion that arises from this proposed Measure: freedom, rights and status and so on.

[129] **Mr Lewis:** Yr wyf wedi egluro yr hyn yr wyf yn ei ystyried yw hawl, ond mae hefyd ystyr arall, gyffredinol i hawl, sef yr hyn yr ydym yn gallu ei wneud. Y sefyllfa o dan gyfraith Prydain yn gyffredinol yw bod pobl yn rhydd i wneud unrhyw beth oni bai ei fod wedi'i wahardd gan y gyfraith.

Mr Lewis: I have told you what I consider to be a right, but there is also another, general meaning to a right, that is, what we can do. The position under British law in general is that people are free to do anything unless it is prohibited by the law.

[130] Enghraifft wych yw hawliau hoywon. Gwnaethpwyd gweithredoedd hoyw rhwng dynion yn anghyfreithlon drwy statud, ond nid yw gweithredoedd hoyw rhwng menywod erioed wedi'u gwneud yn anghyfreithlon. Felly, nid oedd angen diwygio'r gyfraith er mwyn cyfreithloni gweithredoedd hoyw rhwng menywod, ond yr oedd angen gwneud hynny ar gyfer gweithredoedd hoyw rhwng dynion. Mewn geiriau eraill, yr ydym yn rhydd oni bai ein bod yn cael ein caethiwo gan y gyfraith. Ni chredaf y gallaf ychwanegu at hynny. Yr ydym yn rhydd i siarad Cymraeg, Pwyleg, Saesneg ac yn y blaen.

An excellent example is gay rights. Homosexual acts between men were made unlawful by statute, but homosexual acts between women have never been made unlawful. Therefore, the law did not need to be amended to legalise homosexual acts between women, but that had to be done for homosexual acts between men. In other words, we are free unless we are restricted by the law. I do not think that I can add anything to that. We are free to speak Welsh, Polish, English and so forth.

[131] **Gareth Jones:** Dyma fy nghwestiwn olaf i chi. O ystyried eich profiad rhyngwladol, a wyddoch am unrhyw drefniadau cyfreithiol tebyg o ran y rhyddid i ddefnyddio iaith? Os felly, sut mae hynny'n cael ei orfodi?

Gareth Jones: This is my final question to you. Given your international experience, are you aware of any parallels in law elsewhere relating to the freedom to use a language? If so, how is that enforced?

[132] **Mr Lewis:** Rhoddaf ddwy enghraifft i chi. Daw'r enghraifft gyntaf o Wlad y Basg lle datgenir yn statud annibyniaeth y wlad mai Basgeg a Sbaeneg yw'r ieithoedd swyddogol a bod gan bawb yr hawl i siarad a dysgu Basgeg. Os ystyriwch hynny yng nghyd-destun dioddefaint Gwlad y Basg o dan law'r ffasgwyr, yna gellir gweld yr angen i ddatgan hynny. Nid oes angen datgan hynny yng Nghymru. Yr ail enghraifft yw'r enghraifft a roddais yn gynharach o Slofacia, lle mae gorfodaeth mewn rhai sefyllfaoedd i ddefnyddio'r iaith Slofaceg, a olyga, yn dechnegol, bod ambell i sgwrs rhwng siaradwyr Hwngareg yn anghyfreithlon. Mae nifer fawr o enghreifftiau eraill yn ymwneud â'r iaith Romani a'r ormes a ddiodefodd, ond mae hynny'n fwy drwy weithredu na thrwy ddeddfu.

Mr Lewis: I will give you two examples. The first example comes from the Basque Country where it is stated in the country's declaration of independence that Basque and Spanish are the official languages and that everyone has the right to speak and to learn Basque. If you consider that in the context of the suffering of the Basque Country under the fascists, the need to declare that is evident. There is no need to declare that in Wales. The second example is the example that I gave earlier from Slovakia, where there is compulsion in some situations to use only the Slovak language, which means that, technically, some conversations between Hungarian speakers are illegal. There are many other examples relating to the Romany language and the oppression that it has suffered, but that is more through action than legislation.

[133] **Val Lloyd:** Thank you, Mr Lewis, and thank you for staying for the extra mile, so to speak. You will be sent a draft transcript of today's proceedings for correction; it will be with you in about a week's time.

[134] **Mr Lewis:** Diolch yn fawr. Mae'n ddrwg gennyf am eich cadw chi'n hirach nag y dylwn. **Mr Lewis:** Thank you very much. I apologise for having kept you longer than I should.

[135] **Val Lloyd:** I now welcome Professor Colin Williams from the school of Welsh at Cardiff University. Thank you for your forbearance in waiting an extra 15 minutes; we appreciate it.

[136] I will start by asking whether you agree with the general intent of the proposed Measure.

[137] **Yr Athro Williams:** Ydwyf, wrth gwrs, fel rhywun sydd wedi bod yn dadlau dros ddeddfu yn yr un maes a thros gomisiynydd iaith ers 1973, pan oeddwn yn fyfyrwr laslanc yng Nghanaada. Mae'n gam allweddol ymlaen, ac, gan ddibynnu ar sut y'i gweithredir, gall fod yn allweddol. **Professor Williams:** Yes, of course, as someone who has argued for legislation in the same field and for a language commissioner since 1973, when I was a young student in Canada. It is a crucial step forward, and, depending on how it is implemented, it could be crucial.

[138] **Michael German:** I will start with Part 1, on official status of the Welsh language, and ask a question that I posed to the previous witness. What do you understand is meant by 'official status' of a language in respect of the rights, duties and everything else that flows from that?

[139] **Yr Athro Williams:** Cytunaf 100 y cant ag Emyr a'i arbenigedd. Rhoddodd ddehongliad cywir a chymesur. Credaf mai ychydig o wahaniaeth sydd rhwng yr ystyr gyfreithiol o statws swyddogol a'r defnydd a wna'r cyhoedd o'r gair 'statws'. Felly, ar lafar gwlad, credaf fod nifer yn meddwl bod statws gan yr iaith Gymraeg eisoes, ond pe bai'n cael ei brofi mewn llys, mewn achos difrifol, ni chredaf fod y fframwaith yn ddigonol fel ag y mae. Felly, cymeradwyaf gyngor Emyr ein bod yn datgan hyn yn glir, gan ddefnyddio'r un geiriau a ddyfynnodd o Ganada. Byddai eglurdeb i'r cyfnod newydd o gynllunio ieithyddol yng Nghymru a pholisi yn ymwneud â'r Gymraeg sydd yn eglur o'r cychwyn. **Professor Williams:** I agree wholeheartedly with Emyr and his expertise. He gave a measured and correct assessment. I think that there is only a little difference between the legal meaning of official status and the use that the public makes of the word 'status'. So, at grass-roots level, I think that many people believe that the Welsh language already has status, but if that were tested in a court of law, in a serious case, I do not believe that the framework is sufficient as it stands. So, I endorse Emyr's advice that we should state this clearly, using the same wording that he quoted from Canada. There would be clarity for the new phase of language planning in Wales and a policy relating to the Welsh language that is clear from the outset.

10.50 a.m.

[140] Un fantais arall yng nghyd-destun yr hyn a ddywedodd Emyr am ddatblygiadau rhyngwladol ac Ewropeaidd yw nid yn unig bod y Gymuned Ewropeaidd yn cynnig cyfrifoldebau newydd i ieithoedd sydd ar hyn o bryd yn swyddogol, yn bwysicach, bydd yn cynnig adnoddau i atgyfnerthu ieithoedd sydd eisoes wedi ennill eu plwyf yn eu gwledydd eu hunain o ran bod yn statudol ac o ran safon, cywirdeb a chymesured. Yr wyf yn One further advantage in the context of what Emyr said about international and European developments is that not only does the European Community offer new responsibilities for languages that are currently official, more importantly, it will provide resources to strengthen languages that have already come into their own in their own countries with regard to statutory status, standardisation, accuracy and proportionality.

eich annog felly i dderbyn cyngor Emyr am ddau reswm: yn gyntaf, parch cenedlaethol am yr iaith Gymraeg, ac yn ail, pwy a wŷr beth fydd goblygiadau gwneud neu beidio â gwneud y gosodiad yng nghyd-destun ariannu adnoddau a chydweithio rhwng Cymru a gwledydd eraill yn y Gymuned Ewropeaidd?

I would therefore urge you to accept Emyr's advice for two reasons. First, it is a matter of national respect towards the Welsh language and, secondly, who knows what the implications of making or not making that statement will be in the context of funding resources and co-operation between Wales and other European Community countries?

[141] **Michael German:** I put to you the words of the Minister to this committee on the official status of the Welsh language.

[142] 'Section 1 also signals to any court considering issues in relation to the Welsh language that the Welsh language enjoys official status in Wales'.

[143] Do you agree with that?

[144] **Yr Athro Williams:** Nac wyf.

Professor Williams: I do not.

[145] **Michael German:** Presumably, that is for the reasons that you gave earlier. We have jurisdictional problems with the English language, because Wales shares a jurisdiction with England—Rhodri Morgan questioned Emyr Lewis on this earlier. Does that present problems in establishing unambiguously in law that Welsh is an official language?

[146] **Yr Athro Williams:** Yn wahanol i Emyr, nid wyf yn gyfreithiwr. Efallai y gwyddoch, er fy mod yn dysgu yn adran y Gymraeg, mai daearyddwr ydwyf, ac felly yn fwy ymarferol na nifer o bobl eraill. Felly, nid wyf yn credu ei fod yn peri problemau ar hyn o bryd. Gallwch ddadlau pe bai tueddiadau Ewropeaidd yn arwain at gyfansoddiadau ysgrifenedig yn gyffredinol yn Ewrop, y byddem yn rhagdybio'r hyn a allai fod yn wir ymhen pum neu 10 mlynedd. Felly, dylem fanteisio ar y cyfle hwn i ofyn y cwestiwn yn gyntaf a dod i farn gyhoeddus swyddogol am rinweddau unioni'r cam hanesyddol. Nid wyf yn credu bod unrhyw broblem gyfreithiol yn codi o'r ffaith bod cyfraith Lloegr a Chymru wedi eu hieuo, yn enwedig, os wyf yn deall yn iawn, am fod arfer ychydig yn wahanol yng Nghymru eisoes. Mae dehongliadau a chyfundrefnau gwahanol ac mae tuedd i ganolbwyntio ar bethau Cymreig—hynny yw, pethau unigryw i Gymru—eisoes wrth ymarfer cyfraith Lloegr a Chymru yng Nghymru. Felly, rhan o lif datganoli rhesymol yw hwn. Gyda holl lif datganoli yn mynd i un cyfeiriad, byddai'n od pe na baem, am ryw reswm, yn cymryd y cam rhesymegol sydd yn deillio o'r ffaith bod gwahaniaethau o fewn y Deyrnas Unedig. Byddai hynny'n afresymol.

Professor Williams: Unlike Emyr, I am not a lawyer. Perhaps you know that, although I work in the department of Welsh, I am a geographer, and therefore more practical than some. Therefore, I do not believe that that poses any problems at present. You could argue that if European tendencies were to lead to written constitutions more generally throughout Europe, we would be pre-empting what might be the case in five or 10 years. So, we should take advantage of the opportunity to pose the question, first of all, and to come to a public and official opinion on the merits of righting a historical wrong. I do not think that any legal problem arises from the fact that English and Welsh law have been yoked together, particularly, if my understanding is right, because practice in Wales differs slightly already. There are different interpretations and systems in place and there is already a tendency to concentrate upon Welsh issues—that is, issues that are unique to Wales—in the practice of English and Welsh law in Wales. So, this is part of the logical progress of devolution. With devolution flowing entirely in one particular direction, it would be strange if, for some reason, we do not take the rational step emanating from the fact that differences exist in the United Kingdom. That would be irrational.

[147] **Michael German:** We will probably need a legal opinion on this at some stage.

[148] **Rhodri Morgan:** O ran sut mae diogelu annibyniaeth y comisiynydd priodol, a allwch amlinellu eich syniadau chi ynglŷn â sut mae'r Mesur arfaethedig yn diogelu annibyniaeth y comisiynydd neu beidio?

Rhodri Morgan: On the issue of how to safeguard appropriately the independence of the commissioner, can you outline your thoughts regarding how the proposed Measure would safeguard or fail to safeguard the independence of the commissioner?

[149] **Yr Athro Williams:** Y mae fy nhystiolaeth ysgrifenedig, a roddwyd ar PowerPoint, yn enghreifftio ychydig o'r egwyddorion sylfaenol. Yr wyf yn poeni am ddau beth ynglŷn â'r Mesur arfaethedig a'r comisiynydd iaith. Yn gyntaf, gwn ei fod yn gonfensiwn i sôn am fod yn atebol i Weinidogion Cymru, ond carwn weld y comisiynydd yn atebol i'r Cynulliad fel corff ac nid i Weinidogion fel y cyfryw, a hynny oherwydd profiadau gwledydd eraill, ac nid am fy mod yn ddrwgdybus o Weinidogion Cymru, pwy bynnag y bônt.

Professor Williams: My written evidence, which was given on PowerPoint, highlights some of the basic principles. I have two concerns about the proposed Measure and the Welsh language commissioner. First, I know that it is the convention to refer to accountability to Welsh Ministers, but I would like to see the commissioner being accountable to the Assembly as a body and not to Ministers as such, following the experiences of other countries, and not because I am suspicious of Welsh Ministers, whoever they may be.

[150] O edrych ar y sefyllfa yng Nghanada dros amser hir, a'r sefyllfa yn Iwerddon, gwelir nifer o achosion lle bu ymyrraeth wleidyddol uniongyrchol oherwydd bod y comisiynydd iaith, ar un adeg, yn atebol i Weinidog neu i glwstwr o Weinidogion. Er mwyn osgoi'r fath dyndra, gwnaethpwyd y comisiynydd yn atebol i'r Senedd yng Nghanada am resymau priodol. Ni wnaed hyn oherwydd ymyrraeth wleidyddol uniongyrchol—byddai neb mor naïf ag i ladd ar gomisiynydd iaith sy'n asiant i'r Senedd, ond torrwyd ar staff, arian a chapasiti'r comisiynydd iaith i wneud ei waith cyfreithiol. Felly, gwnaethpwyd yn iawn am hynny drwy orfodi'r comisiynydd i fod yn atebol i'r Senedd ac nid i glwstwr o Weinidogion neu'r Cabinet er mwyn osgoi rhai cyhuddiadau, yn enwedig pan oedd Québec ar ei hanterth ac yn bygwth ymwahanu oddi wrth Ganada.

Looking at the situation in Canada over a long period of time, and at the situation in Ireland, you can see several cases of direct political intervention because the language commissioner was, at one time, accountable to a Minister or to a cluster of Ministers. In order to avoid tension of this kind, the commissioner was made accountable to the Parliament in Canada for the proper reasons. This was not done because of direct intervention—no-one would be so naïve as to criticise a language commissioner who is an agent of the Parliament, but there were cuts to staff numbers, funding and the capacity of the commissioner to engage in legal work. That was redressed by making the commissioner accountable to Parliament and not to a cluster of Ministers or the Cabinet to avoid certain accusations, especially when Québec was threatening to become independent of Canada.

[151] **Rhodri Morgan:** A glywsoch y cwestiwn y gofynnais i Emyr Lewis a'i ateb ynglŷn â'r gymhariaeth fwyaf perthnasol rhwng y mathau gwahanol o gomisiynwyr, ombwdsmyrn ac yn y blaen? Er na ddywedodd ef hyn mor gadarn yn ysgrifenedig, dywedodd Emyr ei fod yn gweld y rôl yn un sy'n agosach at rôl yr archwilydd cyffredinol a'r ombwdsmon

Rhodri Morgan: Did you hear the question that I asked to Emyr Lewis and his response regarding the most relevant comparison with the different types of commissioners, ombudsmen and so on? Although he did not express it so forcefully in his written evidence, Emyr said that he saw the role as being closer to that of the auditor general and the public services ombudsman rather than

gwasanaethau cyhoeddus na rôl y comisiynwyr dros blant a'r henoed, sy'n cael eu penodi gan y Prif Weinidog yn hytrach na chan y Cynulliad. A gredwch ei fod yn debycach i'r archwilydd cyffredinol a'r ombwdsmon gwasanaethau cyhoeddus?

[152] **Yr Athro Williams:** Ydwyf, 100 y cant. Nid yw Emyr a minnau wedi trafod hyn o gwbl.

[153] **Rhodri Morgan:** Nid oes cyhuddiad o hynny.

[154] **Yr Athro Williams:** Yr wyf yn dweud hyn o ganlyniad i brofiad gwledydd eraill, oherwydd mae datganoli yng Nghymru yn weddol ifanc. Mae 40 mlynedd a mwy o brofiad yng Nghanaada. Yno, mae'r comisiynydd iaith yn un o chwech o swyddogion y Senedd. Mae hynny'n rhoi statws ac awdurdod arbennig iawn i'r comisiynydd iaith ac yn ei wneud yn genedlaethol bwysig, ac nid yn unig o ran materion ieithyddol, ond fel rhywun sydd yn gallu helpu'r Senedd i ddatblygu confensiynau a gweithredoedd cyfansoddiadol Canada. Felly, mae agwedd bwysig yn perthyn i rôl comisiynydd iaith Canada, ac ni fyddai hynny'n wir yng Nghymru pe bai'r comisiynydd iaith yn debycach i'r comisiynydd henoed a'r comisiynydd plant. Mater i chi yw eich trefniadau mewnol.

[155] Mae iaith ychydig yn wahanol i wasanaethau henoed a phlant. Mae'r iaith yn greiddiol i Gymru ac yn unigryw iddi, ac felly efallai'n haeddu mwy o sylw a statws na'r ddwy swydd arall.

[156] **Rhodri Morgan:** Ai dyna'r pwynt? Hynny yw, mae'r ombwdsmon gwasanaethau cyhoeddus a'r archwilydd cyffredinol yn cael eu hystyried ar wahân i'r Llywodraeth oherwydd eu pwrpas, bron a bod, yw beirniadu'r Llywodraeth—rhoi crasfa, cnoc, neu gic i'r Llywodraeth a gwasanaethau cyhoeddus—a chraffu ar yr arian y mae'r Llywodraeth yn gwario, ac yn y blaen. Felly, maent bron a bod mewn gwrthwyneb i'r Llywodraeth o'r dechrau.

[157] **Yr Athro Williams:** Ydynt, yn strwythurol.

the role of the children's commissioner or the commissioner for older people, who are appointed by the First Minister rather than the Assembly. Do you believe that it is nearer to the auditor general and the public services ombudsman?

Professor Williams: Yes, 100 per cent. Emyr and I have not discussed this at all.

Rhodri Morgan: There is no accusation of that.

Professor Williams: I say this as a result of the experience of other countries, because devolution in Wales is fairly young. Canada has over 40 years of experience. There, the language commissioner is one of six officials in the Parliament. This give particular status and authority to the language commissioner and it gives him national importance, not just in relation to language matters, but as someone who can assist the Parliament to develop Canada's conventions and constitutional functions. Therefore, there are important aspects to the role of the Canadian commissioner, and that would not be the case in Wales if the language commissioner is akin to the older person's commissioner or the children's commissioner. Your internal arrangements are a matter for you.

Language is rather different to services for older people and children. The language is at the core of Wales and unique to it, and so it perhaps deserves more attention and status than those two other positions.

Rhodri Morgan: Is that the point? That is, the public services ombudsman and the auditor general are considered to be separate from the Government because their purpose, almost, is to judge the Government—to give Government and public services a thrashing, a knock, or a kick—and to scrutinise the money that the Government spends, and so on. Therefore, they are almost in opposition to the Government from the start.

Professor Williams: Yes, structurally.

[158] **Rhodri Morgan:** A yw hynny'n ymarferol i gomisiynydd iaith?

Rhodri Morgan: Is that practical for a language commissioner?

11.00 a.m.

[159] **Yr Athro Williams:** Yn achos Canada, ydyw, oherwydd mae tua 90 y cant o'r cwynion am fethu cydymffurfio â'r Ddeddf yn ymwneud â gweision sifil. Prif fusnes Ffrangeg a Saesneg Canada yw'r Llywodraeth ffederal. Felly, mae tensiwn sylfaenol rhwng gwaith y comisiynydd a'r Llywodraeth, neu'r adrannau Llywodraeth, y mae'n eu rheoleiddio. Y syniad yng Nghymru, efallai, yw y bydd y comisiynydd iaith yn debygol o ymdrin yn fwy â'r dinesydd. Petai Llywodraeth a llywodraethu Cymru yn datblygu'n fwyfwy dwyieithog, rhagdybiaf y bydd y comisiynydd iaith yn ymwneud fwyfwy â llywodraeth Cymru, a llai, efallai, â chymunedau, y dinesydd ac ati. Y brif elfen i'w gwarchod yw annibyniaeth y comisiynydd i godi safonau dwyieithog llywodraeth Cymru ac archwilio. Dyna pam yr wyf wedi nodi yn fy mhapur bod angen gwahaniaethu yn gwbl glir rhwng hyrwyddo'r Gymraeg a rheoleiddio'r Gymraeg. Yn achos Canada ac Iwerddon, '*regulation and implementation*' yw unig swyddogaethau eu comisiynwyr iaith. Maent yn addysgu drwy bamffledi a thrwy ymwneud â'r cyhoedd, ond nid yw swyddfa'r comisiynydd iaith yn ymwneud â pholisi iaith nac â hyrwyddo. Pobl eraill sydd yn gwneud hynny. Rôl y comisiynydd yw glynu at reoleiddio. Nid yw'n glir nac yn syml, ond mae hynny'n ddigon o dasg pan sonnir am y Gymraeg yn dod yn fwyfwy allweddol i lywodraethu Cymru, boed ar lefel genedlaethol, lefel ranbarthol, neu lefel yr awdurdodau lleol.

Professor Williams: In the case of Canada, yes it does, because around 90 per cent of complaints of non-compliance with the Act concern civil servants. The main concern for French and English in Canada is the federal Government. So, there is a fundamental tension between the work of the commissioner and the Government, or Government departments, that he regulates. The idea in Wales, perhaps, is that the language commissioner is likely to deal more with the citizen. If the Government and the governance of Wales develop to become increasingly bilingual, I foresee the language commissioner becoming ever more involved with the governance of Wales, and less, perhaps, with communities, the citizen and so forth. The main aspect to be protected is the commissioner's independence to raise the standard of bilingualism in the governance of Wales and to scrutinise. That is why I noted in my paper that it is necessary to have a clear distinction between the promotion of the Welsh language and the regulation of the Welsh language. In Canada and Ireland, regulation and implementation are the only functions of their language commissioners. They educate by means of pamphlets and public engagement, but the language commissioner's office has no remit in terms of language policy and promotion. Other people do that. The commissioner's role is to stick to regulation. It is not clear or simple, but it is enough of a task in itself when we talk about the Welsh language being increasingly key to the governance of Wales, be that at national, regional or local authority level.

[160] **Rhodri Morgan:** A gredwch fod rôl polisi a rôl hyrwyddo yn rhywbeth llywodraethol yn hytrach na gwaith rheoleiddio a gorfodol?

Rhodri Morgan: Do you believe that the role of policy and the promotional role are a matter of governance rather than regulatory or enforcement work?

[161] **Yr Athro Williams:** Credaf, am y rheswm sylfaenol a rhesymegol y byddai'n anodd i rywun yn swyddfa comisiynydd iaith, a fydd yn hanner gyfrifol am lunio'r polisi, reoleiddio'r polisi hefyd. Byddai hynny'n

Professor Williams: Yes, for the simple and logical reason that it would be difficult for someone in the office of the language commissioner, which will have half the responsibility for drafting policy, to have to

afresymol.

[162] **Rhodri Morgan:** Felly, a gytunech ag Emyr bod angen cadw bwrdd yr iaith, neu a ddylai'r gwaith llywodraethol a ddisgrifiwyd gennych, sef hyrwyddo a hybu, gael ei wneud oddi mewn i'r Llywodraeth?

[163] **Y Athro Williams:** Fe gofiwch fy mod wedi bod yn aelod o fwrdd yr iaith am 10 mlynedd. Yr wyf newydd ymddeol. Wrth reswm, mae gennyf brofiad proffesiynol o waith y bwrdd, a thalaf deyrnged i'w allu i wneud pob math o bethau. Cytunaf ag Emyr; byddai'n ddoeth i gadw'r profiad hwnnw mewn canolfan, beth bynnag fo ei enw, boed yn gomisiwn neu'n asiantaeth. Nid yw 'bwrdd' yn apelio—enw a gydiodd yn y 1980au ydyw. Y broblem yw bod tensiwn rhwng dymuniad 'Cymru'n Un' a'r Llywodraeth i wneud yr iaith Gymraeg yn rhywbeth sy'n perthyn i bob adran, ac yn hynny o beth geisio gwthio'r polisi iaith ym mhob rhan o bolisi'r Llywodraeth ac felly'n awgrymu y dylid diddymu'r bwrdd, gan glustnodi unigolion gyda'r bwrdd i fynd i wahanol adrannau er mwyn ymryson ac ymgyrchu dros y Gymraeg yn Llywodraeth Cymru.

[164] Oni bai am hynny, fe gollwch yr arbenigedd ac, yn bwysicach efallai, fe gollwch y ddeinameg. Felly, cytunaf y dylid cadw'r elfen honno o waith y bwrdd sydd yn hyrwyddo ac sy'n fwy radical na chael gweision sifil yn gweithio ar eu pennau eu hunain, a chadw elfen reoleiddio'r bwrdd a rhoi grym iddi drwy roi pen newydd arni, sef comisiynydd iaith a dirprwy gomisiynydd, a gwahanu'r ddwy swyddogaeth. Yn y gorffennol, yr oedd y bwrdd, ei aelodau a'i staff, yn awgrymu'r ffordd arall: y gellid cadw'r ddwy swyddogaeth o fewn un corff a'i alw'n gomisiwn iaith. Ni chredaf fod hynny'n ddoeth. Yr wyf wedi dadlau hynny, fel unigolyn o fewn y bwrdd, am amser hir. Mater i staff y bwrdd, pan roddant dystiolaeth, yw awgrymu'r hyn y maent yn ei feddwl yn awr. Credaf y byddai'r cyhoedd yn gweld ei bod yn annheg neu'n anghymwys, heblaw bod ffin gadarn rhwng hyrwyddo a rheoleiddio. Pe bai achos llys mewn achos o 'fudge', fel y dywedodd Emyr, neu

regulate the policy as well. It would be unreasonable.

Rhodri Morgan: Therefore, would you agree with Emyr that the language board would need to be retained, or should the governance work that you just mentioned, namely promotion, be done from within the Government?

Professor Williams: You will remember that I was a member of the Welsh Language Board for 10 years. I have only just retired. Naturally, I have professional experience of the work of the board, and I pay tribute to its ability to do all sorts of things. I agree with Emyr; it would be wise to retain that experience centrally, regardless of its name, be it a commission or an agency. The name 'board' does not appeal—it is just a title that stuck in the 1980s. The problem is that there is a tension between the desire of 'One Wales' and the Government to make the Welsh language something that belongs to every department, thereby trying to drive the language policy in to every part of Government policy and therefore suggesting abolishing the board, earmarking individuals who are with the board to go to different departments to fight and campaign for the Welsh language in the Government of Wales.

If that does not happen, you will lose the expertise and, more importantly perhaps, you will lose the dynamic. Therefore, I agree that the element of the board's work that deals with promotion and is more radical than having civil servants working independently should be retained, as should the board's regulatory element, only empower it by appointing a new head, namely the language commissioner and deputy commissioner, and separating the two functions. In the past, the board, its members and its staff, would have suggested doing it the other way, namely that both functions could be retained within one body called a language commission. I do not believe that that is wise. As an individual within the board, I have been arguing that for a long time. It is for the board's staff, when they give evidence, to suggest what they think now. I believe that the public would consider it unfair or unsuitable, unless there is a firm boundary between promotion and regulation. If a court case involving a

aneglurder, byddai'n haws amddiffyn penderfyniad unrhyw gomisiynydd iaith sydd â rôl dra gwahanol i'r ochr hyrwyddo.

'fudge', as Emyr mentioned, or haziness is brought, it would be easier to defend the decision of any language commissioner if his or her role is quite different to that of the promotional side.

[165] **Rhodri Morgan:** Diolch yn fawr.

Rhodri Morgan: Thank you.

[166] **Val Lloyd:** Gareth, did you want to come in here?

[167] **Gareth Jones:** Yr wyf yn deall yn awr yr hyn yr ydych yn ei olygu o ran gwahaniaethu rhwng rheoleiddio a hyrwyddo. Onid oes hefyd rhyw ffin o ran hyrwyddo lle byddai sefydliadau neu gyrff cyhoeddus yn ymateb i'r safonau yn unig, pan fo elfen arall o ran hyrwyddo, sef datblygiad a thwf yr iaith Gymraeg goruwch hynny neu ymhellach na hynny? A oes perygl mai'r hyn y byddwn yn ei wneud yng Nghymru yw gosod safonau ac ymateb iddynt heb yr elfen hollbwysig o hyrwyddo twf pellach yr iaith Gymraeg?

Gareth Jones: I now understand what you mean in terms of making a distinction between regulating and promoting. Is there not also some boundary with regard to promotion where institutions or public bodies would respond only to the standards, when there is another element of promotion, namely the development and growth of the Welsh language above and beyond that? Is there a risk that what we will do in Wales is to set standards and respond to them without that crucial element of promoting the further growth of the Welsh language?

[168] **Yr Athro Williams:** Byddai hynny'n fwy o ofid gennyf pe bai hynny yn digwydd o fewn swydd comisiynydd iaith, gan mai cylch gwaith comisiynydd iaith fyddai clustnodi swyddogaethau statudol yn unig, a dyna pam mae'r syniad yr awgrymodd Rhodri Morgan, ac y cytunodd Emyr ag ef, o gael rhywbeth mwy creadigol o lawer sy'n rhagdybio'r hyn a all ddigwydd mewn pum mlynedd, neu sy'n gallu cydweithio'n agos â sefydliadau eraill y tu hwnt i Gymru mewn lleoedd fel Gwlad y Basg, Catalwnia, y Gymuned Ewropeaidd, Canada a De Affrica, mor ddeniadol. Pe bai cylch gorchwyl hyrwyddo'r iaith yn cael ei roi i swyddfa'r comisiynydd iaith, yr wyf yn amau na fyddai'r ochr greadigol yn cael chwarae teg, heb sôn am fuddsoddiad. Ar hyn o bryd, mae'r bwrdd yn mynd y tu hwnt i'w gylch gorchwyl statudol achos mae angen iddo wneud hynny: mae'n ymateb i anghenion rhyngwladol a'r newidiadau mewn cymdeithas. Felly, yr wyf eisiau gwarchod yr elfen greadigol. Mae rhai yn ei galw yn radical, ond nid ydyw, nid yw ond yn rhagdybio'r hyn all ddigwydd mewn pum mlynedd os yw'r twf mewn ysgolion cynradd cyfrwng Cymraeg yn parhau, os yw'r prifysgolion yn ymateb, os yw'r gweithle yn gofyn am fwy o siaradwyr Cymraeg, ac os yw datblygiad technoleg gwybodaeth yn

Professor Williams: I would be more concerned if that were to happen within the role of the language commissioner, because the remit of the language commissioner would be to identify statutory functions only, and that is why the suggestion made earlier by Rhodri Morgan, with which Emyr agreed, of having something far more creative that would anticipate what could happen in five years' time, or could work closely with other organisations outside Wales in places such as the Basque Country, Catalunya, the European Community, Canada and South Africa, is so appealing. If the remit to promote the language were given to the language commissioner's office, I doubt that the creative aspect would be given fair play, let alone investment. At present, the board goes beyond its statutory remit because there is a need for it to do so: it is responding to international requirements and societal change. So, I am keen to protect the creative aspect. Some people would describe it as radical, but it is not, it just anticipates what may happen in five years' time if the growth in Welsh-medium primary schools continues, if the universities respond, if the workplace demands more Welsh speakers, and if the development of information technology demands it. Were it not for the work of the board, information technology in Welsh

mynnu hynny. Oni bai am waith y bwrdd, byddai technoleg gwybodaeth yn Gymraeg wedi bod yn ofnadwy. Nid ydyw'n ddigonol yn awr, ond y bwrdd wnaeth rhagdybio pa sgiliau fyddai gweithlu dwyieithog ei angen. Aeth y bwrdd ymhell tu hwnt i ofynion statudol Deddf yr Iaith Gymraeg 1993 drwy ragdybio'r angen. Mae angen gwarchod hynny; beth bynnag a ddaw yn sgîl y Mesur arfaethedig, mae angen elfen gref o fuddsoddi mewn arbenigwyr sy'n gallu rhagweld tueddiadau cymdeithasol-ieithyddol o ran corpwys yr iaith Gymraeg.

[169] **Gareth Jones:** Yn fyr iawn, a ydyw'n parhau'n bosibilrwydd y bydd y Mesur arfaethedig fel y mae yn cynnwys yr elfen greadigol honno, sut bynnag y bydd yn gweithio allan yn y diwedd a pha drefniadaeth bynnag fydd yn bodoli? A ydyw'r Mesur arfaethedig yn fygythiad i'r elfen greadigol honno?

[170] **Yr Athro Williams:** Nid yw'n fygythiad ar bapur. Fodd bynnag, fel gyda phopeth arall, mae'n dibynnu sut y bydd yn cael ei weithredu: mae'n dibynnu pwy fydd yn cael ei benodi neu ei phenodi fel comisiynydd iaith, pa fath o fframwaith byddant yn ei adeiladu yn ystod y pum mlynedd gyntaf, pa fath o berthynas fydd ganddynt gydag unrhyw gorff arall a fydd yn hyrwyddo, ac, yn bwysicaf oll, faint o ewyllys fydd gan y Llywodraeth a'r Senedd i fuddsoddi gyda'u ffydd a'u harian yn y gyfundrefn newydd. Fodd bynnag, ar bapur, nid wyf yn gweld unrhyw broblem.

[171] **Val Lloyd:** Professor Williams, you have already given us the benefit of your international experience. Will you elaborate on that with regard to how that experience has developed your thinking on the appropriate role of the language commissioner?

[172] **Yr Athro Williams:** Yr wyf yn credu fod dau beth i'w ddweud, nid ar sail gwybodaeth ffeithiol ond ar sail greddf o ganlyniad i siarad â nifer o bobl dros gyfnod hir o amser, a gofyn barn bersonol o blaid ac yn erbyn gweithrediad o'r fath. Fy nheimlad yw y byddwn efallai yn cael yr hyn yr ydym yn ei ddimuno, sef comisiynydd iaith, ond na fydd y swyddogaeth y comisiynydd hwnnw yn ateb y cwestiwn. Felly, mewn enw, bydd tro ar fyd a bydd comisiynydd iaith gennym, ond efallai y bydd pawb yn cael eu siomi. I'r rheini sydd o blaid y Gymraeg ac eisiau

would have been dreadful. It is still not adequate, but it was the board that anticipated what skills a bilingual workforce would need. The board went way beyond the statutory requirements of the Welsh Language Act 1993 by predicting the need. That needs to be protected; whatever the consequence of the proposed Measure, there is a strong need to invest in specialists who can anticipate socio-linguistic trends in terms of the corpus of the Welsh language.

Gareth Jones: Very briefly, is it still a possibility that the proposed Measure as it currently stands will include that creative element, however it ultimately works out and whatever regime will exist? Does the proposed Measure pose a threat to that creative element?

Professor Williams: No, it is not a threat on paper. However, as with everything else, it depends on how it is implemented: it depends on who is appointed language commissioner, what kind of framework they will build during the first five years, what sort of relationship they will have with any other body responsible for promotion, and, most importantly of all, how keen the Government and the Senedd will be to invest their faith and money in the new regime. However, on paper, I do not see any problem.

Professor Williams: I believe that there are two things to say, not on the basis of factual information, but on the basis of instinct having spoken to many people over a long period of time, asking for their personal opinion for and against such action. My feeling is that we will perhaps get what we wish for, namely a language commissioner, but that the commissioner's function will not answer the question. So, in name, there will have been great change and we will have a language commissioner, but perhaps everyone will be disappointed. For those who

gwthio'r Gymraeg i ba bynnag gyfeiriad y dymunir, efallai na fydd y comisiynydd iaith yn ladmerydd digon cryf dros y Gymraeg.

are in favour of the Welsh language and want to push it to whatever direction they wish, perhaps the language commissioner will not be a strong enough advocate for the Welsh language.

11.10 a.m.

[173] I'r rheini sydd yn gweld y comisiynydd iaith fel rheoleiddiwr sy'n codi gwrychyn ac yn cadw trefn ar awdurdodau lleol, byrddau iechyd a'r Llywodraeth ei hun, gan na fydd y comisiynydd iaith yn cyflwyno sancsiynau nac yn gofyn am awdurdod er mwyn gorfodi cydymffurfiaeth ar y Llywodraeth, efallai y cânt eu siomi. Y gwir yw, hyd yn oed yng Nghanada, lle ceir y model gorau, nid yw'r comisiynydd iaith yn sancsiynu mewn modd ariannol fel arfer. Felly, er bod elfen o sancsiwn, ac er bod elfen o ddirwyo, yn ymarferol, nid yw comisiynydd iaith Iwerddon na chomisiynydd iaith Canada yn ymwneud yn y fath ffordd. Mae hynny am un rheswm gwleidyddol: nid ydynt am golli'r frwydr calonnau. Mae'n bwysig bod awdurdod wrth gefn, bod cyfrifoldeb a phŵer wrth gefn, ond yn ymarferol nid yw'n cael ei weithredu achos mae'r comisiynydd yn rhan o ddeialog. Mae'r comisiynydd iaith eisiau ennill pobl ac nid yw am gynyddu casineb tuag at y swydd. Felly, dyna un cwestiwn ymarferol y byddwn yn ei godi.

For those who see the language commissioner as a regulator who puts people's backs up and keeps local authorities, health boards and the Government itself in order, since the language commissioner will not be imposing sanctions and will not ask for authority to impose compliance on the Government, those people may be disappointed. The truth is that, even in Canada, which has the best model, the language commissioner does not usually impose financial sanctions. Therefore, even though there is an element of sanction or of imposing fines, in practical terms, the Irish language commissioner and the Canadian language commissioner do not get involved in that way. There is one political reason for that: they do not want to lose the battle for people's hearts and minds. It is important that there is authority in reserve, that there is responsibility and power in reserve but, in practical terms, it is not implemented because the commissioner is part of a dialogue. The language commissioner wants to win people over and does not want to increase hatred towards the role. Therefore, that is one practical question that I would raise.

[174] Cwestiwn arall yw'r cwestiwn o hawliau, ac yr wyf yn gwybod efallai y caiff ei ofyn mewn munud, ond yr wyf am ei ateb yn awr. Yr wyf yn credu bod y Mesur arfaethedig hwn yn colli cyfle hanesyddol i drafod hawliau, am yr union reswm a roddodd Emyr. Yr wyf yn gobeithio y bydd y safonau yn arwain at ryw ymarfer ac ymhen pum mlynedd y daw pawb i ddeall bod ganddynt hawliau ac y byddant yn gweithredu fel pe bai ganddynt hawliau, ond nid yw hynny'n ddigonol. Os ceir hawliau, dylent fod yn hawliau eglur a diffiniadwy y gellir eu hamddiffyn gan y llysoedd.

The other question is that of rights, and I am aware that this may be asked in a minute, but I will address it now. I believe that the proposed Measure is missing a historic opportunity to discuss rights, for the exact same reason that Emyr gave. I hope that the standards will lead to some sort of practice and that in five years' time people will understand that they have rights and will act as if they have rights, but that is not enough. If rights are established, they should be clear and definable rights that can be protected by the courts.

[175] Mae gan Iwerddon a Chanada gyfansoddiad ysgrifenedig. Yn achos Canada, mae'r Ffrangeg a'r Saesneg yn ieithoedd swyddogol, ac mae 4 miliwn o bobl yn

Ireland and Canada have written constitutions. In Canada's case. French and English are both official languages, and there are 4 million people in Québec who speak

Québec yn siarad Ffrangeg yn unig; nid ydynt yn siarad Saesneg fel iaith gyntaf, neu hyd yn oed fel ail iaith. Felly, mae'n bwysicach yn achos Canada bod yr hawliau yn cael eu hegluro a'u gwarchod gan eu bod yn effeithio ar ryw un o bob naw o'i thrigolion. Nid yw hynny'n wir yng Nghymru, wrth gwrs. Felly, yr wyf yn deall y tuedd sydd gan wneuthurwyr y Mesur arfaethedig i beidio â throedio'n ormodol ar hyd llwybr hawliau, gan nad yw'r pwysau gan ddinasyddion a gwleidyddiaeth mor affwysol ag y mae yng Nghanada.

[176] Fodd bynnag, yr wyf yn credu y dylem fynd i'r afael â'r cwestiwn o hawliau yn awr. Yr wyf yn rhagdybio y bydd y gors hon yn mynd yn waeth, oni bai ein bod yn cynnig rhai hawliau statudol yn y Mesur arfaethedig neu fel rhan o'r pecyn o weithgareddau y mae'r Cynulliad yn ei gynnig. Fel arall, yr wyf yn credu y byddwn yn *'hostage to fortune'*, fel y dywedir yn Saesneg, yn dibynnu'n llwyr ar ddehongliad ac nid ar eglurder.

[177] **Gareth Jones:** Gan fod yr athro wedi cyfeirio at y rhyddid a'r hawl y cyfeirir atynt yng nghwestiwn 27, a chawsom ateb gan Mr Lewis nad oedd yn deall yr hyn a ddywedodd y Gweinidog—efallai dim mwy nag yr oeddwn i—gofynnaf y cwestiwn yn awr i geisio cael mwy o wybodaeth am sut yr ydym yn dehongli 'rhyddid'. Pan ofynnwyd i'r Gweinidog pam fod y Mesur arfaethedig yn cyfeirio at ryddid yn hytrach na'r hawl i siarad Cymraeg, dywedodd,

[178] 'Mae gan bawb ryddid i siarad Cymraeg—neu unrhyw iaith arall, hyd y gwn i—gyda'i gilydd. Dyna'r sefyllfa. Os ydych yn ceisio creu hawl i rywun siarad Cymraeg, y perygl yw y byddech yn creu dosbarth o leoedd lle nad oes gan rywun hawl i wneud hynny.'

[179] Cyn i chi ateb, yr wyf yn derbyn bod gennyf ryddid i siarad Cymraeg. Nid oes unrhyw un erioed wedi fy rhwystro rhag siarad Cymraeg ac yr wyf wedi arfer â hynny ers fy nyddiau cynnar, fel fy nheulu cyn hynny a'u teuluoedd hwy cyn hynny. Nid wyf yn credu y byddwn yn cymryd yn garedig at rywun yn dweud wrthyf, 'O fis Ionawr nesaf, bydd gennych ryddid i siarad

only French; they do not speak English as a first language, nor even as a second language. Therefore, it is more important in Canada's case that the rights are clarified and safeguarded since they affect around one in nine residents. That is not true in Wales, of course. Therefore, I understand the tendency of those who drafted the proposed Measure not to get too involved with rights, since the pressure from citizens and the political domain is not as intense as it is in Canada.

However, I believe that we should tackle the question of rights now. I predict that this mess will get worse, unless we offer some statutory rights in the proposed Measure or as part of the package of activities that the Assembly is proposing. Otherwise, I believe that we will be a hostage to fortune, completely dependent on interpretation, rather than clarity.

Gareth Jones: As the professor referred to the freedom and the right that are referred to in question 27, and Mr Lewis told us that he did not understand what the Minister had said—perhaps no more than I did—I will now ask this question in order to obtain more information about how we interpret 'freedom'. When asked why the proposed Measure refers to the freedom rather than the right to speak Welsh, the Minister told the committee:

'Everyone has the freedom to speak Welsh—or any other language, as far as I know—with one another. That is the situation. If you try to establish a right for someone to speak Welsh, the danger is that you would create a class of places where someone does not have the right to do so.'

Before you respond, I accept that I have the freedom to speak Welsh. No-one has ever prevented me from speaking Welsh and I have been used to that since childhood, as were my family before me, and their families before them. I do not believe that I would take kindly to being told, 'From next January, you will have the freedom to speak Welsh', so I accept that the freedom is here already.

Cymraeg', felly yr wyf yn derbyn bod y rhyddid yma eisoes.

[180] **Yr Athro Williams:** Ofer yw'r pwynt.

Yr Athro Williams: That is a futile argument.

[181] **Gareth Jones:** Beth yw'r gwahaniaeth rhwng rhyddid a hawl? O ystyried fod gennyf y rhyddid, onid oes gennyf yr hawl?

Gareth Jones: What is the difference between freedom and a right? Given that I have the freedom, do I not have the right?

[182] **Yr Athro Williams:** Rhowch hyn mewn cyd-destun ymarferol: rhieni sy'n dymuno gweld eu plant yn mynd i ysgol gynradd Gymraeg. Mae ganddynt y rhyddid i ofyn am hynny, ond nid oes ganddynt yr hawl i ddisgwyl eu bod yn cael addysg cyfrwng Cymraeg yng Nghymru. Nid oes gan unrhyw un hawl absoliwt i ofyn am addysg cyfrwng Cymraeg ar hyn o bryd. Mae yna ddisgwyliadau, a rhyddid i ofyn ac i bwysu, ond nid oes dyletswydd absoliwt ar awdurdodau lleol neu'r awdurdod addysg i gynnig y fath beth. Dyna'r pethau allweddol y buaswn yn mynd ar eu holau: hawl i ymwneud â'r gyfundrefn drwy ofyn am bethau fel addysg a gofal iechyd.

Professor Williams: Put this in a practical context: parents who want their children to go to a Welsh-medium primary school. They have the freedom to ask for that, but they do not have the right to expect to receive a Welsh-medium education in Wales. At present, no-one has an absolute right to ask for Welsh-medium education. There are expectations, and the freedom to ask and apply pressure, but local authorities and education have no absolute duty to provide such a thing. Those are the crucial things that I would pursue: the right to engagement with the system by asking for things such as education and healthcare.

[183] Soniodd Emyr am warchod diddordebau plant ifanc sydd efallai yn methu â siarad Saesneg nes eu bod yn bum mlwydd oed, a diddordebau'r henoed. Gallwch restru rhyw bum peth sylfaenol y byddai unrhyw ddinesydd yng Nghymru yn dymuno gweld Mesur yn eu gwarchod. Maes o law—dros bum neu 10 mlynedd—pan fydd y Mesur arfaethedig wedi ei gytuno, a'r weinyddiaeth wedi ymgartrefu yn y gyfundrefn newydd, gallwch ychwanegu at yr hawliau hynny heb dynnu i ffwrdd oddi wrth ryddid unrhyw un i fynd tu hwnt i'r hyn mae'r gyfraith yn caniatáu ar hyn o bryd. Ofer yw cael Mesur arfaethedig fel hwn heb fod ynddo hawliau sylfaenol a fydd yn cael eu gwarchod gan y gyfundrefn a gan y llysoedd. Yr ydym yn colli cyfle i ieuo'r ddau beth ynghyd. Ar hyn o bryd, mae disgwyl i'r system ymateb mewn ffordd gadarnhaol yn rhoi llawer o ffydd yng nghymeriad dynol ryw. Yr ydym yn gwybod y bydd llawer o sefyllfaoedd lle bydd y rhyddid hwn yn cael ei gwtogi.

Emyr mentioned safeguarding the interests of young children who may not be able to speak English until they are five years old, along with those of the elderly. One could list five fundamental things that any citizen of Wales would wish a Measure to safeguard. Over time—over five or 10 years—when this proposed Measure will have been agreed, and the administration will have acclimatised to the new system, one could add to those rights without detracting from anyone's rights to go beyond what the law currently allows. It is futile to have such a proposed Measure that does not contain fundamental rights that will be safeguarded by the system and the courts. We are missing an opportunity to yoke the two things together. At present, expecting the system to respond positively places a great deal of faith in humankind. We know that there will be many situations where this freedom will be curtailed.

[184] **Gareth Jones:** Nid wyf yn siŵr y gallaf gytuno â chi 100 y cant ar y pwynt hwnnw. Mae gan riant yr hawl i ofyn am

Gareth Jones: I am not sure that I can agree with you 100 per cent on that point. A parent has the right to request Welsh-medium

addysg cyfrwng Cymraeg, wedyn mae gan yr awdurdod yr hawl i ystyried y cais, a naill ai ei dderbyn mewn egwyddor neu i ddweud nad yw'r adnoddau'n caniatáu'r ddarpariaeth ar hynny o bryd. Dyna sut yr wyf innau'n dehongli'r sefyllfa yng Nghymru, ac mae'r sefyllfa yn amrywio o awdurdod i awdurdod.

[185] **Yr Athro Williams:** Yr oedd hynny'n wir cyn y Mesur arfaethedig.

[186] **Gareth Jones:** Oedd.

[187] **Yr Athro Williams:** Beth yw'r pwynt cael Mesur o blaid y Gymraeg, os nad yw'n cyplysu'r pethau hynny?

[188] **Gareth Jones:** Beth fydd yn deillio o'r ffaith fod hawl gennyf yn awr i fynd at yr awdurdod a mynnu addysg cyfrwng Cymraeg? Mae'r awdurdod yn parhau i fod yn yr un sefyllfa o ran adnoddau ac ati, felly sut y bydd yn darparu ar fy nghyfer? Un peth yw cael yr hawl, ond sut y gall yr ochr arall ymateb? Nid wyf am funud yn erbyn cael hawl o'r fath, ond yr wyf yn ceisio edrych ar y mater yn ymarferol. Pa beryglon fydd yn deillio ohonom yn dweud wrth bobl fod ganddynt yr hawl ac y dylent fynd ati i ddefnyddio'r hawl honno? Beth fydd hynny'n ei olygu mewn gwirionedd?

[189] **Yr Athro Williams:** Yr hen gonfensiwn yw rhoi mewn cromfachau 'lle fo'n gymesur ac yn rhesymol', ac wedyn y mae'n fater o ddehongli mewn sefyllfa wleidyddol ac o ran pa adnoddau sydd ar gael. Fel dinesydd a chynllunydd ieithyddol, gan gofio'r holl addewidion a wnaethpwyd yn 'Iaith Pawb' a gan y Llywodraeth, credaf os ydym eisiau i'r Gymraeg ffynnu yn ei gwlad ei hun, mai'r cam rhesymegol fyddai gofyn am hawliau statudol mewn rhai meysydd hanfodol lle y bo'n gymesur. Yr wyf yn derbyn hynny i gyd. Mater ymarferol arall o ran polisi yw hwnnw.

[190] O ran egwyddor sylfaenol, credaf fod gan yr iaith Gymraeg yr hawl i ddisgwyl y byddai Senedd yn ei gwlad ei hun yn gosod tair neu bedair hawl sylfaenol mewn Mesur arfaethedig sy'n awgrymu ei fod yn ymwneud â'r Gymraeg. Ar hyn o bryd, yr ydym yn sôn am yr hawl i gyfathrebu. Digon teg, nid yw'n mynd i newid y byd, ond mae'r

education, and then the authority has the right to consider that request, and either to agree it in principle or to say that resources will not allow that provision at that point in time. That is how I interpret the situation in Wales, and the situation varies from authority to authority.

Professor Williams: That was true before the proposed Measure.

Gareth Jones: Yes, it was.

Professor Williams: What is the point of having a Measure to promote the Welsh language, unless it links those two things?

Gareth Jones: What will be the result of the fact that I now have the right to approach the authority and demand Welsh-medium education? The authority continues to face the same situation in terms of resources and so on, so how is it meant to deliver? It is one thing to have that right, but how is the other side supposed to respond? I am not for one minute opposed to having such a right, but I am trying to look at the matter practically. What dangers will arise if we tell people that they have that right and that they should exercise it? What are the implications of that in reality?

Professor Williams: The old convention is to put in brackets 'where proportionate and reasonable', and then it is a matter of interpreting it within a political context and in terms of what resources are available. As a citizen and language strategist, remembering all of the promises made in 'Iaith Pawb' and by the Government, I believe that if we want the Welsh language to thrive in its own country, the next logical step would be to request statutory rights in some crucial fields where it is proportionate to do so. I accept all that. It is another practical matter in terms of policy.

As a fundamental principle, I believe that the Welsh language has the right to expect that a Parliament in its own country would lay out three or four fundamental principles in a proposed Measure that purports to relate to the Welsh language. At present, we are discussing the right to communicate. Fair enough, this will not change the world, but

hawl i addysg yn hollbwysig—o ran atgynhyrchu ac atgyfnerthu'r Gymraeg—ac yn greiddiol i'r dyfodol. Fel y gwyddoch yn eich cyd-destunau cymdeithasol, addysg yw'r piler allweddol yn ein datblygiad ar hyn o bryd. Nid yw'r gymuned na'r teulu yn atgynhyrchu'r Gymraeg fel y gallent; yr unig gryfder allweddol yw'r system addysg statudol. Ar y lleiaf, buaswn yn disgwyl i'r Mesur arfaethedig drafod hawliau addysg plant rhwng pum ac 16 mlwydd oed, a hawliau eu rhieni.

the right to education is crucial—in terms of regenerating and strengthening the Welsh language—and is essential for the future. As you are all aware in your social contexts, education is currently the pillar of our development. Neither the community nor family is reproducing the Welsh language as they could; the only key strength is the statutory education system. At the very least, we would expect the proposed Measure to discuss the rights of children between five and 16 years of age, and those of their parents.

[191] **Val Lloyd:** In paragraph 2 of your evidence, you use the word 'expectations'. How is it possible to regulate expectations? Would that not involve some sort of rule?

11.20 a.m.

[192] **Yr Athro Williams:** Mae dryswch hyd yn oed yn awr ynghylch Deddf yr Iaith Gymraeg 1993. Mae nifer yn ymddwyn fel pe bai'r Ddeddf yn rhoi hawliau iddynt. Mae Cyngor Gwynedd, er enghraifft, yn awgrymu defnyddio'r hawliau hynny i warchod buddiannau'r Gymraeg ac i ddarparu gwasanaethau. Felly, gwelir fod disgwyliadau yn deillio o arferion. Po fwyaf y mae gweinyddiaeth gyhoeddus Cymru yn gweithredu'n ddwyieithog, po fwyaf y bydd pobl yn disgwyl mwy o beuoedd lle mae'r Gymraeg yn cael ei defnyddio a'i pharchu. Dyna pam yr awgrymais fod ymddygiad heb hawliau yn gallu rhoi pŵer i'r Gymraeg. Nid oes fawr o sialens, felly.

Professor Williams: Even now there is confusion regarding the Welsh Language Act 1993. Many people behave as though the Act confers rights on them. Gwynedd Council, for example, suggests using these rights to safeguard Welsh language interests and to provide services. Therefore, it can be seen that expectations stem from practices. The more that public administration in Wales operates bilingually, the more domains in which people will expect to be able to use Welsh and for it to be respected. That is why I suggested that behaviour without rights can empower the Welsh language. There is not much of a challenge, therefore.

[193] Serch hynny, gan fod gennym Fesur arfaethedig o'n blaen yn awr, yr wyf yn awgrymu y bydd adolygiadau barnwrol yn y dyfodol agos i herio'r hyn sy'n statudol. Yn sgîl hynny, bydd eisiau gwarchod sail gadarn yr hyn a enillwyd eisoes o ddisgwyliadau, arferion ac ewyllys gwleidyddol da. Fel arall, rhagwelaf lanw a thrai, cyfnod o herio'r hyn sydd wedi'i gyflawni yn barod ar sail ymarfer da heb sail ddeddfwriaethol. Credaf, felly, ei bod yn bwysig inni gynnig seiliau cadarn yn y Mesur arfaethedig hwn er mwyn ein hatal rhag llithro yn ôl, heb sôn am ehangu'r defnydd o'r Gymraeg. Gan nad oes elfen statudol yn perthyn i rai gweithgareddau—a gweithgareddau awdurdodau lleol, yn arbennig—mae'n bosibl y byddwn yn gweld llithriad. Yn fy marn i, mae angen gwarchod yr elfennau sylweddol, sylfaenol rhag hynny

However, given that we now have a proposed Measure, I suggest that there will be judicial reviews in the near future to challenge what is statutory. Given that, we will need to safeguard the firm foundation of what has been secured already on the basis of expectation, practice and political goodwill. Otherwise, I foresee an ebb and a flow, a period of challenging what has been achieved previously, based on good practice and not legislation. I believe, therefore, that it is important that we offer strong foundations in this proposed Measure to avoid any slippage, let alone any increase in the use of Welsh. As there is no statutory element to some activities—and particularly those undertaken by local authorities—it is possible that we will see a slippage. In my opinion, we need to safeguard these significant, basic elements

cyn inni sôn am gamau newydd ac am symud ymlaen.

from that before we talk about the next steps and about moving forward.

[194] **Brynle Williams:** I will now move on to sections 7, 8 and 9, namely judicial reviews of legal proceedings, which you have touched on briefly, professor, and legal assistance and costs. From an international perspective, can you comment on the significance of the Welsh language commissioner's being empowered to become involved in judicial reviews or legal proceedings as provided for in section 7 of the proposed Measure, or to provide legal assistance under section 8 of the proposed Measure?

[195] **Yr Athro Williams:** Atefag yr hyn a ddywedodd Emyr. Prin iawn yw'r achlysuron lle'r wyf yn disgwyl i hynny ddigwydd. Fodd bynnag, mae cyn gomisiynydd iaith Canada, Dyane Adam, neu'r comisiynydd presennol, Graham Fraser, wedi ymyrryd yn ofalus iawn nifer o weithiau dros gyfnod o chwe blynedd, a hynny er mwyn diogelu hawliau cydnabyddedig siaradwyr Ffrangeg. Er enghraifft, gwelwyd ymyrraeth pan gafwyd adolygiad barnwrol o'r penderfyniad i gau ysbyty a oedd yn gwasanaethu ardal wledig Ffrengig yn bennaf. Bygythiwyd dileu'r ysbyty, oherwydd prinder adnoddau yn y dalaith. Un o oblygiadau'r penderfyniad hwnnw oedd bod trigolion yr ardal yn gorfod teithio dros 50 o filltiroedd er mwyn cael unrhyw wasanaeth, heb sôn am wasanaeth cyflawn. Ymyrrodd y comisiynydd iaith, nid ar sail iechyd ond ar sail disgwyliadau a hawliau rhesymol trigolion yr ardal honno o Ontario, gan ddweud y byddent o dan fygythiad pe bai'r ysbyty yn cau. Felly, cafwyd adolygiad barnwrol a chafwyd estyniad i fywyd yr ysbyty. Mae'r comisiynydd iaith yn gwneud y fath beth yn achlysurol, ond yn dyngedfennol.

Professor Williams: I endorse what Emyr said. Seldom are the occasions when I expect that to happen. However, Canada's former language commissioner, Dyane Adam, or Graham Fraser, the current commissioner, have intervened very carefully several times over a period of six years to safeguard the recognised rights of French speakers. For example, intervention was seen when there was a judicial review over the closure of a hospital that mainly served people in a French-speaking rural area. The hospital was threatened with closure because of a lack of resources in the province. One of the implications of that decision was that residents of the area had to travel more than 50 miles to have any kind of service, let alone a full service. The language commissioner intervened, not on health grounds but on the grounds of the reasonable expectations and rights of the residents of that part of Ontario, saying that they would be under threat if the hospital closed. Therefore, there was a judicial review and the hospital's life was extended. The language commissioner takes such action occasionally, but decisively.

[196] Yr hyn y mae Canada yn ei wneud— a gallai hyn fod yn wir am Gymru ymhen 20 mlynedd—yw ieuo hawl yr unigolyn i gael gwasanaeth â hawl y gymuned i ddisgwyl bywyd cyfrwng Ffrangeg. Dros amser, mae'r gyfundrefn wedi esblygu o fod yn un sy'n ymwneud â hawl yr unigolyn neu'r dinesydd, drwy'r llysoedd a'r Llywodraeth, i un sy'n ymwneud â hawl y gymuned i oroesi. Nid oes hawliau cymunedol, ond disgwylir i'r gymuned fod yn un hyfyw sy'n ddigon abl i atgynhyrchu diwylliant yr iaith Ffrangeg. Gwelir addysg, iechyd, gwasanaethau cyhoeddus, y swyddfa bost ac yn y blaen fel rhai o'r hoelion wyth yn y cyd-destun hwn. Mae'r comisiynydd iaith wedi ymddwyn fel lladmerdydd nid yn unig dros hawliau'r

What Canada does—and this could be true of Wales in 20 years' time—is yoke the right of the individual to have a service to the right of the community to expect a life lived through the medium of French. Over time, the system has evolved from being one that is about the rights of the individual or citizen, though the courts and the Government, to one that is about the right of the community to survive. There are no community rights, but there is an expectation that the community will be viable and able to reproduce culture in French. Education, health, public services, the post office and so forth are seen as the cornerstones in that context. The language commissioner has acted as an advocate not only for the rights of the individual, but also

unigolyn ond dros hawl y gymuned i gael gwasanaethau, ac, yn hynny o beth, mae wedi bod mewn adolygiadau barnwrol er mwyn gwarchod hygrededd y gymuned Ffrangeg, yn enwedig yn Ontario ac, i raddau llai, yn New Brunswick. Dyna lle mae wedi ymyrryd, ac nid mewn achosion yn erbyn y Llywodraeth nac yn erbyn adran o'r Llywodraeth. Mae'n gallu gwneud hynny drwy adroddiadau blynyddol i'r Senedd.

for the rights of the community to receive services, and, in that regard, he has been involved with judicial reviews to safeguard the integrity of the French-speaking community, particularly in Ontario and, to a lesser degree, in New Brunswick. That is where he has intervened, not in cases against the Government or against a Government department. He can do that via the annual reports submitted to the Parliament.

[197] Felly, pan fydd cymuned fregus mewn perygl, mae'r comisiynydd iaith, ar brydiau, wedi ymyrryd yn gyfreithiol. Mae ganddo'r hawl i wneud hynny oherwydd mae'n gwarchod buddiannau'r Ffrangeg fel iaith swyddogol yng Nghanada.

So, when a fragile community has been at risk, the language commissioner has, on occasion, intervened lawfully. He has the right to do that because he is protecting the interests of French as an official language in Canada.

[198] **Gareth Jones:** Pan gyfeiriwch at 'iechyd cymdeithasol', ai dyna'r math o beth sydd gennych dan sylw?

Gareth Jones: When you refer to 'social health', is that the kind of thing to which you are referring?

[199] **Yr Athro Williams:** Yr wyf yn cyfeirio at '*ethno-linguistic vitality*'. Ofer yw cael yr hawl os yw pawb arall o siaradwyr yr iaith yn diflannu.

Professor Williams: I am referring to ethno-linguistic vitality. There is no point in having the right if the other speakers of the language disappear.

[200] **Brynle Williams:** Hoffwn symud ymlaen at adran 11, ynghylch staff.

Brynle Williams: I would like to move on to section 11, which relates to staff.

[201] Section 11(6) states that the commission must obtain the approval of the Welsh Ministers for the number of staff members that may be appointed and the terms and conditions of service of the staff. In your evidence, you say that the Assembly should be responsible for funding and setting staff levels for the commissioner. What are your reasons for that view, and how have the international comparisons informed your thinking?

[202] **Yr Athro Williams:** Eto, nid wyf yn rhagdybio'r hyn y bydd y Cynulliad yn ei wneud, ond sôn am yr hyn y mae Canada, Iwerddon ac, i raddau llai, y Ffindir wedi profi. Ar y cychwyn, yr oedd yr awdurdodau'n meddwl y byddai swyddfa comisiynydd iaith yn rhywbeth bach iawn, gyda chylch gorchwyl bychan ac felly tua wyth neu 10 aelod o staff. Fodd bynnag, wrth i'r comisiynwyr iaith ddechrau ar y gwaith o warchod a rheoleiddio—ac yn enwedig yng Nghanada, i raddau llawer mwy helaeth nag yn Iwerddon—dechreuodd eu gwaith dreiddio i bob rhan o Lywodraeth ganolog a ffederal. Mae swyddfa'r comisiynydd iaith, felly, yn tyfu.

Professor Williams: Again, I am not anticipating what the Assembly will do, but referring to what Canada, Ireland and, to a lesser extent, Finland have experienced. In the beginning, the authorities thought that the office of a language commissioner would be very minor, with only a small remit, and so perhaps requiring only eight or 10 members of staff. However, as the language commissioners began the work of safeguarding and regulating—and particularly in Canada, to a far greater extent than in Ireland—their work started to permeate all aspects of central and federal Government. The office of the language commissioner is, therefore, growing.

[203] Am gyfnod hir, yr oedd rhai, fel y Rhyddfrydwyr yng Nghanada, o dan Pierre

For a long period, some, such as the Liberals in Canada, under Pierre Elliott Trudeau,

Elliott Trudeau, eisiau i hyn ddigwydd, oherwydd un o brif angorau polisi iaith Canada oedd y comisiynydd iaith, a oedd yn gwarchod buddiannau Ffrangeg y tu allan i Québec, Ontario, yn y gorllewin pell, yn Newfoundland ac yn y blaen. Felly, yr oedd yn talu i'r Llywodraeth Ryddfrydol ganiatáu i swyddfa'r comisiynydd iaith ddatblygu. Rhoddwyd mwy o swyddi a chyfrifoldebau iddi er mwyn gwarchod buddiannau Ffrangeg y tu allan i Québec.

wanted to see this happening, because one of the main anchors of language policy in Canada was the language commissioner, who protected French-language interests outside of Québec, Ontario, in the far west, in Newfoundland and so on. Therefore, it paid for the Liberal Government to allow the language commissioner's office to develop. More posts were allocated and further responsibilities were given to it in order to protect French-language interests outside Québec.

[204] Pan ddaeth Llywodraeth Dorïaidd i rym, a oedd â'i chefnogaeth yn deillio'n bennaf o'r gorllewin, nid oedd y Ffrangeg yn flaenoriaeth iddi. Y peth cyntaf a wnaed oedd bygwth torri ar allu'r comisiynydd iaith i ddiwallu anghenion Ffrangeg, lle bynnag y bônt. Polisi'r Torïaid oedd bod y Ffrangeg yn iaith swyddogol yn Québec gan mai'r iaith gyntaf yno ydyw, ond bod y Saesneg yn gydradd. Dywedodd nad oedd Québec yn dalaith ddwyieithog, oherwydd Ffrangeg yw iaith gyntaf yr *Assemblée Nationale du Québec*. Felly, polisi'r Torïaid oedd dweud os oedd pobl eisiau siarad Ffrangeg, gallant wneud hynny yn Québec, Ontario a New Brunswick. Yn y taleithiau eraill, er bod cyfraith ffederal yn dweud bod eisiau gwarchod y Ffrangeg, nid oeddent am wneud llawer yno oherwydd iddynt gredu nad oedd yn talu iddynt, fel plaid, wneud hynny.

When a Tory Government came to power, which drew its support mainly from the west, the French language was not a priority for it. The first thing that it did was threaten to curtail the commissioner's ability to meet the needs of the French language, wherever they existed. The Tory policy was that the French language was an official language in Québec, as that was its first language, but that English had equality. It said that Québec was not a bilingual province, because French was the first language of the *Assemblée Nationale du Québec*. So, the Tories' policy was to say that, if people wanted to speak French, they could do so in Québec, Ontario and New Brunswick. As for the other provinces, although federal law states that the French language should be protected, they would not do much there because they believed that it did not pay for them, as a party, to do so.

[205] Cwtogwyd ar allu'r comisiynydd iaith i warchod buddiannau'r Ffrangeg. Yr oedd y Senedd yn synhwyro hynny, ac yr oedd tyndra rhwng y Llywodraeth a'r comisiynydd iaith drwy'r amser. Felly, trosglwyddwyd y cyfrifoldeb dros adnoddau ac am staffio'r comisiynydd iaith o'r Llywodraeth i'r Senedd. Yn ymarferol, daw arian comisiynydd iaith Canada o gyllid llyfrgell y Senedd. Nid yw'n ymwneud ag unrhyw adran na gwleidyddiaeth; daw drwy'r drws cefn o adnoddau cyffredinol y Senedd. Felly, gwelir swyddfa'r comisiynydd iaith fel atodiad i allu'r Senedd i ddiwallu anghenion y wlad, fel nad yw'n fater bleidiol a gwleidyddol ac fel nad yw ei chefnogaeth yn mynd i fyny ac i lawr drwy'r amser. Dyna oedd y perygl, oherwydd yr oedd naill ai'n chwyddo neu'n cael ei gwtogi bob pum mlynedd. Felly, mae sylfeini cyfreithiol i gapasiti'r comisiynydd iaith yno i wneud ei

The language commissioner's ability to protect the interests of the French language was curtailed. The Parliament sensed that that was the case, and there was always tension between the Government and the language commissioner. So, the responsibility for resourcing and staffing the office of the language commissioner was transferred from Government to Parliament. In practical terms, the funding of Canada's language commissioner is drawn down from the parliamentary library's budget. It has nothing to do with any department or with politics; it comes in through the back door of the Parliament's general resources. The office is seen as an add-on to Parliament's ability to meet the needs of the country, so that it is not party political and so that its support does not go up and down all the time. That was the danger, because the role would either increase or be curtailed every five years. So,

waith.

there are legal foundations for the language commissioner's capacity to carry out his functions.

11.30 a.m.

[206] Wrth gwrs, y Llywodraeth sydd o dan lach y comisiynydd iaith hanner yr amser, oherwydd comisiynydd iaith ffederal ydyw ac nid comisiynydd ar gyfer un dalaith. Mae tua 80 y cant o waith y comisiynydd iaith yn cael ei ganolbwyntio ar weithgaredd y Llywodraeth ffederal ac adrannau mawr y Llywodraeth. Felly, wrth gwrs, mae tyndra statudol, ac, er mwyn gwarchod y comisiynydd i wneud ei waith, maent yn gwarchod y staff a'r adnoddau.

Of course, it is the Government that comes under fire most of the time from the language commissioner, because the commissioner has a federal remit and is not for only one province. Around 80 per cent of the language commissioner's work is concentrated on the work of the federal Government and the great departments of Government. So, of course, there is a statutory tension, and, to protect the commissioner's ability to carry out his work, they protect the staff and the resources.

[207] **Brynle Williams:** Felly, yr ydych yn dweud bod gwers bwysig inni o ran sicrhau bod y comisiynydd yn cadw hyd braich oddi wrth y Llywodraeth ac mai cryfder y rôl yw ei annibyniaeth o'r Llywodraeth.

Brynle Williams: So, you are saying that there is a major lesson for us to learn, namely to ensure that the commissioner is at arm's length from Government, and that being independent of Government is the strength of the role.

[208] **Yr Athro Williams:** Yn union.

Professor Williams: Quite.

[209] **Brynle Williams:** Mae fy nghwestiwn olaf am adrannau 22 a 23, ynghylch y panel cynghori.

Brynle Williams: My final question is on sections 22 and 23 on the advisory panel.

[210] Do you think that it is necessary to have an advisory panel to assist the commissioner? Could you explain your answer?

[211] **Yr Athro Williams:** Nid yw'n angenrheidiol. Mae'n dibynnu ar ba gyfundrefn yr ydych yn ceisio ei ddiffinio. Mae Seán Ó Cuirreáin, comisiynydd iaith Iwerddon, adran ustus y Ffindir ac adran bwerus Catalwnia yn gofyn am gyngor arbenigwyr ac yn eu talu am y cyngor hwnnw. Nid oes rhaid cael pwyllgor statudol, ond, fel yr awgrymodd Emyr, mae rôl y comisiynydd yn gallu bod yn un unig—o fod y person mwyaf poblogaidd pan fydd yn lladmerydd dros y Ffrangeg, yr Wyddeleg neu'r Gymraeg ac yn arwr i bawb, i fod y person lleiaf poblogaidd yn y wlad pan fydd yn cosbi'r Llywodraeth. Felly, weithiau, gall fod yn fuddiol i'r comisiynydd ddweud, 'Ar sail ein ymgynghoriad statudol gydag arbenigwyr, dyma ein barn ni, er mai fi fel comisiynydd sy'n rhoi'r farn unigol gerbron—fy nghyfrifoldeb i yw hwnnw.' Fodd bynnag, mae'r cyhoedd a'r

Professor Williams: It is not necessary. It depends on which system you are trying to establish. Seán Ó Cuirreáin, the Irish language commissioner, the justice department in Finland and Catalunya's very powerful department ask experts for advice and pay for that advice. You do not necessarily need a statutory committee, but, as Emyr suggested, the role of commissioner can be a lonely one—from being the most popular person when advocating in favour of French, Irish or Welsh and being everyone's hero, to being the least popular person in the country when reprimanding the Government. Therefore, sometimes, it can be useful for the commissioner to say, 'On the basis of our statutory consultation with experts, this is our considered opinion, although it is I, as commissioner, who is providing that particular opinion—that is my responsibility.' However, the public and the politicians can

gwleidyddion yn gallu gweld bod tua thri neu bedwar person y tu cefn i'r comisiynydd sydd wedi bod wrthi yn rhoi cyngor. Felly, nid yw'n angenrheidiol, ond mae'n dacteg wleidyddol gadarn i ddarparu'r sylfaen honno er mwyn rhannu cyfrifoldeb wrth gefn. Mae'n gwneud synnwyr, yn syml.

[212] Yn achos Iwerddon, mae canolfan cwynion y comisiynydd yn penodi tri pherson doeth, cyfreithwyr fel arfer ac un ymarferwr adnoddau dynol. Felly, er ein bod yn sôn am gynllunio ieithyddol a pholisi iaith, nid ieithydd sydd ei angen yn y pen draw ond rhywun sy'n ymwneud â phobl, oherwydd dyna fydd y gŵyn, sef tramgyddo buddiannau pobl.

[213] Yn Iwerddon, mae nifer o gyrff, er enghraifft tribiwnlysoedd neu bwyllgorau ymgynghorol wrth gefn, sy'n cael eu talu am ryw wyth diwrnod y flwyddyn. Pan fydd achos difrifol, byddant yn dod i mewn a rhoi cyngor, ond yr un bobl ydynt ac maent yn magu hyder a phrofiad wrth wneud y gwaith. Os nad oes gennych bwyllgor, gall barn un arbenigwr dros dro fod yn dra gwahanol i farn arbenigwr arall sy'n dod i mewn chwe mis yn ddiweddarach. Nid oes gennych hanes yr achos na chof sefydliadol. Felly, mae'n talu, nid mewn termau ariannol, ond yn ymarferol, i'r pwyllgor gadw golwg ar yr hyn sy'n digwydd yn y gyfundrefn neu yn y gymdeithas. Felly, mae'n ddoeth, ond nid yw'n angenrheidiol.

[214] **Michael German:** I wish to take you on to Part 4 on standards. The standards give rise to duties—and you may wish to comment on rights and duties and whether there is an important distinction between the two in your opinion. However, in general terms, because you have expressed a view on this before, how do you see the move from schemes to standards? Do you see that as a development and a good process, or as one that you have reservations about?

[215] **Yr Athro Williams:** Ni thrafodaf hawliau a chyfrifoldebau rhagor, ond safonau a chynlluniau. Cyn i'r Mesur arfaethedig ymddangos, rhaid imi gyfaddef fy mod yn disgwyl i'r safonau fod yn haen arwyddocaol a symbolaidd—nid i ddisodli cynlluniau iaith, ond i'w gwarchod fel bod safonau cenedlaethol yn perthyn i'r system addysg, y gwasanaeth iechyd, y Llywodraeth ac yn y blaen. Dyna sut yr wyf yn dal i'w gweld, sef, fel rhywbeth sydd ar lefel *mezzo*, ac, oddi tanynt, rywbeth tebyg i'r cynlluniau iaith

see that there are three or four people backing up the commissioner, who have been busy giving advice. So, it is not necessary, but it is a useful political tactic to provide that foundation on which to share the responsibility behind the scenes. So, it simply makes sense to do that.

In the case of Ireland, the commissioner's complaints bureau appoints three experts, usually lawyers and one human resources practitioner. So, although we are talking about language planning and language policy, it is not necessarily a linguist who is needed, but someone who can deal with people because that is what the complaint will be, namely going against the interests of people.

In Ireland, there are a number of bodies, for example tribunals or back-up advisory committees, which are paid for around eight day per annum. When there is a serious case, they will come in and give advice, but they are the same people and they foster expertise and confidence by carrying out the work. If you do not have a committee, the opinion of one temporary expert could be different from the opinion of another expert who comes in six months later. You would have no case history and no institutional memory. So, it pays, not in financial terms, but in practical terms, for the committee to keep an eye on what is happening in the system or in society. So, it is judicious, but is not necessary.

Professor Williams: I will no longer discuss rights and responsibilities, but standards and schemes. Before the proposed Measure appeared, I have to admit that I expected the standards to be a symbolic and significant layer—not to replace language schemes, but to protect them so that national standards would be applied to the education system, the health service, the Government and so on. That is how I still view them, namely as something on a *mezzo* level, and, underlying them, something similar to the traditional

traddodiadol weithio o hyd.

[216] Gwn na chaiff ei amlygu yma, ond, heb hynny, sut caiff y safonau eu profi yn y pair? Rhaid cael rhywbeth tebyg i gytundeb manwl i wireddu'r safonau. Mewn achosion eraill, megis o ran safonau iechyd ac ymddygiad, gwn y gall Cymdeithas Feddygol Prydain neu gorff arall gynnig safonau. Mae llawer o brofiad rhyngwladol o hynny, yn enwedig mewn gweinyddiaeth gyhoeddus dros Ewrop. Fodd bynnag, yn ddeallusol, gwelais y safonau hyn fel haen ychwanegol a oedd yn rhoi cysondeb i ddisgwyliadau a hawliau pobl.

[217] Mae Huw Onllwyn eisoes wedi cyfeirio'n gyhoeddus at fy ngwaith yn y Ffindir, Iwerddon, Cymru ac yn y blaen, a gwir yw dweud, o dan fframwaith bresennol bwrdd yr iaith, bod rhai cynlluniau iaith yn wych tra bod eraill yn annigonol. Felly, mae anghysondeb yn rhan greiddiol o'r ymwneud â phob un, er bod y bwrdd yn ceisio cael cysondeb drwy ailgytuno cynlluniau bob pum mlynedd. Gall anghysondeb ddeillio o'r broses, felly pe bai safonau yn gwarchod ac yn gwireddu'r isafbwynt gwasanaeth y byddai rhywun yn ei ddisgwyl, byddai hynny'n gam allweddol ymlaen.

[218] Yr hyn nad wyf yn ei weld yn glir drwy edrych ar y Mesur arfaethedig yw'r berthynas rhwng safonau a'r hyn sydd gennym ar hyn o bryd, oni bai eu bod yn cael eu gweld fel haen ar ben haen yn unig. Yr wyf yn siŵr y bydd gweision sifil yn ymateb mewn ffordd llawer disgleiriach, gan argyhoeddi bod safonau yn gallu bod yn gwbl eglur. Fodd bynnag, fel y dywedodd Emyr, hyd nes y byddwn yn gweld achos arbennig lle caiff model senario ei roi ger ein bron, bydd safonau'n parhau'n haniaethol yn hytrach na'n bethau ymarferol y gellid troi atynt wedi i hyn gael ei basio.

[219] **Michael German:** I will now put this to you as a matter of principle rather than detail. You mentioned Huw Onllwyn Jones, who said to us:

[220] 'We hope that the work that we have done in developing the new standards system brings greater consistency and clarity, and enables better enforcement of schemes. So, it builds on what Colin Williams found in his research.'

language schemes will continue to operate.

I know that it is not evidenced here, but, if not, how are the standards to be tested? Something like a detailed contract is needed to realise the standards. In other cases, such as with health standards and standards of conduct, the British Medical Association or another body can propose standards. There is a lot of international experience of that, particularly in public administration throughout Europe. However, intellectually, I viewed these standards as an additional tier that gave some kind of consistency to people's expectations and rights.

Huw Onllwyn has already referred publically to my work in Finland, Ireland, Wales and so on, and it is true to say that, under the current language board framework, some language schemes are excellent while others are inadequate. So, inconsistency is central to the process, although the board is seeking consistency by seeking a reagrment of schemes every five years. Inconsistency can emanate from the process, so if there were standards to protect and safeguard the minimum service that one would expect, that would be a great step forward.

What is not clear from the proposed Measure is the relationship between standards and what we have at present, unless the two are just seen as a tier upon a tier. I am sure that civil servants will respond in a much brighter way and will be able to convince you that standards can be quite clear cut. However, as Emyr said, until we see it in operation in a specific case where a scenario model is placed before us, standards will remain abstract rather than practical things that could be revisited once this is passed.

'Gobeithiwn fod y gwaith yr ydym wedi'i wneud wrth ddatblygu'r system safonau newydd yn dod â mwy o gysondeb ac eglurder, a'i fod yn galluogi gorfodaeth well o'r cynlluniau. Felly, mae'n adeiladu ar yr hyn a welodd Colin Williams yn ei waith

ymchwil.’

[221] Do you agree with that?

[222] **Yr Athro Williams:** Ydw, mewn egwyddor, ond mater arall yw’r manylion. **Professor Williams:** Yes, in principle, but the detail is another issue.

[223] **Michael German:** Do you agree, therefore, with the Law Society’s view that the proposed Measure should give a clear and detailed outline of the substance of standards?

[224] **Yr Athro Williams:** Ydw. Mater o ffydd yw hyn ar hyn o bryd, nid mater o brofi patrwm normadol. **Professor Williams:** Yes. It is currently a matter of trust, not a matter of testing the normative pattern.

[225] **Lorraine Barrett:** Can you explain what you mean by the term ‘active offer’ in respect of standards, which you mention in your paper?

[226] **Yr Athro Williams:** Yng Nghanada, unwaith eto, ac i raddau llai yn Iwerddon a nifer o wledydd eraill, mae cydraddoldeb ieithoedd, gan wybod bod anghydraddoldebau cymdeithasol, yn awgrymu bod gwasanaethau yn cael eu derbyn gan ddinasyddion ar lefel gydradd. Fodd bynnag, mae’r dinesydd, naill ai o ran profiad neu ddisgwyliadau, yn seicolegol ac yn ddamcaniaethol, yn gwybod bod y Saesneg yn drech na’r Gymraeg ym mhob man yng Nghymru. Felly, oni bai bod cynnig gweithredol i ysgogi pobl i ofyn am wasanaethau yn y Gymraeg, ac wedyn i ddefnyddio’r gwasanaeth hwnnw, bydd yr hen batrwm o anghysondeb yn parhau. **Professor Williams:** In Canada, once again, and to a lesser extent in Ireland and a number of other countries, the equality of languages, bearing in mind that there are social inequalities, suggests that services are received by citizens at comensurate level. However, the citizen, either through experience or expectation, psychologically and theoretically, knows that English is stronger than Welsh everywhere in Wales. So, unless there is an active offer to encourage people to ask for services in Welsh, and then to make use of that service, that old pattern of inconsistency will remain.

[227] Yng Nghanada, dros gyfnod hir o 40 mlynedd, mae’r angen a’r galw, sef y ddwy elfen angenrheidiol, yn cael eu diogelu gan gyrff neu adrannau o’r Llywodraeth drwy awgrymu bod pobl yn defnyddio cynnig gweithredol—maent hyd yn oed yn hyfforddi pobl i’w ddefnyddio. Felly, pe baet yn dod ataf ac yn dweud, mewn Ffrangeg, ‘*Je demande...*’, byddwn i’n dweud, ‘Mae’n flin gennyf, nid wyf yn siarad Ffrangeg, ond mae rhywun yn y swyddfa sy’n gallu, felly fe af i’w ôl’. Fodd bynnag, os wyt ti’n aros pum munud ac yna’n dweud dy fod yn fodlon siarad Saesneg, nid cydraddoldeb mo hynny. In Canada, over a long period of 40 years, need and demand, which are the two crucial elements, are safeguarded by bodies or Government departments suggesting that people utilise an active offer—they even train people to use it. So, if you approached me and said, in French, ‘*Je demande...*’, I would reply, ‘I’m sorry, I don’t speak French, but someone in the office does, so I’ll go to get them’. However, if you wait five minutes and then say that you are willing to speak English, that is not equality.

11.40 a.m.

[228] Er mwyn osgoi’r tensiwn a’r embaras a’r diffyg safonau proffesiynol, mae Canada yn mynnu bod pwy bynnag sy’n darparu gwasanaethau dwyieithog blaen tŷ yn gorfod To avoid the tension, the embarrassment and the lack of professional standards, Canada insists that those delivering bilingual front-of-house services have to speak basic-level

siarad Ffrangeg a Saesneg i safon waelodol. Felly, maent yn cynnig gwasanaeth, nid yn esgus cynnig gwasanaeth. Mae hynny'n rhan statudol o unrhyw wasanaeth ffederal a gynigir. Mae staff y gwasanaethau ffederal yn cael eu haddysgu nid yn unig i wneud eu gwaith arferol ond i ddelio â'r cyhoedd fel nad yw aelodau o'r cyhoedd yn teimlo eu bod dan anfantais. Mae hynny'n wahanol i ddweud ar bapur bod y Gymraeg a'r Saesneg yn gydradd, gan ei fod yn cael ei brofi wrth i rywun ofyn am wasanaeth, wyneb i wyneb. Mae cynnig gweithredol, felly, yn mynd ymhellach ac mae hynny'n ymwneud â hyfforddiant staff, nid y gyfraith yn unig.

French and English. So, they provide a service, rather than pretend to provide a service. That is a statutory requirement of any federal service provided. Federal service staff are trained not just in their normal duties, but to deal with the public, so that members of the public do not feel that they are disadvantaged. That is different to saying on paper that Welsh and English are equal, as it is tested when someone requests a face-to-face service. An active offer, therefore, goes further than that; it is related to staff training, and not just the law.

[229] **Lorraine Barrett:** To expand on that, all local authorities in Wales will offer a certain level of service through the medium of Welsh. If you were to ask for a particular department at Cardiff Council, across the road, and you spoke in Welsh, someone would say 'Could you hold on a moment? I'll get someone to converse with you through the medium of Welsh.' How realistic would it be, considering where we are now, to ensure that such services, whether at a hospital reception desk or elsewhere, would have someone working there who could at least converse at some level? Would it be just as bad or offensive—I am not sure what the right word is—if they could only communicate in basic Welsh, so that they could only go so far and would then have to find someone else? I am not sure how realistic it would be or by what timescale you would envisage it becoming a full service.

[230] **Yr Athro Williams:** Mae hwnnw'n gwestiwn ymarferol, doeth a rhesymol. Yng Nghanada, clustnodir rhai swyddi fel rhai dwyieithog penodedig, felly mae'r cynnig gweithredol yn dechrau gyda'r person hwnnw. Unwaith y maent wedi meithrin hyder neu weld bod defnydd y gwasanaeth yn codi, maent yn gwthio ffiniau'r cynnig gweithredol i rannau eraill o'r awdurdod lleol, yr ysbyty neu lle bynnag. Nid oes disgwyl i bawb sydd yn ymwneud â'r cyhoedd fod yr un mor rhugl yn siarad Ffrangeg a Saesneg. I gychwyn, bydd swyddi penodol yn cael eu clustnodi fel bod y cynnig gweithredol yn cael ei gynnig. Os na ddaw unrhyw beth o hynny, ni fydd y cynllun iaith neu'r safonau yn ymdroi i wneud mwy gyda'r cynnig gweithredol na pharhau i glustnodi un neu ddwy o swyddi penodol. Felly, ni ddylem fynd ar ôl y sgwarnog bod yn rhaid i bawb sydd yn ymwneud â'r cyhoedd yng Nghymru fedru'r Gymraeg—nid yw hynny'n rhesymol, beth bynnag. Ond, mewn rhai achosion arbennig, fel achosion dwys gyda phobl ifanc a henoed neu fynediad at feddyg mewn ardal fel Caerfyrddin, dylid disgwyl bod rhywun yn gallu siarad Cymraeg os yw'r gwasanaeth i fod yn gyflawn.

Professor Williams: That is a practical, wise and rational question. In Canada, some posts are designated bilingual positions, so the active offer begins with that person. Once they have grown in confidence or seen that the use of the service is increasing, they will push the boundaries of the active offer to other parts of the local authority, the hospital of whatever it is. There is no expectation that everyone who interfaces with the public is equally fluent in French and English. Specific jobs will be designated at the outset, so that the active offer can be made. If nothing comes of that, the language scheme or standards will not develop the active offer further, but will continue to designate one or two particular posts. So, we should not go after the red herring that everyone who interfaces with the public in Wales has to be Welsh speaking—that is unreasonable, in any case. However, in some particular cases, such as intensive cases with young or older people or perhaps access to a doctor in an area such as Carmarthen, there should be an expectation that someone can speak Welsh if it is to be a complete service.

[231] Rhywbeth sy'n esblygu dros amser yw hyn, a chyda'r holl gymariaethau â Gwlad y Basg a Chatalonia, yr ydym yn cymryd yr arferion gorau o'r hyn sy'n digwydd yno'n awr. Cychwynnodd yr ardaloedd hynny o lle yr ydym ni yn cychwyn yn awr yn 1975 neu 1969, felly ni ddylem ni gymryd arferion Catalwnia, Québec neu Ganada oddi ar y silff a disgwyl iddynt weithio yng Nghymru. Mae'n cymryd amser. Fodd bynnag, yr egwyddor yw'r peth pwysig. Ni ddylid ffugio cynnig gwasanaeth; mae hynny'n waeth, fel yr oeddet yn dweud, na chyfaddef eich bod yn gallu siarad unrhyw iaith ar wahân i'r Gymraeg.

[232] **Gareth Jones:** Yn eich cyflwyniad ysgrifenedig, o dan y pennawd 'Ystyriaethau Eraill', yr ydych yn nodi bod:

[233] 'safonau, yn y pen draw, yn ymwneud mwy â gweinyddiad cyhoeddus...nag yw â'r gyfraith.'

[234] A allwch esbonio'r datganiad hwn?

[235] **Yr Athro Williams:** Ffetis yw'r holl beth—comisiynydd iaith, rheoleiddio a deddfwriaeth—ar un lefel. Mae'n angenrheidiol er mwyn cyrraedd pwynt arall, y pwynt a wneuthum awr yn ôl, sef gallu ymddwyn yn naturiol yn Gymraeg neu yn Saesneg a disgwyl i hynny fod yn arferol wrth ofyn am wasanaeth. Rhywbeth wrth gefn yw'r gyfraith ac yn y blaen. Gwelaf fod yr un peth ynghlwm wrth hyfforddiant gweithwyr mewn awdurdodau lleol, ysbytai, prifysgolion neu ysgolion.

[236] Yn y bôn, y profiad yw'r peth pwysig i'r unigolyn. Mae'r gyfraith, y comisiynydd iaith, deddfwriaeth eilaidd a deddfwriaeth sylfaenol oll yn rhyw fath o fecanwaith er mwyn cyrraedd pwynt lle mae'r profiad yn gallu bod yn real. Felly, y cynnig yn fy nhystiolaeth oedd peidio ag anghofio mai arfer gweithwyr ac arfer dda o ran hyfforddiant gweithwyr yw'r pethau pwysicaf er mwyn gwireddu'r gwasanaeth.

[237] **Gareth Jones:** Deallaf y pwynt hwnnw. Felly, yn yr un cyd-destun, a fydddech yn ymatal rhag defnyddio safonau er mwyn gorfodi?

This is something that evolves over time, and with all these comparisons with the Basque Country and Catalunya, we are taking examples of current best practice. They started from where we are starting now in 1975 or 1969, so we should not take the practices of Catalunya, Québec or Canada off the shelf and expect them to work in Wales. It takes time. However, the principle is the important thing. We should not pretend to offer a service; that is worse, as you said, than admitting that you can speak any language apart from Welsh.

Gareth Jones: In your written submission, under the heading 'Other Considerations', you state that:

'ultimately, standards are more about public administration than the law.'

Can you expand on this statement?

Professor Williams: On one level, the whole issue of a language commissioner, regulation and legislation is a fetish. It is necessary in order to get us to another point, namely the point that I made an hour ago, which is to be able to behave naturally through the medium of Welsh or English and expecting it to be the norm when requesting a service. The law and so on are a back-up. I see this as related to the training of staff in local authorities, hospitals, universities or schools.

At the end of the day, the experience is the important thing for the individual. The law, a language commissioner, secondary and primary legislation are all mechanisms to reach the point where that experience becomes a reality. Therefore, the proposal in my evidence was that we should not forget that the practice of staff and good practice with regard to staff training are the most important things in order to provide services.

Gareth Jones: I understand that point. Therefore, in the same context, would you refrain from using standards for the purpose of enforcement?

[238] **Yr Athro Williams:** Na fyddwn; nid yn reddfol. Nid yw'n gwneud synnwyr i mi.

Professor Williams: No, I would not do so instinctively. It does not make sense to me.

[239] **Gareth Jones:** Mae un rhan lle yr ydych yn cyfeirio at yr elfen weinyddol. Yr ydym yn sôn am gyfraith, ac mae gosod y safonau yn beth cyfreithiol, yn ôl yr hyn yr wyf yn ei weld. Os deallaf yn iawn—ac yr wyf yn cytuno â chi—mae angen meithrin hyder a phrofiad yr unigolyn, sy'n elfen weinyddol i ryw raddau ac nid yn rhywbeth cyfreithiol. Mae'r safonau fel pe baent yn gorfodi un ar y llall.

Gareth Jones: In one part, you refer to the administrative side. We are talking about law, and setting standards is a matter of law, as far as I can see it. If I understand correctly—and I agree with you—there is a need to nurture confidence and experience in individuals, which is an administrative matter to a certain extent and not a legal matter. The standards seem to force one upon the other.

[240] **Yr Athro Williams:** Ydynt, ond, yn y bôn, fel yr wyt yn awgrymu, ofer yw cael y safon oni ellir ei weithredu. Dylai'r buddsoddiad fynd tuag at ddiwylliant awdurdodau lleol, ysbytai, ac yn y blaen. *Trigger point* yw'r safonau i mi, nid *end point*.

Professor Williams: They do, but essentially, as you suggest, it is pointless having a standard unless it can be enforced. The investment should be made in the culture of local authorities, hospitals and so on. For me, the standards are a trigger point rather than an end point.

[241] **Gareth Jones:** Yr oeddwn yn pryderu bod y safonau—yr wyf yn derbyn y *trigger point* hefyd—yn y gyfraith. Dyna'r unig bryder sydd gennyf.

Gareth Jones: I was concerned that the standards—I also accept the trigger point—were enshrined in law. That is the only concern that I have.

[242] Mae fy nghwestiwn nesaf yn cyfeirio at wahanol fathau o safonau. Mae'n ymwneud â llunio polisi gweithredol, cyfathrebu a chadw cofnodion. A yw'r rhain yn briodol?

My next question refers to different kinds of standards. It relates to drawing up operational policy, communication and keeping records. Do you believe that these are appropriate?

[243] **Yr Athro Williams:** Ydynt, ac yn dderbyniol. Gydag amser, bydd hynny'n magu hyder ac yn dod yn fwy normadol mewn degawd. Bydd yn sialens ar y cychwyn cyntaf, ond, dros amser, mae'r disgwyliadau yn ddigon rhesymol.

Professor Williams: Yes, and acceptable. With time, that will engender confidence and it will become more normative in a decade. It will be a challenge at the outset, but, over a period of time, the expectations are quite reasonable.

[244] **Rhodri Morgan:** O ran hyd, lled a dyfnder Atodlen 9 i'r Mesur arfaethedig, a ellir cynnwys y gwasanaethau cyhoeddus i gyd sy'n berthnasol i'r Mesur arfaethedig hwn, sef addysg, defnyddio'r Gymraeg wrth ddarparu gwasanaethau rheng flaen ac yn y blaen?

Rhodri Morgan: With regard to the length, breadth and depth of Schedule 9 to the proposed Measure, can all public services that are relevant to the proposed Measure be included, such as education, the use of Welsh in provision of front-line services and so on?

[245] **Yr Athro Williams:** Fy nheimlad ar y cychwyn oedd bod angen llawer mwy o drafodaeth ynglŷn â beth fyddai'r realiti yn hynny. Cefais gyfle i feddwl am yr hyn y byddai'n ei olygu yn ymarferol ac a oedd angen rhestru pob gwasanaeth y gallwch

Professor Williams: My feeling at the outset was that far more discussion was needed about what the reality of this would be. I had an opportunity to think about what this would mean in practical terms and whether it was necessary to list every service that you could

feddwl amdano er mwyn gwarchod neu glymu'r Gymraeg i ryw beuoedd arbennig. Credaf ei fod yn rhesymol i ddechrau, ond y broblem yw lle mae stopio os oes rhaid rhestru'r gwasanaethau cyn iddynt fod yn gymwys. Fel yr ydym yn gwybod, yr oedd nifer o bobl yn cynnig gwasanaethau yn y 1950au heb gyfraith o gwbl. Efallai nad oeddent yn ddigonol, ond yr oedd yn arfer dda yng Ngheredigion, neu le bynnag, i gynnig rhyw fath o wasanaeth. Felly, yr wyf yn rhanedig wrth ymateb i'r cwestiwn. Ni allaf weld cyfle i wneud rhywbeth oni bai ei fod yn cael ei restru.

[246] **Rhodri Morgan:** A oes bylchau amlwg yn eich tyb chi ynglŷn â diffiniad y gwasanaethau cyhoeddus?

[247] **Yr Athro Williams:** Nac oes, oherwydd fy mod yn deall bod gweision sifil a chyfreithwyr y Llywodraeth yn eu cynnig oherwydd eu bod yn gallu eu hamddiffyn. Pe baent yn cynnig rhai eraill heb brofiad i amddiffyn a gwarchod gwasanaethau eraill, credaf y byddent yn mynd y tu hwnt i'w cyfrifoldeb o roi cynngor cyfreithiol.

[248] **Rhodri Morgan:** Y broblem gyda'r Mesur arfaethedig fel y'i drafftiodd yw ei fod yn ymwneud â'r un agweddau yn union â chanllawiau Bwrdd yr Iaith Gymraeg ar yr hyn mae cynlluniau iaith yn gallu ei gynnwys.

[249] **Yr Athro Williams:** Bydd yn rhaid imi feddwl am hynny. Os gofynnwch y cwestiwn yn ysgrifenedig, gwnaf feddwl amdano. Nid wyf am roi ateb y naill ffordd yn awr oherwydd ateb o dop fy mhen fyddai.

11.50 a.m.

[250] **Rhodri Morgan:** Iawn. O ran tystiolaeth y Gweinidog gerbron y pwyllgor hwn ynglŷn â'r mathau o ddyletswyddau a fyddai cyrff cyhoeddus yn eu cael oherwydd y safonau, beth yw eich dehongliad chi o'r hawliau fydd yn deillio o'r safonau fel y maent wedi'u drafftio yn awr?

[251] **Yr Athro Williams:** Ar ddiwrnod braf o haf, gallaf weld hwn yn gweithio yn effeithlon iawn. Pan fo cymylau duon yn bygwth, a bod ansicrwydd, diffyg arweiniad,

think of in order to protect or to tie the Welsh language to particular domains. I believe that it is a reasonable start, but the problem is the question of where to stop with the services if they have to be listed before they become eligible. As we know, a number of people offered services in the 1950s even though there was no law at all. They may not have been sufficient, but it was good practice in Ceredigion, or wherever, to offer some sort of service. Therefore, I am split with regard to my answer to the question. I cannot see that there is an opportunity to do something unless it is listed.

Rhodri Morgan: In your opinion, are there obvious gaps with regard to the definition of the public services?

Professor Williams: No, because I understand that they have been proposed by Government civil servants and lawyers because they can be defended. If they were to suggest others without experience to defend and protect other services, I believe that they would be going beyond their remit of offering legal advice.

Rhodri Morgan: The problem with the proposed Measure as drafted is that it relates to exactly the same aspects as the Welsh Language Board's guidelines to what language schemes can contain.

Professor Williams: I will have to think about that. If you ask that question in writing, I will think about it. I do not wish to give a reply one way or another now because it would be off the top of my head.

Rhodri Morgan: Okay. In respect of the Minister's evidence to this committee regarding the kinds of duties that public bodies would have as a result of the standards, what is your interpretation of the rights that will arise from the standards as they are currently drafted?

Professor Williams: On a fine summer's day I can see this working very efficiently. When there are dark clouds gathering, and there is uncertainty, lack of leadership, lack of

diffyg adnoddau, a bygythiad i'r gwasanaeth, ni chredaf ei fod yn ddigonol. Mater o ffydd ydyw yn y rheini sydd yn gweithredu'r system. Ar bapur, y mae'n bosibl, ond mater arall yw penderfynu a oes sicrwydd wrth gefn y caiff ei wneud ar bob achlysur. Nid yw hynny mor glir imi.

[252] **Gareth Jones:** Yr ydym eisoes wedi cyfeirio at iechyd cymdeithasol. Mae'r model eisoes yn bodoli, ond efallai byddai modd ei ddatblygu yng Nghymru. A fyddai modd addasu'r Mesur arfaethedig i ystyried hynny?

[253] **Yr Athro Williams:** Credaf ei bod yn rhy gynnar i sôn am addasu'r Mesur arfaethedig. I mi, byddai hynny'n rhywbeth hirdymor ar gysail profi'r Mesur dros bum i 10 mlynedd. I fod yn hyf, byddai'n well gennyf eich bod yn canolbwyntio ar y pethau allweddol sydd yn y Mesur arfaethedig a allai fod yn ddiffygiol a'u gwella yn awr. Un cyfle a gawn ymhen pum neu 10 mlynedd i wneud hyn. Efallai bod modd gwneud hynny maes o law, gan fod cymunedau traddodiadol Cymraeg yn dechrau edwino, a chan fod ysgolion traddodiadol Cymraeg yn cael problemau. Gwyddom y problemau. Nid y gyfraith fydd yn darparu'r ateb, ond polisi. Un o'r pethau i'w gadw mewn cof yw, fel y mae Deddf yr Iaith Gymraeg 1993 wedi esblygu wrth gael ei dehongli, bydd y Mesur yn esblygu o gael ei ddehongli gan bobl eraill y tu hwnt i'n diddordebau ni ymhen pum neu 10 mlynedd. Mae angen cadw ar gof y gall effaith y Mesur arfaethedig fod yn uniongyrchol ar gryfhau neu leihau'r hyn yr ydym eisoes wedi'i ennill o ran patrymau iaith, addysg, cymunedau, rhwydweithiau ac ati.

[254] **Gareth Jones:** Yr ydych eisoes wedi crybwyll gorfodi safonau. A oes rhywbeth arall yr hoffech ei ychwanegu at hynny? Sut y mae'r dulliau ar gyfer gorfodi safonau yn cymharu â'r rhai yr ydych yn gyfarwydd â hwy? Yr ydych wedi rhoi rhai enghreifftiau, ond a oes rhywbeth ychwanegol?

[255] **Yr Athro Williams:** Ddim ar hyn o bryd. Fel y dywedodd Emyr, mae'n haws ymateb i rywbeth lle bo achos arbennig a lle gall rywun weld fframwaith yn hytrach na

resources, and a threat to the service, I do not believe that it is adequate. It is a matter of confidence in those implementing the system. On paper, it is possible, but deciding whether there is a guarantee behind it that this will be done on all occasions is another matter. That is not so clear to me.

Gareth Jones: We have already referred to social health. The model already exists, but perhaps it could be developed in Wales. Could the proposed Measure be adapted to take that into consideration?

Professor Williams: I think that it is too early to talk about amending the proposed Measure. To me, that would be something for the long term, on the basis of having experienced the Measure over five to 10 years. To be bold, I would prefer you to concentrate on the crucial aspects of the proposed Measure that could be deficient and improve on them now. We will only have one opportunity to do this in five or 10 years. Perhaps we could do that in due course, as traditional Welsh-speaking communities are starting to decline and traditional Welsh-speaking schools are having problems. We know the problems. It is not the law that will provide the answer, but policy. One of the things that we must bear in mind is that, just as the Welsh Language Act 1993 has evolved in being interpreted, so will the Measure evolve in being interpreted by others who have interests over and above our interests in five or 10 years. We have to bear in mind that the proposed Measure could have a direct impact on strengthening or weakening the gains that we have already made in terms of patterns of language, education, communities, networks and so forth.

Gareth Jones: You have already mentioned the enforcement of standards. Is there anything else that you would like to add? How do the mechanisms for enforcement of standards compare with those that you are familiar with? You have given us some examples, but is there anything in addition to that?

Professor Williams: Not at present. As Emyr said, it is easier to respond to something where you have a particular case history and where there is a framework in

syniadau yn unig. Pa bynnag syniad y bydd rhywun yn ei godi, gall rhywun arall godi syniad arall sydd yr un mor effeithlon. Mae'n anodd imi ragdybio heb ddibynnu'n ormodol ar fy mhrofiad yn y bwrdd yn gweithio gyda chynlluniau iaith gan mai dyna'r model creiddiol. Felly, mae'n anodd dychmygu ar hyn o bryd ffyrdd eraill o weithio ar yr ochr honno, heblaw bod enghraifft arbennig yn dod ger ein bron, fel rhyw fath o '*scenario setting*' lle awn drwyddo fesul cymal i weld beth a all ddigwydd.

place rather than just concepts and ideas. Whatever concept someone may suggest, someone else could suggest something that is just as efficient. It is difficult for me to anticipate what would happen without depending too much on my own experience on the board of working with language schemes, because that is the core model. Therefore, it is difficult to imagine at present other ways of working in that regard, unless a particular example is put before us, such as some kind of scenario setting that we could go through clause by clause to see what could happen.

[256] **Gareth Jones:** Fel y gwyddoch, y Rhan olaf yw Rhan 6, ar rhyddid i ddefnyddio'r Gymraeg. Yr ydych eisoes wedi—

Gareth Jones: As you know, the final Part is Part 6, on freedom to use Welsh. You have already—

[257] **Yr Athro Williams:** Nonsens llwyr yw hynny imi. Rhyddid i anadlu—diolch.

Professor Williams: That is utter nonsense to me. Freedom to breathe—thanks.

[258] **Gareth Jones:** Ie. Yr ydych wedi gwneud y pwynt hwnnw, ond efallai bod cwestiwn yma. Eto, o'ch profiad rhyngwladol, a ydych yn ymwybodol o unrhyw drefniadau cyfreithiol tebyg o ran rhyddid i ddefnyddio iaith, ac, os felly, sut y mae hynny'n cael ei orfodi?

Gareth Jones: Yes. You have made that point, but there may be a question here. Again, from your international experience, are you aware of any legal arrangements of a similar nature in terms of the freedom to use a language, and, if so, how is that enforced?

[259] **Yr Athro Williams:** Yng Nghatalwnia, Gwlad y Basg a nifer o wledydd de-ddwyrain Asia, megis Cambodia, Fietnam, delta Mekong, ac yn y blaen, cyn bod unrhyw ddeddfwriaeth benodol, yr oedd llawer o bwysau ar ryddid, ond yr oedd y rhyddid hwnnw ar ddwy lefel. Yr oedd rhyddid rhag dioddef a rhyddid i wneud rhywbeth penodol. Yr hyn sydd wedi digwydd ers 1975, yn arbennig yn Asia, yw fod y syniad o ryddid rhag gormes a rhyddid rhag peidio defnyddio iaith neu ddiwylliant arbennig wedi troi i fod yn rhyddid i wneud hynny. Ar ôl cyfnod o rhyddid i ymwneud â Llywodraeth yn yr iaith ac i gael addysg yn yr iaith, ac yn y blaen, mae wedi troi yn Fesur arfaethedig. Cawsom y ddeialog honno yn y 1960au a'r 1970au. Mae'r rhyddid yn perthyn i bawb sydd dros 50, fel petai. Hynny yw, ein deialog ac ein disgwrs ni yw hynny, nid deialog a disgwrs y bobl ifanc, sydd yn cymryd yn ganiataol fod ganddynt y rhyddid hwn.

Professor Williams: In Catalunya, the Basque Country and a number of countries in south-east Asia, such as Cambodia, Vietnam, the Mekong delta, and so on, before any specific legislation was enacted, there was a great emphasis on freedom, but that freedom was on two levels. There was freedom from suffering and freedom to do something in particular. What has occurred since 1975, particularly in Asia, is that the idea of freedom from oppression or from not being able to use a particular language or culture has turned into the freedom to do so. After a time of freedom to deal with the Government in the language, and be educated in the language, and so on, it has become a proposed Measure. We had this dialogue in the 1960s and 1970s. The freedom belongs to everyone over 50, as it were. That is, it is our dialogue and discourse, not the dialogue and discourse of young people, who take it for granted that they have this freedom.

[260] **Val Lloyd:** Thank you for answering our questions, Professor Williams. We will write to you with the question that my colleague, Rhodri Morgan, asked. You will be sent a draft transcript, which you should receive in about a week.

[261] **Yr Athro Williams:** Diolch am y **Professor Williams:** Thank you for the cyfle i wrando ac i gyfrannu. opportunity to listen and to contribute.

[262] **Val Lloyd:** I will now draw the meeting to a close. We will be meeting next Thursday morning, when we will be taking evidence from the Welsh Language Board, Scottish Power and the Royal Mail Group. Thank you.

*Daeth y cyfarfod i ben am 11.56 a.m.
The meeting ended at 11.56 a.m.*